COLLECTIVE BARGAINING AGREEMENT

BETWEEN THE U.S. DEPARTMENT OF EDUCATION

AND THE NATIONAL COUNCIL OF DEPARTMENT OF EDUCATION LOCALS

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES COUNCIL 252

December 17, 2013

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ARTICLE 1: Parties to the Agreement and Definition of Unit

Section 1.01

This Agreement is made and entered into between the United States Department of Education, hereinafter referred to as "the Employer," and the American Federation of Government Employees, AFL- CIO through its agent, National Council of Education Locals No. 252, hereinafter referred to as "the Union" or "the Council," and collectively known as "the Parties."

Section 1.02

The Federal Labor Relations Authority on July 22, 1981, in Cases No. 3-R0-71 and 3-R0-72, certified the Union as the exclusive representative for a bargaining unit of all professional and non-professional employees of the Department, but excluding the following as set forth therein:

A. Management officials and supervisors;

B. Confidential employees;

C. Employees engaged in personnel work in other than a purely clerical capacity;

D. An employee engaged in administering the Federal Labor-Management Relations Program;

E. Employees engaged in intelligence, counterintelligence, investigative, or security work which directly affects national security;

F. Employees primarily engaged in investigation or audit functions relating to the work of individuals employed by the Department;

G. Employees of the Office of Inspector General; [The Office of Inspector General is excluded, by agreement, because of the existing organization of its functional responsibilities.]

H. Experts and consultants;

I. Intermittent employees;

J. Employees hired under the summer employment program and employees under student appointments (except those in the Cooperative Education Program);

K. Faculty advisers;

L. Employees appointed under fellowship programs;

M. Schedule C employees;

N. Members and staff of independent agencies, boards, commissions and councils for which the Department provides administrative services; and,

O. Employees on temporary appointments of ninety (90) days or less.

ARTICLE 2: Purpose

The Employer and Union agree to work to accomplish the mission of the Department and to improve the working conditions and productivity of all employees of the Department. Subject to the law, it is the intent of this Agreement to provide a clear statement of the respective rights and obligations of employees, the Union and the Employer so that constructive labor-management relations may be furthered and facilitated. More specifically, it is the purpose of this Agreement to:

A. State the policies, procedures, and methods that will govern the working relationship between the Parties;

B. Recognize and respect the dignity and rights of employees in the implementation and application of this Agreement and in accordance with applicable policies, laws, regulations and Statutes;

C. Indicate and provide for the resolution of matters of concern;

D. Facilitate constructive labor-management relations and implement processes to encourage such a relationship; and

E. Ensure employee participation through the Union, as authorized by the Federal Service Labor-Management Relations Statute (FSLMRS), regulation, and the provisions of this Agreement, in the formulation and implementation of personnel policies and practices and matters affecting general working conditions of bargaining unit employees.

ARTICLE 3: Definitions and Applications

As used in this Agreement and for purposes of its interpretation:

Section 3.01

When such terms as "applicable laws, rules, and regulations," are used in this Agreement, they are intended to refer to that body of Federal laws, regulations, and rulings of Federal agencies, and the rulings and decisions of appropriate authorities, such as the Comptroller General, to which the Employer, its employees and the Union are subject, consistent with the terms of the FSLMRS.

Where this Agreement makes reference to Department of Education policies, directives, or regulations, the Parties intend that the policies, directives or regulations to be applied are those which are in effect at the time of the action referred to in the Agreement. It is not the Parties' intention, by merely referencing them, to fix the specific terms of such policies, directives or regulations for the duration of this Agreement. Rather, each Party reserves any right it may have under the law or this Agreement to propose and negotiate changes to those policies, directives or regulations.

Section 3.02

"Blackberry" refers to any smart phone or portable telecommunications device issued to employees for telephone calls or email communication of equivalent or greater capability.

Section 3.03

“Bona fide work consideration" refers to workload that is greater than normal in terms of volume and/or workload that is immediate involving assignments that cannot reasonably be performed by another employee.

Section 3.04

"Briefing" refers to the disclosure of information and materials provided in transparency to the Union during labor-management meetings and negotiations for addressing mid-term issues, developing concerns, and/or providing pre-decisional involvement for desired or required changes, as referred to in this Agreement.

Section 3.05

“ConnectED" refers to the Department's intranet site or any successor to ConnectED that is used internally within the Department to post information electronically.

Section 3.06

"Consult" means to meet in good faith for the purpose of exchanging information on proposed plans or activities and to provide an opportunity to exchange views or opinions.

Section 3.07

"Deciding official" refers to a decision-making representative of the Employer who is considered to be fair, impartial, and free of a conflict of interest in the outcome of the decision, per the arbitration decision of ARB-05-002 from 27 March 2007 defining this term. The 27 March 2007 decision states, "The requirement in 5 U.S.C. 7121 (b) that a grievance procedure be "fair" requires that persons designated by management to decide a grievance must be impartial and free from a conflict of interest.”

Section 3.08

"Discuss" means to exchange, informally, views or opinions.

Section 3.09

"Disclosure" means to provide all available information that is not privileged, confidential or otherwise restricted, or to provide full transparency to the extent possible during labor-management meetings, briefings, or human capital relations.

Section 3.10

“Employee” means a member of the bargaining unit described in Article 1 of this agreement.

Section 3.11

"Employee Performance Folder" refers to the folder that contains employee performance appraisal documents in any format that the record exists.

Section 3.12

"Employer" refers to the Department of Education and all principal offices and components therein. "Employer" also refers to supervisors or managers of the Department, or individuals delegated to perform supervisory or managerial responsibilities.

Section 3.13

"Equitable" refers to what is just, fair, and reasonable in providing the equal opportunity and conditions of work for any employee to the most extent possible in order to avoid unfair advantage.

Section 3.14

"Formal discussion" refers to any discussion between one or more representatives of the Department and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment. Formal discussions are not limited to in-person meetings. Microsoft Office Communicator Live meetings, teleconferences, video conferences, and other verbal/signed communications may constitute formal meetings if the above conditions are met.

Section 3.15

Federal Mediation and Conciliation Service Procedures (FMCS)- The Department uses an independent agency of the United States government, founded in 1947, which provides mediation services to industry, community and government agencies worldwide and establishes the procedures prior to implementing the arbitration process.

Section 3.16

“FSLMRS" or "the Statute" means the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5, United States Code.

Section 3.17

"Labor-Management" refers to meetings, forums, committees, video conferences, teleconferences, and/or other activities consisting of both Employer and Union representatives preparing for or participating in working together.

Section 3.18

"Labor Relations Officer" means the Department of Education Human Capital and Client Services Director, Employee and Labor Relations Branch, or designee who is identified as the point of contact for the Agency.

Section 3.19

"Level of Recognition" means that notification should be provided or approval sought from the highest level of the Union, being the AFGE Council 252 President or designee.

Section 3.20

"Local Labor-Management Forum" is the periodic meeting (every four months) of representatives of the Employer and Union officials at the regional level having regional decision-making ability.

Section 3.21

"Medical documentation" refers to documentation from a physician, medical specialist, or licensed medical practitioner verifying a medical condition of a bargaining unit employee.

Section 3.22

"Mid-term bargaining" or "mid-term negotiations" refers to bargaining the impact of actions, issues, and/or concerns related to developing and/or changing conditions of employment during the life of the Collective Bargaining Agreement.

Section 3.23

"National Collective Bargaining Official" is the management official of the Employer to whom responsibilities referred to in this Agreement have been delegated and who has decision-making authority.

Section 3.24

"National Labor-Management Forum" is the bi-annual meeting of representatives of the Employer and Union officials at the level of national recognition having decision-making ability. Collectively, participants in the National Labor-Management Forum exercise the responsibilities referred to in this agreement and have decision-making authority.

Section 3.25

"Negotiate" has the meaning given to it by the FSLMRS. It encompasses the obligation of the Parties to bargain collectively by meeting at reasonable times in a good faith effort to reach agreement; however, this does not compel either the Union or the Employer to agree to a proposal or to make a concession.

Section 3.26

"Officials" - where this agreement refers to duties to be performed by named officials of the Employer or the Union (e.g., the "National Collective Bargaining Official," "Labor Relations Officer," "supervisor", "Council President," or "Chief Steward"), it is understood that the Parties reserve their respective rights to assign these duties to, and have them performed by, other officials.

Section 3.27

"Official duty" refers to an assignment of agency work performed during duty hours by a bargaining unit employee as assigned by managers or supervisors of the Employer.

Section 3.28

"Official time" is a type of excused absence during normal work hours when representation activities may be performed by Union representatives as specifically provided for in this Agreement. Such individuals shall be paid at their normal rate of pay during such periods.

Section 3.29

"Official Notice (Notification)" is notice of a desired or required change to conditions of employment communicated between the Employer and the Union. The party proposing the change shall notify the other in writing and/or by email of the proposed change. The notification shall include, as appropriate, the proposed date of implementation. The receiving party will notify the initiating party in writing and/or by email whether or not it wishes to negotiate concerning the change. The notice will be delivered in the manner specified by Article 8 or Article 9, as appropriate.

Section 3.30

"Official Personnel Folder" will be interpreted to apply to electronic official personnel files (eOPFs) as well as physical files that have not yet been converted to the electronic version.

Section 3.31

"Pre-decisional involvement" (PDI) refers to those initial and follow-up activities where the Union is afforded the opportunity to participate in shaping decisions in the workplace. PDI is a process to provide the Union's input as stakeholders into the decision- making process. PDI does not waive management's or union's statutory rights. PDI is not subject to administrative review.

Section 3.32

"Proposed change" refers to a desired or required change to conditions of employment communicated between the Employer and the Union. When the Employer wishes to make a change, including a required change, the Employer will generate an Article 8 or Article 9 notice. The Union may issue a 'Demand to Bargain' over a proposed change.

Section 3.33

"Reasonable Accommodations" are arrangements that address the specific needs of disabled employees to assist them to perform the required duties and responsibilities of their job.

Section 3.34

"Reprisal" refers to retaliation from a supervisory or management representative against an employee and/or Union representative for perceived injury related to protected activity.

Section 3.35

"Response" refers to an answer or reply made orally, or preferably in writing, that is delivered as soon as practicable, when a time frame is not specified or mutually agreed upon by all Parties, or within such time as otherwise provided in this Agreement.

Section 3.36

"Special Representatives" refers to the designated team/committee members for whom official time is provided in this agreement.

Section 3.37

Standard Form (SF) -Where this Agreement requires use of a particular Standard Form (e.g. SF

1187), and a successor to the form is created, use of the successor form complies with this Agreement. Other forms, created by the Department (not standard forms), may be subject to negotiation.

Section 3.38

"Statutory rights" refers to rights of the bargaining unit employees, the Union, and/or the Employer, provided in federal law under 5 U.S.C, Chapter 71 and/or Title VII of the Civil Service Reform Act of 1978.

Section 3.39

"Supervisor" refers to the first-line supervisor or designated management official in the employee's immediate supervisory chain.

Section 3.40

"The Art of Conducting a Structured Interview" is a guide developed by the Department, to assist managers in developing a structured approach for the interview process. In addition, this guide addresses the pros and cons of different interview question types, what interviewing techniques may be helpful, and those which may prove to be less effective.

Section 3.41

'Transfer of function" is defined in 5 CFR 351.203 as

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

Section 3.42

"Union representative" refers to duly designated union officers, and those Union-designated stewards and team/committee members, for whom official time is provided in this agreement.

ARTICLE 4: Copies and Distribution of Agreement

Section 4.01

Within two (2) weeks of the effective date of the Agreement, the Employer shall notify all employees that a link to the Agreement is available on the Department's intranet site (connectED).

Section 4.02

As soon as practicable following the effective date of the Agreement, the Employer agrees to distribute a hard copy of the Agreement to each employee.

Section 4.03

The Employer agrees to distribute a hard copy of the Agreement to each new employee and supervisor.

Section 4.04

Twenty-five (25) hard copies of the Agreement shall be made available to each Union local for its own use, and one hundred (100) hard copies of the Agreement shall be made available to the Council. The Employer shall post a searchable text-based file of the Agreement on the main page of the Department's intranet site (connectED). The location of the posting shall not be moved from the main page. In addition, the Employer shall post a searchable text-based file of the Agreement on the Department's internet site (ED.gov).

Section 4.05

The Employer agrees to distribute to each employee any new agreements that modify existing contractual provisions. The Employer shall post a searchable text-based file of any new agreements that modify existing contractual provisions. Any such files shall be linked to the Agreement and therefore accessible in the same manner as the Agreement. These files shall also be accessible on the Department's internet site (ED.gov).

Section 4.06

As soon as practicable after the effective date of this Agreement, the Employer shall advertise and provide links to the Agreement on ED Notebook, FSA Starting Line, and Inside ED.

Section 4.07

The Employer shall ensure that a searchable text-based file of the Agreement and of any new agreements that modify existing contractual provisions are posted on any Departmental websites that are successors to connectED and ED.gov, in accordance with the placement provision set forth in Section 4.04.

Section 4.08

Costs of reproduction, posting, and distribution of this Agreement and any new agreements that modify existing contractual provisions will be assumed by the Employer.

ARTICLE 5: Effective Date and Duration of Agreement and Negotiation of Subsequent Agreements

Section 5.01

The Employer and the Union agree that for the full term of the Agreement (as set forth in Section 5.02 and, as may be applicable, in Section 5.03) the provisions of this Agreement shall remain in full force and effect and unchanged except as mutually agreed, or as may be required by applicable law.

Section 5.02

This Agreement shall remain in effect for three (3) years from the effective date shown on the cover of the Agreement.

Section 5.03

A. This Agreement shall be automatically renewed from year to year thereafter unless one Party gives the other written notice of its intention to renegotiate this Agreement no less than sixty (60) or more than ninety (90) calendar days prior to its expiration date. If notice to renegotiate is given, the Agreement shall be extended for one (1) year or until a new agreement becomes effective, whichever is earlier.

B. At the time this Agreement is extended or renewed, the Parties will negotiate, consistent with applicable law, concerning any changes in this Agreement that may be required by changes in Government-wide rules or regulations.

Section 5.04

In the event that one of the Parties decides to renegotiate this Agreement as provided for in Section 5.03, the following procedures will apply:

A. Representatives of both Parties shall meet within seventy-five (75) calendar days after notice to renegotiate is given to arrange for ground rules negotiation, including designation of the time and place for general negotiations on the new agreement.

B. Ground rules negotiation shall be held at the Employer's Headquarters in Washington, DC. Each party shall be represented by up to four (4) persons. Appropriate travel and per diem shall be provided to up to three (3) Union negotiators.

C. Each Party will designate a Chief Negotiator who will have appropriate collective bargaining authority.

D. The Employer will make a room available for negotiations.

Section 5.05

The Employer and the Union agree that initial training in contract administration is necessary. Each Local will designate Union representatives to be trained by Council Officers. Official time will be granted to Union representatives to participate in contract administration training. The amount of official time needed, and whether or to what extent travel and per diem may be provided, will be negotiated.

ARTICLE 6: Employee Rights and Responsibilities

Section 6.01 - Statutory Rights

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

1. Act for a labor organization in the capacity of a representative; and
2. Through representatives chosen by employees under the provisions of the Statute, engage in collective bargaining, in accordance with the provisions of the law and this Agreement, with respect to conditions of employment.

B. Nothing in this Agreement will require an employee to become or remain a member of a labor organization, and no employee shall be required by this Agreement to have labor organization dues withheld except pursuant to a voluntary written authorization by a member for dues withholding (see Article 16).

C. All employees in the unit have the right to be represented fairly by the Union without discrimination and without regard to labor organization membership.

D. In accordance with 5 U.S.C. Section 7114(a) (2) (B) employees will be notified of their rights to Union representation on an annual basis. The notification will be sent to all employees in January of each calendar year. The notice will contain the statutory reference and language as follows:

(1) Bargaining unit employees have the right to Union representation at any examination by a representative of the Employer in connection with an investigation if:

i. The employee reasonably believes that the examination may result in disciplinary action against the employee, and

ii. The employee requests Union representation.

(2) In addition, employees will be notified of the right of the Union, in accordance with 5 U.S.C. 7114(a)(2)(A), to be present at any formal discussion between one (1) or more representatives of the Employer and one (1) or more employees or their representatives concerning any grievance or any personnel policy or practices or other general conditions of employment.

E. Bargaining unit employees have and shall be protected in the exercise of their statutory rights. It is also recognized that those same employees shall be responsible for performing their assigned work to promote the mission of the Department.

Section 6.02 - Raising Work-Related Concerns

A. An employee is free to bring individual concerns about personnel policies, practices, and matters affecting working conditions to the attention of his/her Union representative or immediate supervisor, or as may be appropriate, other officials of the Employer. Normally, the employee and/or Union representative shall attempt to resolve the concern at the lowest constructive level within the employee's chain of command.

B. Should concerns not be resolved at the lowest constructive level, or if such resolution is

not feasible, an employee may communicate with a Human Resources Office representative, an equal employment opportunity representative, or an Employer official of higher rank than the employee's immediate supervisor.

C. With respect to Section 6.02 (a) and (b), an employee shall be excused from official duties for such reasonable time as is necessary by his/her immediate supervisor as soon as practicable. If, because of work-related considerations, the supervisor cannot release the employee upon request, the supervisor shall provide the employee with the work-related reasons for the decision and, with the employee, mutually agree on a time for release. In the event a mutually agreeable time cannot be reached, the employee can ask the second-level supervisor to decide on a time for release. Employees agree to request release time only for the purposes stated in Section 6.02 (a) and (b).

D. An employee may file a grievance under this Agreement, provided that he/she has raised the concern within the time limits and under the procedures contained in Article 42, Section 42.05, of this Agreement.

Section 6.03

The Employer shall not, without the employee's knowledge, place in an employee's Official Personnel Folder (OPF) material of any nature which reflects adversely upon an employee's character or Government career. If the Employer intends to place any such material in the OPF, the Employer shall give the employee the opportunity to rebut it in writing and to have the rebuttal included along with the material. No employee or employee's representative may remove or attempt to remove any material from an employee's OPF. Should an employee believe that material is improperly included in the OPF or wish to reproduce any material in the OPF, he/she shall call the matter to the attention of the Human Resources Office representative having custody of the OPF. The employee and/or his/her representative shall observe the Employer's policies and practices pertaining to removal or reproduction of the materials in the OPF.

Section 6.04

No employee shall be required or coerced by the Employer or the Union to invest money, make political contributions, donate to charity, or participate in activities or undertakings not related to the performance of official duties.

Section 6.05

No employee shall be required to disclose his/her religion, race, ethnic group, or political affiliation, except as may be required in accordance with the law.

Section 6.06

Employees have the right (consistent with General Services Administration Regulations and other appropriate authorities) to decorate their working areas with paintings, photographs, and other artistic or symbolic representations. The employee has the responsibility to see that Government owned or controlled property is not defaced and that its intended purpose is not impaired.

Section 6.07

An employee's use of personally owned audiovisual equipment shall be in accordance with General Services Administration regulations and other appropriate authorities.

Section 6.08 - Outside Employment and Standards of Conduct

A. The Employer agrees to apply fairly and equitably consider requests for approval of outside employment or activities. Requests for approval of outside employment or activities must be submitted reasonably in advance of the proposed start date. When required by 5 CFR Part 6301-SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF EDUCATION, written approvals must be obtained before engaging in outside employment or activities that require approval.

B. The Employer will review and approve or disapprove the written request of an employee to engage in outside employment or activities as quickly as possible after the Employer's receipt of the request, but not later than twenty (20) workdays from the receipt of the employee's completed request. The employee will use the "Request for Approval of Outside Activity/ /Employment" form. The "Request of Approval of Outside Activity/Employment" form is available from the Office of the General Counsel, Ethics Division. The request will be denied by the Employer if the Employer determines that the outside employment or activity will involve conduct prohibited by Statute or Federal regulations, including 5 CFR Part 2635. The Employer will include a statement of its reasons for disapproving any such request.

C. If an employee wishes to dispute the Employer's rejection of a request to engage in outside employment or activity; the employee may file a grievance directly at the third step of the grievance procedure. This grievance must be filed within five (5) workdays of the Employer's rejection of the request. It will be treated exactly as if it had been processed through this Agreement's grievance procedure, and is the final step of the procedure. If the Employer and the employee are unable to amicably resolve the grievance, the Employer will forward to the employee, within the time limits prescribed for the final step of the grievance procedure, a final grievance decision containing the reasons for the rejection. Thereafter, the Union may invoke Arbitration in accordance with this Agreement's Arbitration provisions over the issues.

D. An employee may consult with the Ethics Division concerning the proper interpretation or application of Executive Branch and Department of Education Standards of Conduct on an anonymous basis and may receive answers to hypothetical questions. Consultation may occur through direct telephone calls to the Ethics Division, or by raising issues through the Union or another intermediary.

E. Previous memoranda of understanding on outside employment and ethics policy are superseded by this Article.

ARTICLE 7: Employer-Union Rights and Responsibilities

Section 7.01

The Employer and Union recognize that the right of employees to organize and bargain collectively, through the Union, and thereby participate in decisions which affect them, is in the public interest.

MANAGEMENT RIGHTS, in addition to those stated in this Agreement, are as stated in Title 7 of the Civil Service Reform Act of 1978.

UNION RIGHTS, in addition to those stated in this Agreement, are as stated in Title 7 of the Civil Service Reform Act of 1978.

EMPLOYEE RIGHTS, Each employee has the right freely and without fear of penalty or reprisal to form, join, or assist the Union or to refrain from any such activity. Except as otherwise expressly provided in this Agreement or Statute, the right to assist a labor organization extends to participation in the Management of the organization and acting for the organization in the capacity of an organizational representative, including presentation of views to officials of the Executive Branch, the Congress, or other appropriate authority. The Employer and the Union agree to assure that employees are apprised of their rights under this Section and that no interference, restraint, coercion or discrimination is practiced to encourage or discourage membership in the Union and its locals.

The Employer recognizes the Union as the exclusive representative of employees in the bargaining unit and the Union's right to negotiate personnel policies, practices and working conditions as provided in 5 U.S.C. Chapter 71. As such, the Union is entitled to act for and bargain collectively for all employees in the unit. The Union is responsible for representing the interests of all employees in the unit without discrimination and without regard of membership in the Union in all matters relating to personnel policies, practices, and other conditions of employment.

Section 7.02

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

Section 7.03

The initiation of grievances in good-faith by employees will not cause any reflection on their standing with their managers or on their loyalty or desirability to the organization. Employees and Union stewards who have relevant information concerning any matter for which remedial relief is available under this Agreement will, in seeking resolution of such matter, be assured freedom from restraint, interference, coercion or discrimination, intimidation or reprisal.

Section 7.04 - Pre-Decisional Involvement (PDI)

The Parties shall work together as partners to identify problems and craft solutions to better serve the agency's customers and mission. The Union shall have pre-decisional involvement to the fullest extent practicable without regard to whether those matters are negotiable subjects of bargaining under 5 U.S.C. 7106.

Pre-decisional involvement refers to those activities where the Union is afforded the opportunity to shape decisions in the workplace. Pre-decisional involvement is a process to provide for the Union's input as stakeholders in the decision-making process. Pre-decisional involvement does not waive Management's or Union's statutory rights. PDI is not subject to administrative review.

Upon request from the Union's President for Council 252, the Employer will provide written information regarding the Employer's use or non-use of PDI. The request should come from Council 252 President to the Labor and Employee Relations Division. Whether or not the Employer engaged in PDI is not subject to administrative review.

Agency matters involving administrative and budgetary decision-making that governs the functionality of the organization will not require PDI. However, if any changes within the organizational structure potentially create situations that may affect bargaining unit employees, those matters shall be subject to PDI.

The parties will establish local labor-management committees to help identify problems. The local committees are encouraged to work to resolve problems and issues identified. In the event that such matters cannot be resolved at the local level, the committee can propose recommendations for the resolution to be presented at the national forum. The parties will make a good-faith effort to resolve issues concerning proposed changes in conditions of employment, including those involving subjects set forth in the 5 U.S.C. 7106(b)(1).

As a complement to the existing collective bargaining process, Management shall discuss workplace challenges and problems with labor and endeavor to develop solutions jointly, rather than advise Union representation of predetermined solutions to problems and then engage in bargaining over the predetermined solutions.

The Employer shall evaluate and document in consultation with the Union, changes in employee satisfaction, manager satisfaction, and organizational performance resulting from the national forum.

Section 7.05

The Parties agree on and understand the value of collaborative effort and the positive impact it can have upon the agency. Therefore, if the Union raises subjects covered by 5 U.S.C. 7106(b)(1), the Employer shall to the extent permitted by law discuss such topics. However, the Union recognizes the limitations imposed by statute which reserve to the Employer the right to:

A. Determine the mission, budget, organization, number of employees, and internal security practices of the Department;

B. Hire, assign, direct, layoff, and retain employees in the Department, or suspend, remove, reduce in grade or pay, or take other disciplinary actions against such employees;

C. Assign work, make determinations with respect to contracting out, and determine the personnel by which the Department's operations shall be conducted;

D. With respect to filling positions, make selections for appointments from:

    1. among properly ranked candidates for promotion, and,

    2. any other appropriate source.

E. Take whatever actions necessary to carry out the Department's mission during emergencies;

F. Determine numbers, types, and grades of employees or positions assigned to any

organizational subdivision, work project, or tour of duty; and,

G. Determine the technology, methods, and means of performing work.

However, the Parties also recognize that the Employer and the Union may negotiate:

A. Procedures which Management Officials of the Employer will observe in exercising any authority under this Section; or,

B. Appropriate arrangements for employees adversely affected by the exercise of the Management rights listed above.

Section 7.06

A. Any efforts to discuss 5 U.S.C. 7106(b)(1) matters in labor-management committees and national forums shall not be a waiver of the Employer's rights.

B. The Parties further recognize and agree that discussions concerning any 5 U.S.C. 7106(b)(1) matters which may form the basis for labor-management understandings are binding only pursuant to a written memorandum of understanding executed by the duly authorized representatives of the Employer and the Union.

Section 7.07

The Employer recognizes that the Union and its designated representatives have the right, and shall be protected in the exercise of the right, consistent with the provisions of the law and this Agreement to:

A. Engage in collective bargaining;

B. Handle grievances and appeals;

C. Represent employees by being afforded the opportunity to be present at:

   A. Any formal discussion between one or more representatives of the Employer and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment, or,

   B. Any examination of an employee in the unit by a representative of the Employer in connection with an investigation if:

      a) The employee reasonably believes that the examination may result in disciplinary action against the employee, and,

      b) The employee requests representation.

      c) If an employee appears for a scheduled interview without representation and reasonably believes, because the subject of the interview has changed, that disciplinary action may result, the employee may request a brief delay to secure such representation.

      d) If an employee is represented in an interview and the subject of the interview changes to subjects over which the employee and the representative have not conferred, the employee or the representative may request a brief recess to confer on such issues.

D. The Union will be advised in advance of the time, location and general nature of the subject matter to be addressed at these formal discussions. Normally the Employer will provide such notifications two (2) workdays in advance. Copies of any briefing

charts/documents provided to the bargaining unit employees will be provided to the Union prior to the formal discussion to the fullest extent practicable. During the formal discussion, the Union representation will be permitted to respond to issues affecting bargaining unit employees and any comments made about the Union and/or its views.

Section 7.08

The Employer recognizes that to facilitate fulfillment of the goals in this Article the lawful exercise of representational rights in accordance with the Statute and the terms and conditions of this Agreement, the Union and its officials shall be held free from penalty, restraint, or reprisal.

Section 7.09

The Union and Employer recognize that their mutual and respective obligations to honor the terms and conditions of this Agreement include fairly and factually representing and communicating to employees and to managers, as appropriate, their rights and responsibilities under this Agreement, Statute, or regulation.

Where disputes arise concerning the interpretation or application of this Agreement or of applicable law or regulation, or an alleged breach thereof has occurred, the Parties may seek informal resolution before invoking other statutory recourse.

Section 7.10

In exercising their respective rights, or in fulfilling their respective obligations, the Employer and Union agree to do so in a manner which:

A. Fosters a spirit of labor-management cooperation and mutual respect;

B. Recognizes the obligation as public employees to prudently, judiciously, efficiently, and with due regard to the need for economy, exercise representational or managerial rights assigned herein;

C. Promotes effective and informed communication between supervisors and employees which is essential to improve employee performance, develops employee skills, enhances employee satisfaction, and promotes amicable dispute resolution;

D. Fosters organizational stability and promotes labor-management harmony; and,

E. Is consistent with the procedures, processes, and provisions set out in the specific articles of this Agreement.

Section 7.11

A. The Employer will not exercise interference, coercion, or censorship of any protected written communication between the Union and employees that is distributed in accordance with the provisions of this Article and elsewhere in this Agreement.

B. The Union agrees that solicitation of membership, collection of dues, and engaging in other internal Union business communications, such as distribution of Union notices and newsletters, will only be conducted by Union representatives who are in a non-work status.

   Except for such activities as distribution of Union materials where no contact occurs between the distributor and unit employees, employees must also be in a non-work status to participate in internal Union business.

   If such business is conducted in a work area during work hours, it is agreed that there

will be no disruption of the work process.

C. The Union also agrees that materials will be posted only on authorized bulletin boards as provided for in Article 15. The Union agrees that all such material posted will not impugn the integrity, motives, or character of any individuals.

D. The Employer and the Union shall fairly and accurately present factual information, and take immediate action to correct errors.

Section 7.12

When orientation sessions are scheduled more than two (2) weeks in advance, the Union will be given notice ten (10) workdays prior to the session. The Union shall have two (2) representatives to make a presentation of the thirty (30) minutes during each session, prior to lunch. The designated Union officials will be allowed official time to make such presentation.

The Union will be given a list of prospective bargaining unit employees' names, position titles, grades, and post-of-duty prior to their orientation session.

The Union agrees that membership solicitation will not be conducted at orientation sessions. The Union may leave its literature in a location where employees leaving the orientation have access to the materials.

Section 7.13

The Union recognizes that the Employer has the right to communicate directly with employees, through such means as surveys, questionnaires or focus groups, for the purpose of gathering information, suggestions or opinions concerning conditions of employment.

Section 7.14

The Parties acknowledge that Management has the right to conduct voluntary surveys. However, the Employer agrees to provide the Council 252 President prior written notification, and a copy of any ED survey or questionnaire which is intended to be distributed to bargaining unit employees, for comment at least five (5) days prior to distribution to bargaining unit employees.

The Employer shall provide the Union with an advance written copy of the survey results. The Employer may not use these communications to bypass the Union by negotiating directly with the bargaining unit employees concerning matters which are properly bargainable with the Union.

Section 7.15

The Union will present the Employer at each facility with an updated list of Union officers and representatives annually. The Employer will post this list in the connectED intranet site within twenty (20) workdays after its receipt, and notify bargaining unit members by email of its location.

Section 7.16

The Employer recognizes the right of every bargaining unit employee to be free from reprisal for providing information in connection with a violation of any law, rule, regulation, or provision of any Collective Bargaining Agreement, and/or evidence supporting mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

Section 7.17 - Last Chance Agreements

The Union will be entitled to attend "last chance" meetings and any settlement discussions regarding the "last chance" agreement. In addition, the terms of a "last chance" agreement will contain at a minimum:

1. The conditions that must be met by the employee;
2. The penalty for breach of the Agreement; and,
3. The duration of the Agreement.

Section 7.18 - Protections against Prohibited Personnel Practices

The Parties agree that employees shall be free from Prohibited Personnel Practices under Title 5. The Employer shall not:

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

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

H. Take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant which the employee or applicant for employment as a reprisal for:

1. A disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences:

a) A violation of any law, rule, or regulation; or,

b) Gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial or specific danger to public health or safety, if such a disclosure is not specifically prohibited by law and if such information is not specifically required by the Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs; or,

2. A disclosure to the Special Counsel or to the Inspector General of an agency or another employee designated by the head of the Agency to receive such disclosures or information which the employee or applicant reasonably believes evidences:

a) A violation of any law, rule, or regulation; or,

b) Gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

I. Take or fail to take, or threaten to take or fail to take, any personnel action against any employee or applicant for employment as a reprisal for:

1. The exercise of any appeal, complaint or grievance right granted by any law, rule, or regulation;

2. Testifying for or otherwise lawfully assisting any individual in the exercise of any right referred to in subsection 1 above;

3. Cooperating with or disclosing information to the Inspector General of an agency, or Special Counsel, in accordance with applicable provisions of law; or,

4. Refusing to obey an order that would require the individual to violate a law.

J. Discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others; except that nothing in this subsection shall prohibit an agency from taking into account in determining suitability or fitness any conviction of the employee or applicant for any crime under the laws of any State, of the District of Columbia, or of the United States.

K. Knowingly take, recommend, or approve any personnel action if the taking of such action would violate a veterans' preference requirement; or knowingly fail to take, recommend, or approve any personnel action if the failure to take such action would violate a veterans' preference requirement.

L. Take or fail to take any other personnel action if the taking of, or failure to take, such action violates any law, rule, or regulation implementing, or directly concerning , the

merit system principles contained in the Civil Service Reform Act of 1978.

M. An employee aggrieved under Section 2 above may raise the matter under a statutory procedure or under the employee grievance procedure but not both.

N. In reviewing grievances on the provisions of this Article, arbitrators will apply the same standards of evidence and burden of proof as those applied by the Merit Systems Protection Board.

Section 7.19 Personnel Records

A. Employees will, upon request, have access to all official records pertaining to them with the exception of records restricted by law or Government-wide rule or regulation. Examination of actual physical records (as opposed to receipt of copies) will take place in the general presence of those having custody of the records. Before disclosure of a record is made to employees or their personally designated representatives, the identities of both must be verified. Employees must provide their prior written consent to the Employer before disclosure of their written record will be made to a designated representative or in the presence of a designated representative. Access shall be on official time.

B. Employees or their personally designated representatives may obtain a photocopy of documents pertaining to the employees with the exception of records restricted by law or Government-wide rule or regulation.

C. No document described in Section A will be made available to any unauthorized persons for inspection or photocopy. Further, such information will be made available to authorized persons (as defined by 5 U.S.C.§ 552(a) and as further provided in the Privacy Act of 1974, in the Office of Personnel Management (OPM) Notices of Systems of Records for OPM records.

D. The Employer uses the eOPF system for Official Personnel Folders (OPFs). As a result, employees have access to their OPFs at times of their choosing. Employees may provide the Union with copies of documents included within the OPF. OPFs will be purged in accordance with current applicable regulations.

E. If access to the information is delayed, Council 252 may either move forward or request an extension of time to file a grievance or to submit an oral or written reply in the case of a disciplinary, adverse, within-grade or unacceptable performance action. Extensions requested as a result of a delay described above will be granted by the Employer.

F. The Employer will maintain an Employee Performance Folder (EPF) for each employee separately from other personnel records such as drop files or eOPFs. No documentation related to disciplinary action or adverse action will be placed in an employee's EPF unless such action was based on performance reasons. Access to EPFs is limited to Management Officials with a need to know and those others referenced in the current published system of records description in accordance with the Privacy Act, 4 U.S.C. § 552a.

G. The Parties recognize that developing automation technologies have enabled some information that is presently stored in paper-based systems to be stored in other systems. If the Employer elects to change its method of storing any information which is subject to the terms and conditions of this Article, the Employer will assure all employees, or their personally designated representatives, continued access to such information which

is not otherwise required to be maintained by law, higher level rule or regulation, or by agreement between the Parties.

H. The Employer will normally inform the Union within five (5) days whether the information requested under 5 U.S.C. § 7114(b)(4) will be supplied. Where the Employer has determined not to supply such information, the Union may either move forward with the grievance or may request an extension of time to file or appeal to subsequent steps.

ARTICLE 8: Labor-Management Negotiating Procedures

Section 8.01

The Union and the Employer agree to be bound to the terms of this Agreement without regard to geographical location or organizational component. The Parties agree, as expressed in Article 5 (Effective Date and Duration of Agreement and Negotiation of Subsequent Agreements), that the terms of this Agreement shall remain unchanged during its entire term except as provided by Article 5, or as may be required by law.

This Article governs the mid-term bargaining relationship of the Parties over matters which are not covered in this Agreement. The procedure contained in Section 8.04 deals specifically with negotiations at the level of recognition (i.e., Department level).

Section 8.02

Provisions of existing Department rules, regulations, or other formal directives or policies which are inconsistent with this Agreement are superseded, as of the effective date of this Agreement, with respect to their applicability to bargaining unit employees.

Section 8.03 Past Practices and Memoranda of Understanding

A. Any past practices or provisions of written memoranda of understanding or agreement which are in existence on the effective date of this Agreement, and which are inconsistent with the terms of this Agreement, are superseded. Such matters shall be governed by the terms of this Agreement.

B. Any existing written memorandum of understanding or agreement which has a specific term or duration extending beyond the effective date of this Agreement shall continue in effect until its expiration date, subject to the terms of Section 8.03(A).

   Any such memorandum of understanding which contains no provisions described in Section 8.03(A) shall, upon its expiration, be subject to renegotiation in accordance with 5 U.S.C. Chapter 71 and this Agreement.

C. Other existing past practices or provisions of written memoranda of understanding or agreement, on matters which are not covered by this Agreement and are not inconsistent with it, shall be treated as past practices. Such past practices shall not be considered to be incorporated into this Agreement with respect to duration, and shall be subject to renegotiation in accordance with 5 U.S.C. Chapter 71 and this Agreement. Although neither Party shall be required to maintain a past practice which is unlawful or which constitutes a waiver of any right granted to it under 5 U.S.C. Chapter 71, discontinuation of any such past practice shall be subject to any negotiation requirements established by 5 U.S.C. Chapter 71.

D. If, after the effective date of this Agreement, any practice develops which is inconsistent with this Agreement, either Party may require the other to conform to this Agreement by providing adequate prior notice of its intention to enforce this Agreement in the future. Thereafter, both Parties shall conform to the terms of the Agreement.

E. Memoranda of understanding or agreement negotiated under the terms of this Article or Article 9 shall be considered to be part of this Agreement and shall have duration concurrent with the Agreement, unless otherwise specified in the memoranda.

F. Provisions of local agreements negotiated under Article 9 of this Agreement shall be superseded by any subsequently negotiated agreement at the level of recognition, or any subsequently issued Government-wide rule or regulation. However, the local Parties may amend those provisions of their local agreements to conform to the higher level agreement or Government-wide rule or regulation.

Section 8.04 Mid-term Negotiations at the Level of Recognition

The Parties agree to negotiate during the term of this Agreement, to the extent required by law and consistent with the terms of this Agreement, on changes in conditions of employment, whether initiated by the Employer or by the Union. Except as specified in Article 9, all negotiations shall be carried out at the level of exclusive recognition (i.e., at the Council and Department level).

A. Notice of Proposed Change: A Party desiring, or required, to make a change shall notify the other Party in writing of the proposed change. The notice will at a minimum contain the following information:

   1. The nature and scope of the proposed change,
   2. Explanation of the initiating Party's plan for implementing the change,
   3. An explanation of why the proposed change is necessary, and,
   4. The proposed implementation date.

   Notification will be served by any one of the following methods: certified mail, first class mail, FAX or email with a notification request for notification when the message has been opened.

   If either Party requests a briefing, the receiving Party will advise the initiating Party, orally or in writing, within five (5) workdays of receipt of the notice; and, the briefing will be conducted within fifteen (15) workdays of the request. If the receiving Party wishes to negotiate, it will advise the initiating Party within five (5) workdays after the briefing of its demand to bargain.

B. Informal Discussions and Resolution: At any time during the notification and negotiation procedure described in this Section, the Parties may informally discuss and undertake efforts to resolve concerns about the proposed changes. Agreements or understandings reached informally shall be documented by appropriate means.

C. Negotiation Procedure: The Parties acknowledge that ground rules bargaining stems from 5 U.S.C. 7103(a) (12) and as such no Party will waive its right to bargain ground rules. The procedures contained in this subsection will constitute the ground rules for negotiations provided the Parties mutually agree. In the event that the Parties do not mutually agree to the ground rules set forth under this Section, the receiving Party can elect to negotiate ground rules.

   1. If formal negotiations are required to resolve differences concerning any proposed change, the negotiations will begin no later than ten (10) workdays after receipt of the receiving Parties demand to bargain. The Party requesting negotiations will make good-faith efforts to submit proposals, in advance, in part, or in whole, or statement of interest prior to arriving at the bargaining table provided that all requests for information have been fulfilled.

      The Parties shall make use of teleconferences, FAX machines, mail, etc. to clarify issues and provide necessary information prior to any negotiation session. Negotiation

sessions shall be conducted by telephone, by FAX machine, by mail, email, or in person, subject to agreement of the Parties. If meetings are required for negotiations at the level of recognition, they shall be held in Washington, DC, unless another location is mutually acceptable to the Parties. For negotiation of Management-initiated changes, the Employer agrees to pay travel expenses and per diem for two (2) of the Union negotiators. Payment of travel and per diem shall be subject to applicable laws, rules, and regulations, including established Department of Education travel policies.

2. If a meeting is required during the negotiation process in this Article, the Union shall be entitled to the same number of negotiators at the bargaining table as Management designates. However, the Union will always be entitled to have at least three (3) negotiators present for bargaining. Prior to deciding on the number of Management members, the Employer will discuss the appropriate size of the respective negotiating teams with the Union. Where practicable and agreeable, the Parties shall coordinate negotiations meetings with other scheduled meetings.
3. The Employer will provide the Union negotiating team with customary and routine office equipment, supplies, and services, including but not limited to computer(s) with internet access, telephone(s), desks and/or tables and chairs, office supplies, and access to at least one printer and one photocopier.
4. The starting date and daily schedule for negotiations will be established by the Chief Negotiators.
5. Alternates may substitute for team members. Such alternates will be entrusted with the right to speak for and to bind the members for whom they substitute.
6. During negotiations, the Chief Negotiator for each Party will signify agreement on each Section by initialing the agreed-upon Section. The Chief Negotiator for each Party will retain his/her copies and will initial the other Party's copy. This will not preclude the Parties from reconsidering or revising any agreed-upon Section by mutual consent.
7. It is agreed that either team may request a caucus, and may leave the negotiation room to caucus at a suitable site provided by the Employer. 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.
8. Each Party shall be represented at the negotiations at all times by one (1) duly authorized Chief Negotiator/Chief Spokesperson who is prepared and authorized to reach agreement on all matters subject to negotiations and to sign- off on agreements for their respective Party.
9. Official time for negotiations under this Section shall be as provided by 5 U.S.C. 7131(a) and Article 14 of this Agreement.
10. Each Party will designate a Chief Negotiator who will have appropriate collective bargaining authority.
11. Proposals made by the receiving Party must be negotiable and must be related to the proposed change. If the Parties agree, negotiations on different proposed changes may be consolidated or held concurrently.
12. At any point in the formal or informal process the initiating Party may elect to withdraw any proposed change, in whole or in part. However, nothing contained in this paragraph shall prevent either Party from subsequently initiating negotiations over the same subject

matter.

13. When an agreement is reached, it will be typed in final form and signed by both Parties. Such agreements and understandings shall conclude negotiation on such matter(s).

Section 8.05

Unless otherwise permitted by law, no changes will be implemented until all negotiations have been completed including any impasse proceedings. The parties agree that the Employer, may implement procedures or changes where

(a) actions may be necessary to carry out the agency mission during emergencies;

(b) is compelled to do so by higher law or authority; or

(c) necessary for the functioning of the Department.

Parties agree to be bound to the resolution of submitted issues imposed by the formal dispute resolution procedures of 5 U.S.C. 7119.

Section 8.06

The Agreement shall not be completed and finalized until all proposals have been disposed of by mutual consent. Negotiations disputes, including questions of negotiability and resolution of impasses, will be processed in a manner consistent with the 5 U.S.C. Chapter 71 and implementing regulations.

Section 8.07

Agreements negotiated pursuant to this Article will be subject to Agency head approval pursuant to 5 U.S.C. 7114 (c). In the event of disapproval, the Union will have the option of renegotiating the entire disapproved agreement, provided the Parties have not agreed otherwise. The option to renegotiate the entire agreement must be exercised by the Union within fifteen (15) workdays of notice of disapproval.

ARTICLE 9: Mid-Term Negotiations at the Local Level

Section 9.01

The purpose of this Article is to describe the scope and procedures for local negotiations under this Agreement. The Parties agree that no local agreement may delete, modify or otherwise nullify any provision of this Agreement; nor shall any provision in a local agreement be in conflict with any provision of this Agreement, Statute, Government-wide regulation, or written regulation/policy of the Department applicable to more than one Department installation. All local agreements shall be part of and subject to the terms and control of this Agreement.

The Union will have pre-decisional involvement (PDI) to the fullest extent practicable, without regard to whether those matters are negotiable subjects of bargaining under 5 U.S.C. 7106. This is not intended to have the Union involved in day-to-day matters of the Department but an effort to work collaboratively on issues of mutual concerns. Furthermore, it is in the best interest of all Parties to make a good-faith attempt to resolve issues concerning proposed changes in conditions of employment, including those involving the subjects set forth in 5 U.S.C. 7106(b) (1), through discussion in its labor-management forums. Pre-decisional involvement does not waive Management's or Union's statutory rights. PDI is not subject to administrative review.

Section 9.02

Local negotiations shall be limited to solely local matters within a specific region or Headquarters. Subject matters for local negotiations do not include such matters as:

A. Subject matter already contained in this Agreement;

B. Interpretation and application of this Agreement;

C. Subject matter that has been the subject of bargaining at the Department level; or.

D. Subject matter affecting employees, the Union or the Employer at another installation or Department-wide.

Section 9.03 Local Negotiations

The Parties agree to negotiate during the term of this Agreement, to the extent required by law and consistent with the terms of this Agreement, on changes in conditions of employment, whether initiated by the Employer or by the Union.

A. Notice of Proposed Change: A Party desiring, or required, to make a change shall notify the other Party in writing of the proposed change. The notice will at a minimum contain the following information:

   1. The nature .and scope of the proposed change;

   2. Explanation of the initiating Party's plan for implementing the change;

   3. An explanation of why the proposed change is necessary; and.

   4. The proposed implementation date.

   Notification will be served by any one of the following methods: certified mail, first class mail, FAX, or an email with a notification request for notification when the message has been opened.

If either Party request a briefing, the receiving Party will advise the initiating Party, orally or in writing, within five (5) workdays of receipt of the notice; and the briefing will be conducted within fifteen (15) workdays of the request. If the receiving Party requests additional information, the initiating Party will provide the information within five (5) workdays. If the receiving Party wishes to negotiate, it will advise the initiating Party within five (5) workdays after the briefing of its demand to bargain.

B. Informal Discussions and Resolution: At any time during the notification and negotiation procedure described in this Section, the Parties may informally discuss and undertake efforts to resolve concerns about the proposed changes. Agreements or understandings reached informally shall be documented by appropriate means.

C. Negotiation Procedure: The Parties acknowledge that ground rules bargaining stems from 5 U.S.C. 7103 (a) (12) and as such no Party will waive its right to bargain ground rules. The Procedures contained in this subsection will constitute the ground rules for negotiations provided the Parties mutually agree. In the event that the Parties do not mutually agree to the ground rules set forth under this Section, the receiving Party can elect to negotiate ground rules.

1. If formal negotiations are required to resolve differences concerning any proposed change, negotiations will begin no later than ten (10) workdays after receipt of the receiving Party's demand to bargain. The Party requesting negotiations will make good-faith efforts to submit proposals, in advance, in part, or in whole, or statement of interests prior to arriving at the bargaining table provided that all requests for information have been fulfilled.

   The Parties shall make use of teleconferences, FAX machines, mail, etc., to clarify issues and provide necessary information prior to any negotiation session. Negotiation sessions shall be conducted by telephone, by FAX machine, by mail, email, or in person, subject to agreement of the Parties. If meetings are required for negotiation, they shall be held at the location where the change is to occur, unless another location is mutually acceptable to the Parties.

2. If a meeting is required during the negotiation process in this Article, the Union shall be entitled to the same number of negotiators at the bargaining table as Management designates. However, the Union will always be entitled to have at least three (3) negotiators present for bargaining. Prior to deciding on the number of Management members, the Employer will discuss the appropriate size of the respective negotiating teams with the Union. Where practicable, the Parties shall coordinate negotiation meetings with other scheduled meetings.

3. The Department will provide the Union negotiating team with customary and routine office equipment, supplies, and services, including but not limited to computer(s) with internet access, telephones, desks, and/or tables and chairs, office supplies, and access to at least one (1) printer and photocopier.

4. The starting date and the daily schedule for negotiations will be established by the Chief Negotiators.

5. Alternates may substitute for team members. Such alternates will be entrusted with the right to speak for and bind the members for whom they substitute.

6. During negotiations, the Chief Negotiator for each Party will signify agreement on

each Section by initialing the agreed-upon Section. The Chief Negotiator for each Party will retain his/her copies and will initial the other Party's copy. This will not preclude the Parties from reconsidering or revising any agreed upon Section by mutual consent.

7. It is agreed that either team may request a caucus, and may leave the Negotiation room to caucus at a suitable site provided by the Department. 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.
8. Each Party shall be represented at the negotiations at all times by one (1) duly authorized Chief Negotiator/Chief Spokesperson who is prepared and authorized to reach agreement on all matters subject to negotiations and to sign off on agreements for their respective Party.
9. Official time for negotiations under this Section shall be as provided by 5 U.S.C. 7131(a) and Article 14 of this Agreement.
10. Each Party will designate a Chief Negotiator who will have appropriate collective bargaining authority.
11. Proposals made by the receiving Party must be negotiable and must be related to the proposed change. If the Parties agree, negotiations on different proposed changes may be consolidated or held concurrently.
12. At any point in the formal or informal process the initiating Party may elect to withdraw any proposed change, in whole or in part. However, nothing contained in this paragraph shall prevent either Party from subsequently initiating negotiations over the same subject matter.
13. When an agreement is reached, it will be typed in final form and signed by both Parties. Such agreements and understandings shall conclude negotiation on such matter(s).

Section 9.04

Unless otherwise permitted by law, no changes will be implemented until all negotiations have been completed, including impasse proceedings. The Parties agree that the Employer may implement procedures or changes where

(a) actions may be necessary to carry out the Department mission during emergencies;

(b) compelled to do so by higher law or authority; or

(c) necessary for the functioning of the Department.

The Parties agree to be bound to the resolution of submitted issues imposed by the formal resolution dispute procedures of 5 U.S.C. 7119.

Section 9.05

The Agreement shall not be completed and finalized until all proposals have been disposed of by mutual consent. Negotiation disputes, including questions of negotiability and resolution of impasses, will be processed in a manner consistent with 5 U.S.C. Chapter 71 and implementing regulations.

Section 9.06

If appropriate representatives of the Employer and the Union disagree as to whether a proposal is

solely local for the purposes of any local agreement, they shall jointly refer the question in writing to both the Council President and the National Collective Bargaining Official for discussion and resolution. If they disagree, the Party wishing to negotiate the matter in question may file a National Grievance under the procedures described in Article 42. Issues of negotiability shall be resolved in accordance with 5 U.S.C. Chapter 71.

Section 9.07

Once completed, local agreements must be sent to the Parties at the Department level. The Employer shall review local agreements for conformance with this Article, and in accordance with Section 5 U.S.C. 7114(c). The review for conformance with this Article shall be accomplished within the same timeframe specified for Section 7114(c) review. In the event of disapproval, the Union will have the option of renegotiating the entire disapproved agreement, provided the Parties have not agreed otherwise. The option to renegotiate the entire agreement must be exercised by the Union within fifteen (15) workdays of notice of disapproval.

ARTICLE 10: Reorganization Implementation Procedures, Physical Moves

Section 10.01

As used in this Agreement, a reorganization, readjustment, or realignment including transfer of function or other organizational change should be treated as reorganization if it involves the elimination, addition, or redistribution of functions or responsibilities among or within Department components. A "move" is the relocation of any employee to a different location. For moves of five (5) or fewer employees within the same building, the Employer will notify the Union, normally at least five (5) workdays before the move.

Section 10.02 - Disclosure of Plans to Reorganize

A. The Parties agree that early sharing of information and concerns, and early discussion of issues arising from proposed reorganizations, should promote resolution of issues arising and expedite the negotiation process. Therefore the Union will have pre-decisional involvement in all matters concerning the draft plans of reorganizations to the fullest extent practicable. The Department will provide all requested information expeditiously where not prohibited by law and in accordance with 5 U.S.C. 7114. The Department will provide accurate and complete information so that the Parties can make good-faith efforts to resolve issues concerning the proposed changes.

B. Before submitting a final reorganization plan for administrative approval, the Employer will notify the Union about the plan and provide a copy of the current plan to the Union. The Employer will also provide copies of any supporting documentation that it intends to submit as part of the administrative approval process. The Union will have ten (10) working days to review the plan and submit recommendations to the Employer. Before submitting the plan for administrative approval, the Employer will provide a written response to the Union's recommendations, including its reasons for rejecting any of the Union's recommendations. The Employer will include the Union's recommendations and its written response as part of the materials it submits for administrative approval, and it will provide the Union a copy of the reorganization package that it submits for approval.

C. When plans for a reorganization are complete and the necessary administrative approvals secured, the Employer will notify the Union in accordance with Article 8 or 9 where appropriate and provide, as appropriate, the following information:

   1. Reason(s) for the reorganization;
   2. Approved functional or mission statements and organizational charts for the existing and proposed organization(s);
   3. Staffing chart(s) for both the existing and proposed organizational component(s), including the identification of employees currently on details or temporary promotions;
   4. A list of projected details (i.e., interim assignments to positions or duties in the new organization) that will be made prior to reassignment of employees to the new organization. For bargaining unit employees, the projected details must identify the following information: the employee's name, the current position/series and grade of

record, projected detail series/grade under the detail, and estimate of time employee will be detailed into the assignment;

5. A list of the officially classified unit position descriptions then completed, if any, and the positions for which such classification action is pending;
6. A list of any known changes in career ladder promotion potential for unit employees' positions;
7. A list of known unit vacancies in the new organization, if any;
8. The proposed implementation schedule and any proposed employee notices; and,
9. Projected adverse impact resulting from the reorganization, if any. As used here, "adverse impact" means any action that negatively affects terms and conditions of employment that may result from the reorganization.

Section 10.03 - Physical Moves Associated with Reorganizations

The Parties agree that the physical movement of individual(s) or organizational group(s) of bargaining unit employees may be necessary due to a reorganization, or to promote the efficiency of operations and/or the efficient use of allocated office space. In the instance of reorganization, the Employer will provide all the documentation outlining the physical move resulting from the reorganization as part of the reorganization package, including the outlined documentation in Section 10.05(c) of this Article to the Union within ten (10) workdays of Department approval.

Section 10.04 - Physical Moves

The Parties agree to the following procedures and provisions to handle all physical moves. Additional procedures that apply to physical moves involving a relocation of organizational components to another building are in Section 10.06 below.

A. The Parties agree that early sharing of information and concerns, and early discussion of issues arising from proposed physical moves, should promote resolution of issues and expedite the physical move. To that end, the Union will have pre-decisional involvement in all matters concerning physical moves. If the Employer decides to move employees to a different building or to renovate a portion of the existing building, the Employer will permit the Union to participate in a walkthrough of the new space at the earliest practicable date after the new space is selected.

B. Notwithstanding the dates below and in Section 10.05, the Employer will not take actions before bargaining over those actions is complete.

C. Every reasonable attempt shall be made to relocate bargaining unit employees into comparable or better working space and areas. The Parties understand that "hoteling" workspace, normally used by Teleworkers, will differ from the usual cubicle space.

D. Newly constructed office or cubicle space will be in conformance with Departmental Directive OM: 4-103 or its successor for newly constructed spaces but no less than sixty- four (64) square feet.

E. Employees will have storage space equal to or better than what they currently have, (e.g., numbers and size of flipper files, lateral files, bookcases, etc.), as space allows. The Employer will work with employees to accommodate their individual storage needs. The Parties understand that changes in technology may reduce the need for physical

storage space.

F. Where groups are moving or space is being reconfigured, the Employer will make every effort to reasonably accommodate employees with disabilities and/or medical concerns. A space, technology, and/or health and safety assessment will be performed accordingly to ensure that all policy, law, and regulations are met.

G. If possible, employees shall keep the same telephone number and telephone service(s). Dedicated telephone lines for TDDs will be installed and working prior to moving employees with hearing impairments.

H. Employees will be provided with boxes and other supplies for the purpose of packing personal items and/or otherwise assisting in preparation for the move.

I. The Employer will provide information to employees on personnel services in their new location.

J. The Employer will provide a Management point of contact and backup for the move.

K. The Employer will disclose any anticipated adverse effects from the move (including, but not limited to decreased employee work space, decreased availability of parking, decreased availability of public transportation for commuting).

L. The Employer shall designate the location of Departments, Divisions, branches, and groups as required. The Employer shall also designate the location of Non Bargaining Unit space, administrative support personnel, and positions requiring offices.

M. Upon request, before the physical move, the Employer and the Union will conduct a walkthrough of the new space to enable the Union to fulfill its representational responsibilities. The Parties agree that physical moves should not take place until the new space is safe and ready for employees' use.

Section 10.05 - Formal Notice of Physical Move

A. In addition to giving the Union the opportunity for pre-decisional involvement, the Employer will formally notify the Union in writing of plans to move employees in accordance with Article 8 or 9. If negotiations are requested, they shall be conducted in accordance with said article(s). Unless otherwise permitted by law, no changes will be implemented until all negotiations have been completed including any impasse proceedings.

B. If the new space is in a different facility or a renovated portion of the facility in which employees are currently located, the Employer will give the Union formal notice of the move forty-five (45) days in advance of the projected move date. This notice is in addition to the pre-decisional involvement and physical inspection discussed in Section 10.04(a) and (b) above. If some of the information below is unavailable forty-five (45) days in advance at that time, it will be provided as soon as it is available.

C. This notice shall contain all of the following items of information:

1. A description of how and when employees affected by the move will receive advance notification of the date upon which the move is scheduled;
2. A space plan which is consistent with the special requirements of any employees with disabilities;
3. Arrangements, within its limits to do so, with the General Services Administration

(GSA) or other authorities, for phone service, computer networking service, essential repairs, and maintenance. Furthermore, dedicated telephone lines that utilize TDD, TTY, or any other assistive audio equipment shall be installed and working prior to moving those employees with disabilities;

4. Specific accommodations where needed to assist employees with disabilities in preparing for the move, making the move and adjusting to the new office environment will be provided in accordance with laws, regulations, and policy;
5. A statement that the space is or will be made safe for occupancy in accordance with existing OSHA regulations, prior to the move; and,
6. Provisions for a Union office as specified in Article 15, if affected.

D. Notice and/or negotiation are not required for employee moves incidental to details, reassignments, or promotions, unless such moves result from implementation of reorganization.

Section 10.06 - Negotiations about Reorganizations or Physical Moves

A. The Employer shall notify the Union of reorganizations and physical moves in accordance with Article 8 or- The notice shall also include the information listed in Section 10.021cl and/or Section 10.05(c), as appropriate.

B. Unless otherwise permitted by law, no changes will be implemented until all negotiations have been completed including any impasse proceedings. Both Parties agree to be bound to the resolution of submitted issues imposed by the formal dispute resolution procedures of the Statute.

C. Agreement shall not be completed and finalized until all proposals have been disposed of by mutual consent. Negotiation disputes, including questions of negotiability and resolution of impasses, will be processed in a manner consistent with 5 U.S.C. Chapter 71 and implementing regulations.

D. The Parties agree that actions, such as details or reassignments, changes in performance plans, physical moves, reductions in force, etc., shall be governed by the applicable Article(s) of this Agreement, applicable laws and regulations and written Department policy. However, no implementation of types of actions which are not covered by this Agreement will occur until all bargaining obligations on the reorganization are statutorily satisfied.

Section 10.07 - Parking

The Employer shall assign automobile parking spaces available for employee use in accordance with GSA regulations and Department policy.

ARTICLE 11: Contracting

Section 11.01 - General

A. Definitions

1. "Contracting out" is the process of converting work to performance by private sources outside the Department.
2. "Work" includes any work currently or last performed by Federal employees; similar to that currently or last performed by Federal employees; and an expansion of work currently or last performed by Federal employees.
3. "OMB Circular A-76" refers to the Office of Management and Budget's Government-wide procedures for conducting public-private cost comparisons required before work performed by Federal employees can be converted to contractor performance. All references to OMB Circular A-76 in this Article shall also apply to any successor public-private cost comparison process.
4. "lnsourcing" means the transfer of work from sources outside the Department to Department employees.
5. "Start of preliminary planning" with respect to the OMB Circular A-76 process means the date on which the Department assigns Department personnel, or obligates funds for the acquisition of contract support, to carry out any of the following activities:
   a) Determining the scope of the competition;
   b) Conducting research to determine the appropriate groupings of functions for the competition;
   c) Assessing the availability of workplace data, quantifiable outputs of functions, or Department or industry performance standards applicable to the competition; or,
   d) Determining the baseline cost of any function for which the competition is conducted.

B. Scope

1. The provisions of this Article concern any contracting out or insourcing of work. This Article applies to Department contracting actions and reviews regardless of the authority under which the action or review is initiated.
2. This Article is applicable whether or not there is a direct or negative effect on current bargaining unit employees and whether or not Department action adversely impacts current bargaining unit employees.
3. The Department shall comply with all applicable laws, rules, and regulations in all aspects of the contracting out and insourcing process that are not excluded from collective bargaining under 5 U.S.C. 7106(a) or 7117.
4. Within thirty (30) days from the effective date of this Agreement, the Department will provide the Union with a copy of its rules, regulations, and policies applicable to contracting out or insourcing decisions. The Department will notify the Union of any changes to these rules, regulations and policies.

Section 11.02 - Department Inventories

A. Within six (6) working days of the day that the notice of availability of the Department's FAIR Act Inventory is posted in the Federal Register, the Department shall provide to the Union a link to the Department's FAIR Act Inventory. The Department shall provide the FAIR Act Inventory in the same format as requested by the Office of Management and Budget (OMB).

B. Not later than January 30 of each year, the Department shall provide to the Union an inventory of the Department's service contracts compiled in accordance with the FY2010 Consolidated Appropriations Act, Division D, Section 743, in the same format that such inventory is required to be submitted to OMB.

Section 11.03 – Public-Private Competitions

A. General

1. Before starting preliminary planning under OMB Circular A-76, the Department shall notify the Union and all potentially affected employees in writing of the decision to begin the A-76 process.

2. At the start of the preliminary planning process, the Department shall provide a briefing to three (3) Union representatives and all employees performing the functions being studied on the A-76 process, including (but not limited to) the overall process, procedures, employee rights, and roles of Department personnel. If the employees or the Union representatives are geographically disbursed, the Department may use teleconference or video conferencing. The Department shall also provide the participants with electronic copies of the briefing materials.

3. As allowable under applicable laws and regulations, the Department shall provide the Union with the following materials at the beginning of the preliminary planning process:

   a) The tentative schedule for the A-76 process;

   b) A list of all functions being considered for inclusion in the A-76 study;

   c) The Department's rationale for reviewing the function(s) at issue in a public-private competition;

   d) All data upon which the decision to pursue the A-76 process instead of or in addition to another efficiency method was based; and,

   e) All Department correspondence authorizing or directing the undertaking of the A-76 process.

4. The Department shall provide to the Union and potentially affected employees in an electronic format all documents and information made available to bidders that is not prohibited from being disclosed under other applicable law or regulation on the same day that they are made available to bidders.

5. The Department shall provide the Union and affected employees with monthly briefings throughout the competition, from the beginning of preliminary planning to the final performance decision, and throughout the post-competition transition phase. Such updates will be posted on ConnectED. As allowable under applicable laws and regulations, such briefings will include but not be limited to:

a) Actions taken since the previous update;

b) Actions scheduled to take place before the next briefing;

c) Any changes in the A-76 schedule; and,

d) Answers to all questions related to the A-76 process submitted in writing to the Department's designated official at least fourteen (14) days prior to the update.

B. Competition Start

1. The Department will provide the Union and all affected employees written notification of the formal public announcement of an OMB Circular A-76 competition on the same day as the formal public announcement. The notification shall include all information required to be included in the formal public announcement.

2. No later than the formal public announcement date of each OMB Circular A-76 competition, the Department shall provide the Union a list of affected bargaining unit employees with the following information about each: job title, current position description, grade, step, work unit, and work location.

3. OMB Circular A-76 allows for Union representation on Performance Work Statement (PWS) and Most Effective Organization (MEO) teams. The Union may appoint a representative to serve on every (PWS) or MEO team formed under OMB Circular A-76 at the request of the PWS or MEO Team Lead. The Department will train employee PWS and MEO team participants concerning their duties and obligations under all laws, rules, and regulations. The Department has determined that the assignment of the Union's representative(s) will be treated as an assignment of work for the purposes of duty time to participate. Time spent participating on these teams will not be considered as official time as specified in Article 14, Official Time, of this Agreement. The Union's representative assigned to these teams will sign the same non-disclosure agreement and be bound by the same obligations to protect confidential information regarding the contracting out process as all other members. In accordance with OMB Circular A-76, the Human Resource Advisor (HRA) is responsible for interfacing with directly affected employees and their Union representatives.

4. If the A-76 competition involves a function performed in more than one (1) geographic location, the Union may appoint a representative to each of the teams from each geographic location. In addition, if the A-76 competition involves more than one (1) function, the Union may appoint a representative to each team from each function. The Union's representatives to these teams will be considered full members of these teams and will be subject to the same requirements as other team members. If a Union representative is removed for good cause, another Union representative shall be appointed by the Union to serve in his or her place at the request of the PWS or MEO Team Lead.

5. The Department shall provide the Union notification of and the opportunity to participate in all meetings, electronic conferences, site visits, conferences, and/or debriefing sessions that are open to all actual or potential bidders related to OMB Circular A-76 competitions on official time.

6. For any OMB Circular A-76 competition, the Department shall release to the Union, upon request, the data upon which the in-house cost estimate is based. This data shall include, but not be limited to: manpower levels, indirect costs, number of vacancies,

historical costs, raw data, observations, etc. This data shall not include internal Management recommendations or deliberations but instead the data and observations on which the deliberations and recommendations are based. If requested, these documents will be released as soon as allowable by applicable laws and regulations. In addition, the Department shall provide to the Union, upon request, all documents relating to the OMB Circular A-76 competition as soon as allowable by applicable laws and regulations.

C. Competition End

1. The Department will provide the Union and all affected employees with written notification of the formal public announcement of the end date of an OMB Circular A-76 competition on the same date as the formal public announcement. The notification shall include all information required to be contained in the formal public announcement.
2. The Department will provide the Union and all affected employees with written notification of the formal public announcement of the cancellation of an OMB Circular A-76 competition on the same date as the formal public announcement. The notification shall include all information required to be included in the formal public announcement.
3. The Department shall conduct debriefings as required by OMB Circular A-76 and applicable laws and regulations.
4. The Department will inform the Union of all contests filed by any Party concerning an OMB Circular A-76 competition within twenty four (24) hours of the time the Department is made aware of such filing, unless inconsistent with any applicable law or regulation.

Section 11.04 - Restriction on Conversion of Functions Performed by Federal Employees to Contractor Performance

As provided in Federal law (P.L. 110-161 § 739, P.L. 111-8 § 735, and 41 U.S.C. § 439), the Department is prohibited from converting to contractor performance any activity or function performed by Federal employees unless the conversion is based on the result of a formal public-private competition. In accordance with Federal law (P.L. 110-161§ 739, P.L. 111-8 § 735, and 41 U.S.C. §439), no function being performed by Federal employees may be modified, reorganized, divided, or in any way changed for the purpose of exempting the conversion of the function from this requirement, and in no case may a function being performed by Federal employees be converted to contractor performance to circumvent a civilian personnel ceiling (41 U.S.C. §439 (a) (3)). This prohibition applies to functions and work assigned to Federal employees, regardless of whether or not the position is encumbered.

Section 11.05 Arrangements for Employees

A. In any contract resulting from a conversion to contract performance of work being performed by bargaining unit employees, the Department must include a provision that requires the contractor to give those bargaining unit employees, whether or not they are subject to reduction in force, the right of first refusal for employment openings in positions for which they are qualified in accordance with applicable law and regulation.

B. No bargaining unit employee entitled to a right of first refusal with a contractor who refuses employment with a contractor shall be denied any rights he/she might otherwise

have under this Agreement or applicable reduction in force procedures, or any other personnel procedures.

C. The Union retains the right to bargain additional procedures and arrangements for adversely affected employees regarding specific decisions by the Department to contract out the work of bargaining unit employees as they occur. If the Union chooses to bargain, Department implementation will be held in abeyance pending the completion of bargaining, including the resolution of any impasse disputes.

D. The Department will consider requesting Voluntary Early Retirement Authority (VERA) and Voluntary Separation Incentive Program (VSIP) authority from the Office of Personnel Management as soon as it begins the OMB Circular A-76 process. If the Department elects to use VERA/VSIP authority it will be concurrent with other methods used to facilitate Department opportunities for the affected employees.

Section 11.06 - lnsourcing

The Department will provide the Union with an electronic copy of sourcing reports, including insourcing reports, as submitted to OMB. Such reports will be provided in the same format that they are provided to OMB, except that any proprietary, source selection, or privacy act information shall be redacted or deleted.

Section 11.07 - Communication

Within thirty (30) days from the effective date of this Agreement, the Department will provide the Union with contact information for the current official responsible for contracting out and insourcing matters at the Department, and within five (5) business days of any change. If a separate official is assigned responsibility for insourcing matters, the Department will provide the Union with updated contact information for that official as well within five (5) business days of that assignment or any change.

All matters regarding Impact Evaluation Statements must be addressed at the level of recognition with the Union. In the event that the Union elects to submit a written concurrence with the Impact Determination Statement, such submission must be provided to the Department within ten (10) workdays. The Union will be briefed by the Department on the procurement of products and services at the request of the Union.

ARTICLE 12: Union-Management Participation During the term of the Agreement

Section 12.01

A. The Union and the Employer recognize that frank, open, and regular exchange of information and viewpoints between the Parties is essential to promote and maintain sound labor-management relations. The Employer and the Union will establish a cooperative and productive form of labor-management relations throughout Headquarters and the regions. To this end, both Parties agree to work cooperatively and productively to enhance that relationship, improve efficiency and effectiveness of Government, and promote positive employee-management relations. Accordingly, the Parties agree to discuss a wide range of matters of mutual concern, the administration of the Agreement, and general matters affecting working conditions of bargaining unit employees.

B. The Parties agree to establish and/or continue the National and Local Level labor-management forums to help identify problems and propose solutions to better serve the public and Department missions; The Parties agree that participation in the forums provided for in this Article does not waive rights or responsibilities under the Statute or Collective Bargaining Agreement.

C. These forums allow the Union to have pre-decisional involvement, to the fullest extent practicable, in matters brought to the forum, without regard to whether those matters are negotiable subjects of bargaining under 5 U.S.C. 7106; The Department will provide adequate information on such matters expeditiously to Union representatives where not prohibited by law; and make a good-faith attempt to resolve issues concerning proposed changes in conditions of employment, including those involving the subjects set forth in 5 U.S.C. 7106(b) (1), through discussions in its labor-management forums.

Section 12.02 - National Labor-Management Forum

A. The Employer and the Union agree to meet at a minimum of twice a year on issues of present and future concerns relating to labor-management relations. Each Party shall appoint up to six (6) members. The Parties agree to provide, in writing, the names of its members fourteen (14) days prior to a meeting. The Employer agrees to pay travel and per diem, as necessary, for the Council President, or designee, and four (4) representatives from the Union to attend these meetings.

B. In the event that National Forum meetings must be rescheduled or cancelled, a follow-up meeting will be scheduled to take place within thirty (30) workdays of the cancellation. When key principals of either team are unavailable, an alternate with decision-making authority must be properly designated.

C. The Parties will endeavor to have an agenda for such meetings which will be submitted by both Parties two (2) weeks in advance of each meeting and will be in sufficient detail to permit the other Party to prepare for the conference. Agenda items are subject to change or additions by mutual consent.

D. The forums may determine whether to create by-laws, charters, other working documents and additional meetings.

Section 12.03 - Local Labor-Management Forum·

A. The Employer agrees to meet every four (4) months with the Local President, or designee, and up to two (2) other local Union officials on local issues of mutual present and future concern.

B. In the event that Local Forum meeting(s) must be rescheduled or cancelled, a follow-up meeting will be scheduled to take place within fifteen (15) workdays of the prior cancellation. When key principles of either negotiating team are unavailable, an alternate with decision-making authority must be properly designated.

C. Agenda items for such meetings will be submitted by both Parties two (2) weeks in advance of each meeting and will be in sufficient detail to permit the other Party to prepare for the conference. Agenda items are subject to change or additions by mutual consent. If agendas are not timely submitted, upon the request of either Party the meeting will be postponed.

Section 12.04 - Union-Employer Consultation on Agreement Administration

A. The Parties recognize that there are matters relating to the ongoing administration of the Agreement and day-to-day operations of mutual interest to both Parties which may become the subject of ongoing, frank, and open exchange of information and viewpoints and may be submitted for discussion within the labor-management forums for resolution.

B. To this end, the Council President, or designee, and the Chief Steward, or designee, and the Labor Relations Officer for the Department agree to meet every three (3) months or sooner on matters of an urgent nature for discussions (meetings can take place via conference call, video conference, etc.). In the event that a matter requires an in-person meeting, the Employer agrees to pay travel and per diem, as necessary, for the Council President, or designee referred to above, and the Chief Steward, to attend these meetings.

C. Electronic calendar reminders will be sent out with agenda items for such meetings by either Party in advance of each meeting and will be in sufficient detail to permit the other Party to prepare for the conference. Agenda items for such meetings will be submitted by both Parties in advance of each meeting and will be in sufficient detail to permit the other Party to prepare for the conference.

D. All designated Union representatives participating in the forum will be granted official time.

The designees/participants representing each Party must be prepared to engage in real discussion aimed at reaching consensus on the committee's action items. The Parties by mutual agreement will memorialize action items under a Memorandum of Understanding (MOU) that will be reviewed and signed by the appointed Parties approving officials.

ARTICLE 13: Union Participation on Committees

Section 13.01

The Parties shall jointly create labor-management committees or workgroups at the level of recognition and other appropriate levels agreed to by labor and Management, or adopt existing workgroups and/or committees to help identify problems, propose solutions and to work effectively to better serve the employee, public and Department missions.

The Union shall be represented on these committees or workgroups, when established, as provided for by this Article. The Union will designate to the Employer the name of its representative(s) to each committee or workgroup and will notify the Employer of any changes in its designated representative(s). The designated Union representatives will receive official time.

Section 13.02

The Union representative on committees will have the same status as other members of the committees, in accordance with the committee's assigned responsibilities. Union representatives will have the same voice in committee recommendations as do other duly appointed members.

Section 13.03

A. The Union or the Department may initiate the establishment of labor/management committees to address matters affecting conditions of employment in the bargaining unit, in areas where the Employer has not established a committee. Ground rules and operating procedures, including Privacy Act considerations for the Committee will be determined by its members.

B. In the event that the Parties establish a Joint Awards Committee, such committee will be responsible for reviewing awards data to serve the interests of both the Employer and the workforce by functioning as a continuing link regarding matters involving incentive awards.

C. The roles and responsibilities of the Committee typically include:

   1. Identifying and bringing to the Employer's attention any trends, problems, issues or circumstances regarding the incentive awards program;

   2. Focusing the Employer's attention on any Management practices or problems with the incentive awards program that could produce dissension and dissatisfaction among .employees;

   3. Promoting and communicating the efforts of the Employer to achieve and maintain an effective incentive awards program; and,

   4. In the event that the Employer establishes an "Employee Suggestion Program", the Joint Awards Committee shall be responsible for evaluating and recommending disposition of employee suggestions and whether the employee should receive an award based upon the overall benefit and impact to the Employer.

Section 13.04 - General Committee Principles

A. It is critical that while functioning as a committee the participants treat each other with dignity and respect, and share their ideas, proposals, information and concerns with each other. Each participant is expected to participate as an equal partner in all discussions and activities with the assigned committees.

B. It is understood that an employee's participation will be viewed positively and will have no adverse impact on his/her career.

C. The Employer and the Union endorse the use of joint facilitation as needed. The Employer agrees to provide training to both Union and Management designated facilitators to be used for this purpose.

D. The Parties will work for consensus using an interest-based, problem solving/decision-making model in the committees/workgroups. Each participant has a responsibility to· participate in the decision-making process and to support the group's decision when consensus is reached.

E. The Union maintains its bargaining rights regarding Department decisions. Although it is expected that disputes should become less frequent and more easily solved by operation of these committee goals, the Parties also recognize that the use of administrative or legal remedies is appropriate.

F. To maximize committee contributions, the Department agrees to provide or arrange for training to be conducted for the stakeholders as needed, in consensus methods of dispute resolution, (i.e. alternative dispute resolution techniques and interest-based bargaining approaches etc.).

Section 13.05

The Parties on the established committees/workgroups will notify one another of emerging topics or initiatives that may affect conditions of employment. The Parties recognize that pre- decisional discussions facilitate the early identification and resolution of issues and provide the opportunity for adding value to the planned outcome.

Section 13.06

Bi-annually the Parties agree to complete a joint self-assessment of the committees/workgroups, including the degree to which they accomplished their identified goals and the extent to which they engaged in a constructive and collaborative decision making process.

Bi-annually the Parties shall review accomplishments and suggest additional steps that could be taken to promote the continued development of the collaborative process.

Section 13.07

Committee/workgroup actions shall in no way preclude or delay Union or employee actions taken regarding alleged violations of this Agreement, nor will it be used to circumvent the Employer's obligations under the Collective Bargaining Agreement.

Section 13.08 - Procedures

A. The Parties agree that dates, location and duration of committee meetings must be established by the committee.

B. There will be co-chairs (one representing labor and one representing Management). The

parties will· rotate chairing the meetings.

C. A recording secretary will be appointed to take minutes and maintain them and distribute them to committee members.

D. An agenda or list of topics to be discussed will be distributed to each member of the committee within a reasonable period of time but not less than five (5) days prior to the meeting.

E. Any topic that proposes changes to the Collective Bargaining Agreement will not be discussed by the committee.

F. No bargaining shall take place at the meetings.

G. Active grievances will not be discussed by the committee.

H. Topics that could lead to a grievance may be discussed.

I. Recommendations growing out of the committee meetings are not binding on either Party.

J. The Parties may request the Federal Mediation and Conciliation Service to facilitate the initial meeting or future meetings.

ARTICLE 14: Union Representatives and Official Time

Section 14.01

A. The provision for Union representatives, and the use of official time to perform representational activities as provided herein, are negotiated pursuant to the Federal Service Labor-Management Relations Statute, and shall be administered in accordance with said Statute.

B. The purpose of official time is to provide bargaining unit employees time in which to perform Union representational activities during normal working hours, without loss of pay or charge to annual leave. Union representatives and bargaining unit employees shall not perform any activity relating to internal Union business on official time.

Section 14.02

As used in this Agreement, the term "Union representatives" means duly designated Union officers, and those Union-designated stewards and team/committee members for whom official time is provided in this Agreement.

Section 14.03

A. The Union will be allotted no fewer than seventy-five (75) stewards throughout Headquarters and the regional offices. Such stewards should be designated and assigned by the Union, and the Union shall advise the Employer accordingly.

B. In addition to the stewards referred to in Section 14.03(A) and the officers referred to in Section 14.04, employees who serve as Union representatives on joint Labor-Management committees, or on Employer teams or committees, shall be granted a reasonable amount of official time for that purpose. Team/committee representatives who are not otherwise designated stewards under this Section, and are not officers named in Section 14.04, may use official time only for committee work, and not for the other purposes listed in Section 14.05.

C. The Union shall provide the Employer written notification of the name, telephone number, organizational unit, and immediate supervisor of each Union representative within ten (10) workdays of the effective date of this Agreement so that appropriate discussions can be held with these supervisors and managers.

D. The Union shall also provide the Employer the same information in writing of any change in the list of Union representatives as soon as practicable (normally ten (10) workdays) before the change becomes effective. When the change is a temporary one, the duration of the appointment shall also be indicated. Temporary changes shall not be utilized to increase the number of positions entitled to use official time, provided by this Article.

Section 14.04

A. Union representatives, selected or appointed by the Union under the terms of this Article, shall be granted official time, when they would otherwise be in a duty to carry out the representational activities specified in Section 14.05.

B. The Council President, National Shop Steward, and the Local 2607 President shall be released from duty for 100% official time. The Union representatives referred to in this

Section shall not be required to seek release from their supervisors as provided in Section 14.06(B). However, they must submit time and attendance reports as provided by Article 40 and by Section 14.07 of this Agreement, and they shall conform to other Department policies regarding leave and other conditions of employment.

C. The following Union representatives may use a reasonable amount of official time:

1. Council 252 Officers;
2. The President, Vice-President, Secretary, Chief Steward, and Treasurer of each Union Local; and,
3. Stewards authorized in Section 14.03(A).

D. If there is more than one (1) Union representative reporting to the same supervisor, the Parties agree to work closely and constructively to reduce the impact of the multiple representatives on performance of the work of the unit. If issues are not satisfactorily resolved, reassignment may be appropriate.

Section 14.05

A. Official time in the amounts specified in Section 14.04 may be used only by Union representatives identified in Section 14.04 for the following activities involving representation of the Union or bargaining unit employees:

1. Meeting with employees to discuss alleged grievances, and investigation of grievances;
2. Preparing for and attending grievance conferences, formal discussions, other meetings with Management, and formal appeals or Arbitration hearings;
3. Preparing and presenting replies to proposed disciplinary and adverse actions, unacceptable performance actions, denials of within-grade increases, classification appeals, and statutory appeals;
4. Reviewing documents in connection with an activity specified in this Section;
5. Travel necessary to conduct an activity specified in this Section, with the understanding that travel expenses are not required to be paid by the Employer except where specifically provided in this Agreement;
6. Preparing for and attending meetings of joint labor-management Committees established by this Agreement;
7. Preparing reports required to be submitted by the Union to the Department of Labor;
8. Preparing for and representing the Union or employees before the Federal Labor Relations Authority;
9. Preparing for and attending negotiations with the Employer in accordance with provisions of this Agreement;
10. Participating in labor-management partnership activities; and,
11. Participating in alternative dispute resolution procedures as contained in Article 42.

Section 14.06

A. A Union representative shall, to the extent possible, schedule his/her absences so as not to compromise important work assignments or impede work. The supervisor shall, to the extent possible, schedule assignments, and inform Union representatives of assignments, in

advance in order to reduce the likelihood of conflicting demands. The time spent in carrying out the representational duties described in this Article may require some adjustment of a representative's workload if, in the judgment of the Employer, an adjustment is necessary and practicable. Supervisors and Union representatives are encouraged to meet, periodically, to forecast official time use and to assess potential impact of official time on office workload.

B. The Employer recognizes the importance of official time to the Union's ability to meet its representational responsibilities, and the Parties intend that this Section be applied accordingly. Union representatives will be permitted to leave their assigned work area on official time as authorized under this Agreement after:

1. Providing written (when practicable) or verbal notification to their immediate supervisor or appropriate Management Official ("practicable" to mean if written notification cannot be provided prior to departure it will be provided upon return).
2. Providing a good-faith estimate of the amount of time for which release is requested.
3. Indicating the destination, if any.
4. Specifying the representational category in Section 14.05.

The Employer shall assess bona fide work considerations ("bona fide work considerations" to mean workload that is greater than normal in terms of volume and /or workload that is immediate involving assignments that cannot reasonably be performed by another employee). If the supervisor elects to discuss work load impact the Parties may do so. Request for official time during periods of normal workloads will be granted.

Requests for Official Time during periods of normal workloads will be granted.

If, based on the foregoing representations and considerations, the supervisor cannot accommodate the absence of the representative at the time and for the duration requested, the Union representative will be given time to make alternative arrangements to carry out that representational activity. This procedure does not require a Union representative to request prior release for brief, unexpected telephone calls and interruptions received at the work area of the representative.

C. The Parties agree that discussions between employees and Union representatives, and other authorized representational work, should normally be held in designated Union space, or in other appropriate non-work areas, to avoid disrupting work.

Section 14.07

Each Union representative shall submit to his/her supervisor a biweekly written report of the amount of official time that he/she has spent on Union activities covered by this Article, both at his/her work area and away, by completing the "official time" section of the time and attendance form. The representative shall submit the report by the last workday of each pay period, and shall provide an amended report if official time is used after submission of the time and attendance form.

This report will provide, at a minimum, the information required by the Office of Personnel Management or other appropriate authorities,

LRD - Labor Relations - Dispute Resolution

LRG - Labor Relations - General Labor Management Relations

LRM - Labor Relations- Mid Term Negotiations

LRT- Labor Relations- Term Negotiations

Following the effective date of this Agreement, the Parties shall review the existing Reporting form to determine if any changes are needed, and shall, if required by law, negotiate those changes.

Section 14.08

A. The Employer shall grant official time for short periods of time, ordinarily not to exceed forty (40) hours for each year this Agreement is in effect, to stewards and officers authorized to engage in representational activities to attend external training courses that relate directly to the matters within the scope of the Statute and which are of mutual benefit to the Union and the Employer. New stewards and officers shall be granted up to forty (40) hours each year.

B. The Union shall submit all requests for official time for Union-sponsored training to the Labor Relations Officer, or designee, for the necessary administrative clearances and arrangement for supervisory approvals, at least ten (10) workdays before the training date. The Union shall submit a copy of the training agenda at the same time. This ten (10) day notice requirement may be waived by mutual agreement.

   1. The Union shall bear all costs associated with this training including any travel or attendant costs.
   2. The Union shall provide initial training in Agreement administration to Union representatives authorized to engage in representational activities within ninety (90) calendar days of their designation.

Section 14.09

Consistent with applicable laws and regulations, the Employer may grant Leave without Pay to a bargaining unit employee selected to serve in a full time capacity as a national or district officer of the Union providing his/her absence does not unduly interrupt the mission of the office to which he/she is assigned. This type of leave may not be granted to more than one (1) employee at a time.

ARTICLE 15: Use of Official Facilities

Section 15.01

The Employer agrees to provide appropriate meeting space for each Local and the Council to be used for Union meetings with employees during employees' non-duty status. Arrangements for regularly scheduled meeting space shall be agreed to by the Union and the Employer. If the space will not be used as scheduled by the Union, the Union shall notify the Employer as far in advance as possible. The Employer further agrees that to the extent practicable when such meeting space is scheduled for use by the Union the scheduled use shall not be changed.

The Employer agrees that, where available, the Union may have access to the use of Video Teleconferencing and Computer Training Rooms for Union Sponsored Training. The Union will have the same access as other groups.

Section 15.02

A. The Employer agrees to provide the Union private space for the Council and for each Local which the Union may use for the conduct of official business as provided for in the Statute. The space shall not be the regularly assigned office for any individual.

B. The Parties agree to maintain the current allocation of Union space, except that the Atlanta and Chicago regions shall be provided a minimum of 275 square feet of space. For all future moves of ED locations the Union space at a minimum shall consist of 275 square feet of space, for each Local in the regions, 275 square feet of space for the Headquarters' Local, and 275 square feet of space for the Council, unless otherwise mutually agreed upon. In the event that this matter is not resolved utilizing this Article; the Parties agree either side can initiate bargaining on this matter.

C. The Employer further agrees to provide the following for the Council, unless otherwise agreed upon:

   1. Three (3) Blackberry devices for the Council President, and two (2) other designated Union officials.

   2. Seventy-five (75) Employer-approved External Storage devices, total to be given to the Council for dissemination.

      a) The Employer further agrees to provide the following for each Local and Council office, unless otherwise agreed upon:

         1) Two (2) lateral file cabinets,

         2) One (1) conference table large enough to adequately accommodate six (6) individuals,

         3) Six (6) side chairs,

         4) Two (2) modular, systems, or standard furniture sets suitable for assigned space,

         5) Multi Line Telephone System (at least three (3) individual telephone numbers) and one (1) polycom-style conference capable unit,

         6) Two (2) computers and (1) black and white printer,

         7) Magnetic white board,

8) The Employer will provide a phone with voice mail capabilities published in the Employer email address book, and,
9) One (1) color Multi-Function printer (Scan/Fax/Print/Copy).

b) In instances of physical moves or budget limitations or other considerations which require changes or reductions, the Employer will notify the Union of these concerns and the Union will have pre-decisional involvement in the contemplation so that the Parties can make a good-faith attempt to resolve the issues. In the event that no resolution is achieved, the initiating Party will provide proper notice in accordance with Article 8 and bargaining will commence if requested.

Section 15.03

A. Union representatives shall be permitted reasonable use of telephones provided by the Employer along with the Department's internal mail system when necessary for conducting labor-management activities. Consistent with postal and Departmental regulations, the Union shall have use of Employer metered mail limited to labor relations representational matters but not including matters relating to internal Union business. This, however, does not permit the Union representative to use other types of mailing such as express, overnight, registered, certified mail, etc.

B. The Employer agrees to provide access to copying machines for representational business. Use of copiers shall be reasonable and shall not substantially interfere with conduct of official business.

C. The Employer agrees to provide access to "FAX" machines for the transmission of documents from the Union to the Employer at different locations. Use of such machines shall be reasonable and shall not substantially interfere with the conduct of official Employer business.

D. The Employer shall endeavor to deliver through the Departmental internal mail system unopened mail and documents addressed or forwarded to the Union or a Union representative. These items must be clearly identified or marked “To Be Opened by Addressee Only."

Section 15.04

A. The Employer agrees to provide the Union, for official Union materials, in each building, one (1) lockable bulletin board, exclusively for its use, per location. Official publications of the Union, which may include newsletters, fliers, or other notices, may be distributed on Employer property by Union representatives during non-duty time. Where available, Union representatives will use centralized employee mail slots/drops to distribute Union publications. Distribution shall be accomplished so as not to disrupt operations. All such materials shall be properly identified as official Union issuances.

B. The Employer will provide fifteen (15) copies of Title 5 of the Code of Federal Regulations on an annual basis.

Section 15.05

The Employer will allow the Union reasonable use of email. The Union is subject to the same standards that apply to all users as established by Departmental policy.

ARTICLE 16: Voluntary Allotment for Payment of Union Dues

Section 16.01

In accordance with the Federal Service Labor-Management Relations Statute (FSLMRS), the Union and the Employer agree that where an employee voluntarily agrees to authorize the payment of dues through payroll deductions, the following provisions of this Article will apply. No employee will be interfered with, restrained, unfairly treated, or coerced by the Union or the Employer in choosing to exercise or not to exercise the right to have Union dues voluntarily deducted from his/her salary.

Section 16.02

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

A. Be an employee in the unit covered by this Agreement;

B. Be a member in good standing of the Union;

C. Have a regular net salary, after other legal and required deductions, sufficient to cover the amount of the authorized allotment for dues;

D. Have no other current allotment for the payment of dues to a labor organization; and,

E. Submit a written request to the Labor Relations Officer authorizing the deduction on SF-1187 ("Request and Authorization for Voluntary Allotment of Compensation for Payment of Labor Organization Dues").

Section 16.03

The Employer shall deduct dues only for those pay periods where the employee's net salary, after other legal and required deductions, is sufficient to cover the amount of the authorized allotment for dues.

Section 16.04

An employee may authorize an allotment of only those dues which are the regular and periodic dues required by the Union for that employee. Initiation fees, special assessments, back dues, fines, and similar items are not considered dues and shall not be deducted.

Section 16.05

The Employer shall withhold dues on a biweekly basis conforming to the regular pay period. The Employer may take up to ten (10) workdays to process the SF-1187. The Employer shall thereupon begin to deduct dues as of the next complete biweekly pay period. The designated Labor Relations Officer shall document the receipt of the SF-1187 in writing.

Section 16.06

A. An allotment may not be revoked for one (1) year after the first deduction.

B. A revocation shall be effective as of the first full pay period after the anniversary of the first deduction. To revoke allotment, the employee shall obtain an SF-1188 ("Revocation of Voluntary Authorization for Allotment of Compensation for Payment of Employee Organization Dues") from the Labor Relations Branch, or regional personnel office, as appropriate, and shall submit the SF-1188 to that office during the

thirty (30) calendar day period beginning before the anniversary date of the first deduction.

C. If the employee does not submit the SF-1188 during the thirty (30) calendar-day period, his/her withholding allotment will be continued, and may not be revoked until the next anniversary date. An SF-1188 that is not received in a timely fashion will be returned to the employee with an explanation concerning the appropriate time for resubmission.

D. The designated Labor Relations Officer shall notify the Union of the revocations submitted by its members no later than five (5) workdays after receipt of the revocation.

Section 16.07

If exclusive recognition should cease to exist for the covered unit, all allotments shall be terminated. In addition, the Employer shall terminate an individual employee's allotment when:

A. The employee ceases to be a member in good standing of the Union;

B. The employee is reassigned, transferred, or otherwise excluded from the bargaining unit; or

C. The employee is separated from the Department.

Section 16.08

Termination of allotments as required in Sections 16.07(A) and 16.07(B) shall be effective on the first full pay period following receipt and necessary processing of the appropriate notice by the designated Labor Relations Officer. Terminations as required by Section 16.07(C) shall be effective as of the date of separation. However, when separation occurs during a pay period, the Employer shall withhold the allotment from the employee's salary for that pay period, subject to Section 16.03, above.

Section 16.09

It is the responsibility of the Union to:

A. Provide SF-1187;

B. Certify on the SF-1187 the amount of dues to be withheld each biweekly pay period;

C. Certify to the designated Labor Relations Officer when there is a change in the amount of the Union dues (changes can be made only once every twelve (12) months);

D. Promptly notify the Labor Relations Officer when an employee with an allotment ceases to be a member in good standing with the Union;

E. Ensure that its members understand the conditions, procedures, and time limits which they must meet in order to voluntarily revoke dues, allotments;

F. Promptly refund an erroneous remittance to the Employer; and

G. Provide an annual list to the Employer of persons to whom dues deduction reports shall be sent, and timely notify the Labor Relations Officer when any changes occur.

The Union Treasurer or designee shall make the necessary certifications required by this Section for the Union.

Section 16.10

A. It is the responsibility of the Employer to:

1. Forward to the appropriate Union official checks in payment of net dues in accordance with established accounts;
2. Promptly send to the Union the balance due if it erroneously underpays a payment of net dues; and,
3. Inform the Union of the Human Capital and Client Services point of contact responsible for the reports and updates of Union dues deduction annually and upon change of designated Human Resources representative.

B. If the Employer has not withheld dues from an employee in accordance with Section 16.05, the Employer shall forward to the Union the amount due. The Employer may recoup the amount of the overpayment from the employee, consistent with law, rule, regulation and Department policy. If the amount to be recouped exceeds the equivalent of dues allotments for three (3) pay periods, the Employer will provide to a current Department employee the option to repay the amount of payroll offset over a series of pay periods.

Section 16.11

The Employer shall provide biweekly Union dues deduction reports overall to the Counsel President, and by location to Union local Presidents. The reports shall show, by Principal Office:

A. Names of members for whom deductions are made, and amounts;
B. Total number of members for whom dues are withheld;
C. Total amount withheld; and,
D. Net amount remitted

The Employer shall make the programming changes to its payroll system needed to provide sorting by Principal Office within approximately ninety (90) calendar days after the effective date of this Agreement.

Section 16.12

If the Parties are negotiating a new Agreement at the time this Agreement would otherwise terminate, the dues withholding provisions contained in this Article shall be extended until a new Agreement is reached.

ARTICLE 17: Merit Staffing and Promotions

The Department recognizes and supports applicable law, rules, and regulations and Department policies. The purpose and intent of this Article are to ensure that merit promotion principles are applied consistently, with equity for all employees, and without regard to political, religious, or labor organization affiliation or non-affiliation, marital status, race, color, sex, national origin, disabling condition, age, or sexual orientation and shall be based solely on job- related criteria.

To further the goals of merit staffing principles and in recognition of the knowledge, skills, and experience possessed by its employees, the Department shall follow the procedures in this Article and the Department's Merit Promotion Plan, as amended by this Article, and provide qualified employees the opportunity to apply and receive first consideration when filling bargaining unit vacancies in the competitive service. To that end, the Employer agrees that it is in the best interest of the Department to:

A. utilize the talents and skills of its employees to the extent possible;

B. assist employees in improving their performance in accordance with Article 23 (Performance Appraisal); and,

C. encourage employees to develop their potential according to their capabilities through discussions with their supervisors, developmental assignments, and if appropriate, formal training opportunities as provided in Article 26 (Employee Development and Training).

Section 17.01

The provisions of this Article are applicable to the filling of competitive service positions within the bargaining unit. In accordance with 5 CFR 335.103, competitive procedures will apply to the following types of personnel actions:

A. Promotions, except those listed in the provisions under 17.02.

B. Temporary promotions for more than 120 calendar days.

C. Details over 120 calendar days to higher graded positions or to positions with known promotion potential greater than the employee's present position.

D. Selection for training which is part of an authorized training program, part of a promotion program, or required before an employee may be considered for a promotion as specified in 5 C.F.R. 410.302.

E. Reassignment or demotion to a position with greater promotion potential than a position previously held on a competitive basis in the competitive service. Exceptions are actions permitted by reduction-in-force regulations and reassignment of an intern or trainee as part of the training and development plan.

F. Transfer to a higher-grade position or a position with more promotion potential than a position previously held on a permanent basis in the competitive service, except as permitted by reduction-in-force regulations.

G. Reinstatement to a permanent or temporary position at a higher grade level or with more promotion potential than previously held in a non- temporary position in the competitive service.

Section 17.02 - Actions not Covered by Merit Staffing (Competitive) Procedures

In accordance with 5 CFR 335.103, Merit Staffing (competitive) procedures will not apply to the following personnel actions which are exceptions to Section 17.01 above:

A. Non-Competitive appointments and promotions not included in Merit Process Promotion Based on Reclassification when:

   1. No significant change occurs in the duties or responsibilities of the position and the position is upgraded due to issuance of a new classification standard, an updated Agency-wide classification policy or the correction of a classification error; or,

   2. The position is upgraded due to accretion of additional duties and responsibilities and the following provisions are met:

      a) The employee continues to perform the same basic functions in the same organization, working for the same supervisor (the duties of the former position are absorbed into the new position, and the former position is abolished);

      b) The new position has no promotion potential;

      c) The additional duties and responsibilities assigned to or accrued by the incumbent do not adversely affect or impact other positions in the unit; and,

      d) The accretion is supported by a written analysis and evaluation of the position (which may involve an audit with the employee and/or the employee's Supervisor or other fact gathering method).

B. Permanent Promotion to a position held under a temporary promotion when:

   1. The assignment was originally made under competitive procedures; and,

   2. The Employer informed all competitors at the time that the assignment may lead to a permanent position.

C. Temporary promotion of an employee for less than one hundred twenty (120) days; or for more than one hundred twenty (120) days to a grade previously held on a permanent basis, unless the employee was demoted for reason(s) related to performance or misconduct.

D. Placement as a Result of Priority Consideration when the referral is a remedy for candidates not given proper consideration in a previous competitive promotion action.

E. Promotion to a Grade Previously Held on a permanent basis in the competitive service from which the employee was separated or demoted for other than performance or conduct reasons.

F. Promotion, Reassignment, Demotion, Transfer, Reinstatement, or Detail to a Position Having No Higher Promotion Potential than the potential of a position an employee currently holds or previously held on a permanent basis in the competitive service and did not lose because of performance or conduct reasons.

G. Promotion Resulting from Successful Completion of a Training Program for which the employee was competitively selected.

H. Selection from the Re-employment Priority List at the same or lower grade level than the position from which separated.

I. Reinstatement to any Position of a career or career conditional employee who served under a career SES appointment consistent with 5 CFR 335.103(c) (3).

J. Promotion as a Legal Remedy as ordered and agreed upon in a legal or administrative proceeding.

K. Details for one hundred twenty (120) days or less to a higher graded position or to a position with known promotion potential.

L. Competitive appointment from a Certificate of Eligibles through OPM or delegated examining authority); or,

M. Non-competitive appointments under special authority; e.g. conversion of Student Career Experience Program student, appointment of eligible Corporation for National and Community Service employees or Peace Corps personnel (must clear ICTAP through an announcement), conversion of a Veterans Readjustment Act (VRA) appointee and Presidential Management Fellows.

N. Career ladder promotions.

Section 17.03 - Temporary Promotions

A. The Employer is responsible for assuring that temporary promotions, details to higher graded positions or to positions with known promotion potential do not compromise the open competitive principles of the merit system or the principles of job evaluation. Therefore, the Employer is responsible for keeping such actions within the shortest time practicable and to secure necessary services through the use of appropriate personnel actions.

B. Bargaining unit employees will not be detailed or temporarily promoted to higher graded positions for more than a cumulative total of 120 calendar days during any 12 month period without the use of competitive procedures. Temporary promotions or details to higher graded positions or positions with known promotion potential in the bargaining unit expected to last more than sixty (60) calendar days shall be made in accordance with the Department's Merit Promotion Plan. Employees detailed to higher graded positions for more than thirty (30) consecutive days shall be temporarily promoted to the higher grade effective the thirty-first (31st) day of the detail. Details during reorganizations and non-competitive details will be in accordance with the provisions of Article 10 (Reorganization Implementation Procedures) and Article 19 (non-Competitive Reassignments and Details).

C. Temporary promotions for qualified and eligible bargaining unit employees will take effect on the 31st day that an employee is assigned to perform the duties of a higher graded job. This includes an employee who has been officially detailed to a higher graded position for 30 consecutive days or an employee who has been assigned and performed all the duties of a higher graded position for 30 consecutive days.

   Details to higher grades will not be interrupted for the purpose of avoiding temporary promotions on the 31st day. If an employee is detailed to a higher graded position for more than 30 days within a 60-day period, the employee will be retroactively promoted the length of the detail as of the 31st day of the detail.

   The employer will notify the union of any details that result in a temporary promotion, as they become effective.

The union requests a report every 6 months of employees who are currently on details.

D. When selecting employees for non-competitive temporary promotions and non-competitive details to higher graded positions and to positions with known promotion potential, the Employer will give careful consideration to qualifications, including abilities, skills, and work experiences of employees.

Section 17.04 - Assessment Criteria and Subject Matter Expert(s)

A. A job analysis shall be conducted to determine the competencies required for competitive positions. Job analysis requirements shall conform to the Uniform Guidelines on Employee Selection Procedures at 29 CFR 1607 and 5 CFR 300, Subpart A.3.

B. The agency is responsible for ensuring assessment criteria meet applicable regulatory and statutory requirements.

   1. Information taken from the assessment process will be provided to the Selecting Official. The information will also serve as reference material to document the process by which the qualified candidates were identified.

   2. The Employer may convene subject matter experts to work with the assessment material. Subject matter experts review vacancies which have been announced in the bargaining unit in the competitive service when the Human Resources office needs the collective judgment and expertise of subject matter experts in rating candidates for a particular position which requires specialized, practical knowledge of computer equipment, the natural sciences, statistics, economics, mathematics, or educational research and which use terminology usually understood only by subject matter experts.

C. Assessment criteria used to evaluate candidates must be fair, job-related, and applied equitably.

Section 17.05 - Priority Consideration before Using Competitive Procedure

Employees who are involuntarily demoted in the Department without personal cause or who are in grade retention status are entitled to consideration for re-promotion before using the competitive procedures. This applies to positions at the employee's former grade or at any intervening grades that are to be filled under competitive procedures. The right to this consideration does not apply to a position with promotion potential higher than that of the position held at the time of the change to the lower grade.

Section 17.06 - Posting Vacancies

A. The Local Union President of the headquarters or regional office may obtain vacancy announcements from ED's automated staffing system (or its successor).

B. Each vacancy will be advertised in a geographic/organizational area large enough that a reasonable number (i.e. where there are at least three applicants) highly qualified candidates may be anticipated and given an opportunity to compete.

C. All vacancies and training within the bargaining unit, that require competitive procedures in accordance with this Article, will be posted electronically on the OPM's USA website or its successor.

D. Notice of cancellation will be sent to the applicant.

E. Vacancies will be posted consistent with ED Merit Promotion Plan (Personnel Policy 335-1) or any currently prevailing OPM regulations or initiative superseding Personnel Policy 335-1.

F. The Employer shall post vacancies for longer periods of time when the personnel office determines that:

   1. the area of consideration warrants longer posting, or,

   2. a longer time is necessary to ensure adequate distribution time for employees to be notified of the vacancy and to apply for it.

G. When substantive information on a vacancy announcement is incorrectly stated and/or when technology presents barriers affecting employees who may apply for the vacancy, the vacancy shall be re-announced.

Section 17.07 - Contents of Vacancy Announcements

The Employer shall include the following information in a vacancy announcement:

A. Announcement number, opening and closing dates;

B. Title, series, grade, geographical and organizational location of the position, and number of positions that may be filled from the announcement;

C. Area of Consideration;

D. Description of promotion potential, if any;

E. Statement of any selective factors pertinent to the duties and qualifications;

F. When using an automated recruitment system, each factor/question used to determine the basic eligibility and/or best-qualified candidates will be included on each announcement. If a position is not announced using an automated system, a summary of criteria to be used by the evaluation panel (including the relative weights of knowledge, skills, abilities, and other characteristics) to rank candidates will be stated on the announcements;

G. Information on how to claim Veteran’s preference.

H. Summary statement of the duties of the position;

I. Description of qualifications;

J. Whether the position is a permanent or temporary position and full-time or part-time employment;

K. Name and telephone number of the Human Resources Specialist to contact for information relating to the announcement;

L. Special working conditions, such as tour of duty, travel requirements, expected overtime, telework eligible, etc.;

M. A statement of the bargaining unit status;

N. The different levels at which the position may be filled if it is a multiple-level announcement;

O. A statement as to whether the position is considered "essential" for purposes of reporting to work when the facility might otherwise be closed; and,

P. A statement if the position is sensitive and if the appointment is subject to reappointment investigation;

Q. Equal Employment Statement and Reasonable Accommodations statement;

R. Whether or not relocation expenses will be paid;

S. Where additional information can be found; and,

T. Where applications should be sent.

When information on a vacancy announcement is incorrectly stated so that it would affect employees who may apply for the vacancy, the vacancy shall be re-announced.

Section 17.08 - Applying for Vacancies

A. Employees may use agency computer resources for applying for positions on non-duty time and consistent with department's policy on personal use of agency equipment and resources.

B. The Agency will provide appropriate information to employees on how to file for a vacancy and how to complete the appropriate form(s). The Agency will make instructional material on the promotional process available to bargaining unit employees.

Section 17.09 - Telephone Interviews

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

Section 17.10 - Rating Factors

A. If the Employer uses weights and selective factors they shall be job related. Factors, if used, will be applied fairly and equitably and like skills and experience shall be given like credit.

B. An employee's accumulation of earned annual leave or sick leave shall not be a factor in rating.

Section 17.11 - Subject matter experts, Panels, and Advisory Committee

A. The Employer may convene subject matter experts to review applications for vacancies which have been announced in the bargaining unit in the competitive service when the human resources office needs the collective judgment and expertise of subject matter experts in validating the qualification of the candidates for a particular position which requires specialized, practical knowledge of computer equipment, the natural sciences, statistics, economics, mathematics, or educational research and which use terminology usually understood only by subject matter experts.

B. When the Employer uses an interview panel, the interview process will consistently use structured interview guidance as outlined in "The Art of Conducting a Structured Interview" issued by the Employer and retain documentation as it relates to the selection and will provide written justification to Human Resource Office outlining the reasons for the selection.

C. A bargaining unit employee may be a member of the interview panel. The union will have three (3) work days to provide concurrence or non-concurrence with the bargaining unit member.

D. Panel members must not be in competition for the vacancy.

E. An individual may not serve on a panel where a conflict of interest may exist i.e. a relative of an applicant.

F. The justification will become part of the Merit Promotion case file and will be maintained for the same two year period as required under record maintenance procedures as prescribed by ED and OPM regulations.

G. The Employer and the Union agree to use the Diversity Advisory Committee established in Article 27, section 27.06 as the advisory group for merit staffing plan. This committee will serve in an advisory capacity to the Employer on matters pertaining to the general improvement of merit and competitive staffing practices in ED.

Section 17.12 - Rating and Referral

A. Determining Best Qualified

Promotion eligible candidates will be rated against the KSA's/competencies set forth in the job analysis process. Candidates will be identified as either "best qualified," "highly qualified," "well qualified," or, "ineligible," based on the scores received in the application process. When more than ten (10) candidates are rated as eligible, "highly qualified" candidates will be determined by using all of the ranking factors listed in the vacancy announcement in the evaluation process. Candidates will be ranked according to their rating scores assigned by the automated hiring system or ranking panel(s)/ranking official.

B. Referral to Selecting Officials

1. The highly qualified candidates who will be referred for consideration will be determined based on the most logical (natural) break in the scores; i.e., two or more points. However, in the event the natural break method results in more than ten (10) highly qualified candidates, the HR will resort to identifying the top ten (10) numerically ranked candidates who will then be forwarded to the selecting official/panel in alphabetical order. All tied scores (at number 10) will be forwarded to the selecting official. Candidates will be ranked according to the rating score assigned by the automated hiring system. Applicants eligible for non-competitive selection (e.g. for lateral assignments, re-promotion, etc.) will also be referred to the selecting official.

2. If highly qualified-certificate is to be used for more than one (1) vacancy, an additional highly qualified-candidate (if available) may be added for each additional vacancy.

3. lf there are fewer than ten (10) highly qualified candidates, only the highly qualified candidates will be referred.

4. If there are no highly qualified candidates and the selecting official, with the concurrence of the human resources representative, determines that it is impractical to expand the area of consideration, then the qualified candidates may be referred in alphabetical order. If the human resources representative makes such a decision, the reason(s) why further expansion of the Area of Consideration (AOC) is impractical must be fully documented in writing and included in the Merit Promotion case file.

C. Priority Consideration

1. An employee who would have been referred but was not given proper consideration due to a procedural violation or error in a previous competitive placement action, must be given advanced consideration for the next vacancy at the same grade which becomes available in the same occupational family as the position denied, for which the employee is qualified. The employer will notify the eligible employee that he/she may request priority consideration. This means that the employee must request priority consideration, apply for the vacancy, and must be referred to the selecting official for consideration before other selection certificates are referred to the selecting official. If selected on the basis of advance consideration, the employee is promoted or reassigned noncompetitively. If the employee refuses consideration, the employee forfeits his/her entitlement to the advance consideration.
2. The selecting official must justify in writing any non-selection under this section.
3. Upon request the Union will be furnished statistics on priority considerations granted, exercised, and the results.

D. Upon request the union will be provided a copy of all Education Department Certificate of Eligibles issued under the provisions of this Article for bargaining unit positions grades GS-4 and above, excluding open continuous vacancy announcements. The Employer will redact the certificates to remove sensitive personal information such as Social Security Number, home address, telephone number, etc.

Section 17.13 - Selection

A. The selecting official has the right to select or not select any candidates referred. However, the selecting official will give consideration to the candidates' fitness and qualifications, without regard to political, religious, or labor organization affiliation or non- affiliation, marital status, race, color, sex, national origin, disability, sexual orientation, or age. The selection shall be based solely on job- related criteria.

B. If the area of consideration on a vacancy announcement is broader than the Department, the selecting official shall first interview and consider Department employees on the Certificate of Eligibles before considering outside candidates. The selecting official shall provide to the Human Resources office written documentation on the Certificate of Eligibles attesting that each candidate on the Certificate of Eligibles from within the Department was interviewed and given fair and impartial consideration. The Union may review the documentation upon request.

C. A selecting official will normally render a decision within one (1) pay period upon completion of all interviews. When a decision has been made, the selecting official will notify the Human Resources Office who will review the selection. The staff of the Human Resources Office will notify the selectee of the selection.

D. The Employer will provide a copy of ED Certificate of Eligibles issued under the provisions of this Article for bargaining unit positions grades GS-4 and above, excluding open continuous vacancy announcements to the Union. Such copies will be provided to the respective Local President in whose installation the vacancy occurs.

E. The Employer agrees that, in keeping with the spirit and intent of this Article, it is necessary and appropriate to acquire and maintain pertinent information and data on

merit promotion selections. Therefore, the Employer shall obtain relevant information regarding merit promotion selections and shall also compile data, indicate trends, and prepare analyses of merit promotion selections by principal offices in headquarters and the regions. The employer, consistent with cost considerations, shall make special analyses of principal offices available to the Union upon request. The Council President and other Union officials, as appropriate, shall meet with the Director of Human Resources to periodically review and discuss merit promotion information and to raise any concerns, problems, and suggestions that the Union may have for improvement.

F. Only the Human Resource Office may transmit information concerning a selection to any applicant or authorized person. The selecting official will not discuss the selection until after the Human Resources specialist has reviewed the selection and notified the selecting official that an offer has been made and accepted by the selectee.

G. If the Employer has not made a selection pursuant to an announced vacancy within ninety (90) calendar days of the issuance of a Certificate of Eligibles, the Employer shall re-announce the vacancy before a competitive selection may be made.

Section 17.14 - Release and Notification of Successful Applicants

The Employer will work with program officials to establish mutually agreeable release dates based on mission and program requirements. Normally, an employee will be released no later than one (1) complete pay period for promotions, following the selection. When local workforce and program conditions permit, an employee will be released no later than two (2) complete pay periods for reassignments, following the selection. When an employee is nearing the end of a waiting period for a within-grade increase, consideration should be given to releasing the employee at the beginning of a pay period on or after the effective date of the within-grade increase, but not later than two pay periods after the normal date of release, provided such an action would benefit the employee.

Section 17.15 - Information for Non-selected Employees

Following notice of non-selection, an employee considered and not selected shall receive, upon request, the following information from the personnel office:

A. The group in which the employee was placed;

B. Whether the employee met minimum qualifications;

C. Employee's overall score;

D. Employee's relative standing in numerical listing:

E. What the Best-Qualified List cutoff score was;

F. Whether or not the employee was on the Best-Qualified List;

G. The name of the employee selected for the vacancy; and,

H. The qualification requirements and the evaluation and ranking factors used. This provision does not require nor permit the release of the crediting plans consistent with applicable law.

In accordance with the Privacy Act of 1974, the personnel office shall permit an employee who has not been rated highly qualified, or his/her representative, to post-audit sanitized individual

records of those candidates rated “highly qualified.”

Applicants interested in receiving additional information concerning their non-selection or particular rating and ranking for a vacancy may submit a Freedom of Information Act (FOIA) request to the FOIA office.

Section 17.16 - Promotion Records for Unit Positions

In accordance with 5 CFR 335.103, a file sufficient to allow for reconstruction of the competitive action will be kept for two years, unless there is a grievance or complaint pending on the particular promotion action, in which case the file will be kept pending final decision of the grievance or complaint.

Section 17.17 - Effective Date of Promotions

The Employer shall take every reasonable action to ensure that employees' promotions are effective at the beginning of a pay period to facilitate employees receiving their pay checks in a timely manner.

ARTICLE 18: Career Ladder

Section 18.01

A career ladder starts when an employee enters into a pre-established series of positions of increasing responsibility and/or difficulty in the same line of work. The employee may progress to the highest grade established for that career ladder (the "full-performance level"). When an employee enters a career ladder at a lower grade level, he or she is promoted non-competitively to higher grade levels upon meeting the requirements set forth in this Article.

Section 18.02

A. The Employer recognizes the importance of providing training and grade-building experience to employees in a career ladder who are performing at least at a "Successful," or equivalent, level, so that they can demonstrate their ability to perform work at the next higher grade level. If it is determined that there will not be enough work in the unit at the next performance level to promote the employee, the Employer must notify the Union and afford it the opportunity to negotiate as required by 5 U.S.C. 7106 (b)(2) & (3) for the affected employees(s).

B. Supervisors and employees in career ladder positions below the full performance level are encouraged to meet periodically to discuss the assignments, and level of performance on those assignments, that will enable employees to show that they have the ability and readiness for promotion to the next grade level in the position.

C. The Parties recognize that it is the responsibility of the Employer, alone, to determine the specific assignments or types of assignments which an employee must satisfactorily perform to demonstrate the ability and readiness for promotion to the next higher level. These assignments should be consistent with the grade level and work requirements of the position to which promotion is sought.

Section 18.03

The Parties agree that career ladder promotions are not automatic; however, incumbent employees in career ladder positions below the full performance level will be promoted to the next higher grade level when:

A. The employee was initially selected through merit procedures, or a valid exception or exclusion to merit procedures;

B. The employee has met the necessary time-in-grade and qualifications requirements;

C. The first line supervisor provides written certification that: the employee is performing at least at a "Successful" level, has not received less than a ""Successful"," or equivalent, rating on a critical element that is also critical to the performance at the next higher grade, and has demonstrated the ability and readiness to perform at the next higher level; and,

D. There is enough work in the unit at the next performance level for the employee to be promoted, and there is a continuing need for personnel at that grade level.

Section 18.04

A. If an employee is certified as "Successful" or its equivalent and is meeting the promotion criteria in Section 18.03, the supervisor will promptly recommend promotion, to be effective at the beginning of the first pay period after the requirements are met.

B. In the event that the employee met the promotion criteria, but the appropriate Management Official(s) failed to initiate the promotion timely or to complete the documentation or approvals in a timely fashion, the promotion will be retroactive to the beginning of the first pay period after the pay period in which the requirements were met.

C. Meeting the career ladder advancement criteria, the supervisor and employee will develop a plan tailored to assisting the employee in meeting the criteria. The plan should include all applicable training as well as any other appropriate support. At the request of the employee, the Union may provide assistance.

D. If an employee is not meeting the criteria for promotion, the employee will be provided with a written notice at least one hundred and twenty (120) days prior to the earliest date of promotion eligibility. The written notice will state what the employee needs to do to meet the promotion criteria. If an employee meets all promotion criteria except ability and readiness to perform at the next higher level, the supervisor will specify the types of tasks that must be completed successfully and/or the skills that must be demonstrated for the employee to qualify for promotion.

E. Under normal circumstances, approvals and authorizations shall be provided, or disapprovals given, by the principal office within fifteen (15) workdays of the supervisor's written certification, and the human capital office shall review and take appropriate action on the promotion request within fifteen (15) workdays after receipt of the request from the principal office.

F. The Employer may not deny or delay a promotion for arbitrary or capricious reasons. However, a delay may occur if there is misconduct that has a bearing on readiness for promotion. The employee shall be provided a written explanation of these circumstances upon request.

Section 18.05

If an employee has completed time-in-grade and qualifications requirements for a career ladder promotion, and the supervisor has not initiated action under Section 18.04(A) the employee may request a determination from the supervisor as to whether the supervisor is prepared to certify promotion. The supervisor will inform the employee within fifteen (15) calendar days after the employee has requested a determination of the action he/she intends to take.

A. If the determination is to recommend a promotion, the supervisor shall promptly initiate the certification and promotion recommendation required in Section 18.04(A) of this Article. In the event that the employee met the promotion criteria, but the appropriate Management Official(s) failed to initiate the promotion timely or to complete the documentation in a timely fashion, the promotion will be retroactive to the beginning of the first pay period after the pay period in which the requirements were met.

B. If the determination is not to recommend a promotion the supervisor will promptly communicate to the employee the reasons for non-promotion. The employee may, thereafter, request a redetermination from the supervisor at four (4)-month intervals.

C. Nothing in this Section is intended to prevent a supervisor from submitting a promotion recommendation in the absence of an employee request.

Section 18.06

The employee has the right under Article 42 to request the right to file a grievance of the Employer's decision not to promote the employee.

ARTICLE 19: Non-Competitive Reassignments and Details

Section 19.01

This Article applies to non-competitive reassignments or details of bargaining unit employees to positions in the bargaining unit. Reassignments and details which require competition and the procedures applicable to them are provided for in Article 17 (Merit Staffing and Promotions). All matters not specified in this Article relating to non-competitive details of employees shall be governed by law, Department Policy and Office of Personnel Management regulation.

Section 19.02

A. A detail is the temporary assignment of an employee to a different position or to a different set of duties for a specified period, with the employee returning to his/her regular duties at the end of the detail, as the employee continues to be the incumbent of the position from which detailed.

   1. Reassignment means a change from one position to another, without promotion or demotion, while the employee is serving continuously within the same Department. Because they are permanent, all reassignments will be documented in the employee's OPF.

B. The Employer shall provide any employee detailed for more than five (5) workdays with a statement of duties or a functional statement and include an appropriate statement of performance expectations, three (3) workdays prior to the effective date. Where this is not practicable, the Employer shall give the employee a statement of duties or a functional statement within five (5) workdays after the commencement of the detail.

C. For reassignments or details of one hundred and twenty (120) calendar days or more, the Employer will work with the employee to develop an appropriate performance plan as required by Department policies and Article 23 (Performance Appraisal). The performance plan shall be completed within thirty (30) calendar days after the beginning of the detail or reassignment.

Section 19.03

For a detail which lasts between five (5) and thirty (30) workdays inclusive, the Employer shall provide the employee with a memorandum outlining the work performed by the employee during the detail.

Section 19.04

The Employer shall record a detail of more than thirty (30) calendar days on Standard Form 52 ("Request for Personnel Action"), as a permanent record in the employee's OPF.

Section 19.05

A. The Employer agrees to notify an employee of a reassignment or detail in writing at least ten (10) workdays in advance of the effective date of the reassignment or detail, if the reassignment or detail is for more than five (5) workdays. Regardless of duration, if the reassignment or detail is outside the local commuting area, the Employer will also notify

the employee and the Union at least ten (10) workdays in advance of the effective date.

B. For a detail that is necessitated by workload requirements or a special project and that is in excess of five (5) workdays, the Employer agrees to solicit volunteers from other qualified employees. The Employer agrees to notify the Union when it solicits volunteers for such details.

C. Except for reassignments or details outside of the local commuting area, which require fourteen (14) calendar days notice, the Employer may reassign or detail an employee on short notice, or immediately, due to pressing work conditions that prevent the Employer from providing advance notification. In such circumstances, the Employer shall provide an oral explanation for the reassignment or detail to the employee and his or her Union representative when notification of the reassignment detail is given. The explanation for the reassignment or detail shall be provided in writing within five (5) working days of its effective date.

Section 19.06

Employees detailed to higher graded positions for more than thirty (30) consecutive calendar days shall be temporarily promoted to the higher grade effective the thirty-first (31st) day of the detail. The Employer will notify the Union when a detail results in a temporary promotion.

Section 19.07

A. For details of ten (10) workdays or less, the Employer agrees to allow the employee to maintain his/her approved alternate work schedule, to take previously-approved leave, and to continue previously-approved Telework arrangements in detail.

B. For reassignments, or details of more than ten (10) workdays, the Employer agrees to seriously and fairly consider an employee's request to maintain his/her previously approved alternative work schedule, leave, telework, and other work arrangements. If maintaining these previously-approved arrangements would interfere with the employee's ability to work effectively in the reassignment or detail, the Employer and the employee will work together in an effort to establish new arrangements that comport with the requirements of the reassignment or detail and that are satisfactory to the employee.

ARTICLE 20: Release Dates

Section 20.01

If an employee accepts an offer of employment from a Federal or other employer, he/she shall promptly inform his/her immediate supervisor.

Section 20.02

If the new position is in the Federal sector, the Employer shall give a release date, which will not be later than two (2) weeks following the date of the initial release request by the new Employer unless other mutually satisfactory arrangements are made.

ARTICLE 21: Reduction in Force

Section 21.01 - Purpose

This Article describes the procedures and arrangements for adversely affected bargaining unit employees that the Employer will follow in the event it determines to undertake a Reduction in Force (RIF) or transfer of function. It is intended to protect the interests of employees while allowing the Employer to exercise its rights and duties in carrying out the mission of the Department.

Section 21.02 - Applicable Laws and Regulations

The Department will adhere to all applicable Government wide rules and regulations and the provisions of this Article in the administration of reduction in force or transfer of function.

Section 21.03 - Definitions

Definitions of terms used throughout this Article may be found in applicable Government-wide regulations or Department policies.

Section 21.04 - Alternate Methods

To the extent that this is practicable and not prohibited by law, and without interfering with the accomplishment of the Employer's mission, the Employer agrees alternative methods such as, but not limited to attrition, reassignments or details which do not result in displacement, hiring freeze on new employees, curtailing conversions of temporary employees to regular employees, early-out retirement, and to the extent feasible, non-essential expenditures and cost reduction efforts will be considered before abolishing positions.

Section 21.05 - Pre-Decisional Involvement

A. If the Employer contemplates a RIF action, the Employer will notify the Union and the Parties will convene pre-decisionally to discuss the reason(s) for the RIF and its anticipated effect on bargaining unit employees.

B. If available at the pre-decisional stage, the Employer will provide copies of any supporting documentation that it intends to include as part of the internal review and approval package. Documents shall include any business analysis, cost analysis, or other data relied upon by the Employer. The Employer will brief the Union at the level of recognition.

Section 21.06 - Union Notification

A. The Employer will notify the Union of the RIF at least twenty (20) workdays in advance of any notice to employees, or sooner if practicable and in accordance with Article 8. The written notification will include:

1. The specific reasons why the Employer considers an RIF and/or transfer of function to be necessary including all actions considered, adopted, or rejected before deciding to conduct an RIF, and the reasons for the adoption or rejection;
2. The approximate number, types and geographic locations of positions affected;
3. The competitive area in which the RIF will be conducted;

4. The competitive levels to be initially affected;
5. The proposed effective date;
6. The RIF proposals; and,
7. The retention roster that identifies the ranking of those employees who will be subject to the RIF. This roster will identify the employees' names, locations, lengths of service, performance evaluation review, awards, and the employee's location on the roster.

B. At the request of the Union, the Employer will brief the Council President or his/her designee about the RIF proposal. The briefing will include the reason(s) for the RIF and its anticipated effect on bargaining unit employees if the information is known at the time of the briefing.

C. The Employer will also provide updated information to the Union concerning the RIF as soon as such information becomes available including, but not limited to, additional positions affected, the names of affected employees, revised dates, and listings of job offers made.

Section 21.07 - Official Time for Representation

Union representatives shall be entitled to official time in accordance with Article 14 to assist employees affected by RIF actions. Such time shall include but not be limited to private consultation with employees, preparation and presentation for meetings, inquiries, appeals, grievances, review of retention registers or other RIF records, and other related aspects of employee assistance. ·

Section 21.08 - Employee Notification

Employees who are adversely affected by actions stated in this Article (i.e., geographically transferred, demoted, or separated because of the RIF) shall, as a minimum, be sent notification at least seventy (70) days in advance of the effective date by certified mail, in accordance with the Office of Personnel Management (OPM) regulations. All such notices shall contain the information required by OPM regulations, in addition to that required by this Agreement.

Section 21.09 - Employee Information

As far in advance as possible of an anticipated RIF, the Employer will notify employees of the need to review their personnel records and ensure that these records are complete and accurate. The Employer shall provide information needed by employees to understand the RIF and why they are affected.

Specifically, the Employer shall advise employees regarding the following:

A. Veterans preference;

B. Three (3) most recent performance ratings of record received during the previous four (4)-year period;

C. All periods of Federal civilian and military service;

D. Completed training;

E. Current licenses and certifications;

F. Experience gained outside Federal service;

G. Proposals or requirements for reduction in force in accordance with applicable rules and regulations including PMI 351-1; and,

H. The extent of the affected competitive area, the regulations governing reduction in force and the kinds of assistance provided for affected employees.

Upon request, the Employer will provide additional information on the RIF regulations. The Employer will also provide information on potential benefits, such as eligibility for:

A. Career transition assistance,

B. Separation incentives (if available),

C. Rehiring selection priority,

D. Severance pay,

E. Retirement,

F. Retraining,

G. Unemployment compensation, and,

H. Relocation allowances.

Section 21.10 - Employee Response to Notice

Upon receipt of a notice notifying the employee that he/she is offered a reassignment and/or release from competitive level, or any other RIF action described in this Agreement, in lieu of separation, the employee shall have a minimum of five (5) workdays to accept or reject the offer in the notice. If the employee is offered a job that will require relocation, the employee will be given at least fifteen (15) calendar days to respond to the offer.

Section 21.11 - Employee Use of Official Time and Facilities

Employees who are identified for separation or change to a lower grade shall be entitled to a reasonable and necessary amount of time between the date of the notice and the effective date of separation or change in lower grade while otherwise in a duty status without charge to leave for:

A. Preparing, revising, and reproducing job resumes and/or job application forms;

B. Participating in employment interviews; and,

C. Using the telephone to locate suitable Federal employment or apply for unemployment.

All such time is subject to workload considerations and supervisory approval. Such time will not be unreasonably denied.

Section 21.12 - Displaced Employees

In order to minimize displacement actions that would result from an RIF, the Employer may offer lateral assignments to vacant positions that the Employer otherwise intends to fill with employees who would otherwise be released from their competitive level. At that time, the Union may initiate bargaining in accordance with Article 8, Labor-Management Negotiating Procedures.

Section 21.13 - Outplacement Program

A. The Employer will be diligent in providing employees with all placement opportunities available under law and regulation, to minimize the adverse impact on employees who are affected by the RIF.

B. The placement program will include counseling for employees on job opportunities and alternatives available to affected employees.

C. The Employer will notify employees of the services available under its Career Transition Assistance Proposal (CTAP) and how to obtain them.

D. The Employer will notify employees of the services available from other agencies under the Interagency Career Transition Assistance Proposal (ICTAP) and how to obtain them.

Section 21.14 - Unemployment Compensation

At the Union's request, the Employer will ask representatives of the Unemployment Insurance Agencies from states in which employees would file claims to provide information regarding benefits, eligibility requirements, and application procedures.

When fifty (50) or more employees in a competitive area receive notices of separation by RIF, the Department must notify the appropriate State Unemployment Insurance Agencies, the chief elected official of local government jurisdictions and OPM.

Employees who are to be released from their competitive level will receive up to eight (8) hours of administrative leave in order to apply for unemployment benefits.

Section 21.15 - Severance Pay

The Employer will notify all employees who are separated in an RIF of their rights, if any, to receive severance pay under law and regulation. Those who are eligible to receive severance pay will receive an estimate of the amount of severance pay and information on how these payments will be made.

Section 21.16 - Employment outside the Department

Those employees who cannot be placed within the Department will receive assistance within five (5) workdays of issuance and receipt of the final RIF notice in finding employment outside the Department, including employment in other Federal agencies. This assistance will include, but not be limited to:

A. Resume writing;

B. Access to any inter-agency job centers;

C. Coaching in job search and interview techniques;

D. Assistance in obtaining copies of performance evaluations; and,

E. A reasonable amount of official time to visit inter-agency job centers or attend job interviews.

To the extent permitted under law and regulation, the Employer will continue to extend the services of subsections A-D to employees after the date of the employee's separation.

Section 21.17 - Position Vacancies during an RIF

Consistent with 5 CFR Part 351, the Employer will take steps to reduce adverse effects on employees, including but not limited to:

A. Fill any vacant position in the bargaining unit through outside hiring or through promotion as long as there are employees facing separation in the RIF who are both qualified and available to fill that position.

B. When an RIF is being conducted, vacant positions within the competitive area that can be filled through recruitment or placement from outside the competitive area will be used to provide affected employees with their best job offers (i.e., assignment rights) under the RIF placement procedures.

C. If more than one (1) vacancy is available for an employee released from his/her competitive level, HRS will offer the vacancy that results in no reduction or the least possible reduction in the representative rate. If there is more than one (1) vacancy with that rate, HRS will decide which vacancy to offer.

D. An employee's RIF assignment right is met if ED offers the employee a vacant position at the grade to which he or she has bump or retreat rights. (i.e. the released employee in the highest group and subgroup must receive the offer of a position before an employee in a lower group and subgroup.)

E. Qualifications may be waived in offering an employee RIF assignment to a vacant position, if it is determined that the employee has the capacity, adaptability, and special skills needed to satisfactorily perform the duties and responsibilities of the position. However, any minimum educational requirement of the position may not be waived.

Section 21.18 – Reassignment to a Different Geographic Area

When the Employer is not able to place an employee within the local commuting area and the employee accepts an offer of reassignment within the Department, in lieu of separation, which requires a move to another geographic area such action will be deemed to be in the best interest of the Government. Such employees will be provided with relocation time, reimbursement, and other benefits consistent with law, rule, or regulation.

A. When the Employer assigns an employee to a position which requires a move to another geographic area, the employee will be granted administrative leave and/or excused absence, as appropriate, to locate housing and make related arrangements at the new work location. Provided all applicable regulations are satisfied, the employee shall be placed in a travel status for such trips and shall receive travel and per diem expenses.

B. Employees reassigned to a different commuting area will be allowed up to ninety (90) calendar days if necessary, to complete the move and report to the new duty station. The employee may be allowed additional time where circumstances relating to the move beyond the control of the employee required time off from work.

Section 21.19 - Personnel Files

The Union may review any bargaining unit employee's Official Personnel Folder (OPF) and Employee Performance File (EPF) at the employee's request if that employee reasonably believes that the information used to place him/her on the retention register is inaccurate,

incomplete, or not in accordance with the law, rule, regulations, and provisions of this Article.

Section 21.20 - Records

The Employer will maintain all lists, records and information pertaining to the RIF in accordance with OPM regulations.

Section 21.21 - Retention Register

The Employer shall certify the accuracy of all retention registers, which are to be used to conduct an RIF. The Union may examine retention registers for the competitive area where the RIF will take place, including any subsequent updated registers.

Section 21.22 - Details

Employees on detail will not be released during an RIF from the position to which they are detailed but, rather, from their positions of record.

Section 21.23 – Re-promotion Rights of Affected Employees

Eligible employees will be entitled to re-promotion priority in accordance with Department policy.

Section 21.24 – Re-employment Priority List

The Employer will maintain a reemployment priority list, consistent with applicable regulation, for Group I and II employees who receive notices of separation from competitive positions.

Section 21.25 - Transfer of Functions

A. A Transfer of Function (TOF) means the transfer of the performance of a continuing function from one competitive area and its addition to one or more other competitive areas, except when the function involved is virtually identical to functions already being performed in the other competitive area(s) affected. A TOF is also the movement of the competitive area in which the function is performed to another commuting area. In a TOF, the operation of the function must cease in one competitive area and must be carried on in an identical form in another competitive area where it was not being performed at the time of the transfer.

B. When the Employer contemplates a TOF, the Employer will notify the Union and engage in pre-decisional discussions. The Employer will provide all the information relied upon in its contemplation to the Union for such discussion. The Union may provide input and recommendations for consideration by the Employer, and the Employer will provide in writing the rationale for rejecting the Union's recommendations. In the event that a TOF is still deemed necessary after such discussions, the Employer will inform the Union as far in advance as practicable, giving the reason for the action, the approximate numbers, types, and geographic location of the positions to be affected, and the approximate date of the action. At that time, the Union may initiate bargaining in accordance with Article 8, Labor- Management Negotiating Procedures.

C. Employees whose positions have been designated as transferring with the function will be notified by certified mail. The notice will state that the employee is being offered the opportunity to volunteer for transfer with his/her or her position to a new competitive area. The notice will further state:

1. The name and location of the new competitive area;
2. The complete address of the new work site;
3. The applicable salary, including locality pay, of the employee's position at the new work site;
4. A statement that the employee is free to decide whether to accept the offer of the opportunity to volunteer for transfer with his or her position;
5. A statement that should the employee be selected to transfer with his/her position, the Employer will pay moving expenses and pay for house hunting trips in accordance with the Statute and Government-wide regulation;
6. A statement that it is possible that not all volunteers will be able to transfer with their position;
7. A statement that should the employee choose not to transfer with his or her position, or if the employee is not selected to transfer despite having volunteered, the employee may be separated from his or her current position by adverse action procedures; and,
8. The deadline for responding to the offer of transfer will be no less than thirty (30) days from the date of the notice.

D. If there are not enough qualified volunteers from among those affected employees, the Employer may solicit qualified volunteers from the rest of the current competitive area.

E. If the total number of employees who volunteer for transfer exceeds the total number of employees required to perform the function in the competitive area that is gaining the function, preference will be given to the volunteers with the highest retention standing. In the event there are not enough volunteers for the transfer, employees with the lowest retention standing will be selected for involuntary transfer.

F. The. Employer will not fill any vacant position in the bargaining unit through outside hiring or through promotion as long as there are employees facing separation in the TOF who are both qualified and available to fill that position.

G. When a transfer of function results in a reduction in force, RIF procedures, as outlined in applicable law, regulations, and this Article, will be used.

H. The Employer shall grant a reasonable amount of excused absence to employees to locate housing, to arrange for disposition of their current homes, and to make arrangements for other related matters in accordance with applicable regulations and Department policies when employees, during a TOF, are moved from one commuting area to another. Payment of moving costs shall be determined in accordance with applicable regulations, Department policies, and availability of funds for such purposes.

I. In a TOF occurring between the Department and another Federal agency, the Employer shall provide an information copy of the contents of this Article, other related Articles, and any related Supplemental Agreements to the gaining agency.

Section 21.26 - RIF Appeals and Grievances

An employee who has been separated, downgraded, or furloughed for more than thirty (30) days by RIF, has the right to appeal to the Merit Systems Protection Board (MSPB) if the employee

believes that the Department did not properly follow the RIF regulations. The released employee must file the appeal during the thirty (30) day period after the effective date of the RIF action.

However, bargaining unit employees must use the negotiated grievance procedures and may not appeal the RIF to MSPB unless the employee alleges the action was based upon discrimination. The time limits for filing a grievance under a negotiated grievance procedure are set forth in this Agreement. (5 CFR 351.901)

ARTICLE 22: Position Descriptions and Classification Actions

Section 22.01

The Parties agree to the importance of ensuring the completeness and accuracy of an employee's position description, which states the major and grade controlling duties, responsibilities, and supervisory relationship of the position, since: (a) it is the continuing basis for the classification, grade, and pay of an employee; and (b) it also serves as a basis for the development of an employee's performance plan. Therefore, each position covered by this Agreement must have a current and accurate position description. A copy of the position description shall be provided to the employee when he or she is assigned to the position, and upon any change to the position description.

Section 22.02

A. The Employer shall delineate in a position description, in accordance with applicable Office of Personnel Management (OPM) classification standards, the kinds of range of duties that an employee may be expected to perform.

B. The Employer will endeavor to make assignments of work to employees consistent with the range of duties and responsibilities in their official position descriptions.

C. The Employer shall initiate action to change the position description in a timely manner if the recurring major duties and responsibilities identified in an employee's position description change. The Employer will provide written notice to the Union of substantive changes to Position Descriptions for review and comment within ten (10) calendar days of Department approval. The Union may propose changes, make recommendation(s), or comment(s) and provide documentation supporting recommendations(s), within fifteen (15) calendar days of receipt.

Section 22.03

If the phrase "other related duties as assigned", or similar language, is included in the position description, those duties should not constitute a major portion of the employee's time.

Section 22.04

If an employee concludes that his/her position description is no longer accurate, the employee shall discuss his/her concerns about the accuracy of the position description and its classification with the supervisor. Together the two shall make a good-faith effort, if necessary with the assistance of a representative of the personnel office, to resolve the problem, including the use of a desk audit, if needed. If these efforts fail to resolve the matter, the employee may utilize procedures in Article 42 of this Agreement for review of the accuracy of the position description, and/or, as applicable, file a classification appeal in accordance with 5 CFR, Part 511, Subpart F. No changes may be made to a position description without review and approval by the appropriate Human Resources office.

Section 22.05

The Employer will notify the Union in writing when changes in position classification standards will require changes in position descriptions or in classification standards.

Section 22.06

The Employer will apply newly released OPM classification and job grading standards within a reasonable period of time.

A. The Union will be provided copies of the new and old standards, with major changes described.

B. The Employer will provide the Union copies of all guidance received from OPM regarding the changed standards.

C. The Employer will consider the Union's written comments concerning occupational classification standards when making recommendations to OPM, and will provide the Union a copy of any recommendation submitted.

D. When a promotion will result from the application of a new classification standard or the correction of a classification error, it will normally become effective no later than the beginning of the third full pay period following a Management decision to promote the incumbent, subject to applicable qualifications, performance, or other requirements for the position in question.

Section 22.07

An employee whose position is reclassified to a lower grade based in whole or in part on a classification decision is entitled to a prompt written notice from the Employer, normally with ten (10) calendar days of the reclassification decision. This includes employees who are eligible for retained grade or pay. The notice will explain:

A. The reasons for the reclassification action;

B. The employee's right to appeal the classification decision to the Employer and/or to OPM as provided by regulation and Department policy;

C. The time limits within which the employee's appeal must be filed in order to preserve any retroactive benefits under 5 CFR 511.703;

D. Any other appeal or grievance rights available under applicable law, rule, regulation; and,

E. Notification to the employee that the downgrade is a result based in whole or in part on a classification decision, and his or her eligibility for grade and/or pay retention, if applicable.

Section 22.08

Employees who have been downgraded as a result of a classification action while serving under a career or career-conditional appointment (or one of equivalent tenure) shall be entitled to priority referral for noncompetitive consideration for permanent promotion prior to a vacancy being filled by competitive promotion under Article 17, Merit Promotion. Such employees shall be entitled to priority referral and consideration only to vacancies for which the downgraded employee is highly qualified up to the grade level or the equivalent level of the position from which downgraded.

A listing of the ten (10) most senior highly qualified downgraded employees will be referred to the selecting official before a competitive promotion certificate is issued and before referral of other candidates not entitled to preferred placement by applicable regulations (e.g. reassignment eligibles). If there are less than ten (10) highly qualified re-promotion eligibles, all highly qualified eligibles will be referred. The seniority of highly qualified candidates is determined by

the service computation date used to calculate leave eligibility.

If the list of downgraded employees contains five (5) or more highly qualified re-promotion eligibles, selection should be made from among those eligibles, absent good cause.

The impact of any notice of downgrading will be negotiated with the Union prior to implementation, in accordance with this Agreement.

Section 22.09

Affected employees and the Union will be provided timely notice of personnel Management evaluations conducted by either the Department or OPM that will involve classification audits of bargaining unit employees. While classification audits are in process, the Department will not reassign duties, if the purpose of the reassignment is to avoid reclassification of the position. Employees shall have the right to Union representation in all phases of the classification process, including desk audits, covered by this Agreement.

Section 22.10

Current position descriptions for bargaining unit employees will be provided to the Union, upon request.

ARTICLE 23: Performance Appraisals

The Employer and the Union agree it is important for supervisors and employees to know their responsibilities under the performance appraisal system. To this end, the Employer agrees to communicate (e.g., meetings, written guidance, or other appropriate activities) as necessary, with both supervisors and employees concerning the procedures of the Department's performance appraisal system. The Union will be notified of any scheduled training or briefings for bargaining unit employees, and invited to attend.

For the purposes of this Article, references to 'supervisors' apply to Rating Officials as well.

Section 23.01 - Performance Appraisal System

A. It is the policy of the Department that the performance appraisal system will, in conformance with 5 U.S.C. Section 4302 and related Office of Personnel Management (OPM) rules and regulations:

   1. Provide for periodic appraisals of job performance of employees;

   2. Encourage employee participation in establishing performance standards; and,

   3. Use the results of performance appraisals as a basis for training, rewarding, reassigning, promoting, reducing in grade, retaining, and removing employees.

B. The Union and Employer agree that, in addition to the formal steps in the performance appraisal process described below, it is essential for supervisors to provide employees prior to implementation of the performance plan with the benchmarks associated with measures in the performance plan. The supervisor will also provide employees with regular feedback on how they are meeting the benchmarks in their performance appraisal plans. Supervisors and employees are expected to engage in on-going discussions concerning employee performance and progress in meeting established benchmarks associated with results and standards set out in the performance plan.

C. The Employer will not limit the number or proportion of employees who can obtain a particular rating. Each employee's performance will be judged solely against his/her performance standards.

Section 23.02 - Senior Officer

The Employer has determined that a Senior Officer is any official who is the head of an office or PO or ED, (e.g. Assistant Secretary or equivalent office head).

Section 23.03 - Developing the Performance Appraisal Plan

A. In developing the performance plan, the supervisor shall consider the requirements of the employee's position, including the employee's position description and the actual duties and work situation of the employee.

B. The supervisor, in collaboration with the employee, will establish from three (3) to five(5) critical elements that identify performance results. Each critical element will describe measurements of the element/result at the "Results Achieved," and above performance level. The performance standard must contain at least one (1) measurement but multiple measurements are strongly encouraged.

Supervisors and employees are encouraged to write performance elements and standards that are specific, measurable, aligned with the strategic elements/priorities of the organization, realistic/relevant and time-based. Supervisors will have the option to assign a weight to each .element in a performance plan, and employees may make recommendations about the weight that should be assigned to each element.

If there is not agreement between the employee and the supervisor, the Approving Official may be consulted to reach agreement. If there is no agreement between the employee and the supervisor, the employee may consult with their Union representative. If a meeting is requested and granted, the employee may have a Union representative if requested.

C. The employee will have access to a hard-copy of the signed document within five (5) workdays. Electronic signatures will be considered acceptable for the purpose of this Article, and the employee will receive confirmation when the plan becomes effective.

D. Either the supervisor or the employee may propose modification of previously established elements, or performance standards for discussion at the start of the appraisal period, during progress review sessions, or at other times. The supervisor is responsible for deciding whether or not to modify the employee's performance plan.

E. All critical elements to be used for performance appraisals will be communicated and discussed with the employee to provide performance expectations at the beginning of the rating period or whenever elements or expectations change during the rating period. The supervisor should make a concerted effort to define and clarify the measures in a performance plan.

F. Any measurements that the supervisor/Rating Official intends to use to rate the employee should be clearly defined. An employee cannot be rated on undefined expectations and/or outcomes.

G. Measures should be written based only on the outcomes an employee achieves, to the extent that the measured results are within the employees control.

Section 23.04 - Group Standards/Elements

A. A Senior Officer of a PO may determine that a particular performance expectation is of such a shared or mutual quality as to cover the performance element and standard(s) of all or a given set of employees within the PO. Having made such a determination, a Senior Officer may authorize the insertion of one or more such standards in the automated REACH performance plans of those mutually covered employees. Group elements and standards will, where needed, differentiate between different grade levels.

Group standards/elements will, where applicable, differentiate between different grade levels under those standards. The discussion of group standards/elements may be carried out in group meetings, and the implementation of the standards/elements is subject to impact and implementation negotiations, as may be required by law and the Parties' Collective Bargaining Agreement (CBA). The identification of group performance elements, the establishment of group performance standards, and the documentation of accomplishments should be a joint planning and communication process between the employee and his/her supervisor.

B. For employees covered by the bargaining unit: As outlined in Article 23 of the Collective Bargaining Agreement (CBA), the Union is entitled to attend discussions to develop group standards and elements under the formal discussion provision of the Federal

Service Labor- Management Relations Statute. Prior to implementing the group standards and elements impacting bargaining unit employees, POs must fulfill any bargaining obligation required by the CBA. A PO should contact the Office of Management, HCCS, Labor Relations Team for assistance on the bargaining obligation.

C. A group standard is a standard that applies to all or a given set of employees in a Principal Office. While group standards are generally approved at the Senior Officer Level, they are sometimes designated to managers below the Senior Officer, but above the employee's Approving Official (second level supervisor). Examples of group standards might be those uniformly applied across regions or divisions. A group standard is evident when the standard is distributed from Management (Management above the approving official) and the employee is required to adopt the standard without the opportunity to provide input.

For employees covered by the bargaining unit: As outlined in Article 23 of this agreement, the Union is entitled to attend discussions to develop group standards and elements under the formal discussion provisions. Prior to implementing the group standards and elements impacting bargaining unit employees, POs must fulfill any bargaining obligations.

Section 23.05 - Disagreement with Performance Plan

A. If the employee does not agree that the performance plan accurately measures their performance, the employee does not have to sign the performance plan.

B. If an employee refuses or fails to sign his/her performance plan, the document will be annotated to as such, and the appraisal process will continue forward.

C. An employee who refuses to sign his/her performance plan should indicate in the notes to the plan the reasons for refusing to sign, including any specific objections to the content of the plan and the date the plan was implemented.

Section 23.06 - Employee Signature

Electronic signatures will be considered acceptable for the purpose of this policy, and the employee will receive confirmation when the plan becomes effective. An electronic signature in the REACH system will be generated when an employee hits the "send" button from his/her REACH plan that will forward the plan to his/her supervisor. The act of hitting the "send" button will constitute an electronic signature for agreement with the performance plan. The effective date of the agreement is the date the employee hits the "send" button.

If the employee does not agree with his/her REACH plan then the employee will not be directed to hit the "send" button to forward his/her plan to his/her supervisor. However, the appraisal process will continue forward.

Section 23.07 - Changes during the Rating Period

The elements and/or standards to be used for the rating may be updated during the rating period provided they are in effect and communicated to the employee and are documented on the performance plan or in the system at least one hundred and twenty (120) calendar days prior to the end of the rating period. Employees and supervisors will collaborate on changes made to the performance plan and attempt to reach agreement.

The supervisor/Rating Official will have fourteen (14) workdays to provide notification to the employee as to whether the suggested changes to the element(s) are approved or denied.

Section 23.08 - Progress Reviews

A. During the annual appraisal period the supervisor shall hold at least one (1) formal mid-point progress review. More frequent progress reviews shall be held if an employee's performance warrants it, as discussed in 23.08(C), below.

During progress reviews, discussions between the supervisor and employee include:

1. The employee's overall performance, compared to his/her performance standards,
2. Performance achievements and problems,
3. Special assignments,
4. Training needs, and,
5. If needed, modification of the performance plans, in accordance with Section 23.03(d) of this Article.

B. The supervisor and the employee will both certify that the mid-point discussion was held. The supervisor will document the mid-point discussion as promptly as practical but no later than thirty (30) calendar days after the mid-point discussion is held. If an employee chooses not to sign the written/electronic document at this stage, then the supervisor will make a notation to reflect that the employee chose not to sign, and the appraisal process will continue.

C. If the supervisor advises an employee during a mid-point discussion that his or her performance is below the "Results Achieved" or equivalent level, the supervisor must issue a written/electronic summary of the discussion detailing the deficient performance, relative to the performance standards, and recommendations for how the employee can improve his/her performance to the "Results Achieved" level. A copy must be provided to the employee. Supervisors shall track employee progress throughout the performance year and offer assistance to any employee whose performance level appears to be dropping.

Section 23.09 - Annual Appraisal

A. During the annual appraisal meeting the supervisor shall explain the basis for the rating and discuss this rating with the employee.

B. In appraising an employee, the supervisor shall consider factors outside the employee's control which may have affected the performance of the employee (e.g., details, long term illnesses).

C. When appraising an employee who is a Union representative, the supervisor shall consider the time required to fulfill labor-management representational functions established by the FSLMRS and this Agreement.

Section 23.10 - Informal Assistance Plan (IAP)

A. The purpose of the Informal Assistance Plan (IAP) is to improve the employee's performance in identified critical areas. The plan is especially designed to assist in improving employee performance in identified problem areas, prior to rendering a performance rating lower than "Results Achieved". In compliance with requirements that employees receive assistance prior to reaching an "Unacceptable" level of performance, the performance assistance process will occur before the employee is placed on a Performance Improvement Plan (PIP).

B. When a supervisor recognizes that an employee's performance is declining below the "Results Achieved" level, prior to placing an employee on a PIP the supervisor will meet with the employee and offer the employee an Informal Assistance Plan (IAP). The IAP may include formal training, on-the-job training, counseling, assignment of a mentor, closer supervision and/or other assistance deemed appropriate. The IAP will occur before a formal placement of a PIP. The purpose of the IAP is to help an employee improve his/her performance on one or more critical elements when the supervisor recognizes that the employee's performance is beginning to decline below "Results Achieved". A critical element is a component of a position consisting of one (1) or more duties and responsibilities which are of such importance that "Unacceptable" performance on the element would result in an overall performance level of "Unacceptable". Such elements are used only to measure performance at the individual level.

   If accepted, the IAP will be in place for a reasonable period of time, for a minimum of sixty (60) days. By mutual agreement, the period may be extended to allow the supervisor ample opportunity to assess the employee's performance on the critical elements identified.

   At the conclusion of the IAP, if performance has not improved to the "Results Achieved" level, a rating of '"Unsatisfactory Results" may be assigned. The employee will then be placed on a Performance Improvement Plan (PIP).

C. If in a progress review, or at any time during the appraisal period, an employee who is at the "Results Achieved" level is informed that his/her overall performance level is declining, the employee may request a separate meeting solely to discuss how the employee may improve his/her performance. In this meeting, the Parties shall discuss such matters as the employee's elements and performance standards, the causes of the performance difficulties, and what the employee must do to improve his/her performance. After any meetings, the supervisor will provide the employee a summary of the agreed-upon actions.

Section 23.11 - Unsatisfactory Results

A. If a supervisor concludes that an employee's performance has reached the "Unsatisfactory Results" ("Unacceptable") level, and the employee is covered by the 5 U.S.C. Section 4303, the supervisor shall prepare and issue a Performance Improvement Plan (PIP). Issuance of the Plan will initiate the formal "opportunity period" required by 5 U.S.C. Section 4302(b) (6).

B. It is understood that should an employee fail to successfully complete the designated opportunity period he/she may be reassigned or be given a proposal for reduction in grade or removal as deemed appropriate by the supervisor.

C. Performance Improvement Plan:

   A formal plan to be implemented for a reasonable period of time (generally not less than sixty (60) calendar days) to give the employee an opportunity to bring performance to at least the "Results Achieved" level on one (1) or more performance elements. It also serves as an opportunity for the employee's supervisor to express performance expectations. An employee should be placed on a PIP whenever the employee's performance falls to the "Unsatisfactory Results" level.

   The Performance Improvement Plan (PIP) process (as a corrective action) should follow if

an employee fails to meet the requirements under the Informal Assistance Plan (IAP). When the supervisor concludes that the employee's performance is at the "Unsatisfactory Results" level, the supervisor shall notify the employee in writing, describing what would be necessary for the employee's performance to improve. The employee shall be given one (1) progress review each quarter until performance reaches "Results Achieved". The employee may notify the Union of the PIP meeting and a Union representative will be allowed to be present to participate in any collaborative discussions about the PIP.

1. The PIP must identify:
   a) The critical element(s) for which performance is "Unacceptable";
   b) The specific performance deficiencies under the element(s), including identification of assigned tasks that were not performed successfully and how they relate to the elements and standards of the performance plan;
   c) The level of performance that must be achieved in order to reach the "Results Achieved" (successful) performance level;
   d) Assistance to be provided during the term of the PIP;
   e) The duration of the PIP;
   f) The consequences of continued "Unacceptable" performance; and,
   g) A statement that unless performance in the identified critical element(s) improves to and is sustained at an acceptable level for a minimum period of one (1) year, the employee may be reduced in grade, reassigned, or removed from Federal service.
2. The supervisor shall conduct at least one (1) progress review during the mid-point of the opportunity period and shall summarize the progress review and provide it in writing to the employee. The written summary will discuss the employee's progress towards reaching the level of retention ("Results Achieved") in the Critical elements discussed in the Performance Improvement Plan.
3. The improvement plan will afford the employee a reasonable amount of time/opportunity of at least sixty (60) calendar days to resolve the identified performance-related problems. The opportunity period can be longer than sixty (60) calendar days.
4. The improvement plan will be tailored to the specific needs of the employee and may include formal training, on-the-job training, counseling, assignment of a journeyman mentor, or other assistance as appropriate.
5. The improvement plan will identify the supervisor or persons who will be available to guide, coach, and otherwise assist the employee in reaching "Results Achieved" or "Satisfactory" performance, what specific assistance will be provided and when employees may request additional assistance.
6. The employee will be informed in writing that personnel-related actions (WGIs, awards) may be withheld while this level of performance continues.
7. At any time during the opportunity period, the rating official may conclude that assistance is no longer necessary because the employee's performance has improved to at least "Results Achieved." The rating official will notify the employee of this determination in writing.

8. If, following the performance improvement period, the rating official is unable to make an assessment that the employee is successfully performing his/her critical job duties and responsibilities, the rating official will give the employee a documented performance interview communicating this determination. In that case, it is appropriate to extend the assistance period until an assessment can be made.
9. If the employee has chosen to be represented by the Union, a Union representative has the right to be present at the progress review described in Section 23.11.C.2 above, and all PIP meetings with the employee. If the employee has concerns about the opportunity period or PIP, he/she may meet with the supervisor to discuss those concerns and may have Union representation in that meeting.
10. An employee whose performance is found to be "Unacceptable" and for whom a reduction in grade or removal has been proposed is entitled to Union representation or other representation as provided for by law (5 U.S.C. Section 4303(b) (1) (B) and this Agreement. If a supervisor determines to take a performance-based or adverse action for performance reasons, such action will be done in accordance with the provisions of Article 41 of this Agreement, law, OPM regulations, and Department policy.

Section 23.12 - Individual Appraisal Meetings

A. Both Parties agree that the individual appraisal meetings, including conferences to develop appraisal plans, and progress reviews, are not intended for the purpose of discussing grievances, general personnel policies or practices, or conditions of employment, and are not intended to be investigatory in nature.

B. Except to the extent provided in this subsection, and in Sections 23.03(b)and 23.11(c)(9), the appraisal process is reserved for meetings between the first-line supervisors and employees.

   A supervisor or Employer representative may meet with more than one (1) bargaining unit employee to develop or modify performance plans of general applicability within the work unit, or to discuss other issues regarding performance appraisal. In such meetings, the Union's right to representation shall be governed by the "formal discussion" provision of 5 U.S.C. 7114(a)(2)(a), and in Article 7 of this Agreement.

Section 23.13

ED retains electronic versions of performance documentation. Retention of such records longer than required by law is permitted (except for those records subject to the 5 U.S.C. Section 4303(d)) for Department use or for historical or statistical analysis, but only so long as the record is not used in a determination directly affecting the individual about whom the record pertains (after the manual record has been or should have been destroyed).

ARTICLE 24: Within-Grade Increases

Section 24.01

The Employer shall administer within-grade increases (WGI) in accordance with applicable law, Office of Personnel Management regulations, and Department personnel policies, including pertinent policies on performance appraisals.

Section 24.02

Employees who occupy permanent positions are eligible to earn a WGI. A permanent position means a position filled by an employee whose appointment is not designated as temporary, and does not have a definite time limitation of one (1) year or less. Permanent position includes a position to which an employee is promoted on a temporary or term basis for at least one (1) year.

Section 24.03

Denial of a WGI is not to be used as a punitive measure or for an act of misconduct in lieu of appropriate disciplinary actions. A notice of a proposed adverse/disciplinary action that is not based on performance is not a bar against a favorable determination of acceptable level of competence for purposes of a WGI.

Section 24.04

Normally a WGI will be effective on the first day of the first pay period following the end of the required waiting period. If a within-grade increase is withheld because of administrative error, oversight, or Management's failure to carry out a ministerial act, and a favorable determination is subsequently given, the increase shall be retroactive to the date the increase would otherwise have been effective and shall be processed immediately.

Section 24.05

The supervisor shall give an employee with known performance deficiencies that do not meet an acceptable level of competence a progress review(s) at least one hundred and twenty (120) days prior to the end of the waiting period. This will help facilitate an improvement period, to achieve a Successful, or equivalent rating.

Section 24.06

A. The employee's rating of record for the most recently completed appraisal period is used to determine acceptable level of competence. The Employer also will consider the employee's performance in the interim between the issuance of the performance appraisal and the end of the waiting period.

B. Both Parties agree that the notice of negative determination, or dispute of the negative determination, will not include incidents, deficiencies, or other work performance that occurred outside of the waiting period.

Section 24.07

If, at the end of the waiting period, the supervisor determines that the employee's performance is not at an acceptable level of competence for the purpose of approving the WGI, the supervisor will provide a written explanation to the employee within ten (10) workdays of the last day of the waiting period, in addition to providing the employee with their rights for reconsideration as

described in Section 24.08 below. The supervisor's written determination shall identify why the employee's performance is not at an acceptable level of competence.

Section 24.08 - Reconsideration Procedures and Employee Rights

A. An employee may request reconsideration of the Employer's WGI decision within fifteen (15) calendar days of the employee's receipt of the ineligibility notice. The notice of determination shall state the reasons for the negative determination and areas of performance that the employee must improve. After the employee requests reconsideration the Employer will provide copies of all the documentation on which it relied in making the ineligibility determination to the employee within five (5) working days of the employee's request. The time limit to request reconsideration may be extended when the employee shows that 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 prescribed fifteen (15) calendar days.

B. An employee's request for reconsideration shall cite specifically the reason(s) for the reconsideration, and it shall be in writing. Upon request, the employee is entitled to a reasonable amount of official time to prepare the reconsideration request. Furthermore, the time limit to request reconsideration may be extended when the employee shows he or 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 or her control from requesting reconsideration within the time limit.

C. The employee has the right to Union representation in the reconsideration process.

D. When a reconsideration official receives a request for reconsideration, the official shall establish a Reconsideration File. The Reconsideration File shall contain all pertinent documents relating to the negative determination, including copies of:

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

E. The file shall not contain any document that has not been made available to the employee or his/her representative, nor any summary of the employee's personnel presentation to which the employee has not been provided the opportunity to submit a written exception.

F. The Employer shall provide a prompt written final decision, not to exceed fifteen (15) calendar days after the employee has presented all of the documents/evidence supporting their request for reconsideration. If the reconsideration official determines that the employee has met an acceptable level of competence, the WGI shall be retroactive to the date the increase would otherwise have been effective.

G. When a negative determination is sustained after reconsideration, the employee shall be informed in writing of the reasons for the decision and his/her right to appeal the decision under the grievance process outlined under Article 42 of this Agreement.

Section 24.09

When a within-grade increase has been denied, the supervisor:

A. Will provide assistance to the employee as outlined in Section XIV, Part C of PMI 430-2, or its successor.

B. May prepare a new rating of record and grant the WGI when he/she determines that the employee has demonstrated performance at an acceptable level of competence that has been sustained for at least the minimum appraisal period. The WGI will become effective the first day of the first pay period after the acceptable level of competence determination has been made.

C. Shall review the employee's performance at the next regularly scheduled progress review to determine if the employee's performance has reached and has been sustained at an acceptable level of competence as described above. If this is achieved, the WGI shall be granted. This review shall be informal.

D. Must make another level of competence determination after no more than fifty-two (52) calendar weeks following the original eligibility date for the WGI. For as long as the WGI continues to be denied, determinations will be made no later than each fifty-two (52) calendar weeks.

ARTICLE 25: Awards, Quality Step Increases, and Employee Suggestions

Section 25.01

The Union and the Employer acknowledge the importance of equitability recognizing employees for quality contributions to the Department and its mission. The Parties agree that timely recognition and encouragement by the immediate supervisor of an employee's performance is an important incentive, increases employee job satisfaction, and contributes to the overall quality of work performance.

Section 25.02

To the extent practicable, awards, employee suggestions, and quality step increases shall be processed in a reasonable and timely manner. The types of awards for recognition are listed as follows and are not limited to these: Performance Rating Cash Award, Quality Step Increase (QSI), Special Act Cash Award, Spot Cash, Time-Off Award (TOA), Suggestion Program, Letters of Commendation, Certificates of Recognition, and other Non-monetary Awards.

Section 25.03 - Awards

A. Within applicable budget limitations, the Employer will grant awards (including, but not limited to performance awards, Quality Step Increases (QSIs), Time Off Awards, Spot Cash Awards, and Special Act Awards, and 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, in accordance with current Department policy.) Such awards will be granted in a fair, consistent, and objective manner without discrimination. Employees will be eligible for awards under this Agreement for any period(s) of time that they are in the bargaining unit.

B. The Employer will provide the Union with bargaining unit employee award information on an annual basis, subject to the restrictions of the Privacy Act. Such information shall include, at a minimum:

   1. The award recipient's name, series and grade;
   2. The type of award granted (i.e., Performance, Special Act); and,
   3. Justification for all awards other than performance.

C. Upon written request and in accordance with 5 U.S.C. 7114(b)(4), the Employer will provide the Union with any information that is normally maintained by the Employer, and is reasonably available to process a grievance if it has not been provided such information pursuant to this provision.

D. The fact that an employee is the subject of a conduct investigation, or has been the subject of a disciplinary action during the rating period, will not preclude a performance award that would otherwise be granted unless such preclusion is necessary to protect the integrity of the Federal service. The merits of the Employer's decision to withhold an award are subject to the negotiated grievance procedure.

Section 25.04 - Performance Awards

A. Performance awards for bargaining unit employees will be allocated and distributed in accordance with this Article, Article 23 (Performance Appraisals), and current ED policy.

B. All awards recommended under this Article shall be subject to review and approval in accordance with 5 CFR Part 451.

C. The Performance awards for the High "Results Achieved" ("Highly Successful") and Exceptional "Results Achieved" ("Outstanding") shall be considered in the establishment of the baseline percentage process.

D. Within applicable budgetary limitations, the head of each Principal Office shall annually establish baseline award percentages for awards. The Department shall notify the Union annually of any proposed changes to the baseline percentages.

E. Employees whose performance results are rated at the "Results Achieved" level (formerly "Fully Successful") are eligible to receive Organizational awards when the employee's Principal Office receives a "Highly Successful" or "Outstanding" rating in ED's Organizational Assessment.

Section 25.05 - Quality Step Increases (QSI)

A. Employees who demonstrate sustained high-quality performance are eligible for a QSI and must meet the following requirements:

   1. Current rating of record of "Exceptional Results Achieved" ("Outstanding"),
   2. Have not changed grade since the rating of record was given,
   3. Have not received a QSI during the preceding fifty-two (52) weeks, and
   4. Have not reached the maximum step of his or her grade.

B. A QSI does not affect the timing of an employee's next WGI unless it places the employee at the Step 4 or 7 of his or her grade. In these cases, waiting periods are extended for an additional fifty-two (52) weeks. (ref. PMI451-1)

C. An employee who has been approved for a QSI may elect to receive a cash award or combination cash award and time off award instead of the QSI, as long as the total value of any such combined award equals or exceeds the minimum award percentage that has been established.

D. Employees who are ineligible for a QSI because they are at a Step 10 level may receive a cash award or a combination cash award and time off award. The total value of the combined award may not exceed the minimum award percentage that has been established.

Section 25.06 - Special Act Awards

A. A lump sum cash award may be made to an employee as an individual or member of a group based on a special act or service in the public interest in connection with or related to official employment. A cash award for a special act may be paid at any time during the appraisal cycle. During an annual appraisal cycle, an employee may receive only one (1) special act of special achievement award for individual accomplishments and only one (1) award for group accomplishments. Neither award may exceed $2,500 unless a higher amount, not to exceed $10,000, is approved by the Secretary. Special act awards are not based upon an employee's performance rating of record or a particular appraisal cycle.

B. Nominations for Special Act Awards must use the Award Nomination Form and procedures for this award. The award form is included in PMI-451.

C. In accordance with Article 13, the Awards Committee will consider ways in which the

Parties can supplement this Article to include other forms of non-cash awards (such as savings bonds).

Section 25.07 -Spot Cash Award

A. A Spot Cash Award is a net payment of $500 in recognition of employee efforts that may otherwise go unrecognized. Such efforts are generally contributions within or outside assigned job responsibilities.

B. Examples would include: producing exceptionally high quality work under tight deadlines; performing added or emergency assignments in addition to regular duties; demonstrating exceptional courtesy, tact, or responsiveness as an individual or team member; exercising extraordinary initiative or creativity in addressing a critical need or difficult problem; or making suggestions which directly contribute to economy in, or the effectiveness of, Government operations.

C. Spot Cash Awards may be recommended by any level (generally the immediate supervisor), and are approved at the Division Director level, Regional Office Director or equivalent. An employee may not receive more than three (3) Spot Cash Awards during any twelve (12) month period.

D. Nominations for Spot Cash Awards must use the Award Nomination Form and procedures for this award. The award form is included in PMI-451.

Section 25.08 - Time Off Awards (TOA)

A. The purpose of the Time Off Award (TOA) is to increase employee productivity and creativity by rewarding employee contributions to the quality, effectiveness, or economy of Government operations. The award is also intended to increase the quality of work life for all employees, as well as encourage and recognize one-time, non-recurring accomplishments above or beyond normal job requirements. TOAs can be used in lieu of, or to supplement, performance ratings, cash awards (see item VA of PMI451-1). This award can also be used to provide immediate recognition to an employee who performs particular tasks, assignments, or other job responsibilities in an exemplary manner, or makes a suggestion which directly contributes to economy in, or the effectiveness of, Government operations.

B. A TOA provides an employee with an excused absence without charge to leave or loss of pay. All bargaining unit employees shall be eligible for a TOA unless an employee is, or was, on a leave restriction letter within the previous twelve (12) months.

C. During any single leave year, an employee may be granted up to the average total number of hours that the employee works during a biweekly scheduled tour of duty. For example, a full time employee is eligible for a total of eighty (80) hours of time off; and a part-time employee working an average biweekly schedule of sixty-four (64) hours is eligible for a total of sixty-four (64) hours of time off.

D. To encourage the use of TOAs for timely recognition of an employee's contribution, supervisors may grant up to eight (8) hours of time or a workday.

E. The minimum amount of time off for any contribution shall be a minimum of one (1) workday. The maximum TOA for any single contribution shall be forty (40) hours for a full-time employee. A part-time employee will be granted a TOA not to exceed his or her weekly work schedule.

F. A TOA may be used in single blocks of time or in increments of fifteen (15) minutes, subject to approval by Management.

G. A TOA must be scheduled and used within one (1) year from the date the award was granted or it will be forfeited. TOAs should be scheduled so as not to conflict with use of "use or lose" annual leave. When physical incapacitation for duty occurs during a period of time when an employee is using his/her TOA, sick leave will be granted for the period of incapacitation and the TOA will be scheduled at another time.

Section 25.09

A. Employees' suggestions to improve work processes and working conditions provide a valuable and unique source that may greatly increase the efficiency of the service and/or employee morale.

B. The Employer shall maintain and publicize the Employee Suggestion Program and encourage employee participation. The Employer will provide written or electronic acknowledgement within twenty four (24) hours that the suggestion has been received and will respond to the suggestion within ninety (90) calendar days. If it is not possible to respond to a particular suggestion within that time period, the Employer will notify the employee about the status of the suggestion within ninety (90) days and will notify the employee when a decision is made about whether the suggestion will be adopted.

C. Employees may receive cash awards for suggestions that are adopted, in addition to any spot cash or special act awards that they receive during a performance year. This is a lump such cash award of $25.00 to $35,000 and a certificate. The award is open to all employees to recognize ideas which directly contribute to the economy in, or the effectiveness of, Government operations. The amount of the award is based on a percentage of savings to the Government.

ARTICLE 26: Employee Development and Training

Section 26.01

The Department and the Union recognize that the training and development of employees, including career development counseling, is important in carrying out the mission of the Department, and is an effective means of assessing and guiding employee performance capabilities, utilization, and assist in career advancement. The Department is responsible for ensuring that all employees receive the training and development necessary for the improvement of the workforce. All Department-provided training will be conducted by or administered by qualified instructors, or through qualified and/or certified teaching or training software programs.

Appropriate training will be provided to all employees whose positions are abolished or re- engineered as a result of reorganization, change in mission, budget priorities, work elimination, introduction of new duties, transfer of work, or implementation of new technology before expecting adversely impacted employees to perform new or altered duties.

Section 26.02

The Department and the Union recognize that each employee is responsible for applying reasonable time, effort, and initiative in increasing his/her potential through self-development and training.

Section 26.03

The Department shall seek to provide training and development for employees through on-the- job training and the use of internal and external formal training courses so they may develop and advance their individual capabilities. The Employer, to the extent budget, organizational arrangements, and other resources permit, will offer training to all employees regardless of workplace location. Employee training and development will be administered in accordance with all applicable laws, rules, regulations, and the provisions of this Agreement and written Department policy.

Supervisors shall discuss training and developmental needs with employees throughout the year.

Section 26.04

The Department will provide guidance for assistance in formulating Individual Development Plans (IDP). The IDPs will not be mandatory. The IDPs will address the specific needs of the employee(s), the proficiency level needed for the employee to complete organizational tasks at the successful level, and the time needed to achieve the purpose of the training plan.

Section 26.05

The Department shall make available to all employees timely information concerning Department sponsored training courses and programs. Approvals for training and career development programs and courses shall be made in a fair, equitable, and impartial manner. ·

Section 26.06

The Department shall notify employees, as soon as practicable, of timely receipt of training requests, of whether or not their applications have been approved. Nomination and selection in training, career development programs, courses, and other educational endeavors such as the Tuition Reimbursement Program shall be made in a fair, equitable, and impartial manner to all

permanent/career employees at all grade levels located nationwide.

Section 26.07

The Employer shall maintain documentation of completed formal training within the Talent Management System (TMS) or its successor, and the employee's principal office. The training records will be maintained in accordance with the applicable record retention regulations.

Section 26.08

The Employer shall announce training opportunities via the internal website. The Employer shall encourage and support employee's attendance in training and development programs.

Section 26.09

The nomination and/or selection of employees to participate in training and career development programs and courses shall be nondiscriminatory and made without regard to race, color, religion, sex, national origin, disability, age, sexual orientation, gender preference, parental status, marital status, political affiliation, or Union membership or activity, and shall be in accordance with equal employment opportunity guidelines, and consistent with other applicable laws, rules, regulations, the terms of this Agreement and written Department policy.

Section 26.10

To the extent budget, organizational arrangements and other resources permit, the Department will pay employee's expenses for attending trainings, conferences, and/or meetings authorized by 5 U.S.C. Section 4110, when the following criteria are met as provided in 5 CFR 410.404:

A. The announced purpose of the conference is educational or instructional;

B. More than half of the time is scheduled for a planned, organized exchange of information between presenters and audience which meets the definition of training in Section 4101 of Title 5, United States Code;

C. The content of the conference is germane to improving individual and/or organizational performance, and

D. Development benefits will be derived through the employee's attendance.

When fees are a necessary cost related to training, or the payment of fees is required to undergo training, such fees will be reimbursed by the Department.

ARTICLE 27: Equal Employment Opportunity

Section 27.01 - Policy

The Employer has a zero tolerance policy for discrimination and harassment on the basis of race, color, age, national origin, sex, gender identity, religion, disability, genetic information, sexual orientation, marital status, political affiliation, status as a parent, or reprisal for prior Equal Employment Opportunity (EEO) activity. The policy is enforced by:

A. Complying with EEO laws and applicable statutes governed by the Office of Personnel Management directives, Executive Orders, and/or Equal Employment Opportunity Commission regulations;

B. Measuring the effectiveness of compliance department-wide on equal employment opportunity and diversity;

C. Recognizing commitment, leadership, creative and innovative management of the EEO program;

D. Ensuring that the Employer's employment programs, policies and procedures are administered in a fair and equitable manner to all employees and applicants for employment;

E. Determining the extent that all employees understand their EEO responsibilities through EEO training and EEO information as posted within the Employer's intranet site, or EEO posters;

F. Identifying and addressing deficiencies in EEO programs, policies and procedures;

G. Providing technical assistance and guidance to managers and employees in fulfilling EEO programs policies and procedures; and,

H. Systematically evaluating the extent to which ED conducts its employment programs and activities in a manner consistent with applicable Federal requirements.

Section 27.02

The Employer shall provide sufficient staff, funding, resources and authority to enable accurate collection and analysis of data, including applicant pool data, to enable the efficient identification and elimination of existing barriers. To achieve these goals, the Employer will make every effort to meet the following stipulations in order to maintain a sufficient level of resources.

As appropriate, the Employer will notify the Union of the intent to conduct data collection. If any findings result, a final written report will be provided to the Union.

A. Employ personnel with the training and experience to conduct the analyses required by MD-715;

B. Ensure that the EEO staff has the knowledge, skills and ability to facilitate the Employer's EEO programs and procedures effectively;

C. Implement adequate data collection and analysis systems that permit tracking of the information required by MD-715;

D. Provide periodic and/or annual EEO training and education programs to all managers and employees;

E. Ensure that a central fund or other mechanisms have been established for providing reasonable accommodations to employees with disabilities; and,

F. Ensure that a Disability Program Manager is employed at the Department level to advise managers and employees on reasonable accommodation issues in all major components of the Department.

Section 27.03

A. The Employer shall evaluate its EEO complaint resolution process to ensure it is efficient, fair and impartial in accordance with 29 C.F.R. Part 1614;

B. The Employer's EEO office must be kept separate from the legal defense arm of the Department, as well as other Department offices that have conflicting or competing interests; and,

C. Appropriate corrective and disciplinary actions will be taken against employees and supervisors who engage in Discriminatory practices. This includes employees and supervisors that fail to adhere to the provisions of the "No Fear" Act.

D. The Employer agrees to update and post on the intranet a copy of the statutory EEO complaint procedure to include accessible formats for employees with disabilities.

Section 27.04

A. The Employer shall establish and make available an ADR program that facilitates an early, effective, neutral, and efficient informal resolution of disputes to include a system for identifying, monitoring and reporting significant trends reflected by complaint processing activity.

B. Within the EEO framework the aggrieved employees and involved management officials shall be informed of the ADR option to resolve disputes at the earliest possible stage. ADR should be undertaken in good faith in accordance with federal rules and regulations.

C. All bargaining unit employees and managers are encouraged to utilize the ADR process to resolve individual concerns prior to filing a formal EEO complaint. EEO disputes resolved by ADR are final when written and signed. The authorized Union representative of the · bargaining unit (BU) employee and the responsible management official will have the right to participate in all stages of the ADR process. This is in addition to an employee's right to Union representation.

D. ADR Settlements shall not set precedent.

Section 27.05 Diversity and EEO Committees

A. In achieving a model EEO program, the Employer and the Union agree to establish a joint Diversity and Equal Employment Opportunity (DEEO) Advisory Committee in headquarters. This committee will serve in an advisory capacity to the Employer ensuring that the Department is in compliance with EEO policies and procedures, specifically taking actions to remove identified barriers affecting equal opportunities for all employees.

All Committees will include as much diversity as possible. **Committees will reflect diversity to the maximum extent possible.**

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B. The DEEO Advisory Committee will consist of six (6) members, three (3) appointed by the Union and three (3) by the Employer.

C. The Ground rules and operating procedures, including Privacy Act considerations will be established by the DEEO Advisory Committee.

D. The members' tenure will be established in the ground rules and operating procedures and will not be affected by the renegotiation of this Agreement. Members may be reappointed to serve additional terms.

E. The DEEO Advisory Committees established under this section are to be advisory and consultative in nature and serve the DEEO interests of both the Employer and the work force by functioning as a continuing link regarding matters of an EEO nature.

F. The roles and responsibilities of the Committee may include but are not limited to:

1. Identifying potential barriers and bringing to the Employer's attention any trends, problems, issues or circumstances of a DEEO nature;
2. Focusing the Employer's attention on personnel management practices or problems of a DEEO nature that are producing or could produce dissension and dissatisfaction among employees such as merit promotion procedures, selection for training and distribution of awards;
3. Promoting and communicating the efforts of the Employer to achieve and maintain an effective DEEO program; and,
4. Acting as a forum for an exchange of ideas and actions on matters or concerns of a DEEO nature.

G. The DEEO Advisory Committee may not be used

1. As a means to receive, review, process, express or present individual employee complaints; and
2. As a means to investigate EEO complaints.

Section 27.06

The EEO Director will provide the Union Council President with copies of the Employer's annual MD-715 report in accordance with EEOC guidance.

Section 27.07

The primary purpose of a model EEO program plan is to produce realistic positive change within a prescribed period of time. All such plans will meet the requirements for development, implementation, and management review set forth by the Department and the EEOC. The Employer's EEO plan shall be consistent with the EEOC Guidelines for Affirmative Employment Plans and Model EEO Programs. The Employer will include the Union in the development of the EEO program plan. The Employer and the Union agree to cooperate to eliminate any discrimination.

Section 27.08

A. The Employer will publicize the availability of EEO counseling in each Department-occupied building through the use of posters, intranet, bulletin boards, and/or employee notices. The contact information for EEO counselors and officials will be identified by name, photograph, location, and office phone number. The Employer shall endeavor to keep this information current.

B. EEO counselors will fully advise employees who seek information regarding the time

limits and their rights in processing an EEO complaint under the EEO statutes, including EEO appeals, rights, and procedure. The EEO counselor will also advise the complainant of the right to file a grievance under the negotiated procedure. If the employee elects to file an EEO complaint, the employee must choose between the negotiated grievance procedure or the statutory EEO process, but not both. If the employee elects the Union's dispute resolution procedure, the aggrieved will be informed of the requirement to file an EEO complaint within forty-five (45) days of the alleged incident. If ADR is elected, the pre-complaint process will be extended for up to ninety (90) calendar days.

C. The employee filing a complaint may elect to use the ADR process if the ADR is offered by the Employer; however, the complainant's rights to elect between traditional counseling or the ADR process is final. In the event that the ADR process is terminated for any reason, the employee may not pursue counseling with the EEO counselor and will be issued a Notice of Final Interview. Guidance on the requirements of discrimination complaint appeals will be available from an EEO counselor.

Section 27.09

The Employer agrees to update and post accordingly on the intranet a copy of the statutory EEO complaint procedures to include accessible formats for employees with disabilities.

Section 27.10

An employee filing a complaint will be free from restraint, coercion, interference, reprisal, or discrimination and will have the right to be accompanied by a representative of his/her own choosing. The Union agrees to assist, when requested by the EEO Officer, in resolving complaints in compliance with applicable regulations. The Employer and the Union agree to cooperate promptly with appropriate requests from the EEO counselors.

Section 27.11

A. The Employer agrees to make reasonable accommodations for known physical or mental limitations of employees with disabilities, unless the Employer can demonstrate the accommodation would impose an undue hardship on the operation of the Employer's program in accordance with applicable laws and regulations.

B. The Employer agrees to recognize that individual accommodations will be determined on a case-by-case basis, taking into consideration the employee's disability, the employee's suggestions for reasonable accommodations, existing limitations, the work environment, and undue hardship imposed on the operation of the Department's program as defined by law. The Department is not required to provide the employee's preferred accommodation as long as the Department provides an effective reasonable accommodation.

C. Procedure for requesting reasonable accommodations: An employee should request reasonable accommodation from their supervisor. The supervisor shall provide the employee with ED's accommodation policies and regulations that describe how to obtain a reasonable accommodation. The supervisor and the employee shall engage in an interactive process with the employee to discuss reasonable accommodations options.

D. Responding to requests for accommodations: The Employer will respond to an employee's request for reasonable accommodation within fifteen (15) workdays of receiving the request. If additional time is necessary to respond to the request, the reason(s) for the delay and the approximate timeframe for the response will be provided to the employee in writing.

E. If the request is denied, the reason(s) for the denial will be provided to the employee in writing. Denials will not be made for arbitrary reasons, and the Employer will not reject the employee's healthcare provider's recommendation for accommodations without obtaining expert medical advice. The employee may submit the documentation to his/her supervisor, to the Labor and Employee Relations Division (for Headquarters employees); or the servicing regional Human Capital and Client services office in Atlanta and San Francisco.

F. Examples of accommodations: In accordance with Federal law the Employer agrees to consider reasonable accommodations that include, but are not limited to: job restructuring; making facilities readily accessible to and usable by individuals with disabilities; modifying work schedules and/or varying work hours; acquiring or modifying equipment; providing hearing devices; providing qualified readers and interpreters; Telework; granting of leave; and reassigning or transferring employees to another position.

G. Leave: The Employer will be flexible in granting leave to accommodate an employee's disabling conditions. For example:

   1. Leave without pay may be granted for illness or disability; and,

   2. Sick leave can be appropriately used by individuals with disabilities who use prosthetic devices, wheel chairs, crutches, or other similar type devices for equipment repair. Sick leave can also be appropriately used for service animal training or medical treatment for a service animal.

H. Official travel: Employees with disabilities shall be provided with equal opportunity to perform official business travel. Additional travel expenses that are necessarily incurred to reasonably accommodate the employee's disability may be reimbursed under the Federal Travel Regulations. Examples of such expenses are listed in Section 37.07.

Section 27.12 - Temporary Disabilities

A. Employees temporarily disabled may request accommodation. A request for such accommodation must be in writing and must include the employee's reason for requesting an accommodation, the employee's suggestion for an accommodation (e.g., modification of schedule), and the anticipated length of time the accommodation will be needed. The Employer agrees to consider such requests; the employee and supervisor should work together to try and find solutions to accommodate each other's needs. The Employer's decision of whether or not to provide individual accommodations will be made on a case-by- case basis, taking into consideration the employee's specific needs, the work environment, and the Employer's business needs. If an employee's request is based on a medical condition, the Employer may require the employee to submit medical documentation as described in Article 36.

B. Employees recuperating from illness or injury who are temporarily unable to perform the full range of official duties may submit to their supervisor a written request for a temporary assignment. Such requests will be accompanied by a medical certification which will assist in establishing the duty limits for the employee. Upon receipt of the employee's written request with the accompanying medical statement, the Employer agrees to make a reasonable effort to assign duties to the employee in accordance with applicable rules and regulations, medical recommendations, and the needs of the office workload.

C. The Employer will respond to an employee's request for reasonable accommodation or temporary assignment within fifteen (15) workdays of receipt of the request. If additional

time is necessary to respond to the request, the approximate time frame for the response will be provided to the employee in writing. If the request is denied, the reason(s) for the denial will be provided to the employee in writing. Denials will not be made for arbitrary reasons.

ARTICLE 28: Employees with Disabilities

Section 28.01

The Employer and the Union recognize that several Federal laws protect qualified individuals, including disabled veterans, from discrimination in employment on the basis of their disabilities. In accordance with Equal Employment Opportunity Commission guidance on the ADA Amendments Act (ADAAA) an individual with disabilities is an individual who has a:

A. Physical or mental impairment that substantially limits one or more of the major life activities of such individual;

B. A record of such an impairment; or,

C. Being regarded as having such an impairment, 42 U.S.C. 12102(2).

An individual with disabilities is "qualified" if he or she can perform the essential functions of the employment position with or without reasonable accommodations.

In accordance with Section 501 of the Rehabilitation Act of 1973, 29 U.S.C. Section 791(b) the Employer will take proactive steps to provide equal opportunity to individuals with disabilities in all aspects of Federal employment. Therefore, the Employer will develop and maintain an affirmative action program plan for the hiring, placement, and advancement of individuals with disabilities based on appropriate guidance and regulations.

Section 28.02

The Employer and the Union agree to cooperate and work to eliminate prejudice and unlawful discrimination when discovered or identified against individuals with disabilities, including disabled veterans, in personnel policies, practices, and working conditions. Furthermore, the Employer agrees to ensure that individuals with disabilities enjoy equal benefits and privileges of employment. See Article 27, Equal Employment Opportunity, for additional provisions concerning the rights of employees with disabilities and the need to provide appropriate training about those rights.

Section 28.03

In addition, the Employer agrees to evaluate its employment practices and to conduct facility and technology assessments annually in order to determine where facility and/or technology modifications are required to reasonably accommodate the needs of individuals with disabilities and to identify barriers to equality of opportunity for individuals with disabilities. Modifications to be considered may include, but are not limited to, raised graphic markings and audio devices in and around elevators to accommodate visually impaired persons, access to telephonic and assistive devices to accommodate hearing impaired persons, and access to Department facilities to accommodate mobility impaired persons. A report of the findings of such assessments and implementation actions, if any, will be provided to the appropriate Employer Officials and the Union. Where barriers or necessary modifications are identified in an annual assessment within fifteen (15) calendar days from the date the annual assessment is issued to the Union, the Employer and the Union will begin to develop a joint plan of action with goals and milestones.

When necessary to avoid liability or give individuals with disabilities access to services or reasonable accommodations, the Employer may take action prior to the completion of the joint plan of action to address the necessary modifications in order to comply with applicable Statutes,

regulations, rules and policies. In that event, the Employer shall provide written notice and justification to the Union prior to implementation and shall engage in post-implementation bargaining if so invoked by the Union.

Section 28.04

The Employer agrees to permanently post online information on procedures for administrative assistance, technical, and/or workplace assessments for individuals with disabilities, and will provide annual training as described in Article 27.

Section 28.05

The occupant emergency/evacuation plans for the Employer's facilities will address the identified needs of qualified employees with disabilities and will be developed in accordance with Federal, state and local laws by the Employer with the participation of the appropriate joint Labor Union and Management Committees.

ARTICLE 29: Excepted Service

Section 29.01 - Applicability

The provisions of this Article apply to Schedule A attorney positions within the bargaining unit and other excepted service employees in the bargaining unit, including employees with disabilities hired under 5 CFR § 213.3102(u). The provisions in this Article 29 are not intended to preclude negotiations under Article 8 over other excepted service issues for bargaining unit employees that may arise during the term of this Agreement.

Section 29.02 - Attorney Hiring and Promotions

A. Hiring Plans: The Employer shall provide the Union with a copy of its attorney hiring plan within five (5) days of the effective date of this Agreement. If different principal or regional offices have different attorney hiring plans, the Employer shall provide a copy of each hiring plan to the Union. When the hiring plans are revised, the Employer shall provide a copy of the revised plan to the Union within five (5) days of its effective date.

B. Vacancy Announcements: The Employer shall provide vacancy announcements for attorney positions, including announcements for promotions, to the Local Union President of the Headquarters or regional office in which the vacancies are located. The Employer may provide hyperlinks to the vacancy announcements, attach copies to an email, or provide hard copies of the announcements.

C. Attorney vacancies and promotion announcements will be posted for the same amount of time as vacancies or promotion announcements under the ED Merit Promotion Plan (Personnel Policy 335-1) or any currently prevailing OPM regulations superseding Personnel Policy 335-1.

D. When an attorney who is a member of the bargaining unit applies for an attorney vacancy for which the attorney is qualified, and the attorney is eligible for a lateral transfer to that vacant position, the Employer will interview the attorney. If an attorney member of the bargaining unit applies for an attorney vacancy and is not selected, the deciding official will notify the employee in writing of that decision.

E. An employee's accumulation of earned annual leave or sick leave shall not be a factor in selection decisions.

F. An employee's part-time status shall not be a factor in selection decisions for attorney promotions within the bargaining unit, provided that the employee, if selected for the position, agrees to assume full-time status if the promotion position is advertised as full-time.

G. Panels: Any Panels used by the Employer in the hiring process for bargaining unit excepted service positions will include at least one (1) bargaining unit member approved by the local Union.

Section 29.03 - Employees with Disabilities Hired under 5 CFR § 213.3102(u)

As required by the Americans with Disabilities Act, the Rehabilitation Act of 1973, and Article 28 of this Agreement, the Employer will provide reasonable accommodations to employees with disabilities hired under 5 CFR § 213.3102(u). The Employer will not take adverse action against such employees for performance problems that are related to the Employer's failure to provide reasonable accommodations.

ARTICLE 30: Part-Time and Term Employees

The Employer and the Union agree that part-time and term employees are important and valuable resources who contribute to the successful accomplishment of the mission of the Department. In order to promote harmonious work relationships and to utilize effectively these employees, personnel policies and rules applicable to part-time or term employment should be fairly and consistently applied. The Parties recognize and agree that these employees, their supervisors, and managers should be informed of applicable personnel policies and rules and the conditions and limitations of such appointments. The Employer agrees to provide appropriate information about these matters to employees through the supervisor in a timely manner so that employees will understand the terms and conditions of their appointments.

ARTICLE 31: Research Programs and Demonstration Projects

Section 31.01 - Definitions

For the purpose of this Article, and as defined in 5 U.S.C. 4701, the following definitions apply:

"Research program" means a planned study of the manner in which public management policies and systems are operating, the effects of those policies and systems, the possibilities for change, and comparisons among policies and systems.

"Demonstration project" means a project conducted by the Office of Personnel Management, or under its supervision, to determine whether a specified change in personnel management policies or procedures would result in improved Federal personnel management.

Section 31.02 - Notification to Union

The Department will notify the Union, as provided for in Article 8, if a decision is made to conduct a research program or demonstration project as provided for by 5 U.S.C., Chapter 47, and this Article, and which is applicable to bargaining unit employees. Such notifications will be at an early enough date so as to ensure that the requirements of Article 8 may be met. The Department will provide the Union, upon request, any relevant and necessary information, without cost, which is needed by the Union to exercise its bargaining responsibilities.

Section 31.03 - Negotiation

Where required by the FSLMRS and this Agreement, the Union shall have the right to negotiate on research programs and demonstration projects provided for in the 5 U.S.C., Chapter 47 after any agreement between the Department and the Office of Personnel Management is finalized.

Section 31.04 - Evaluation

After implementation of the program, the Union will be kept informed of the progress on a continuing basis. Any official evaluation reports shall include a statement of the Union's position, which has been provided by the Union to the Employer in writing.

Section 31.05 - Access to Data

The Parties agree that the Union shall be given access to data, as required by law and regulation, which is not otherwise provided for in this Article.

Section 31.06 - Waivers

Any demonstration project shall be consistent with and may not amend or waive any provision of this Agreement, except by mutual consent of the Parties. The Union may request at its option to have such waivers or amendments in writing.

ARTICLE 32: Overtime

Section 32.01 - General

A. Overtime for "non-exempt" employees is governed by the Fair Labor Standards Act (FLSA) and this Agreement. Overtime for "exempt" employees is governed by 5 U.S.C. 5542 (Title 5 Overtime) and this Agreement.

B. All bargaining unit positions will be determined to be FLSA "exempt" or "non-exempt" at the time the position is classified. When classification actions are performed and result in a change to the FLSA determination, the changed FLSA determination for the affected employees will be made available to the employees and the Union within five (5) working days of the classification decision.

C. When overtime work is directed, employees will be compensated for overtime hours worked in accordance with the provisions of the FLSA, 5 U.S.C. 5542, and other applicable Statutes, and Government-wide regulations, and provisions of this Agreement. When a given work situation is covered by the FLSA and another statutory authority, the employee shall be paid under whichever authority provides the greater overtime pay entitlement in the workweek.

D. Overtime will not be distributed, or withheld as a reward or penalty.

E. Overtime work must be ordered or approved by an authorized Department official in writing. The only exception to this requirement is in instances of bona fide emergencies where the Recommending or Approving Officials find it impracticable to obtain advance authorization, and where there is no doubt that the overtime would be approved. In such instances, the recommending official will submit a memorandum requesting written authorization at the earliest possible time.

Section 32.02 - Overtime Pay

A. Overtime pay for FLSA non-exempt employees are equal to one and one-half (1.5 %) times the employee's hourly rate of pay.

B. If the employee's rate of pay exceeds the minimum applicable rate for a GS-10 (i.e., GS-10, Step 1), including any applicable special rate of pay for law enforcement officers or special pay adjustment for law enforcement officers, a locality-based comparability payment, or any applicable special rate of pay, the overtime rate is the greater of:

1. One and one-half (1.5%) times the applicable minimum hourly rate of basic pay for GS-10, Step 1; or,
2. The employee's hourly rate of basic pay.

Section 32.03 - Types of Overtime

A. Regular Overtime:

Any overtime work scheduled in advance of the administrative work week as part of an employee's regularly scheduled workweek is considered regular overtime. An employee shall be compensated for every minute of regular overtime work in accordance with the provisions of OPM regulations, and ED policy.

B. Irregular or Occasional Overtime:

   Overtime work that is not a part of an employee's regularly scheduled administrative workweek is considered irregular or occasional overtime. Irregular or occasional overtime work is paid in the same manner as regular overtime work, except that, at the employee's option, the employee may receive compensatory time off in lieu of overtime premium pay in accordance with Section 32.10 of this Article, or when in travel status as in Section 32.13 of this Article. A quarter (1/4) of an hour shall be the largest fraction of an hour used for crediting irregular or occasional overtime work. When irregular or occasional overtime work is performed in other than the full fraction, odd minutes shall be rounded up or rounded down to the nearest full quarter fraction of an hour.

Section 32.04 - Call-Back

Call-back overtime is a form of irregular or occasional overtime work for which he/she is required to return to his/her place of employment after having already concluded his/her tour of duty and departed the work site. In all call-back situations, the employee will be paid a minimum of two (2) hours of overtime, as provided for by Government-wide regulation.

Section 32.05 - Distribution

Whenever practicable:

A. When the decision has been made to assign overtime work to bargaining unit employees, the supervisor shall distribute overtime work on an equitable basis to those qualified employees who are within the work unit performing the work;

B. The supervisor shall consider the use of qualified volunteers who are known to the supervisor at the time overtime is needed; and,

C. The supervisor shall give fair and serious consideration to any expressed concerns of an employee requesting to be excused from overtime work.

The Parties recognize that there will be circumstances where the nature of the task or project requires an individual with particular experience or skills, or who has been working on or is familiar with the task or project, and it would be impracticable to have that overtime work performed by another employee. The supervisor should be able to articulate why that particular individual is required for that task or project.

Section 32.06 - Records

Records of overtime worked will be kept consistent with law and may be reviewed by the Union upon request.

Section 32.07 - Disputes

The negotiated grievance procedure is the exclusive remedy for the resolution of disputes concerning overtime. Nothing in this Article precludes or impairs FLSA exempt employees from filing a claim for "induced" overtime or FLSA non-exempt employees from filing a claim for "suffered or permitted" overtime.

Section 32.08 - Notice

In the offer or assignment of overtime on days outside of the basic workweek, the Employer will notify the affected employee at least two (2) days advance notice, except in cases of unforeseen mission requirements. When overtime is to be performed on a holiday, normally at least two (2) days of advance notice will be given to the employee affected, except in cases of unforeseen

mission requirements. The Employer will provide a longer notice period for regular overtime work as required by OPM regulation.

Section 32.09 - Impact on Leave

A. Leave usage or balance will not be a factor in offering or assigning overtime to employees. However, employees in a leave status will not be offered or assigned overtime until they return to duty, unless they are needed for unforeseen mission requirements. Overtime in conjunction with leave usage in the same pay period is permitted.

B. Military and court leave matters are covered under Sections 39.19 and 39.21.

Section 32.10 - Compensatory Time in Lieu of Overtime Pay

A. Compensatory time is time off from work that may be granted to an employee in lieu of payment for irregular and occasional overtime. Compensatory time earned is equal to the amount of time spent in overtime work, e.g., one (1) hour and fifteen (15) minutes of overtime work yields one (1) hour and fifteen (15) minutes of compensatory time. The following pertain to such compensation for overtime work:

   1. FLSA Non-Exempt Employees:

      The Employer will normally provide overtime pay for all overtime work performed by non-exempt employees. After considering mission requirements, the Employer may grant compensatory time off for overtime work performed, but non-exempt employees may not be required to accept compensatory time off in lieu of payment for overtime work performed. The Employer will consider employee requests for compensatory time off in lieu of overtime pay.

   2. FLSA Exempt Employees:

      a) Employees whose rate of pay does not exceed the maximum rate for GS-10 (i.e. Step 10) may request to receive compensatory time off in lieu of overtime pay for irregular or occasional overtime. Such requests will normally be granted, subject to mission requirements. If the employee does not make a compensatory time request, or if the Employer does not approve the employee's compensatory time request, the employee is entitled to compensation in accordance with Section 32.03(B) above Irregular or Occasional Overtime..

      b) Employees whose rate of pay exceeds the maximum rate for GS-10 (i.e. Step 10) shall be compensated for irregular or occasional overtime with compensatory time in lieu of overtime pay, unless an exception is granted in advance of the overtime.

B. The Employer may announce in advance of offering overtime that it will only compensate employees with compensatory time and that overtime pay will not be available. If the Employer elects to offer overtime where pay is not available and compensatory time is available and employees decline, those declining will not have it held against them nor will it affect their eligibility for future offers of overtime. Such declination will not be reflected in their Performance Appraisal.

C. Compensatory time earned normally will be used within twenty-six (26) pay periods of the date it was earned. All compensatory time not scheduled and used by the employee within twenty-six (26) pay periods will be forfeited, unless it is required to be paid by 5 CFR 550 or 5 CFR 551, or other Federal regulations.

Section 32.11 - Standby Duty

Pursuant to 5 CFR 550 an employee may be considered on duty and time spent on standby may be considered hours of work if the following situations occur:

A. The employee is restricted to the Employer's premises, or so close thereto that the employee cannot use the time effectively for his/her own purposes; or,

B. The employee, although not restricted to the Employer's premises:

   1. Is restricted to his/her living quarters or designated post of duty,

   2. Has his/her activities substantially limited, or,

   3. Is required to remain in a state of readiness to perform work.

The above situations are just a few examples. 5 CFR 550 should be consulted when determining whether an employee is considered to have been on standby duty.

Section 32.12 - On-Call

An employee will be considered off duty, and time spent in an on-call status shall not be considered work if:

A. The employee is allowed to leave a telephone number or to carry an electronic device for the purpose of being contacted, even though the employee is required to remain within reasonable call-back radius.

B. The employee is allowed to make arrangements such that any work which may arise during the on-call period will be performed by another person.

Employees are not entitled to any additional compensation for time spent in an on-call status.

Section 32.13 - Compensation for Time Spent in Travel

For employees whose compensation is governed by Title 5, United States Code, time in travel status away from the duty station is considered hours of work if it is within the days and hours of the regular scheduled administrative work week or when it meets one of the following criteria:

A. It involves the performance of work while traveling;

B. It is incident to travel that involves the performance of work while traveling;

C. It is carried out under arduous conditions; or

D. It results from an event which could not be scheduled or controlled administratively.

Compensatory time off for travel may only be earned for time in a travel status when such time is not otherwise "compensable." Compensable refers to periods of time creditable as hours of work for the purpose of determining a specific pay entitlement. For example, certain travel time may be creditable as hours of work under the overtime pay provisions in 5 CFR 550.112(g) or 551.422. The travel must be for work purposes and must be approved by an authorized agency official or otherwise authorized under established agency policies.

Travel outside regularly scheduled duty hours (e.g., weekends) is not compensable through overtime pay or compensatory time unless such travel has been officially ordered and approved and meets one of the criteria cited above.

Compensation for time spent in travel status by employees whose compensation is controlled by

the Fair Labor Standards Act shall be governed by that Statute and its implementing regulations.

Section 32.14 - Compensatory Time for Religious Observances 5 CFR 550.1002

A. The Employer will make every effort to accommodate the practice of religious beliefs by individual employees. An employee whose personal religious beliefs require the abstention from work during certain periods of the workday or workweek may elect to work alternative work hours for time lost for meeting those religious requirements.

B. The Employer will afford the employee the opportunity to work compensatory overtime and will grant compensatory off to an employee requesting such time off for religious observances to the extent that such modifications in work schedules do not interfere with the efficient accomplishment of the Department's mission.

C. The employee may work such compensatory overtime before or after the grant of compensatory time off. Compensatory time will be credited to an employee on an hour to hour basis or authorized fractions thereof (fifteen (15) minutes).

D. The overtime pay provisions for overtime work in Section 32.02 do not apply for compensatory overtime work performed by an employee for this purpose.

ARTICLE 33: Child and Elder Care

Section 33.01 - Policy and Purpose

The Employer and the Union recognize that some employees have special child care or elder care needs. The Employer will continue its efforts to support child care and elder care services for its employees, consistent with this Agreement and the Federal Employer's funding authorization.

Section 33.02 - Child Care Subsidies Application Process

The Employer will notify the Union of all proposed changes concerning the child care application process and implementation concerning child care subsidies. The Union's notice of proposed changes will allow for Union review and employee input regarding the proposed changes. The Union's pre-decisional involvement will ensure employees are fully represented in any proposed subsidy changes.

Section 33.03 - Child Care and Elder Care Activities

The Employer will support activities to assist in ongoing child and elder care needs of employees subject to funding. These may include, but are not limited to, child /elder care and parenting information and seminars, consortiums, resource and referral information, education and training workshops and activities, and counseling as available through the Employee Assistance Program, as provided in Article 34, Safety and Health.

Section 33.04 - Child Care Resources

The Employer will post via the Department's intranet (ConnectED), and provide inquiring employees, a listing of all GSA-sponsored child care centers. Upon request by either Party, child care subsidies will be made an agenda item at National Forums and/or collaboration meetings.

Section 33.05 - Child Care Subsidies

A. In accordance with law and subject to funding, the Employer will provide a subsidy to lower- income employees for the expenses associated with obtaining child care. This subsidy applies for Federal child care centers, non-Federal child care centers, and in family child care homes for both full-time and part-time programs such as before and after school programs and daytime summer programs.

B. To the extent authorized by law, the subsidies paid for enrollment in the child care facility will be on a sliding scale, based on total Family Adjusted Gross Income (FAGI) of $75,000 or less.

C. The subsidy will be paid on a monthly basis directly to the provider.

D. If an employee's job grade exceeds GS-11 or $75,000 in the FAGI, ED will not contribute to the employee's child-care expenses.

   If an employee's job grade is a GS-10 or GS-11 and under $75,000 in the FAGI, ED will pay $75 per week toward the employee's amount of child-care expenses.

   If an employee's job grade is a GS-1 through GS-9 and under $75,000 in the FAGI, ED will pay $95 per week toward the employee's amount of child-care expenses.

Section 33.06 - Provision of Child Care Facility

When the Employer decides to move a Principal Operating Component (POC) or regional office to another facility, the Employer will discuss with GSA the feasibility, cost, and process for obtaining on-site child care in or near the new facility. The Employer will give the Union pre-decisional involvement in this process and will invite the Union to meetings or conference calls with GSA concerning child care facilities. If the Employer determines that budget appropriations do not meet the budget levels specified by GSA to provide on-site child care, the Employer agrees to share the basis for this determination with the Union.

Section 33.07 - Child Care Committee

If the Department has the right to designate representatives on a child care facility's board of directors or operating committee, the Union will be allowed to designate at least one (1) of those representatives.

Section 33.08 - Administrative Leave to Attend Meetings

Each parent member of any governing body of the Child Care Facility may be allowed up to two (2) hours per month of administrative leave to attend meetings of that body. Each parent shall be allowed up to two (2) hours of administrative leave per month to attend meetings of the Facility.

Section 33.09 - Elder Care Resources

To the extent permissible by law the Employer will provide employees information about elder care resources. The intent of the information is to promote the awareness and importance of elder care and aging services and programs by providing referral information on topics such as: care giving management, community resources, Federal and national organizations, financial assistance and mortgage services, elder care subsidies, health and wellness services, home assistance and modification, insurance, legal matters, living options and publications.

Section 33.10 - Leave and Arrangements

A. Employees may use any combination of leave, LWOP, earned compensatory leave, and credit hours available to them in accordance with applicable laws, rules, and regulations to attend to an ailing family member, in accordance with the provisions of the Family and Medical Leave Act or the Federal Employees' Family Friendly Leave Act, and as provided in Article 39.

B. Employees may use work life programs that may assist with child care or elder care responsibilities in accordance with this Agreement and all other Federal Statutes.

ARTICLE 34: Safety and Health

Section 34.01

A. The Employer agrees to provide a safe and healthy work place for all employees in accordance with the General Duty Clause of the Occupational Safety and Health Act (OSHA)which says Employers are responsible for providing employees with a safe and healthy workplace.

   The Employer shall take timely action to identify or investigate emergency or hazardous conditions in the workplace and Employer's shuttles, and will initiate abatement actions to resolve the workplace conditions, as may be required by applicable laws, rules, regulations, Department policy, and this Agreement.

   For health related emergency incidents at the Employer's facilities, managers shall coordinate emergency/ urgent care response by contacting appropriate medical assistance; contact of employees' emergency contact; and appropriate follow-up with the employee.

   The Employer shall implement all safety measures required by applicable laws, rules, and regulations, to include, but are not limited to:

   1. Provide Emergency team's Floor Captains access to adequate First Aid kits containing up-to date medical supplies;
   2. All ED Regional Offices will have hand sanitizers on each ED occupied floor;
   3. Provide Fire Extinguishers and instructions on their location and use;
   4. Provide emergency communication and notification systems, and adequate training on their use;
   5. Provide evacuation plans for fire or other emergencies in each work unit area of the regions and Headquarters;
   6. Provide easily visible identification of all Shelter-In-Place (SIP) locations nationwide and training employees regarding SIP protocols;
   7. Provide emergency and safety team volunteers and management staff training for the location and use of emergency equipment, including radios, First Aid kits and supplies, Automated External Defibrillator (AED) equipment, etc.
   8. Provide employees with annual information in Headquarters and Regional Offices on Occupant Emergency/Evacuation Plans for each Regional Office and coordination on business continuity plans for managing all types of emergencies.

B. At the discretion of the Joint Labor and Management Council, Safety and Health Committees will be designated at Headquarters and the regional offices in accordance with this Agreement. The Joint Labor and Management Council will determine the number of members for the Headquarters and Regional Safety and Health Committees which will also include the member's length of tenure. The Safety and Health Committees will serve in an advisory capacity.

C. Members of the Joint Union-Management Safety and Health Committee will determine the appropriate training for committee members.

D. The Headquarters and Regional committees will determine the frequency of meetings. Union representatives shall be granted official time in accordance with Article 14 of this Agreement.

Section 34.02

At least two (2) Union members of the Headquarters Safety and Health Committee representing Headquarters or the region, whichever is practical, or their designee, shall be invited to accompany Department of Labor or Department of Education safety inspectors on all regularly scheduled tours and on the initial and final inspection related to any safety and health hazard at any Department of Education location. The requirement will not prevent the Employer from taking timely action to identify or investigate hazardous conditions or to initiate abatement actions to eliminate identified hazards, as may be required by applicable law, rule, regulation, Department policy, and this Agreement.

Section 34.03

The Employer shall provide the Union with a copy of the annual summary report either hard-copy and/or via internet on occupational safety and health submitted to the Secretary of Labor in compliance with 29 CFR 1960-workplace security and safety. The Employer will provide the copy within seven (7) days of submission to the Department of Labor.

Section 34.04

Consistent with applicable law, rule, regulation, Department policy, and this Agreement, the Employer shall not require an employee or group of employees to work under conditions which are determined by the Employer or by OSHA to be unsafe or unhealthy. The Employer agrees that there will be no restraint, interference, coercion, discrimination, or reprisal directed against any employee for reporting unsafe or unhealthy working conditions.

Section 34.05

The Employer shall continue to utilize Federal Occupational Health (FOH) Services or other health facilities as authorized by Office of Management and Budget to provide the following services:

A. Through the Department's FOH Agreement, provide emergency diagnosis and treatment of minor injuries and illnesses during working hours;

B. Services such as Periodic Health Evaluations (PHE's), immunizations against influenza, and health screenings for high-blood pressure, cholesterol, diabetes, and vision;

C. Referrals to primary care physicians for follow-up care based on preventive service findings; and,

D. Workshops and health education materials on topics such as nutrition, smoking cessation, and stress reduction to help improve employees' health and well-being.

E. The Employer may add to, delete, or modify the above services, for budgetary or other reasons, after notification to the Union and completion of bargaining obligations established by the Statute and this Agreement.

Section 34.06

A. The Union and Employer agree to work closely to encourage all employees to become aware of counseling, training, and referral programs available for such conditions as alcoholism, drug abuse/dependency, stress, and mental health problems. The Employer

will provide employees with alcohol and drug abuse/dependency problems an opportunity to receive the appropriate services described in this Section.

B. The Employer Agrees:

1. That where an employee voluntarily requests professional counseling or treatment, the Employer shall refer the employee to the Employee Assistance Program (EAP).
2. The Employer will make available, counseling services through the Employee Assistance program (EAP), and educational programs on various EAP topics. The Employer shall provide all employees with the counseling service current contact information through the publication of an EAP brochure.
3. That an employee undergoing a prescribed program of treatment for such a condition which requires absence from work will be granted sick leave or other appropriate leave for this purpose in accordance with pertinent leave policies and the terms of this Agreement.

C. If, before the implementation of disciplinary or adverse action, the Employer is informed by the employee that the conduct, behavior, or performance for which the action is proposed, is in fact the consequence of a substance abuse/dependency or mental condition, the Employer will comply with the appropriate laws, rules, regulations, Department policies, and this Agreement.

Section 34.07

The Employer shall post information in work places and electronically via intranet about employee benefits and information on how to access available training under the Federal Employees Compensation Act.

Upon request, the Employer will provide an employee with the most current information on benefits and entitlements such as leave, salary, fringe benefits, hospitalization, disability benefits, retirement, and repurchase agreements.

Section 34.08

The Employer shall provide assistance and/or appropriate tools for the performance of work by employees with documented medical conditions and/or health impairments. The conditions include but are not limited to: osteoarthritis, carpal tunnel, photosensitivity (sensitivity to fluorescent lights), multiple chemical sensitivity syndrome, migraine headaches, and other medical conditions that do not qualify as a disability.

Section 34.09

A. The Employer agrees to make training and information available to employees in Headquarters and the regions concerning how to reduce and eliminate potential incidences of repetitive movement injuries that may include, but are not limited to, carpal tunnel syndrome, vision problems, health issues that may result from performing Department work in a sedentary position, etc.

B. The Employer will address employee concerns regarding noise resulting from internal and external construction and periodic scheduled maintenance activity occurring during normal working hours.

C. The Employer will make all reasonable efforts to safeguard employees from airborne irritants including, but not limited to, synthetic materials, insecticides, cleaning agents,

paint fumes, carpet and flooring glues, and dust resulting from construction or maintenance activity during normal working hours. Where airborne irritants will be used on a large scale, during or after work hours, the Union will be notified as soon as practicable.

D. The Employer and the Union agree that workplace violence can result in both physical and emotional harm to employees. The Employer agrees to encourage the prevention of workplace violence by:

1. Providing information to educate employees about workplace violence, to include specific procedures for recognizing, reporting, investigating, and recording incidents of violence in the workplace in relation to the nature of risk and the factors contributing to the risk;
2. Reporting the incident, after investigation by the appropriate Department official and/or Law Enforcement entity, to the Labor and Employee Relations Office and the Union subject to the privacy rights of victims and perpetrators; and,
3. Posting readable and visible emergency assistance phone numbers in workplace areas in Headquarters and in the region.

ARTICLE 35: Workers Compensation

Section 35.01 - Training and Prevention

The Employer and the Union recognize that training is needed for the prevention of employee injury, to fully inform employees of their rights - including Continuation of Pay (COP), to effectively manage employee injury occurring in the workplace and during employee commutes. The Employer and the Union recognize that training is an effective means of managing potential risk to employees, and ensures the timely processing of Workman's Compensation claims for satisfying the requirements of the Federal Employees Compensation Act (FECA), and the Department of Labor (DOL) Office of Workers' Compensation Programs (OWCP).

The Employer shall provide ongoing Workman's Compensation training to all employees nationwide in its electronic training system.

The Employer shall post information on the intranet regarding Workman's Compensation policies and procedures and how to access employee benefits. Notification of training availability will be publicized annually.

Section 35.02 - Information and Assistance

A. The Employer agrees that when an employee suffers a job-related occupational disease/illness or traumatic injury in the performance of duties and reports it to his/her supervisor, the Employer will ensure that the employee reports to the nearest Federal Occupational Health facility for a professional medical assessment, if necessary. Then, the Employer shall provide the injured employee with the following information as applicable, in a timely manner:

    1. His/her rights to file for compensation benefits;
    2. The types of benefits available;
    3. The procedure for filing claims; and,
    4. The availability of Continuation of Pay (COP) absence in lieu of sick or annual leave up to the limits established by the law.

B. An employee who has filed for compensation benefits will be provided, by the Employer, assistance that includes properly filling out the forms, and information on such options as provided by applicable laws, regulations, and Department policies, in a timely manner in order to meet filing deadlines.

C. The Employer agrees that there will be no restraint, interference, coercion, discrimination, or reprisal directed against any employee for filing a Workman's Compensation claim, or for participating as a witness for an employee who has filed a Workman's Compensation claim.

Section 35.03 - Employee Options

A. An employee with a job-related traumatic injury or occupational disease/illness may request to use accrued sick or annual leave instead of Leave without Pay, pending approval or disapproval of his/her compensation claim.

B. Employees shall have the option of buying back the leave used and having it reinstated to their account if their claim for compensation is approved consistent with applicable laws, regulations, and Department policies.

Section 35.04 - Placement of Workers Compensation Claimants

A. Where the employee requests and supports his/her request with the required medical information, the Employer will consider assigning the employee on a temporary basis to such duties it deems consistent with the employee's medical needs due to the compensable injury, including partial, limited or full duty.

B. Where the employee requests and supports his/her request with an approved Office of Workers Compensation Programs (OWCP) claim and appropriate medical information, the Employer will give due consideration in assigning the employee duties it deems consistent with the employee's medical needs due to the compensable injury. Any such action made will be consistent with applicable laws, regulations, Department policies, and this Agreement.

Section 35.05-Returning to the Workplace.

A. Where the employee recovers from injury within one (1) year of starting compensation, the employee will return to his/her former position or a similar one.

B. If the employee who has suffered a compensable injury does not return to ED, the Employer shall notify the employee in writing of his/her appeal rights and how to file an appeal to the Merit Systems Protection Board (MSPB).

C. If there is a recurrence or a need for further medical treatment during their tour of duty, due to a medical condition that OWCP had previously accepted as being caused during the performance of Department work, the Employer will assist the employee with completing and filing a Form CA-2a, "Notice of Recurrence."

ARTICLE 36: Medical Determination

Section 36.01

This Article concerns the Department's implementation of Office of Personnel Management regulations concerning medical determination published in 5 CFR Part 339 and as may be later amended. These provisions are to be applied consistent with applicable laws, regulations, Department policies, and provisions elsewhere in this Agreement.

Section 36.02

The Employer and the Union agree that the application of this Article, including Management decisions made in applying this Article, shall be in accordance with 5 CFR Part 339.

Section 36.03

Where the Employer believes that a medical condition is contributing to performance or conduct issues, the Employer will provide guidance to the employee that he/she shall have the opportunity to assert a medical condition which may have contributed to the "Unacceptable" or equivalent performance or conduct, and that the employee has a right to use the Employer's counseling service or may supply documentation of a medical condition which impacts the conduct or performance issues.

Section 36.04

If, pursuant to Section 36.03 of this Article, an employee raises a medical condition, he/she shall be given a reasonable time to supply medical documentation.

Section 36.05

If, after an absence, an employee fails to provide acceptable medical documentation but subsequently supplies the requested documentation (within a reasonable period of time specified by the supervisor) the Employer will retroactively approve the sick leave.

Section 36.06

A. When the Employer orders or offers a medical examination, the Employer shall place the employee on excused absence without charge to leave for the time spent undergoing the examination and associated travel time.

B. If an employee elects an examination by his/her physician, for the purpose of obtaining medical documentation, the employee may utilize sick leave, as provided by applicable regulations and this Agreement. In such cases, the employee shall bear the cost of the examination.

Section 36.07

When requesting medical documentation, the Employer will not make arbitrary distinctions between requests for extended sick leave, advanced sick leave and extended Leave without Pay (LWOP) for medical reasons. The Parties recognize that, where conditions differ, appropriate distinctions may be made.

Section 36.08

When an employee raises a medical condition and the Employer requires medical documentation from a physician or licensed practitioner, the employee may submit the

documentation to his/her supervisor, to the Labor and Employee Relations Division (for Headquarters employee), or the servicing regional Human Capital and Client Services office in Atlanta and San Francisco. Medical documentation submitted by an employee shall be assessed, in accordance with applicable law and regulations, by appropriate personnel, and under appropriate criteria.

Section 36.09

As used in this Article, the term "medical documentation" refers to the medical information described in 5 CFR Part 339.

ARTICLE 37: Official Travel

Time in travel status includes the time an employee spends traveling between the official work site and a temporary work site, or between two (2) temporary work sites, and the usual waiting time that precedes or interrupts such travel. Time spent at a temporary work site between arrival and departure is not time in a travel status. Bona fide meal periods during actual travel time or waiting time are not creditable as time in a travel status. A delay between actual periods of continuous travel that include overnight lodging during which the employee is free to rest, sleep, or otherwise use the time for his or her own purposes, is not creditable as a time in a travel status.

Section 37.01 - Travel Authorization

A. Authorization to travel shall normally be approved within five (5) workdays of employee submission into the E-2 Travel System software. The Employer shall normally complete internal processing of Travel Authorization, where the E-2 Travel System shall immediately send an email of the approved notice to the employee. In those circumstances where offices cannot process a Travel Authorization submission due to lack of availability of funding and/or quarterly allotments, a Travel Authorization will be processed as soon as funding issues are resolved.

B. Employees are required to use Government contracted air carriers and contracted city pair fares, however, employees locating "Restricted or Discounted" fares shall send additional notice to their approval string representatives requesting immediate consideration in order to facilitate receiving lower rates and fares. Approval string representatives shall review for immediate approval in order to maintain lower rates and fares. Consideration of applicable fees imposed by the airlines and other expenses are to be considered in the total cost savings before Management will approve the use of the "Restricted or Discounted" fare. Applicable fees could include, but are not limited to, cancellation and change fees that would negate the cost savings of using a "Restricted or Discounted Fare".

C. The Employer agrees that the Reviewer, Approver, and Certifier shall "normally" complete the Travel Authorization within five (5) workdays for issuance of common carrier tickets. Questions or problems which arise during the course of processing shall be promptly referred to the employee for resolution; processing shall begin again when the issues are resolved. In situations where the Travel Authorization cannot be completed in the automated travel system, each Executive Officer can/will issue emergency travel "authorizations" to facilitate employee travel. Note: Common carrier tickets will not be issued, per policy, until forty-eight (48) hours before departure.

Section 37.02 - Compensation for Official Travel

To the maximum extent practicable, the Employer will schedule and arrange for the travel of employees to occur during normal working hours. When travel is required outside of the regularly scheduled workweek, the employee shall be compensated for actual time in travel status with compensatory time consistent with law and the Department's written policies. Compensatory time off for travel is earned by an employee for time spent in a travel status away from the employee's official duty station when such time is not otherwise compensable.

Compensatory time will also be authorized when an employee must travel during the weekend to report to the duty station at the beginning of the workweek.

A. Travel performed within a thirty-five (35)-mile radius of the employee's official duty station is considered local travel and does not require a Travel Authorization. All other travel requires a Travel Authorization.

B. When employees travel on official business requiring written orders/authorization under the Federal Travel Regulation (FTR), orders/authorization will be prepared and allowances authorized consistent with the applicable law, rule, regulation, and the terms of this Agreement. When employees travel locally and written orders/authorization are not required, such travel will be paid consistent with applicable law, rule, regulation, and the terms of this Agreement. Compensation during travel is governed by applicable law, rule, regulation, and Article 32, Overtime, of this Agreement.

C. The Employer agrees to reimburse employees for official travel expenses up to the per diem rate. The Employer further agrees to reimburse actual expense for travel to high cost areas, subject to the approval of appropriate officials in advance of travel and limitations imposed by law and regulation. Employees are not entitled to per diem when on local travel.

D. It is understood that the responsibility for providing estimates of travel costs generally lies with the traveling employee, and that travel is subject to approval by appropriate Management Officials.

E. Employees must file requests for credit of compensatory time off for travel within ten (10) workdays after returning to the official duty station, or within ten (10) workdays of returning from the temporary duty station or approved leave which immediately follows the temporary duty during which the compensatory time off for travel was earned, by submitting his/her travel itinerary, or any other documentation acceptable to the employee's supervisor, in support of the request. If not submitted within this time, the Employer may deny the request for credit of compensatory time unless the employee can show good cause for the delay. The Employer will authorize credit in increments of one-quarter (1/4) of an hour (fifteen (15) minutes).

F. Employees have up to twenty-six (26) pay periods to use compensatory time after it has been earned. If an employee fails to use accrued compensatory time off within twenty-six (26) pay periods after it was earned, he/she must forfeit such compensatory time.

Section 37.03 - Government Travel Card

A. The Government Travel Card (GTC) is to be used only to charge expenses incurred in conjunction with official Government travel or to obtain authorized ATM (Automated Teller Machine) cash withdrawals incidental to official travel.

B. If a traveler needs cash for meals and incidental expenses (M&IE) and miscellaneous expenses (e.g. taxis and subway fares), he/she can withdraw cash from ATMs with the card. Withdrawals may not exceed 100% of the traveler's M&IE and miscellaneous expenses for the trip.

C. The Employer shall provide an electronic link, website reference, and/or copies of all agreements, proposed and in use, between it and the GTC provider and travel contractors concerning employee travel to the Union.

D. While the Parties recognize that bargaining unit employees usually use a GTC to pay for many expenses while on official travel, bargaining unit employees shall not be required to do the following in order to perform their jobs:

1. Apply for personal credit;
2. Undergo a Fair Isaac Corporation (FICO) score review. A bargaining unit employee has the option to refuse to permit a FICO score review. In those instances, an alternative credit worthiness assessment is completed by the employee submitting a SF-85P, Section 22 Questionnaire for Public Trust Positions, to the appropriate Employer office for review. If an employee chooses not to allow a credit worthiness review, a restricted GTC will be issued;
3. Submit to a contractor-performed credit check;
4. Have his/her personal credit rating compromised and/or adversely affected unless the employee becomes delinquent on his/her account.

E. The Employer may exempt bargaining unit employees from using a GTC, and the Employer may authorize one or a combination of the following methods of payment, in accordance with the law:

1. Personal funds, including cash or personal charge card;
2. Travel advances (however, travel advances will not be issued for travelers whose GTC was previously cancelled for verified misuse or bona fide nonpayment); or,
3. Centrally Billed Account (CBA) (to secure common carrier and "in most instances" hotel accommodations).

F. The Employer agrees to post information on the use of the GTC for official travel purposes, consistent with the Employer's policies, applicable Federal regulations and the terms of this Agreement. The posting shall include the following notices:

1. The procedures to dispute a GTC transaction. The employee has ninety (90) days to dispute a transaction, and it is the employee's responsibility to raise any concerns about a GTC transaction within the ninety (90)-day timeframe;
2. The requirement to report lost and/or stolen cards promptly;
3. The possibility that the vendor will report delinquent accounts to credit reporting agencies, since GSA's SmartPay2 contract allows the vendor to report accounts that are one hundred and twenty (120) days or more overdue;
4. The prohibition against using the GTC for purchases that are not associated with Government travel, even if the employee promptly pays the charges on the card;
5. Where travel expenses are under dispute between the GTC financial institution and the employee, the employee will not be required to bear the cost of those expenses until the disputed charges have been resolved. Where travel expenses are under dispute between a traveler and internal Management Officials, the Employer agrees that the undisputed amounts will be reimbursed in a timely manner while disputed amounts will continue to be discussed and mutually resolved;
6. A contact within the Department for getting assistance with GTC-related questions.

G. The Employer will take steps to ensure that the contractor that provides the GTC will not disclose any credit history information, including but not limited to information on any delinquent payments, involving employees, to credit bureaus or otherwise to the public, or other departments of the contractor, unless the contractor has filed suit in a court of law to collect such delinquent payments;

1. The Employer agrees to communicate instances of delayed reimbursement to the financial institution. The Employer will also facilitate communication between employee and financial institution so that the bank and the employee can verify and resolve alleged delinquent accounts;
2. Steps to assure that employees will not be required to pay any part of any disputed billing to the contractor pending resolution of that dispute; and,
3. Steps to assure that, so long as the employee reports the loss of their GTC within forty-eight (48) hours of their discovery of such loss, the unit member will incur no charges associated with that loss.

H. For cardholders whose cards have been cancelled, common carrier expenses only are placed on CBA. When an employee cannot obtain a GTC because of a lack of credit history, or because he/she is found to have an unsatisfactory credit history, the employee's travel will be paid through suitable alternate methods available to the Department, and the employee will not be responsible for paying for their own official travel. Such alternate methods may include, but are not limited to, issuance of a restricted-use charge card, as well as CBA. This does not apply to former account holders whose cards were cancelled due to non-payment or abuse.

I. Employees whose GTC has been canceled for five (5) or more years may request reinstatement and review by the Employer.

Section 37.04 - Travel Advances

A. Employees whose GTC has not been cancelled and who do not possess a GTC will be advanced travel funds in amounts consistent with applicable law, rule, regulation, and the terms of this Agreement for temporary duty travel and international travel. Such advances will be based on an estimate of reimbursable travel expenses.

B. In cases of emergency job-related travel, the Employer will make every reasonable attempt to accommodate travelers needing an advance.

C. Employees are required to reimburse the Employer for the full amount of the entire issued travel advance from the Financial Management System Software (FMSS), within thirty (30) calendar days of the date of their return from travel.

Section 37.05 - Privately-Owned Vehicles

A. It is the Employer's responsibility to select the mode of travel that is the most advantageous to the Government, considering cost and other factors. Pursuant to 5 U.S.C. 5733, travel must be accomplished by the most expeditious means of transportation practicable and commensurate with the nature and purpose of the employee's duties. In addition, the Employer must consider energy conservation, total cost to the Government (including costs of per diem, overtime, lost work time, and actual transportation costs), total distance traveled, number of points visited, and number of travelers.

B. If an employee is either unable or unwilling to use his or her POV for official Government travel, it is the Employer's responsibility to provide direction on the mode of transportation used.

C. If an alternative duty point has been deemed officially necessary, and the employee must travel between the alternate duty point and his/her permanent duty station or residence, the employee shall be reimbursed for the mileage expenses incurred.

D. An employee authorized to use his POV will not be required to carry a passenger(s).

Section 37.06 - Travel Vouchers

A. Employees shall normally submit travel vouchers within five (5) workdays after the completion of travel or every fifteen (15) workdays for employees on continuous travel status. The Employer shall normally complete internal processing of a travel voucher and shall forward the voucher to the designated processing office, within seven (7) workdays of the date the employee submits an accurate, completed voucher.

B. Employees will be reimbursed for all valid travel expenses, and all undisputed portions of their reimbursement claims, within thirty (30) workdays after their submissions to the Employer of a properly executed claim (voucher). The Employer will notify the employees, within seven (7) workdays after submission of travel claim, of any error that would prevent payment within thirty (30) calendar days after submission and will provide the reason(s) why the travel claim is not proper.

C. The Employer shall pay employees late fees for all reimbursements that are not paid within thirty (30) days of employees' submission of proper claims to designated Employer officials. Late payments shall be calculated in accordance with applicable law, rule, and regulation.

D. If a portion or the entire claim for expenses submitted by employees for reimbursement is denied, the undisputed amount shall be paid to employees. Employees shall receive a written notification from the Employer of all disallowed expenses at the time they are notified of payment of undisputed expenses or not more than seven (7) workdays later. This notice shall:

   1. State the reason(s) in detail as to why expenses were disallowed;

   2. Explain the process of employees challenging disallowances.

E. Any disputed disallowances of reimbursement claims may be resolved through the Grievance/Arbitration procedures of Article 42, Grievance Procedure and 43, Arbitration, of this Agreement.

F. The Employer shall act as intermediary between the traveler and the Government Travel Card financial institution when the Employer has delayed reimbursing the traveler for more than the thirty (30) calendar day period permitted by the FTR and Section 37.06 (C) even though the traveler submitted a timely and accurate voucher.

Section 37.07 - Travel for Employees with Special Needs

A. Consistent with its obligations under applicable laws, rules, regulations, and the provisions of this Agreement, the Employer will provide reasonable accommodations to an employee with a special need by authorizing additional travel expenses incurred when an additional travel expense is necessary to accommodate a special physical need which is either:

1. Clearly visible and discernible; or,
2. Substantiated in writing by a competent medical authority.

B. The Employer may pay for any expenses deemed necessary to accommodate an employee with a special need including, but not limited to, the following expenses:

1. Transportation and per diem expenses incurred by a family member or other attendant who must travel with the employee to make the trip possible;
2. Specialized transportation to, from, and/or at TDY duty locations;
3. Specialized services provided by a common carrier to accommodate employees' special needs;
4. Costs for handling baggage that are a direct result of employees' special needs;
5. Renting and/or transporting a wheelchair;
6. Other than coach-class accommodations and/or purchase of an additional seat when necessary to accommodate employees' special needs or size; or,
7. Services of an attendant, when necessary, to accommodate employees' special needs.

Section 37.08 - Training

The Employer shall provide training on the travel policy, procedures and system use to employees (Headquarters and Regions) on an annual basis. If the Employer offers in-person training to Headquarters staff, the Employer, to the extent practicable, will also offer in-person training to regional staff at least once a year. The Employer will investigate the use of various software tools to enable additional regional training opportunities. The training in the regions will be equal in quality to the training made available for employees working in Headquarters.

Section 37.09

Bargaining unit employees traveling on official business for any purpose will not be required to share a room.

Section 37.10

Employees may keep promotional benefits and materials received from a travel service provider for personal use, if the items are obtained under the same conditions as those offered to the general public, and at no additional cost to the Employer in accordance with applicable law, rule, regulation, and the provisions of this Agreement.

Section 37.11 - Long-Term Travel

A. If the travel is expected to require employees to be absent from their posts of duty for three (3) or more months, employees will be given at least thirty (30) days notification of their date of departure when practicable.

B. Except in unusual circumstances, employees will not be required to stay away from their duty stations two (2) consecutive weekends.

Section 37.12 - Returning during Non-Workdays

Employees who are assigned to training or duty away from their regular assigned posts of duty, and elect to return home during non-workdays, will be reimbursed for travel not to exceed the amount reimbursable for the per diem had they remained away from home.

Section 37.13 - Pre-decisional Involvement on Changes to Travel Policy

The Employer agrees to provide the Union pre-decisional involvement in making changes related to employee travel, including changes to its travel policy and contracts for travel agency services. The Employer also agrees that such changes shall require mid-term negotiation with the Union as provided in Article 8 or 9 of the Agreement. The Union agrees to reply within agreed timeframes for comments.

Section 37.14 - Combining Personal and Official Travel

When a traveler wishes to combine personal and official travel, the Approving Officer (Reviewer, Approver or Certifier) needs to review the situation against policy guidelines. The general rule is that a traveler on official business may take annual leave in conjunction with the official trip. In all such cases, the per diem that the traveler is entitled to should be reviewed to ensure that the traveler pays for expenses incurred on leave.

Travelers are entitled to per diem only during the time that they are on official business travel. If a traveler chooses an indirect route or an interrupted route as a matter of personal preference, then the Approving Officer should verify that the per diem allowed to the traveler does not exceed the amount allowed for uninterrupted travel by a direct route.

The traveler will only be issued a ticket for official Government travel and must exchange it for a personal ticket. When a ticket becomes a personal ticket, the traveler will be personally liable for the cost of the ticket and any changes or cancellations to the ticket. Per diem will begin at the start of official ED travel and will end when the personal travel begins.

Section 37.15 - Making Direct Reservations outside the TMC

A Federal traveler who chooses to stay at a lodging property that is in the FedRooms Program may make the reservations directly with the lodging property, instead of using the Travel Management Center (TMC).

Section 37.16 - Receipts

Employees must provide receipts for the following:

A. Any lodging expense, common carrier, rental car, official business calls (including internet access) and baggage fees. If you cannot furnish receipts in any instance as required by this subtitle, the failure to do so must be fully explained on the travel voucher;

B. Any other expense costing over $75. If you cannot furnish receipts in any instance as required by this subtitle, the failure to do so must be fully explained on the travel voucher; and,

Receipts must be retained as prescribed by the National Archives and Records Administration (NARA) under General Records Schedule 6, paragraph number 1.

ARTICLE 38: Directed Membership, Licensure and Certification

Section 38.01

The Employer agrees to use appropriated funds otherwise available to the agency to reimburse employees up to $200 per year for membership dues in a professional association, professional license fees (including but not limited to fees required to maintain a law license), and professional certification fees whenever such membership, license, or certification is necessary to maintain a credential required by the Employer. With regard to directed membership, licensure and certification, the Parties recognize that they are bound by decisions of appropriate authorities.

Section 38.02

The Employer also agrees to pay the expenses for attendance at professional meetings for employees who are required to attend meetings by the Employer.

Section 38.03

A. The Employer agrees to allow employees to use duty time to attend training or courses required by professional associations, professional licenses, and professional certifications directly related to the employee's official duty or whenever such membership, licensure, or certification is required by the Employer, provided that such training meets the requirements of sub-section (B). Examples of such training include, but are not limited to: continuing legal education (for attorneys who are licensed in states with mandatory CLE requirements), Federal Acquisition Certification for Contract Officer's Technical Representatives (position titles vary), Federal Acquisition Certification for Program & Project managers (position titles vary), and Grant License Holders (positions titles vary).

B. Mission – Related Training – is training that supports agency goals by improving organizational performance at an appropriate level in the agency, as determined by the head of the agency. This includes training that:

   a. Supports the agency's strategic plan and performance objectives;

   b. Improves an employee's current job performance;

   c. Allows for expansion or enhancement or employee's current job;

   d. Enables an employee to perform needed or potentially needed duties outside the current job at the same level of responsibility, or

   e. Meets organizational needs in response to human resource plans and reengineering, downsizing, restructuring, and/or program changes.

ARTICLE 39: Leave

Section 39.01 - General Leave Policy

The purpose of this Article is to prescribe the policies covering the different types of leave pertinent to all employees in accordance with applicable law and regulation. This Article shall be administered in accordance with Title 5, United States Code, Chapter 63; Title 5, Code of Federal Regulations, Part 630; and, this Agreement.

Supervisors and employees are responsible for being familiar with general leave provisions, policies, and procedures. Supervisors are also responsible for assisting employees in obtaining information or clarification of leave provisions that apply to such situations as voting, registration, jury duty, etc. Employees are responsible for requesting all leave from the appropriate leave approving officials in accordance with procedures and exercising responsibility and integrity in the use of leave.

Except for emergency leave as noted within this Article, employees shall schedule and obtain advance approval of the supervisor to use leave.

Section 39.02 - Definitions

A. Accrued Leave means leave earned by an employee during the current leave year that is unused at any given time in that year.

B. Accumulated Leave means unused leave remaining to the credit of an employee at the beginning of a leave year.

C. Family Member means the following relatives of the employee:

   1. Spouse and parents, thereof;

   2. Children, including adopted children and spouses, thereof;

   3. Parents;

   4. Brothers and sisters and spouses, thereof;

   5. Grandparents and grandchildren and spouses, thereof;

   6. Domestic partner and parents, thereof, including domestic partners of any individual in paragraphs 2 through 5 of this subsection and definition; and,

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

D. Leave year means the period beginning with the first day of the first complete pay period in a calendar year and ending with the day immediately before the first day of a first complete pay period in the following calendar year.

E. Healthcare certificate means a written statement signed by a registered practicing physician or other registered practitioner certifying to the incapacitation, examination, or treatment, or to the period of disability while the patient was receiving professional treatment.

F. Supervisors mean either the immediate supervisor or other designated leave-approving officials, acting or operating in the place of the immediate supervisor in his or her absence, as appropriate.

Section 39.03 - Annual leave

The Parties agree that the use of accrued annual leave is the employee's right.

A. The supervisor has the right to approve the time, at which leave may be taken, based on work requirements. In approving, disapproving, or cancelling leave, supervisors will give consideration to the desires of an employee and the needs of the organization.

B. Leave requests and approval or denial will be made in writing using an OPM Form 71 (Request for Leave or Approved Absence), a written memorandum, or an email. The supervisor shall respond to requests for annual leave within four (4) workdays after receipt of a properly submitted request, as in accordance with Section 39.03(d) of this Article. Employees may utilize annual leave in fifteen (15) minute increments. Annual leave may not be charged in increments of less than fifteen (15) minutes.

C. When requests are made to use leave on the following day, the employee will notify the supervisor verbally or by email. The supervisor will respond to the request by the close of the business day.

D. Annual Leave will be granted, subject to workload requirements, in a manner which permits each employee to take leave each year. Upon request, any denial of annual leave must be accompanied by a written statement of the reasons for the denial. If the workload requirements permit, employees may request, and supervisors may approve, periods of annual leave that exceed two (2) consecutive weeks. Supervisors and employees are encouraged to plan leave well in advance of summer and winter holiday periods, when many employees seek to use annual leave. It is the responsibility of supervisors to approve leave requests among employees and to maintain a sufficient workforce to accomplish the work of the unit.

E. Conflicting leave requests: Should an employee's annual leave request conflict with the request of another employee, every effort will be made to resolve the conflict on a voluntary basis. In the event this fails, conflicts will be resolved on the basis of seniority as determined by the Service Computation Date (SCD) for leave purposes. In case of a tie, the conflict will be resolved by a toss of a coin. An employee's approved annual leave will not be disapproved if an employee with an earlier SCD date subsequently requests leave for the same period.

F. If the need for annual leave cannot be otherwise anticipated, the employee or designated representative shall attempt to contact the immediate supervisor or designated official to request approval of unscheduled emergency leave by telephone within two (2) hours after the start of the employee's normal workday, or as soon as possible thereafter. The employee, or a designated representative, will leave a telephone number to be contacted by the supervisor to discuss the leave request or work assignments during the requested absence. In the event that either the supervisor or other designated official is not available, the employee or employee's designated representative may utilize voicemail or email to notify the Employer of the need for unscheduled leave. If the leave cannot be granted, the supervisor will notify the employee within two (2) hours of the employee's

request that it cannot be granted.

G. In cases where annual leave can be anticipated and scheduled, and if an employee's request for annual leave is denied, the supervisor shall state the reason(s) for the disapproval in writing, and initiate action to reschedule the annual leave request for a future date, at the same time the immediate leave request is denied.

H. The Employer may grant an employee's request for advanced annual leave in situations where the employee lacks sufficient annual leave to cover the period being requested, but will earn enough leave to cover the amount of the advance by the end of the calendar year; provided that workload requirements permit a granting of leave and that the Employer would have approved a request for Leave without Pay to cover the requested period of absence.

I. An employee who is a steward or other Union official will be granted annual leave or Leave without Pay ("LWOP") to attend internal Union functions which are not covered by Official Time as set forth in Article 14. Normally, an advanced notice of two (2) workdays will be required and will be approved subject to workload considerations.

Section 39.04 - Sick Leave

A. Employees will earn and accrue sick leave in accordance with applicable law and regulations. Employees may utilize sick leave in fifteen (15) minute increments.

B. Subject to limits imposed by law or Government-wide regulation the Employer will approve an employee's request for accrued sick leave when the employee:

1. Receives medical, dental, optical, or other healthcare examination or treatment, subject to Section 39.04(C), below;
2. Is incapacitated for the performance of his or her duties by physical or mental illness, injury, pregnancy, or childbirth;
3. Provides care for a family member who is incapacitated by a medical or mental condition or attends to a family member receiving medical, dental or optical examination or treatment; or provides care for a family member with a serious health condition;
4. Makes arrangements necessitated by the death of a family member or attends the funeral of a family member;
5. Would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by his or her presence on the job because of exposure to a communicable disease; or,
6. Must be absent from duty for purposes relating to his or her adoption of a child, including appointments with adoption agencies, social workers, and attorneys; court proceedings; required travel; and any other activities necessary to allow the adoption to proceed.

C. Non-emergency medical appointments: Employees shall schedule non-emergency medical, dental, optical, psychological, or other healthcare examination or treatment, including alcohol/ drug counseling appointments as soon in advance as practicable and should request sick leave in advance for such appointments. The supervisor shall make an

effort to accommodate an employee's advance request.

D. Unanticipated need for leave: If the need for leave cannot be anticipated, the employee shall attempt to contact the immediate supervisor or designated official to request approval of unscheduled or emergency sick leave by telephone within two (2) hours after the start of the employee's normal workday, or as soon as possible thereafter. The employee or a designated representative will leave a telephone number to be contacted by the supervisor to discuss the leave request or work assignments during the requested absence. In the event that neither the supervisor nor other designated official is available, the employee may leave a voice mail message or email to notify the supervisor of the need for unscheduled sick leave. Failure to report and give notice of anticipated need for sick leave within two (2) hours of the time established to report for duty will not, in itself, be a reason to deny sick leave. If the leave cannot be granted, the supervisor will notify the employee within two (2) hours of the employee's request that it cannot be granted. The employee will be given a reasonable amount of time to report to work. If an employee who reports to work late is required to use sick leave, the Employer may not require him or her to perform any work during the period that leave is charged.

E. Anticipated leave in excess of one (1) day: In addition to the above requirements, if an employee anticipates that an incapacitating illness will require absence in excess of one (1) workday, the employee may also request approval for the approximate length of time he/she will need to be on leave and estimate when he/ she will be able to return to duty. If the employee does not request and receive such approval, he/she is required to contact the supervisor and request leave on a daily basis. The employee will not be required to contact the supervisor and receive approval for use of sick leave on any day for which approval has been granted in advance. However, an employee must return to work or receive approval for another type of leave, when he/she is no longer incapacitated for work, even if advance approval for sick leave has been granted.

   Leave requests and approval or denial will be made using in writing using an OPM Form 71 (Request for Leave or Approved Absence), a written memorandum, or an email. Employees will normally not be required to furnish administratively acceptable evidence to substantiate a request for approval of sick leave for four (4) consecutive workdays or less. For absences in excess of four (4) workdays, a healthcare certificate or other supporting medical or healthcare documentation as determined appropriate under law, Office of Personnel Management (OPM) regulations, Department policy, and this Agreement is required.

F. Denial of request for sick leave: If an employee's request for sick leave is denied, the supervisor shall state the reason(s) for the disapproval in writing. Any employee whose request for sick leave is denied has the right to grieve such a decision in accordance with Article 42 of this Agreement.

G. When an employee is entitled to use sick leave, he or she may instead choose to use any other form of accrued leave.

Section 39.05 - Sick Leave Abuse

A. A supervisor shall presume sick leave abuse when an employee engages in six (6) or more occurrences within a six (6) month period in any category or any combination

thereof:

1. Taking sick leave before and or after a holiday,
2. Taking sick leave before and or after weekends or regular days off,
3. Taking sick leave after pay days,
4. Taking sick leave following overtime worked, or,
5. Engaging in excessive absenteeism-use of more sick leave than granted.

If a supervisor presumes that an employee has abused sick leave, the supervisor will provide the employee with written notification that will provide the option for a conference to discuss the problem. The Employer may require that the employee provide a healthcare certificate indicating that the employee is under the care of a physician, is incapacitated for duty, and the expected duration of such incapacitation. The employee shall not normally be required to provide specific healthcare information such as diagnosis and prognosis, and will provide this information only to Employer representatives who are trained in the requirements of health Insurance Portability and Accountability Act (HIPAA). The Employer will notify the Union as to the names of those officials and locations and will update the union within five days of the change of appointment of those officials. The Employer will ensure compliance with HIPAA regulations. The parties agree to enter into negotiations within 180 days from the signing of this agreement regarding the notice and requirements of HIPAA.

B. As a result of determinations made in accordance with Section 39.05(a\ above, a supervisor may restrict an employee's ability to use sick leave. The notification will be in writing and inform the employee that no request for sick leave, or other leave in lieu of sick leave, will be approved for a stated period (not to exceed six (6) months) unless supported by a healthcare certificate. Any such written notice will describe the frequency, patterns or circumstances, which led to its issuance, and will specify the termination date of the letter. On or before the stated period, the Employer will review the employee's situation and will notify the employee in writing if the leave restriction is no longer in effect. Restrictions may be renewed for up to an additional six (6) months, if there are reasonable grounds to believe that the abuse continues.

C. Except for employees on leave restriction, employees who are released from duty because of illness will not be required to furnish a healthcare certificate to substantiate sick leave for the day they were released from duty. Subsequent days of absence will be subject to the provisions of Section 39.04(e) above. Except for employees on leave restriction, employees suffering from a chronic healthcare condition which requires occasional absence from work, but does not necessarily require healthcare treatment, and who have previously furnished a healthcare certification of the chronic condition, shall not be required to furnish a healthcare certificate to substantiate sick leave for subsequent occurrences of the same condition, unless there are reasonable Grounds for suspecting leave abuse, in accordance with Section 39.05(a) above. However, the Employer may periodically require further healthcare certification to substantiate that the condition still exists.

Section 39.06 - Advanced Sick and Annual Leave

A. The appropriate leave approving official may grant advanced annual or sick leave in

accordance with applicable law, OPM regulations, and Department policy. In making the decision on advanced sick leave, the supervisor may not consider any accrued annual leave of one hundred and twenty (120) hours or less. However, accrued annual leave in excess of one hundred and twenty (120) hours may be considered; along with other appropriate factors (e.g., the nature of the evidence, healthcare documentation, and the amount of leave requested). If the advanced leave request is denied, the supervisor will state the reason in writing.

B. Employees who are incapacitated for the performance of duties because of serious disability or ailment may request advance sick leave not to exceed thirty (30) workdays (240 hours) to a full-time employee, and a pro-rata amount of the same to a part-time employee. A maximum of thirty (30) days of sick leave may be advanced to an employee when required by the exigencies of the situation for a serious disability or ailment of the employee or a family member, or for purposes relating to the adoption of a child.

C. A full-time employee may be granted an initial forty (40) hours of sick leave for family care purposes (either for general family care or for bereavement purposes, or to care for a family member with a serious health condition). These forty (40) hours (or a proportionate amount for employees on part-time schedules or uncommon tours of duty) may be advanced. An employee may be granted an additional sixty-four (64) hours of sick leave (for a total of one hundred and four (104) hours) for general family care or for bereavement purposes provided that he or she maintains at least eighty (80) hours of accrued sick leave in his or her account. Sick leave may not be advanced to establish the eighty (80) hours of accrued sick leave.

D. Requests for advanced sick leave will normally be granted in accordance with governing regulations when all of the following conditions are met:

1. The employee is eligible to earn sick leave;
2. The employee's request does not exceed 240 hours, or for temporary employees, only the amount to be earned during the period of temporary employment if appropriate;
3. There is no reason to believe the employee will not return to work after having used the leave;
4. The employee has provided acceptable medical or healthcare documentation of the need for advanced sick leave; and,
5. The employee is not subject to leave restriction.

Section 39.07 - Preventive Health Screenings

Each calendar year employees may be granted up to four (4) hours without charge to leave for participation in preventive health screening activities outside the work site.

Preventive health screenings are offered to otherwise healthy individuals to help prevent disease, identify the risk for disease, or detect disease in its early, most treatable stages. Services include immunizations, screenings, exams and health behavior counseling and interventions. Blood pressure screening, cholesterol screening, pap smears, and mammography are some examples of effective screening measures. Health history questionnaires, health risk appraisals, and cardiac risk profiles are other kinds of screening tools used to identify a person's risk for disease. Leave requests and approval or denial will be made in writing using an OPM Form 71 (Request for

Leave or Approved Absence), a written memorandum, or an email.

Section 39.08 - Privacy

The Employer will treat as confidential any healthcare information provided by an employee to the supervisor in support of a request for sick leave. The supervisor will safeguard this information and not disclose it to a secretarial or non-Management administrative staff. The Employer may disclose such information subject to the Privacy Act of 1974 as amended 5 U.S.C. 552(a) and 5 CFR 293 Subpart E.

Section 39.09 - Leave without Pay

A. Leave without Pay (LWOP) is a temporary non-pay status and absence from duty for a specific period of time, which may be granted to an employee in accordance with applicable laws, rules, and regulations. LWOP may be requested in the same manner and for the same purposes as annual leave, sick leave and for employees who have applied for a disability retirement when a removal action is involved. Requests for LWOP will be given serious consideration and will not be denied arbitrarily. Denials of requests for LWOP will be provided to the employee in writing.

B. An employee may be granted LWOP to engage in Union activities on the national, district, or local level, to work in programs sponsored by the Union or the AFL-CIO, upon written request by the appropriate Union office. Such requests will be referred to the appropriate Management official for approval. Such employees shall continue to accrue benefits in accordance with applicable OPM regulations. The amount of LWOP is based upon the type and duration of activity in which the employee is engaged, but is also subject to the work requirements and needs of the organization.

C. Approval of LWOP is mandatory for:

    1. Military training or active duty for members of the Reserves or National Guard, who are not entitled to, or have exhausted their military leave (38 U.S.C. 4316(d));

    2. Medical treatment for disabled veterans; and

    3. Employees exercising LWOP rights under the Family and Medical Leave Act.

D. The Employer, to the extent it has authority, will restore the employee to the position which the employee held prior to the leave or to a similar position at the same grade and pay within the commuting area upon return to duty after a period of LWOP.

Section 39.10 - Absence without Leave

Any absence from duty that is neither requested, granted nor approved according to the provisions of the law, applicable regulation, this Collective Bargaining Agreement, and/or Department policy must be considered by the Employer to constitute an Absence without Leave (AWOL). When the Employer determines that it will charge an employee(s) AWOL, it will notify the employee in writing of the intention to do so within twenty-four (24) hours of the decision, no later than the end of the pay period for which the AWOL is recorded. Such notice will include the reason for charging AWOL and include the date and time period in question. The notice will be delivered to the employee in person if the employee is present in the workplace. If the employee is not present and/or is not expected to be present within a reasonable period of time, the notice will be communicated by email and mailed to the employee's last

known address. Upon notification of any charge to AWOL, an employee may request that some other type of leave be substantiated for the AWOL.

Section 39.11 - Leave for Family Purposes

A. Employees are entitled to a total of twelve (12) administrative workweeks of unpaid leave under the Family Medical Leave Act (hereinafter, "FMLA") during any twelve (12)-month period for

   1. birth of a son or daughter and care of the newborn;
   2. the placement of a son or daughter with the employee for adoption or foster care;
   3. the care of a spouse, son or daughter or parent with a serious health condition; or,
   4. a serious health condition of the employee that makes the employee unable to perform the duties of his or her position.

B. Leave under the FMLA will be provided to new parents, including grants of annual leave, sick leave, and Leave without Pay to the maximum extent appropriate under law, Office of Personnel Management (OPM) regulations, Department policy, and this Agreement.

C. Employees must invoke their right to take leave under the FMLA, and must usually give their supervisors thirty (30) days advance notice.

Section 39.12 - Discrepancies in Leave Reporting

If there is a discrepancy between an employee's properly completed Alternative Work Schedule Certification Form and the time and attendance report completed by the timekeeper, the employee shall be given an opportunity to correct or reconcile the discrepancy before submission of the report. If there is no written leave request, no leave charge of any kind shall be made on an employee's record without all reasonable efforts at prior notification to the employee of the charge and the reasons for it. Employees shall be given the opportunity to review and/or copy their time and attendance records as soon as possible after their request.

Section 39.13 - Workplace Closings/Inclement Weather

A. In the event of pending or actual occurrences that may mandate the closing of a workplace or other facility which houses employees remotely or for Telework and other business purposes, the Employer will base its decision on the immediacy of factors or conditions impacting life-safety, guidance from the Office of Personnel Management, the General Services Administration (GSA) (or an owner of a property leased by GSA for the Employer), a Federal Executive Board in the area of the facility, or other appropriate authorities to which the Employer adheres. The Employer will take appropriate emergency notification actions to advice employees of its decisions immediately, or as soon as is practicable.

B. If emergency conditions prevent an employee from timely arrival at work, even though the workplace is not closed, the employee will be subject to subsection (c) below, granted a reasonable amount of time to arrive at work, or may be eligible to use unscheduled leave if approved and announced by the Office of Personnel Management or the Employer, and related to the noted emergency conditions. Employees are obligated to contact their supervisors as early as practicable to explain the circumstances and provide an estimated time of arrival at work.

C. Determining whether to grant leave and the duration of the leave, the Employer shall consider the following factors, and shall uniformly apply them to all employees within the area affected by the emergency:
    1. The distance between the employee's residence and place of work;
    2. The mode of transportation available;
    3. The efforts made by the employee to get to work;
    4. Any physical disability of the employee; and/or,
    5. Any local travel restrictions.

D. If the President, the Office of Personnel Management, or other appropriate authority declares a natural disaster area, employees who are faced with a personal emergency caused by that natural disaster should take due care to first assure their safety, and then adhere to official announcements and guidance of the Federal Government or the Employer, with regard to how best to respond to the emergency at hand.

E. An employee on pre-approved leave for the entire workday or an employee who has requested unscheduled leave when an early dismissal policy is announced should be charged annual or sick leave for the entire workday. An employee scheduled to take pre-approved leave after his or her early dismissal time (e.g., for a doctor's appointment) may not be charged leave for that period. Instead, the employee should be granted excused absence for the remainder of the workday following his or her early dismissal time.

Section 39.14 - Brief Absences/Tardiness

The immediate supervisor may excuse infrequent, brief periods of absence or tardiness due to circumstances beyond the employee's control; e.g., adverse weather conditions, traffic and transportation issues. The Employer will fairly and equitably exercise discretion, on a case-by-case basis, when deciding whether to extend this provision to employees who present frequent requests or otherwise demonstrate patterns of abuse of this flexibility.

Section 39.15 - Leave for Bone Marrow and Organ Donation

A. Employees may use up to seven (7) days of paid administrative leave each year, in addition to annual and sick leave, to serve as a bone marrow donor.

B. Employees may use up to thirty (30) days of paid administrative leave each year, in addition to annual and sick leave, to serve as an organ donor.

Section 39.16 - Time off for Religious Observance

Time off for religious observance will be administered in accordance with Subpart J, 5 CFR 550.1001. To the extent that modifications in work schedules do not interfere with the efficient accomplishment of the Department's mission, the Department will afford the employee the opportunity to work compensatory time and will grant compensatory time off to an employee requesting such time off for religious observances. The employee may work such compensatory time before or after the grant of compensatory time off. Compensatory time will be credited to an employee on an hour to hour basis or authorized fractions thereof (fifteen (15) minutes).

Section 39.17 - Funeral Leave

Upon request, an employee will be granted up to three (3) work days of leave without loss of, or reduction in pay, to make arrangements for, or attend the funeral or memorial service of a family member who died as a result of a wound, disease, or injury incurred while serving as a member of the armed forces in a combat zone. The leave need not be consecutive, but the employee shall provide the supervisor justification for the requested non-consecutive days.

Section 39.18 - Blood Donations

An employee may be granted up to four (4) hours administrative leave for purposes of travel, testing, and recuperation associated with donating blood. Additional administrative leave for this purpose may be approved in unusual circumstances, if needed.

Section 39.19 - Court Leave

A. In accordance with law and regulations, an employee with a regular scheduled tour of duty is entitled to administrative leave/court leave for:

   1. Jury duty (including time spent waiting to be called or selected, and related travel time) when required by any Federal, District of Columbia, State or local court, in any State, territory, or possession of the United States; or,

   2. Serving as a witness (including time spent waiting to testify, and related travel time) when summoned to appear in a judicial proceeding in which the Federal, State or local Government is a Party.

B. If an employee on court leave is excused from court with sufficient time to enable that employee to return to duty for at least four (4) hours of the scheduled workday, including travel time, the employee shall return to duty unless granted appropriate leave by the Employer. Employees will request and receive approval prior to going on leave to the extent practicable, using procedures set forth above.

C. Employees may keep any expense money received for mileage, parking, or required overnight stay, to the extent consistent with law.

D. Court leave is not authorized when the employee appears in any other capacity: for example, as a Party in the proceeding except as provided above. Appearance in an official capacity is official time rather than court leave.

In all cases, an OPM Form 71, or other written request for leave, must be completed and approved by the employee and supervisor prior to the leave period or immediately upon the employee’s return.

Section 39.20 - Voting and Voter Registration

An employee will not be denied the opportunity to vote. As a general rule, when the voting polls are not open at least three (3) hours either before or after an employee's regular hours of work, employees may be granted an amount of excused leave to vote which will permit the employee to report to work three (3) hours after the polls open or leave work three (3) hours before the polls close, whichever requires the lesser amount of time off. In those instances of unusual circumstances, an employee may be excused from duty for up to one (1) duty day to allow the employee to vote. An employee may be excused to register to vote on the same basis as for voting.

Section 39.21 Military Leave

A. As provided in 5 U.S.C. 6323(a), eligible employees may earn fifteen (15) calendar days of military leave per fiscal year for active duty, active duty training, and inactive duty training. An employee can carry over a maximum of fifteen (15) days into the next fiscal year.

B. Military leave shall be granted without any loss of pay. Military leave shall be credited to a full time employee on the basis of an eight (8) hour workday. The minimum charge to leave is one (1) hour as required by law. An employee may be charged military leave only for hours that the employee would otherwise have worked and received pay. Employees who request military leave for inactive duty training (which is generally two (2), four (4), or six (6) hours in length) will be charged only the amount of military leave necessary to cover the period of training and necessary travel. Members of the Reserves and National Guard will not be charged military leave for weekends and holidays that occur within the period of military service.

C. Emergency Military Leave, as authorized by 5 U.S.C. 6323(b), provides twenty-two (22) workdays per calendar year for emergency military duty for employees who perform military duties in support of civil authorities in the protection of life and property, when ordered by the President or a State Governor.

D. Members of the National Guard of the District of Columbia may be authorized unlimited military leave under 5 U.S.C. 6323(c), for certain types of duty ordered or authorized under Title 39 of the District of Columbia Code.

E. Reserve and National Guard Technicians may be authorized up to forty-four (44) workdays of military leave for duties overseas under certain conditions, as provided by 5 U.S.C. 6323(d).

F. Employees requesting approval of military leave as set forth herein shall provide a copy of the orders directing the employee to active duty and/or a copy of the certificate on completion of such duty.

G. The Employer will comply with the provisions of the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. § 4301, et al, which applies to persons who perform duty, voluntarily or involuntarily, in the uniformed services.

H. Service members returning from a period of service in the uniformed services must be reemployed by the "pre-service" Employer if they meet all five (5) eligibility criteria as set forth in USERRA:

   1. The person must have held a civilian job;
   2. The person must have given notice to the Employer that he or she was leaving the job for service in the uniformed services unless giving notice is precluded by military necessity or otherwise impossible or unreasonable;
   3. The period of service must not have exceeded five (5) years;
   4. The person must not have been released from service under dishonorable or other punitive conditions; and,
   5. The person must have reported back to the civilian job in a timely manner or have submitted a timely application for reemployment.

Section 39.22 Other Circumstances Justifying Administrative Leave

The Parties agree that the above reasons for granting administrative leave are not all inclusive and that there may be other situations supporting a request for the granting of such leave; however, in all cases, administrative leave will be granted on a case-by-case basis. Such requests shall be considered based on the reasons presented at the time; the Employer may require documentation as appropriate to support the reasons for and/or the duration of such administrative leave requests.

ARTICLE 40: Alternative Work Schedules

Section 40.01 - General Principles

A. The Employer and the Union agree that the use of alternative work schedules (AWS) improves productivity and morale and provides a greater service to the public. Therefore, except as provided in Section 40.03 all alternative work schedules in this Agreement will be made generally available to all employees in the bargaining unit-consistent with work requirements. They shall be consistently administered and implemented according to the terms and conditions of this Agreement, Department policy, and applicable law.

B. Working under a Telework agreement under Article 44, Telework will not in and of itself disqualify an employee from working an alternative work schedule.

Section 40.02

The Employer and the Union emphasize that the flexibility provided by this Article will lead to increased needs for employees and supervisors to plan for the accomplishment of work, use of leave, and other aspects of the work relationship affected by these work schedules, and to communicate with each other regularly concerning these matters.

Section 40.03

The AWS system contains six (6) options: four (4) flexible schedules (flexitour with credit hours, gliding schedules with credit hours, variable day schedules with credit hours, and variable week schedules) and two (2) compressed schedules (a 5-4-9 compressed schedule and a 4-10 compressed schedule). The Parties recognize that not all options may be appropriate for the work situations of all organizations. However, the flexitour with credit hours option will be available for all bargaining unit employees.

A. If the Employer determines that a group of positions and /or group of employees in certain organizational units are not eligible for some or all of the alternative work schedule options on a permanent basis, the Employer will provide the Union with a list of those groups of positions, groups of employees, or organizational units and indicate which schedules are inappropriate, along with the reasons for the determination, at least thirty (30) days prior to the effective date of the change. The supervisor's decision shall be subject to the negotiated grievance procedures contained in Article 42 of this Agreement. This Section applies to the Employer determination on groups, not individual positions. Procedures for individual positions are found in Section 40.06 of this Article.

B. At the Union's request, the Parties will negotiate over the impact and implementation issues on the Employer's exclusions, if any, under the provisions of Articles 8 (Labor Management Negotiating Procedures) and (Mid-Term Negotiations at the Local Level). If the Parties are unable to agree, the impasse will be resolved under the provisions of law. Pending a final decision on an impasse, the employee(s) or position(s) will remain eligible for the AWS option in question.

Section 40.04

For purposes of this Article, the following definitions apply:

A. Work hours - as used in this Article, synonymous with "duty hours"; that is, the time when an employee is expected to be on duty or on approved leave.

B. Workday - the period of time, including a one-half hour (30 minutes) lunch break, during which an employee is normally scheduled to be at work. Workday requirements for each type of alternative work schedule may be found in Sections 40.07 and 40.08.

C. Work schedule - a schedule of eighty (80) hours, by pay period, which, except for employees on gliding schedules, shows an employee's regular reporting and departure times for each day in that pay period. A schedule may not include the earning or use of credit hours.

D. Core period - the period from 9:30 a.m. to 3:00 p.m. each workday, Monday through Friday, during which employees who are not on leave, on lunch break, or using credit hours, are on duty.

E. Overtime - excluding credit hours or hours in a compressed or variable schedule, all hours which are actually worked in excess of eight (8) work hours in a day or forty (40) work hours in a week, and which are officially ordered and approved in advance by an authorized official of the Employer.

F. Temporary change - temporary change(s) or adjustment(s) in the established regular work schedule of an employee which may be requested by either the supervisor or employee.

G. Work unit - the immediate work group under the supervision of a first-line supervisor.

H. Workweek - the days, Monday through Friday, on which an employee is scheduled to work on his/her established work schedule.

Section 40.05

Employees are responsible for:

A. Submitting proposed work schedules in accordance with Employer requirements and the advance notice requirements and deadlines established in this Article;

B. Maintaining accurate personal time and attendance records and correctly recording the information as required in this Article each day;

C. Attending any required training related to the implementation and administration of the AWS program;

D. Adhering to their approved arrival and departure times as provided in this Article;

E. Requesting approval from their supervisors prior to working or using credit hours;

F. In emergency or unavoidable situations, credit hours may be approved for use as soon as possible after they have been worked; and,

G. Obtaining supervisor approval for all absences (except lunch).

Section 40.06 - Establishing the Schedule

A. Schedule renewal. At any time after the effective date of this Agreement, each employee will submit to his/her first-line supervisor a first and second choice proposed work schedule in writing for approval. The supervisor will review the proposed schedules and notify the employees of approval/disapproval within two (2) weeks after receiving all proposed work schedules from the employees in the work unit. Employees will remain on schedules established under the prior Collective Bargaining Agreement during this period of transition. If an employee and supervisor are unable to agree on a schedule

within sixty (60) calendar days of the effective date of this Agreement, the employee shall be placed on a flexitour with credit hours schedule pending any resolution of the matter sought by the employee under Article 42 of this Agreement. After sixty (60) days of the effective date of this Agreement, any employee who has not requested a schedule under this Agreement shall be placed on an 8:00 a.m. - 4:30 p.m. schedule, or whatever standard hours are in the employee's organization.

B. Each new employee shall propose a schedule as soon as practicable, and the supervisor shall normally respond within five (5) workdays. Until the new schedule is approved, the employee shall be on an 8:00 a.m. - 4:30 p.m. schedule, or another schedule mutually agreed to by the employee and the supervisor.

C. In reviewing scheduling requests from employees, the supervisor will consider adverse impact to the Department such as:

1. Reduction in productivity, i.e. workload impact such as within the Department program office.
2. Ability to efficiently and effectively accomplish the functions within the Department program office.
3. Diminishment of services provided to the public.
4. Increase in costs of Department operation.

D. The supervisor will provide the employee with a signed copy of the approved request, which becomes the employee's established work schedule.

Section 40.07 - Flexible Schedules

A. Flexitour with credit hours will allow employees to select from a range of starting times, and to earn and use credit hours.

1. A biweekly work schedule under this option shall provide for workdays, Monday through Friday, each week. Each workday shall be scheduled for eight and one- half hours, including lunch break, beginning as early as 6:30 a.m. or as late as 9:30 a.m. Each work schedule must indicate reporting and departure times for each workday. Reporting times shall be established in quarter-hour increments (e.g., 8:00, 8:15, 8:30).
2. An employee on a flexible schedule may report for work up to fifteen (15) minutes before or fifteen (15) minutes after his/her scheduled reporting time, but in no .event earlier than 6:30 a.m. or later than 9:30 a.m. The employee's scheduled departure time must be adjusted accordingly. Time not made up before the employee's departure that day may be charged either to the employee's accrued leave or AWOL as appropriate under applicable leave policies, including Article 39 of this agreement.

   In establishing a work schedule, a supervisor may exercise his/her judgment and provide prior approval for an employee to adjust his/her reporting and departure time an additional fifteen (15) minutes in order to provide for occasional situations in which unanticipated circumstances would otherwise require a formal change in reporting time on a particular day. In the event it is necessary for the supervisor to alter the prior approval for work-related reasons, the employee must be notified as soon as practicable.
3. Employees and supervisors should also refer to Sections 40.03 and 40.09 for

provisions applicable to flexitour schedules.

B. Gliding schedules with credit hours will allow employees to vary their starting time on a daily basis, and to earn and use credit hours.

1. An employee for whom a gliding schedule has been approved may vary his/her starting time on a daily basis within a band from 7:30 a.m. to 9:30 a.m. A biweekly work schedule under this option shall provide for workdays, Monday through Friday, each week. Each workday shall be scheduled for eight and one-half (8.5) hours, including lunch break, and the employee may depart eight and one-half (8.5) hours after arrival. Because of the nature of this option, a work schedule will not indicate specific reporting and departure times for each workday; however, employees are required to report within the 7:30 a.m. to 9:30 a.m. flexible band each day.

2. Employees on gliding schedules shall inform their supervisor of any anticipated change in their normal arrival time (i.e., to the extent known in advance).

3. Employees and supervisors should also refer to Sections 40.03 and 40.09 for provisions applicable to gliding schedules.

C. Variable Day Schedule.

Employees working the variable day schedule have a basic work requirement of forty (40) hours in each week of the biweekly pay period. They are required to work during the core period, established in Section 40.04 of this Article, each workday. They may choose a different starting time and quitting time for each workday, starting as early as 6:30 a.m. and leaving as late as 6:30 p.m., and they may vary the number of hours worked each workday, working between six (6) and eleven (11) hours on any given workday, exclusive of the meal period provided in Section 40.04 of this Article. Employees may earn credit hours on variable workday and variable week schedules. Employees must submit schedules on a biweekly basis for variable day schedule.

An example of a Variable Day Schedule is:

Day of Pay Period	Scheduled Hours	Hours
First Monday	8:00 a.m. - 4:30 p.m.	8.00
First Tuesday	8:00 a.m. - 6:30 p.m.	10.00
First Wednesday	8:15 a.m. - 5:45 p.m.	9.00
First Thursday	8:30 a.m. - 3:30 p.m.	6.50
First Friday	8:30 a.m. - 3:30 p.m.	6.50
	Total Hours First Week	**40.00**
Second Monday	8:30 a.m. - 5:00 p.m.	8.00
Second Tuesday	9:30 a.m. - 4:00 p.m.	6.00
Second Wednesday	7:00 a.m. - 5:30 p.m.	10.00
Second Thursday	7:15 a.m. - 4:00 p.m.	8.25
Second Friday	8:00 a.m. - 4:15 p.m.	7.75
	Total Hours Second Week	**40.00**
	Grand Total for Pay Period	**80.00**

D. Variable Week Schedule

Employees working the Variable Week Schedule have a basic work requirement of eighty (80) hours in each biweekly pay period. They are required to work during the core periods, established in Section 40.04 of this Article, each workday. They may choose a different starting time and quitting time for each workday, starting as early as 6:30 a.m. and leaving as late as 6:30 p.m. and they may vary the number of hours worked each workday, and/or workweek, working between six (6) and eleven and one half (12) hours on any given workday, and between forty five- (45) and sixty (60) hours each workweek, exclusive of the meal period provided in Section 40.04 of this Article. An example of a Variable Week Schedule is:

Day of Pay Period	Scheduled Hours	Hours
First Monday	8:00 a.m. - 3:30 p.m.	7.00
First Tuesday	6:30 a.m. - 6:30 p.m.	11.50
First Wednesday	7:00 a.m. – 6:30 p.m.	11.00
First Thursday	8:15 a.m. - 3:30 p.m.	6.75
First Friday	8:00 a.m. - 4:30 p.m.	8.00
	Total Hours First Week	**44.25**
Second Monday	8:00 a.m. - 4:00 p.m.	7.50
Second Tuesday	8:30 a.m. - 5:00 p.m.	8.00
Second Wednesday	8:30 a.m. - 5:00 p.m.	8.00
Second Thursday	9:30 a.m. - 4:15 p.m.	6.25
Second Friday	8:30 a.m. – 3:00 p.m.	6.00
	Total Hours Second Week	**35.75**
	Grand Total for Pay Period	**80.00**

E. An employee is not entitled to premium pay if he/she voluntarily works a flexible work schedule that includes work between 6:30 a.m. - 6:30 p.m. (e.g., 9:30 a.m. - 6:30 p.m.) per 5 U.S.C. 6123(c).

F. Credit hours.

1. Supervisory approval is required before an employee can earn or use credit hours. A request to earn or use credit hours may not be denied arbitrarily by the supervisor. When the supervisor is unavailable, and there is an emergency or to meet urgent deadlines and/or timeframes for work completion, credit hours may be approved as soon as possible after they have been worked. A request to use earned credit hours must be made through an OPM Form 71 (Request for Leave or Approved Absence), a written memorandum or an email message.

2. An employee may lengthen or shorten the scheduled eight and one-half (8.5) hour workday (or the regularly scheduled workday for part-time employees) by earning or using credit hours. The term credit hours, as used in this Article, means any hours in excess of the employee's regularly scheduled workday (excluding lunch break) which the employee elects, and is approved to work, so as to reduce the length of a workday or workweek. Credit hours may be used only after they have been earned.

3. Credit hours must be earned on a scheduled workday (Monday-Friday, excluding holidays), and may be earned between 6:30 a.m. and 8:00 p.m.
4. Credit hours are earned and used in fifteen (15) minute increments. No more than two (2) credit hours may be earned on any workday. Credit hours may not be included in an employee's biweekly work schedule, but supervisors and employees are encouraged to schedule both the earning and use of credit hours as far in advance as is feasible. An employee may not be required to work (earn) a credit hour, even if previously scheduled. The working of credit hours is completely voluntary. However, approval of working credit hours is contingent on work being available for the employee, normally regular duties of the employee's position.
5. Up to twenty-four (24) credit hours may be accumulated by a full time employee for carry over from one (1) biweekly pay period to succeeding biweekly pay periods. Supervisors and employees are jointly responsible for planning the earning and use of credit hours so as not to exceed this carry-over limit. Any credit hours accumulated in excess of these limits at the end of any pay period will be forfeited. Part-time employees may carry over up to one-quarter (1/4) of the hours of their basic work schedule.
6. Credit hours are not overtime hours; therefore employees shall not be entitled to additional pay or compensatory time for any credit hours worked. Overtime work will be compensated as provided for by applicable laws, regulations, and Department policy. Because credit hours are voluntary, if working credit hours is approved, and overtime is subsequently ordered and approved prior to working the credit hours, the employee will be offered the opportunity to elect to work the overtime.
7. Subject to law, regulation, Department policy and the terms and conditions of this Agreement, credit hours either alone or in combination with annual, sick or compensatory leave, or Leave without Pay, may be used for a full day absence. An employee may not earn credit hours while in a non-duty status (e.g., on leave, on holidays, etc.)
8. For employees transferring or separating from the Department, supervisors and employees should plan work schedules so that employees will use their accumulated credit hour balances before they leave.
9. Credit hours may not be earned or used on compressed schedules.

Section 40.08 - Compressed Schedules

A. Two types of compressed schedules may be requested and approved: a "5-4- 9" schedule in which an employee works eight (8) 9-hour days and one (1) 8-hour day within a ten (10) day pay period; and a "4-10" in which an employee works four (4) 10 hour days each week in a pay period. These are both fixed schedules, with set reporting times for each day, and no daily flexibility in arrival and departure times. Credit hours are not an option under these schedules.

B. A biweekly work schedule under either of these options shall provide for the appropriate number of workdays between Monday and Friday of each week. The schedule must indicate reporting and departure times for each workday. Reporting times will be established in quarter-hour increments (e.g., 8:00, 8:15, 8:30), with arrival no earlier than 6:30 a.m. Because night pay requirements apply to compressed schedules, and not to

flexible schedules, departure may not be later than 6:00 p.m. Each workday must include a one-half (1/2) hour lunch break (e.g., a workday for an employee on a 4-10 schedule shall be of 10.5 hours duration).

C. A full day's leave or other absence shall be charged for the number of hours scheduled for work that day.

D. Holidays under Compressed Schedules.

1. A full-time employee who is relieved or prevented from working on a holiday (or an "in lieu of' holiday) is entitled to pay for the number of hours he/she would have been scheduled to work that day.

2. Federal Holidays falling on Monday-Friday, non-workdays.

a) If a holiday falls on a non-workday of the employee, the employee's preceding workday will be designated “in lieu of” holiday. (See 5 U.S.C. 6103 (b).) If the holiday falls on the Sunday non-workday of an employee, the subsequent workday will be the employee's designated “in lieu of” holiday.

b) Exceptions. Scheduling of “in lieu of” holidays is subject to exceptions provided by law and Government-wide regulations.

c) Employees and supervisors should also refer to Sections 40.03 and 40.09 for provisions applicable to compressed schedules.

Section 40.09 - General Requirements for All Types of Schedules

A. All full-time work schedules for each pay period must total eighty (80) work hours.

Employees working part-time schedules will establish similar schedules within the limits of their part-time appointments.

B. Core times for all schedules shall be from 9:30 a.m. to 3:00 p.m. Employees and their supervisors are to establish schedules to provide work hours during the core period. An employee's approved work schedule must be compatible with his /her duties and provide for the employee to be present during all core hours.

C. Flexible and compressed schedules will show arrival and departure times which include a non-paid one-half (1/2) hour lunch break if the employee works at least six (6) hours that day. For example, a schedule for an employee on flexible schedules will show scheduled arrival and departure times eight and one-half (8.5) hours apart. Employees on gliding schedules will leave work eight and one-half (8.5) hours after arrival, unless they are working credit hours, or overtime, etc.

D. Breaks, including lunch breaks, may not be substituted for regularly scheduled work periods in order to modify arrival or departure time.

E. Deviation from the established work schedule should occur on an irregular or occasional basis. If deviation occurs frequently, a new schedule should be established.

Section 40.10 - Changing Individual Employee Schedules

Once established under this Article, an employee's work schedule will remain in effect unless it is changed in accordance with procedures set forth in this Section.

A. Supervisors and employees are asked to give each other as much notice as possible regarding changes in schedules;

B. Changes by mutual agreement.

1. "Temporary" changes. An employee or his/her supervisor may, by mutual agreement, make a temporary change in an employee's work schedule within a specific pay period without modification of the established work schedule provided that the requirement for eighty (80) work hours per pay period is met. Requests for temporary changes must normally be submitted at least one (1) day in advance. Temporary changes may be used to give an employee more than one (1) type of work schedule within a single pay period as long as the employee works a total of eighty (80) hours during the pay period.

2. "Permanent" changes. If circumstances warrant, schedules may be changed at any time by mutual agreement between the employee and the supervisor.

3. C. Employee-initiated changes. Employees may periodically request changes to their individual schedules. The supervisor shall consider the request in accordance with Section 40.06(c) .. A schedule approved by the supervisor will become effective on the first day of the next pay period or on the first day of a later pay period as specified in the employee's request and approved by the supervisor. Requests will be submitted by employees in writing no later than the Tuesday before the beginning of the pay period in which the change is proposed to become effective. The supervisor must notify the employee of his/her decision no later than the Friday before the beginning of the pay period in which the change is proposed to become effective. Employees that have AWS agreements based on an approved reasonable accommodation, the AWS agreement for reasonable accommodation will not be affected by temporary changes.

C. D. Supervisor-initiated changes.

1. Supervisors may have to temporarily change employees' compressed schedules or require change to another type of schedule to accommodate training, travel, pressing work needs, etc. Employees on flexible schedules may have to make comparable, temporary changes in their actual reporting time(s).

   The duration of a specific temporary change would be only as long as required by the situation, normally not to exceed two (2) pay periods. This temporary change procedure may not be used to avoid going through permanent change procedures when those are called for. Before requiring a change of this type, the supervisor, as soon as the need is known, shall communicate with the employee(s) to explain the change and the need for it. The employee and supervisor are required to explore alternatives to change, if workable.

2. If the Employer determines that a position or employee is not eligible for a particular alternative work schedule option (for other than a temporary period of time), the Employer will provide the employee with the reasons for the determination. The Employer must provide thirty (30) days' notice of the intent to remove a position(s) or employee(s) from eligibility for a particular alternative work schedule. Exclusion from participation will be done only in accordance with the applicable legislation, the CBA and ED policy. The supervisor's decision shall be subject to the negotiated grievance procedures contained in Article 42 of this Agreement.

   If a supervisor concludes that any of the available schedule options as defined in 40.06(C) are not appropriate for the work situation of his/her work unit (for other

than a temporary period of time), the supervisor must provide written notice and explanation to the employee. The supervisor's decision shall be subject to the negotiated grievance procedures contained in Article 42 of this Agreement.

A supervisor may "permanently" change an employee's established work schedule by providing the employee with written notice no less than thirty (30) days before the effective date of the change.

In order for a supervisor to make a "permanent" change during the term of a schedule, the reason must identify adverse impact to the Department such as:

a) Reduction in productivity,

b) Diminished services furnished to the public, or,

c) Increase costs in Department operations.

3. If an employee is promoted, reassigned or detailed from one position or work unit to another, he/she must apply for a new schedule. If the employee move is a directed reassignment, not at the employee's choice, the supervisor shall allow a reasonable time for transition if a new schedule is required.

Section 40.11

In seeking mutual agreement on schedules under this Article, supervisors and employees are jointly responsible for making good-faith efforts to reach agreement, including the exploration of alternative schedules.

Section 40.12 - Certifying Attendance and Leave

A. All employees will record and certify their attendance.

B. Bi-weekly certification forms will be available for each employee on or before the beginning of each pay period. The employee must record actual arrival and departure times on this form daily.

C. The employee also will record any leave used, any approved overtime worked, any Telework hours worked, and any compensatory time or credit hours earned or used for each day of the pay period. Employees must attest to the accuracy of their time and attendance in the automated system. An employee's certification form shall be available and accessible for review by his/her supervisor.

D. At the end of each pay period, the fully completed certification form will be transmitted to the timekeeper or supervisor, as directed. It is recognized that the supervisor has the authority to review this information in connection with the preparation of payroll documents. Each employee is responsible for transmitting his/her time and attendance information to the appropriate timekeeper or supervisor. Failure to do so may result in inaccurate or delayed payment of salary checks. If an employee is ill, on leave or travel, or otherwise unable to transmit the completed certification form, it is the responsibility of the employee to make arrangements with his/her supervisor to ensure that the certification form is transmitted to the timekeeper before the time cards are completed. If a supervisor decides that a change must be made to an employee's certification form, the supervisor will notify the employee before releasing the amended certification form to the timekeeper. All certification forms are to be retained, consistent with Department records retention standards.

Section 40.13

When in the judgment of a supervisor, an employee has abused or otherwise not adhered to the provision(s) of this Article, the supervisor will arrange a conference with the employee to discuss the problem. The outcome of the conference will be confirmed in writing. If the conduct is repeated, the supervisor may revoke any or all AWS privileges provided for by this Article. In such instances, the supervisor will notify the employee in writing and specify a work schedule consistent with organizational needs and the period of time (not to exceed six (6) months) it will be in effect.

Section 40.14

A. The Employer may periodically assess the impact of alternative work scheduling on such factors as:

    1. Productivity of the Department;

    2. The level of services furnished to the public; and,

    3. The cost of Department operations.

B. The Employer may modify attendance and leave accounting procedures to conform to law, regulation, and Government Accountability Office guidance and requirements, or other efficiencies of the Department. At that time, the Employer will give notice and negotiate as appropriate under the law and Collective Bargaining Agreement.

ARTICLE 41: Actions for Misconduct or Unacceptable Performance

Section 41.01

The objective of this Article is to ensure that the Employer shall take actions covered by this Article only for sufficient and just cause consistent with this contract, law, regulation, and Department policies.

Section 41.02

Actions for misconduct short of removal are to correct and improve employees' behavior so as to promote the efficiency of the service. It is not punitive in nature. The Employer has determined that the concept of progressive discipline, which is designed primarily to correct and improve employee behavior, will guide managers in making decisions regarding discipline. Although a common pattern of progressive discipline is reprimand, short term suspension, long term suspension and removal, the Employer has determined that any of these steps may be bypassed when the nature of the behavior makes a lesser form of discipline inappropriate.

Section 41.03

Performance based actions for unacceptable performance are only appropriate when the performance of an employee fails to meet established standards in one or more critical elements of such employee's position and after an employee has been afforded a reasonable opportunity to demonstrate acceptable performance.

Section 41.04

A. Definitions

1. As used in this Article, the term "Reprimand" is a written disciplinary action which specifies the reasons for the action and is intended for inclusion in the employee's Electronic Official Personnel Folder (eOPF).
2. As used in this Article, the term "Short-term Suspension" means a suspension for a period of fourteen (14) calendar days or less.
3. As used in this Article, the term "Adverse Action" means a suspension regardless of duration, furlough for thirty (30) calendar days or less, reduction in grade or pay, or removal taken under the provisions of Chapter 75, Sub-chapters I and II of Title 5 United States Code.
4. As used in this Article, the term "Performance-based Action" means a removal or demotion taken under the provisions of Chapter 43 of Title 5 United States Code.
5. The term "Extension File" is used here to refer to the file or files in which the Employer keeps certain personnel records that are not kept in the eOPF.

B. The provisions of this Article do not apply to:

1. Reduction in grade actions caused by misclassification or by the issuance of new or revised position classification standards affecting employees covered by the grade and pay provisions of 5 CFR Part 536.
2. Terminations or suspensions of probationary, temporary, or excepted service employees except where appeal rights to the Merit Systems Protection Board exist

under Chapter 75 or 43 of the Title 5 United States Code;

3. Oral admonishments confirmed in writing, written admonishments, counseling memoranda, or other actions not intended for inclusion in an employee's eOPF, and,
4. Other actions excluded by law or regulation from coverage of the provisions referenced in Section 41.04(a).

Section 41.05 - General Provisions

Bargaining unit employees will be subject to actions for misconduct and performance based actions, disciplinary or adverse actions only for just cause consistent with this contract, law, regulation, and Department policies that promote the efficiency of the service.

A. The Agency's policies and this Agreement on Disciplinary and adverse actions will be consistently applied. The Employer will administer disciplinary and adverse action procedures and determine appropriate penalties to all employees in a fair and equitable manner.

B. Prior to taking discipline, supervisors should, if appropriate, provide oral warnings and/or counseling. Not all situations are appropriate for oral warnings and counseling prior to the initiation of a disciplinary action. A supervisor can initiate disciplinary actions in those instances prior to oral warning or counseling. Counseling and warnings will be conducted privately and in such a manner as to avoid embarrassment to the employee. In instances where actions are proposed on performance-based issues, corrective measures should be implemented in accordance with Article 23 of this Agreement.

C. Except for reprimands as detailed in Section 41.07 of this Article, the deciding official will be different from the official who proposed the disciplinary or adverse action. The deciding official will be at a higher level of management than the proposing official. The deciding official should be impartial and free of conflict of interest to decide the case. If this is a concern, the deciding official shall step down (recuse him/herself) and let another impartial Management Official decide the merits of the action.

D. The Union shall be given the opportunity to be represented at any examination (i.e., questioning) of an employee by a representative of the Employer in connection with an investigation if the employee reasonably believes that the questioning may result in disciplinary or adverse action against the employee and the employee requests representation. The employee has a right to request that the meeting be postponed until Union representation/Union steward is available; in that case, no further questioning will take place until the representative is present. If the employee does not initially request representation the employee may nonetheless request representation at any point later during the examination/investigation. The Employer will annually inform employees, supervisors and managers of this right in accordance with Article 6 of this Agreement.

E. Copies of documents upon which the misconduct or unacceptable performance is based shall be available for review and copying by the employee, his/her representative, if any, or the Union.

Section 41.06 - Alternative Discipline

Alternative discipline in the Federal system is any form of action taken to correct behavior other than the traditional disciplinary methods used by the Government. Therefore, alternative discipline is generally not a reprimand, a suspension with a loss of duties and pay, a change to a lower grade, or a removal from service for cause without the consent of the individual. The Employer agrees to

work with the Union to develop an Alternative Discipline Policy six (6) months from the effective date of the contract.

Section 41.07 - Reprimands

A. Proposal

1. Any proposed action shall specify the reason(s) why the action is proposed.
2. The 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 both the Extension File and the Electronic Official Personnel Folder (eOPF) for up to two (2) years.

B. Response

1. An employee who receives a proposed reprimand may request, and the Employer shall provide, a reasonable amount of excused duty time during the five (5) workdays following receipt of the proposal to prepare and present a response.
2. An employee who is seeking release from official duties to respond to a proposed action under this section, shall request release in advance from his/her supervisor and shall make a good-faith estimate, subject to extension, of the amount of time required. The employee shall return to his/her official duties upon expiration of the time which has been approved. In considering the amount of time requested, and the timing of the release, the supervisor shall consider both the need of the employee to respond to the proposal, including any information provided by the employee with the request, and the need to accomplish the work of the office. If the request is denied because of the need to accomplish the work of the office, the Employer shall arrange with the employee for a release time as soon as the work is complete to allow the employee the opportunity to respond to the proposal. Time limits to respond to all proposed actions in this Article will be extended if the employee cannot be released at the requested time.
3. The employee's response to the proposed action under this Section may be oral or written or both. Oral or written responses shall be presented or delivered to the official proposing the action on or before the last day of the response period. If the proposing official is not available the employee shall deliver the response to the Director of Employee and Labor Relations or their designee.
4. If the employee or his/her representative, if any, requests a conference to respond to the proposal, the proposing official shall schedule a conference at least five (5) workdays from the date of the request if practicable.
5. The proposing official will carefully consider the employee's response(s), if any, before issuing a written decision sustaining, rejecting or modifying the proposed reprimand.

C. Decision

The written decision shall be issued by the proposing official within twenty (20) workdays of receiving the employee's response. The proposing official shall consider the evidence specified in the notice of reprimand to determine the merit of the charges. The proposing official shall consider any answer that the employee and/or his or her representative made, and any documentation furnished, as well as all the information gathered in the investigation. This does not preclude the proposing official from examining other relevant factors when determining the reasonableness of the penalty as required by law. The

decision will explain how the Employer resolved any factual disputes that were raised or developed. If the imposed penalty is less severe than what was proposed, the decision will also specify why the penalty was mitigated.

D. Appeal

1. If the decision sustains or modifies the proposal to issue a reprimand, the employee may appeal such action through the negotiated grievance procedure, or through such other procedure as may be applicable.
2. If the negotiated grievance procedure is chosen, it shall be initiated by filing a completed grievance, together with a copy of the proposal, the decision, and the employee's written response, if any, with the next higher level line official as specified in Article 42. Section 42.08 (Employee Grievances) within five (5) workdays of issuance of the decision. Rules applicable to grievances shall govern processing through that procedure.

Section 41.08 - Short-Term Suspension (14 days or less)

A. An employee against whom a suspension for fourteen (14) calendar days or less is proposed is entitled to:

1. Written notice stating the specific reasons for the proposed action fifteen (15) workdays prior to the implementation of the proposed action.
2. The right to review and receive copies of all material relied upon to initiate the proposed action.
3. A reasonable amount of excused duty time following receipt of the proposal to prepare and present a response orally and/or in writing, and to furnish affidavits and other documentary evidence in support of the response.
4. Be represented by a representative of his/her choice.

B. If the employee or his/her representative, if any, requests a conference to respond to the proposal, the proposing official shall schedule a conference as soon as practicable after the request is made.

If an oral reply is made, a summary will be provided to the employee and the designated Union representative within three (3) workdays. The employee or representative will have five (5) workdays to review the summary and provide edits and comments.

C. Appeal

1. An employee, or a Union representative, may appeal the decision by filing with the appropriate Management Official under the Expedited Grievances described in Section 42.9 of this Agreement, or through such other procedure as may be applicable.
2. If the employee elects to grieve the decision he/she, or the Union representative, shall file a grievance together with a copy of the proposal, decision, and written response, if any, with the designated Management Official as outlined in Section 42.09 (Expedited Grievances) within seven (8) workdays of issuance of the decision. Rules applicable to grievances shall govern processing through that procedure.

Section 41.09 - Removal, Furlough for More than 30 Calendar Days, Reduction-in-grade, Reduction-in-pay, or Suspension for More than 14 Calendar Days

A. An employee against whom such an action is proposed is entitled to:

1. Advance written notice of thirty (30) calendar days stating the specific reasons for the proposed action;
2. The right to review and receive copies of all materials that will not interfere with a pending investigation involving any disinterested Party in the action at hand, which was gathered in any investigation into the matter that led to the proposed action;
3. A reasonable amount of time to respond orally and/or in writing and to furnish affidavits and other documentary evidence in support of the response; and,
4. Be represented by their representative of choice.

B. Response

1. The employee shall receive a reasonable amount of time following receipt of the proposal to prepare and present a response.
2. Any oral or written response shall be presented or delivered to the designated deciding official on or before the last day of the response period. This official shall decide whether to sustain, reject, or modify the proposed action.
3. The deciding official will carefully consider the employee's response, if any, before issuing his/her decision sustain, rejecting, or modifying the proposed action.

C. Decision

1. A written decision by the deciding official shall be issued fifteen (15) workdays from receipt of response. The decision shall contain a detailed response to each issue raised by the Union in the appeal. The Employer shall not consider any reasons for action other than those specified in the notice of proposed action. It shall consider any answer that the employee and/or his or her representative made to a designated official and any medical documentation furnished, as well as all the information gathered in the investigation. This does not preclude the proposing official from examining other relevant factors when determining the reasonableness of the penalty as required by law. The decision will explain how the Employer shall also consider the Douglas factors, which are attached to this Article as Appendix1. The decision will specify how each of the factors was treated in the deciding official's determination of the imposed penalty. If the imposed penalty is less severe than what was proposed, the decision will also specify why the penalty was mitigated.
2. Employees and supervisors should also refer to Section 41.09(E) for provisions applicable to the effective date of decisions.

D. Appeals

1. A decision which imposes a suspension for more than fourteen (14) calendar days, a furlough for thirty (30) calendar days or less, a reduction in grade or pay, or removal, may be appealed, at the employee's option, under the applicable statutory procedure or under the applicable negotiated grievance procedure (Article 42) but not both. (See Section 42.05 for the rules that apply to this election).
2. In either event, applicable standards for both procedures shall be those established by

law. Whichever procedure is elected, that procedure shall be the exclusive forum for resolution of all claims arising out of or related to the disputed action.

E. Stays of Proposed Actions

1. If the decision is to impose a removal or suspension for misconduct or unacceptable performance, and the Crime Provision of this Article is not applicable, the effective date of the action must be no sooner than the eighth (8) workday after issuance of the decision. An additional five (5) calendar days must be added to this time if the decision is served only by mail.
2. If the employee timely grieves the decision under the expedited grievance procedure, the effective date shall be stayed until the issuance of the grievance decision. The grievance decision shall set the new effective date, if applicable.

Section 41.10

The Department will not unreasonably deny a request for extension of the time to respond to proposals.

Section 41.11 - Consideration of Medical Condition

An employee who wishes consideration of any medical condition that may contribute to a conduct, performance or leave problem shall be given a reasonable amount of time to furnish medical documentation (as defined in 5 CFR339.102) in accordance with Article 36 (Medical Determination) of this Agreement.

Section 41.12 - Crime Provision

In instances where public or employee health, safety, or welfare may be impaired or endangered, or there may be a serious breach of applicable standards of conduct, or it is necessary to invoke the "crime provision" of 5 U.S.C. 7513 (b) (1), the Employer reserves the right to take appropriate action immediately and before the procedures set forth herein are initiated or exhausted.

Section 41.13 -Reprisal Prohibited

The Parties agree that pursuant to Article 7 of the Agreement, there will be no reprisal against bargaining unit employees who have filed a complaint, who serve in Union offices, or who assist the Union in any committee or other representation activity.

Appendix 1

Douglas Factors

In Douglas v. Veterans Administration, 5 M.S.P.R. 280 (1981), the Merit Systems Protection Board (MSPB) established a number of factors that are relevant for consideration in determining the appropriateness of a penalty. These factors, listed below, will assist supervisors in considering relevant mitigating and aggravating circumstances.

1. The nature and seriousness of the offense, and its relation to the employee's duties, position and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated.
2. The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public and prominence of the position;
3. The employee's past disciplinary record;
4. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers and dependability;
5. The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisor's confidence in the employee's ability to perform assigned duties;
6. Consistency of the penalty with those imposed upon other employees for the same or similar offenses;
7. Consistency of the penalty with any applicable agency Table of Penalties;
8. The notoriety of the offense or its impact upon the reputation of the agency;
9. The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
10. Potential for the employee's rehabilitation;
11. Mitigating circumstances surrounding the offense such as unusual job tension, personality problems; mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter.
12. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

ARTICLE 42: Grievance Procedure

Section 42.01

The purpose of this Article is to provide a method for prompt resolution of a dispute as to an alleged violation of the Collective Bargaining Agreement, Employer policy, law, rule or regulation. The Employer and the Union are committed to an alternative dispute resolution process, termed in this argument as the Problem Resolution Procedure (PRP) and Alternative Dispute Resolution (ADR) in Section 42.07 and agree that earnest efforts will be made by all Parties to resolve employee grievances at the lowest possible managerial level.

The Alternative Dispute Resolution Center (ADRC) will administer ADR processes, including the Alternative Dispute Resolution (ADR) process used in Equal Employment Opportunity (EEO) complaints, and the Alternative Dispute Resolution (ADR) process used in the negotiated grievance procedure.

The Employee and Labor Relations staff will administer the PRP.

Section 42.02 - Coverage

A. A grievance means any complaint:
   1. By any bargaining unit employee concerning any matter related to the employment of the employee;
   2. By the Union concerning any matter related to the employment of any employee; or,
   3. By any employee, the Union, or the Employer concerning:
      a) The effect or interpretation, or a claim of breach, of a Collective Bargaining Agreement; or,
      b) Any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.

B. Grievances on the following matters are excluded by Statute:
   1. Any claimed violations relating to prohibited political activities;
   2. Retirement, life insurance, or health insurance;
   3. Suspension or removal for national security reasons;
   4. Any examination, certification, or appointment; or,
   5. The classification of any position which does not result in the reduction in grade or pay of an employee.

C. Grievances on the following matters are excluded by this Agreement:
   1. Written notice of proposed action;
   2. Adverse personnel action (as enumerated in Section 7512 of Chapter 75 of Title 5, United States Code) taken against probationary, temporary, or excepted service employees except where appeal rights to the Merit Systems Protection Board

exist under Chapter 75 or 43 of Title 5, United States Code; or,

3. Adjudication of claims the jurisdiction over which is reserved by Statue and/or regulation to another Department, such as, but not limited to, Department of Labor determinations on workers compensation.

Section 42.03 - Exclusivity

Grievances may be initiated by employee(s) covered by this Agreement, the Union and/or their Union representative, or by the Employer. Representation of bargaining unit employees shall be the sole and exclusive province of the Union. Except as provided by law this is the exclusive procedure available to bargaining unit employees, the Union, or the Employer, for the resolution of grievances within its scope.

Section 42.04

A. In accordance with 5 U.S.C. 7121, an employee at his/her option may raise matters covered under 5 U.S.C. 4303 (Unacceptable Performance) and 5 U.S.C, 7512 (Adverse Actions) under the appropriate statutory procedures or the negotiated grievance procedure, but not both. An employee shall be deemed to have exercised his/her option at such time as the employee timely files a notice of appeal under the applicable appellate procedures, or timely files a grievance in writing, whichever event occurs first.

B. Similarly, an employee affected by a prohibited personnel practice under 5 U.S.C.2302 (b) (1) of the Civil Service Reform Act, which lists types of discriminatory personnel practices, may raise the matter under a statutory procedure or the negotiated procedure, but not both. An employee shall be deemed to have exercised his/her option at such time as he/she timely files a grievance in writing or files a written complaint under the statutory EEO procedure, whichever event occurs first.

Section 42.05 - General Provisions

A. An employee presenting a grievance under Section 42.08 or 42.09 of this procedure may represent himself/herself or elect to be represented by an attorney or a Union representative at the grievant's location designated by the Local or Council to handle representational responsibilities under the procedures provided for in Article 14 (Union Representatives and Official Time). An employee may not be represented in the negotiated grievance procedure by anyone who has not either been properly designated under the provisions cited above, or in special circumstances an individual who is acting on behalf of the Union, with express written authority to do so in a specific negotiated grievance or Arbitration.

   The Union shall provide the Director of Workforce Relations or his/ her designee with written notification of its intention to designate a special representative which includes the name of the individual and grievance or Arbitration to be handled together with a copy of the authorization and acknowledgement of responsibility specified above five (5) workdays prior to the time representational activities are to commence. Such a representation shall be subject to all applicable terms and conditions, policies, rules, and regulations including specifically those related to access to the premises and standards of conduct.

B. (1) If an employee represents him/herself, the grievances must be simultaneously filed

with the appropriate Management Official and the Labor Relations Officer (Headquarters) or, in the regions, the individual in charge of handling human resources matters for that region.

2. Upon receipt of the grievance form from an employee electing self-representation, the Employer will provide a copy of the grievance to the Union. The deciding official shall notify the Union of any grievance conference or other formal meeting with the grievant concerning the grievance; and the Union may, at its option, be represented at any such grievance conference or other formal meeting.

3. With respect to any such grievances, the Union may present its views in writing in lieu of sending a representative. Any written Union position shall be made a part of the official grievance file and be considered by the deciding official.

C. ED Grievance Forms or a memorandum will be used to present grievances. Grievants shall complete all sections of the form. A grievance may be presented in person, by mail, or email. The supervisor, manager, or Union official with whom the grievance is filed, or designee, shall sign for receipt and indicate the date received. If presented electronically, the read receipt will serve as the certificate of service. Copies will be distributed to the Parties and other officials according to the instructions on the form. Forms may be transmitted electronically as PDF files once signed.

D. All grievances shall: state the factual basis of the grievance, providing sufficient information for the deciding official to understand the basis for the grievance and make an informed decision; cite the specific Article(s) and Section(s) of this Agreement, regulation, or law alleged to have been violated or misapplied, or any act giving rise to the grievance; and clearly specify the remedy sought. In addition, Employee Grievances under the Expedited Grievance Section of this Article must contain a copy of the certification from the Problem Resolution Process (PRP) and/or Alternative Dispute Resolution (ADR) process. A deciding official who believes that the information provided in a timely filed written grievance does not meet the requirements of this paragraph may request clarification or additional information in writing from the grievant's Union representative, or from the grievant if there is no Union representative. The grievant or Union representative shall provide the missing information in writing within a reasonable time. Timeframes shall be extended, as appropriate, for the completion of this process.

The grievance form and all other relevant documentary evidence and written responses offered, or introduced, including grievance decisions and any written clarifications, will be retained in the official grievance file.

E. The deciding official shall provide five (5) workdays advance notice to the Union of any grievance conference, or other formal discussion with the grievant concerning the grievance. If the grievant is represented by the Union, the deciding official shall normally make arrangements for any conference through the Union representative.

F. All grievance decisions will be in writing and state the issue being grieved, a summary of the findings, and the rationale for the decision. Copies of relevant documents cited in the decision will be provided if they are not otherwise readily available to the employee.

1. When the grievant is represented by the Union, the decision shall be presented to the

Union. The decision may be presented in person or by email. When the grievant has elected self-representation, the deciding official or Employee and Labor Relations will present the decision to the grievant, and will provide a copy to the Union. The Union representative, or grievant, to whom the decision is presented shall sign for receipt and indicate the date received.

2. If the grievant or Union representative believes that a timely written decision does not clearly state the basis for the decision, he/she may request a clarification from the deciding official. The request must be made in writing within two (2) workdays of receipt of the decision, and the clarification shall be provided in writing to the requestor within two (2) workdays of receipt of the request.

G. A supervisor or Union official to whom a grievance is presented for a decision under this procedure is responsible for issuing a timely decision or, under the provisions of Section 42.14, timely arranging for an extension of this time limit. If a grievance decision is not issued within the established or extended timeframes the grievance and the relief shall be considered denied. The Union or Employer may then advance the grievance to Arbitration.

H. In the interest of providing a full and fair opportunity to resolve matters of concern raised under this Article, each Party shall disclose all issues, concerns and information which it believes to have a bearing on the matter.

Section 42.06 - EEO Grievances and Mixed Cases

Employees and Management Officials shall be informed of the Problem Resolution Procedure (PRP) and Alternate Dispute Resolution (ADR) process to resolve mixed case complaints that present EEO issues as a matter of the grievance. A mixed case is a complaint that present Title VII issues as a matter in the grievance process. Where the PRP is used for mixed case complaints, the appropriate EEO personnel shall be included in the session as a technical advisor. An employee who believes he/she has been discriminated against on the basis of race, color, religion, sex, national origin, age or disability may raise the matter under a statutory procedure or this negotiated procedure, but not both. An employee must use the procedure first invoked. Disputes resolved through the ADR process, including PRP are final and shall be memorialized through an official document (i.e. settlement agreement, MOU or MOA.)

A. A claim that the Employer has discriminated against an individual may also be filed under this procedure by the employee, or by the Union on behalf of the employee. The foregoing reservation of this procedure for individual claims is not intended to waive any rights of the Union, or employee(s) rights which are raised under broader types of EEO claims (e.g., class actions, pattern or practice claims, or claims attacking the general validity of the Employer's personnel policies or practices) or other procedures as may be provided by law.

B. An employee must bring his/her concerns to the supervisor within twenty (20) calendar days of the incident that gave rise to his/her concern. If the employee and the supervisor are unable to resolve those concerns within ten (10) calendar days the employee shall have fifteen (15) calendar days to contact ADR or the Union to invoke ADR. If the employee so chooses, he/she must invoke PRP and/or ADR within five (5) workdays after the initial contact with the Union or ADR.

Section 42.07 - Problem Resolution Procedure and Alternative Dispute Resolution

A. From the date on which an employee becomes aware of a grieve-able matter, he/she will have ten (10) workdays to contact his/her supervisor and attempt to resolve the matter. If this attempt is unsuccessful, the employee must contact the Union and/or the Alternative Dispute Resolution Center (ADRC) to invoke the PRP and/or ADR within five (5) days of the expiration of the ten (10) - workday period mentioned above. The Union may invoke PRP on behalf of the employee if so designated to represent the employee.

B. The use of Problem Resolution Procedure and/or ADR is optional and not a prerequisite to filing a grievance and shall not affect timeframes unless mutually agreed to by the Parties.

C. Under the Problem Resolution Procedure, the Union Local President or designee, and the Assistant Secretary or designee at Headquarters or the region shall serve as facilitators between the employee and the supervisor or manager to attempt to achieve settlement, or other mutually acceptable resolution, of the matter. During this period, the Union and Employer facilitators shall attempt to bring both Parties to resolution through mediation, rather than advocacy of a particular side in the matter. The Employee & Labor Relations Branch staff will serve as technical resources for all Parties. The use of this procedure in matters such as reprimands, adverse actions, performance-based actions, within-grade denials, and so forth, shall be optional and informal and shall not affect the timeframes and procedures already provided for those matters. The Employer may not decline to participate in this Problem Resolution Procedure on the ground that the matter is not covered by the Employee Grievance Procedure, unless the employee has raised the matter in another forum provided by law, rule, or regulation (such as the statutory EEO procedure, the MSPB; before the Office of Special Counsel, etc.)

D. As provided under this Article, once the employee or Union invokes PRP and/or ADR, a period of twenty (20) workdays shall be reserved for the resolution under this process. Under PRP, the Union and Employer facilitators may jointly certify the PRP period closed before the conclusion of the twenty (20)-workday period if they conclude that there is no prospect for resolution of the dispute through this process. Under ADR, the employee will be issued a Notice of Right to File at the conclusion of the twenty (20) workday period. The Intake Form, Notice of Right to File and the Counselor's Report shall be included as part of any grievance filed. All proposed settlements shall be provided immediately to the Employee & Labor Relations Branch for signature. This settlement must be signed within seven (7) calendar days from the date on which the settlement was reached. No settlement may be effected that is not in conformance with applicable law, rule, regulation, the Collective Bargaining Agreement, and Departmental policies. If a proposed settlement may not be effected, the Parties may continue trying to reach an alternative resolution. The grievant and the Employer may agree upon a reasonable extension of time for this effort, but this extension will not extend the deadlines for filing an EEO complaint (forty-five (45) days from the date on which the employee became aware of the grieve-able matter) or pursuing any other procedures with deadlines that are prescribed by Statute, law, or regulation. Any breach of a settlement agreement reached in the PRP process must be documented and forwarded to the Office of the General Counsel for the appropriate legal action.

E. If a resolution of the matter has not been accomplished within the designated twenty (20) workday timeframe for the PRP and/or ADR the employee may file a grievance within fifteen (15) workdays after the expiration of the twenty (20)-workday timeframe. The Union and Employer facilitators shall immediately prepare a certification stating that the PRP was utilized and that timeframes were met, or shall state their disagreements about the timeframes. This certification shall be considered by the deciding official if a grievance is filed, and shall be incorporated into the grievance file. The PRP certification will include issues raised, discussed and items of disagreements, not a detailed discussion of each PRP session.

F. Failure by an employee to adhere to meet its timeframes will result in a grievance being considered untimely or otherwise improperly filed.

Section 42.08 - Employee Grievances

A. Within fifteen (15) workdays from the expiration of the PRP or ADR if utilized, the employee and his/her Union representative, if any, may file a grievance. The grievance may contain only issues raised during ADR (ADR/PRP) process. The Intake Form may be amended to capture issues that occur during the ADR process. However, no individual grievances under this Section may be filed at a level higher than an Assistant Secretary, or equivalent. The deciding official for the grievance will always be different from the official who proposed a disciplinary or adverse action. A grievance may also be filed by the Union on behalf of an individual employee or a group of employees reporting to the same first-level supervisor. The deciding official will be at a higher level of Management and should be impartial and free of a conflict of interest to decide the grievance. If a conflict of interest is a concern, the deciding official shall step down and recuse himself/herself and allow another impartial Management Official decides the merits of the case.

B. A grievance must be submitted in writing on a grievance form or a memorandum, and may be presented by email as a signed, scanned attachment to the supervisor of the Management Official who made the decision, or took or failed to take the action grieved. The written grievance should normally contain a description of the matter(s) being grieved, including the Article(s) of the Agreement that is involved, and the requested relief, if known.

C. Within ten (10) workdays after receipt of the grievance and upon request of the grievant, the Union or the deciding official, the deciding official must hold a meeting with the employee and their representative to review the grievance and discuss the issues. The deciding official will take into consideration any facts brought forth in the grievance during the presentation. The deciding official grievance decision will either: grant, partially grant, or deny the relief sought within fifteen (15) workdays after the date of the presentation. The decision shall respond to each issue raised by the Union or grievant in the grievance.

   The grievance decision may be appealed to the next level Management Official within five (5) workdays after receipt of the decision. The decision will include the name, title, work location, email address and work telephone number of the next level Management Official.

D. If the next level Management Official is located in the same office location as the grievant, the grievant shall have five (5) workdays to make an oral and/or written presentation. If the next level Management Official is not in the same office location as the grievant, the grievant shall have ten (10) workdays to make an oral and/or written presentation. The next level Management Official, or designee, within ten (10) workdays after the presentation, gives a written decision containing the reason for the decision. The decision shall respond to each issue raised by the Union or grievant in the appeal. If the decision or appeal response is not acceptable, the Union may invoke Arbitration in accordance with Article 43 (Arbitration).

E. Grievances concerning reprimands shall be filed in accordance with Article 41, Section 41.07 of this Agreement which states: "If the negotiated grievance procedure is chosen, it shall be initiated by filing a completed grievance, together with a copy of the proposal, the decision, and the employee's written response, if any, with the next higher level line official as specified in Article 42, Section 42.08 (Employee Grievance Procedure) within five (5) workdays of issuance of the decision. Rules applicable to grievances shall govern processing through that procedure."

Section 42.09 - Expedited Grievances

A. Because of the special and serious impact on employees of adverse or other actions which impose:

1. Suspensions, removals, or reductions in grade based on unacceptable performance or conduct;
2. Furloughs of thirty (30) calendar days or less;
3. Reduction in Force (RIF);
4. Denials of within-grade increases, may be grieved by the employee or the Union by submitting a signed grievance and any supporting documentation within ten (10) workdays from receipt of the decision or reconsideration decision, with the next level official above the deciding official; or,
5. Decisions on requests for Reasonable Accommodation.

B. The Employer will review the grievance and issue a decision based on the record within ten (10) workdays. If the grievance is not resolved within the ten (10)-workday period, the Union may invoke Arbitration within ten (10) workdays from the date the decision is issued by written notification to the Department's Labor Relations Officer (or designee). If no decision is issued within ten (10) workdays or by any mutually agreed upon extended date, then the Union may invoke Arbitration within twenty (20) workdays from the date the grievance was filed. Arbitration shall be invoked in accordance with the provisions of Article 43, Section 43.07 of this Agreement. Expedited grievances for which Arbitration is invoked will receive priority Arbitration hearings dates, and take precedence over all other cases scheduled for Arbitration, except a previously invoked expedited grievance.

Section 42.10 - Local Union or Local Management Grievances

A. A grievance involving the interpretation and/or the application of this Agreement or personnel policies or practices affecting a condition of employment of more than one (1)

bargaining unit employee reporting to more than one (1) supervisor in a single local Department installation constitutes a local Union or Management grievance.

1. When the grievance involves employees in the same Department component (i.e. Principal Office), the grievance shall be transmitted by the Union to the next level supervisor above the Employer official whose actions have given rise to the grievance, or by the Employer to the Local Union President, as applicable. No Union grievance under this procedure may be filed at a level higher than an Assistant Secretary, or equivalent, or a Regional Component Head.
2. In those instances where a grievance involves a number of employees in different components, but in a single installation, the grievances will be transmitted to the Director of Workforce Relations, or Local Union President as appropriate. If it is a Union grievance, the Director of Workforce Relations will then designate an appropriate Management Official to decide the grievance, as necessary.

B. Within the timeframes provided in Section 42.08(A) Union or Employer wishing to file a grievance under this provision shall transmit a completed Grievance Form together with attachments and pertinent materials to the appropriate individual as specified above.

C. The Union or Employer may request a conference within five (5) workdays from the filing date of the grievance. Within fifteen (15) workdays after the date of the grievance meeting or teleconference, the responding Party shall issue a written decision. If no meeting is requested within five (5) workdays, the conference will be considered waived and within twenty (20) workdays from the date of filing a decision shall be issued.

Section 42.11 - National Grievances

A. A grievance involving the interpretation and/or application of this Agreement or personnel policies or practices which affect a number of bargaining unit employees in more than one Department installation constitutes a National Grievance. The Council President or Director of Workforce Relations, shall, within the timeframe provided in Section 42.08(A), transmit the grievance in writing to either the Director of Workforce Relations, or Council President, as appropriate. However, if it is a Union grievance involving employees in a single Principal Office, the grievance shall be transmitted by the Union to the Assistant Secretary, or equivalent, having authority over the employees.

B. The Party with whom the grievance is filed shall schedule a meeting or teleconference, if requested, to discuss the matter within ten (10) workdays from the date the grievance is received.

C. Within fifteen (15) workdays after the date of the National Grievance meeting or teleconference, if requested, the responding Party shall issue a written response. If no meeting is requested then, within twenty (20) workdays from the date of filing, a decision shall be issued.

D. The Employer or the Union may mutually agree to combine grievances that have the same concerns or subject matter occurring in more than one region or for more than one (1) employee.

Section 42.12

If the Union is dissatisfied with the decisions in any of the grievance procedures described above, or the Employer is dissatisfied with a decision rendered by the Union under Sections 42.10 and 42.11, the Union or Employer may refer the matter to Arbitration as provided for in Article 43 (Arbitration) of this Agreement. Except for grievances under Section 42.09 (Expedited Grievances), the referral shall be made within twenty (20) workdays from the date on which the disputed grievance decision is or should have been issued.

Section 42.13

Employees and their representatives involved in presentation and pursuit of grievances will be free from restraint, interference, coercion, discrimination or reprisal. Employees will be granted reasonable and necessary official time to prepare and present their grievances, subject to the approval of the supervisor. Employees must request release from his/her supervisor prior to using such time or leaving their work site. If a supervisor cannot release the employee at the time requested, then the supervisor will give them the next earliest time for release without compromising the integrity and intent of this Article. In the event the supervisor fails or refuses to grant the release time, the supervisor shall put such denial in writing stating the reason for the denial and the next earliest time for release.

Section 42.14 - Extensions of Time

The time limits provided in this Article will be extended for good cause. Requests to extend must be transmitted to the other Party prior to the expiration of the time limit, and will normally be granted when circumstances or the nature of the grievance render adequate consideration of the issue within the specified time limits impractical. The Party requesting the additional time is responsible for formally requesting the extension of time through the appropriate Union or Management Official. Any such request shall specify the reasons an extension is needed and the additional time requested. A request which is made in writing, and is received prior to the expiration of the time limit, shall operate as an interim extension pending receipt of a formal written response to the request. Copies of any such agreement will be forwarded to all Parties to the grievance, and the request and response shall be made part of the official grievance file.

Section 42.15

All grievance decisions will be non-precedential, except those issued as decisions on National Grievances, and those mutually agreed to by the Parties.

ARTICLE 43: Arbitration

Section 43.01

This Article shall be administered in accordance with the Federal Service Labor-Management Relations Statute, Title 5, U.S. Code Chapter 71, and this Agreement. This Article establishes the procedures for the Arbitration of disputes between the Union and Employer, which are not satisfactorily resolved by the negotiated grievance procedure found in Article 42 of this Agreement.

A referral to Arbitration can be made only by the Union or the Employer. The Parties agree that their interests and those of the employees are served by providing economical and expeditious Arbitration procedures to resolve promptly and finally disputes which other good-faith means have failed to resolve.

Section 43.02 - Designation of Arbitrator

A. The Parties agree to the following procedures to designate arbitrators to be used for all disputes properly referred by either Party for disposition under the provisions of this Article.

B. The Party invoking Arbitration shall request a list of seven (7) arbitrators from the Federal Mediation and Conciliation Service (FMCS) by submitting a completed FMCS Form R-43 "Request for Arbitration Panel," including payment of any fee. The Party requesting the panel list shall request a local panel of arbitrators, when possible, and request that the FMCS serve a copy of the panel list on both Parties (Union and Management).

C. Within ten (10) work days from receiving the list of arbitrators from the FMCS, or by whatever date the Parties shall agree upon, the Parties shall each strike one (1) name from the list alternately and then repeat the procedure until only one (1) name remains. The person whose name remains shall be selected as the arbitrator. The Party striking the first name shall be chosen by a coin toss. A Party may make a direct designation of an arbitrator to hear the case in the event that, (1) the other Party refuses to participate in the selection of an arbitrator; or (2) the other Party has not responded to attempts to strike the arbitrator for seven (7) days.

   The cost of obtaining a list of arbitrators from the FMCS shall be initially borne by the Party invoking Arbitration. However, the Party whose principal contention is rejected by the arbitrator shall bear the ultimate cost for the Arbitration referral fee, which shall be included in the allocation of fees determined by the arbitrator under Section 43.05. If the current Arbitration is settled, the chosen arbitrator can still be utilized to hear the next Arbitration on the Arbitration listing schedule.

D. At any time, the Parties may obtain a new list of arbitrators from the FMCS by mutual consent. The moving Party will obtain a new list should a chosen arbitrator recuse himself or herself for any reason or if the chosen arbitrator is unable to schedule the case for hearing within ninety (90) days of the date of selection.

E. The Parties agree to actively participate in Arbitration hearings to clear up any backlog that may develop. In the interest of cost reduction, efficiency and quicker resolution, the Parties may agree to combine hearings when there is a similarity of facts, law, or witnesses (i.e. REACH cases, etc.).

Section 43.03

It is agreed and understood that arbitrators selected by the Parties shall have no power to add to, subtract from, or modify the terms and conditions of this Agreement. In making awards, the designated arbitrators shall be bound to apply, as necessary, the provisions of law and the standards for review provided in the Statute, other applicable provisions of Title 5, United States Code, and this Agreement, including applicable decisions of administrative authorities to which the Parties are subject by law, such as the Federal Labor Relations Authority (FLRA), the Merit Systems Protection Board (MSPB), the Equal Employment Opportunity Commission (EEOC), the Comptroller General of the United States, the General Services Administration, as well as The United States courts.

Section 43.04

Where the arbitrator's award is binding on the Parties thereto, the Employer and the Union retain their rights to file exceptions to an award with the FLRA, EEOC, or MSPB pursuant to their respective regulations, or with the Federal Courts as provided by law.

Section 43.05

A. The Party requesting transcription will ensure that each Party (and the arbitrator) is furnished a copy of the transcript. The arbitrator will determine final responsibility for payment of the transcription. The Party whose principal contention is rejected by the arbitrator will reimburse the prevailing Party for payment of the transcription fees in the same proportion as the arbitrator's fees, and all expenses are allocated by the arbitrator.

B. Costs of regular fees, including reasonable travel expenses of the arbitrator selected to hear the case, will be borne by the losing Party. The arbitrator will have authority to determine the costs when the award is a split decision.

C. In the event the Parties mutually agree to postpone, delay and/or cancel an Arbitration proceeding, the Parties shall share equally any fees charged by the arbitrator for such cancellation. In the event there is no mutual agreement, the Party who postpones, delays, or cancels the hearing shall pay all fees charged.

Section 43.06

The arbitrator may disqualify himself/herself in any matter referred which in his/her judgment would constitute a real or potential conflict of interest. In such cases the arbitrator shall so notify the Parties and explain the nature of the conflict. That arbitrator would then hear the next case scheduled for Arbitration. The case would then be assigned to a different arbitrator using the procedures described in Section 43.02(C).

Section 43.07 - Arbitration Procedures

A. As set forth in this Agreement, a grievance may be referred to Arbitration by either Party upon an unfavorable grievance decision or if no grievance decision is received by the grievant or representative within twenty (20) workdays of the grievance date. The right to invoke Arbitration is limited to the Union and the Employer; an employee may not independently invoke any of the provisions of this Article.

B. A Party invoking Arbitration shall notify the other Party of its intention to invoke the provisions of this Article. Such notification shall be in writing and include a copy of the grievance being arbitrated, and the decision, if any. The notice shall also designate the name of the representative of the moving Party, and shall be signed and dated by the authorized

representative on behalf of the moving Party.

Notification by either Party of its invocation of Arbitration will be served by certified mail, email with delivery receipt, or hand delivered within twenty (20) work days to the other Party specified below, except as provided under the Expedited Grievance procedure in Article 42.

If the notification is served by certified mail, the moving Party is responsible to ensure that the date of service is established by postmark and/or certified mail receipt stamped with the mailing date by the U.S. Postal Service.

If the notification is served by email the date of service is established by the Delivery Receipt date.

Notification shall be made in accordance with the following:

1. For the Union: To the Department's Labor Relations Officer (or designee), and,
2. For the Employer: To the Council's National Chief Steward (or designee).

C. The moving Party shall meet with the other Party, in person or by teleconference, no later than ten (10) work days after receipt of the invocation of Arbitration. If both Parties agree, this meeting may be postponed to a mutually acceptable date. At this meeting the Parties shall attempt to agree on a submission agreement which shall include a statement of the issue to be referred and, as appropriate, the procedures and the manner of presentation to be followed. In the event the Parties cannot agree on the issue submitted or the procedures, each shall formulate its own version. Thereafter, the Parties may meet jointly with the designated arbitrator to attempt to resolve procedural differences and, where possible, execute a submission agreement reflecting any such understanding(s) reached. Any stipulations agreed to shall be signed by the Parties and attached to the submission agreement, which upon completion shall be delivered to the arbitrator prior to the hearing.

There will be no communication with the arbitrator on the merits of the matter, unless both Parties are participating in the communication.

D. Each Party shall be responsible for securing its respective witnesses. The grievant, grievant's representative and Union witnesses who are Department employees shall be granted a reasonable amount of official time for purposes of preparation for, and testifying at the hearing. A written list of each Party's prospective witnesses shall be exchanged at least ten (10) work days prior to the hearing date or other mutually agreed date. Changes or additions to either Party's witness list shall be given to the other Party at least two (2) workdays in advance. Rebuttal witnesses will not be required to be listed. The arbitrator shall give due consideration to the Parties' expressed interest in the prompt and efficient resolution of disputes. Location dates, and time limits applicable to Arbitrations shall be mutually agreed upon by the Parties and the selected arbitrator. In the event the Parties cannot decide, the arbitrator may decide these issues.

When a grievance concerns a complaint of sexual harassment, as defined in Article 27 - Equal Employment Opportunity, the hearing shall be a closed forum upon request of the Union.

The Employer shall make all reasonable efforts to ensure that witnesses who are employed by the Employer are available for the hearing. In those instances when a witness cannot be made available on the day required, the Arbitration may be postponed.

E. The arbitrator shall issue his/her award promptly and normally no later than thirty (30) calendar days after the conclusion of the hearing or after the final date for the filing of post- hearing briefs, if any. The arbitrator will issue a full written opinion, identifying all significant issues and issues of first impression.

   The appropriate Party will take the actions upon receipt of the final award within thirty (30) days, unless the Party files an exception or appeal within the appropriate time limits.

F. If no exception or other appropriate legal action is filed within the time limit established by Statute and/or FLRA regulation, the award is final and binding. The arbitrator's decisions shall be final and binding subject to the Parties' right to take exceptions to an award in accordance with law, or the grievant's right, if applicable, to initiate court action. However, the arbitrator shall be bound by the terms of this Agreement and shall have no authority to add to, subtract from, alter, amend, or modify any provision of this Agreement. The arbitrator may retain jurisdiction over a case when necessary to clarify the award, 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.

G. The arbitrator may extend any time limits for good cause upon receiving a written request from either Party, if the Parties mutually agree to the request.

H. The failure of the moving Party to:

   1. Adhere to the time requirements of this Article, and/or,

   2. Expeditiously pursue the Arbitration procedures after stating the intent to arbitrate, may be deemed by the arbitrator to mean that the Party has abandoned the action. Any such decision shall foreclosure further processing of the Arbitration.

I. In computing periods of time for the purposes of this Article, the first day of counting will be the day following the date of the act or event (e.g., the day after the employee received a final decision to take discipline or the day after the deadline for submitting a response to a grievance). If the last day in the count is a Saturday, Sunday, a legal holiday, a day other than a legal holiday when the Employer's office is closed, or a day in which an unscheduled leave policy is in effect, that day shall not be counted, and the last day will be the next regular work day.

ARTICLE 44: Telework

Section 44.01 - Policy

The Union and the Employer agree that Telework offers many benefits that include but are not limited to improved employee productivity, to lower absenteeism, reduced need for office space, and improved morale. Telework is a versatile approach to managing Federal human capital costs and improving employee quality of life. By use of Telework, the Department will increase employee retention and help meet Department quality, e-Government, production, and efficiency targets for several years. The Telework initiatives also help the Department fulfill Continuity of Operations (COOP) planning requirements for Federal Agencies.

A. This Section of the Article provides policy on the Department of Education's Telework Program. Under 5 U.S.C. Section 6501(3), "Telework" or "Teleworking" refers to a work-flexibility arrangement under which an employee performs the duties and responsibilities of his/her position, and other authorized activities, from an approved worksite other than the location from which the employee would otherwise work. In this Article, such an approved worksite is called an "Alternative Workstation". An alternative workstation can be a Government or private Telework center, or the employee's home, or another suitable location.

B. Eligible employees may participate in Teleworking to the maximum extent possible without diminished employee or organizational performance. The Department will make position eligibility determinations for all positions at the Department, and the Employer will notify that eligibility determination to the employee. If the position is deemed as ineligible, the Employer will also notify the Union. Principal Operating Components or equivalent offices will work to remove managerial, logistical, organizational, or other barriers to complete implementation and successful functioning. Principal Offices will work with supervisors and the Union to encourage the successful implementation and maintenance of the Telework Program to afford eligible employees the opportunity to Telework. Managers will attempt to implement Telework in their organization to the fullest extent possible.

C. In developing and modifying the Telework policy required by 5 U.S.C. Section 6502, the Employer shall give the Union the opportunity for pre-decisional involvement.

Section 44.02 - Definitions

A. "Fixed Telework" is a regularly scheduled arrangement under which an employee works one (1) or more days per week at an alternative workstation.

B. "As-needed Telework" is Telework that occurs on an occasional, one-time, or irregular basis.

C. "Hoteling" is an option to provide unassigned seating in an office environment, or business section of a hotel, and is the practice of providing office space to employees on an as-needed basis rather than in the traditional office setting. It is generally intended for employees on fixed Telework schedules who work in an alternative workstation for three (3) days per week or more. Prior to implementing Hoteling, the Employer will notify the Union in accordance with Article 10 in this Agreement.

Section 44.03 Eligibility

A. Employees who meet the following criteria are eligible to participate in Telework:

1. The Employee is in good performance standing. The employee's most recent Rating of Record is at the "Results Achieved" or higher level under the REACH performance system (equivalent to "Fully Successful"). And, the employee is not on a Performance Improvement Plan (PIP), as provided in Article 23, Performance Appraisals;
2. The employee is not on leave restriction, as provided in Article 39, Leave Policy;
3. The employee has not been officially disciplined for being absent without permission for more than five (5) days in any calendar year (5 U.S.C. Section 6502(a)(2)(A));
4. The employee has not been officially disciplined for violations of Subpart G of the Standards of Ethical Conduct for the Employees of the Executive Branch for viewing, downloading, or exchanging pornography, including child pornography, on a Federal Government computer or while performing official Federal Government duties (5 U.S.C. Section 6502(a)(2)(B));
5. The employee is not required to handle directly, on a daily basis (every workday), secure materials "determined to be inappropriate for Telework by the Secretary (5 U.S.C. Section 6502(b)(4)(A));
6. The employee's official duties do not require, on a daily basis (every workday), activity that cannot be handled remotely or at an alternative worksite (5 U.S.C. 6502(b)(4)(B));
7. The employee has access to the work space, utilities, equipment and reference materials suitable for the work to be performed at the designated alternative workstation as specified in the Telework Program Agreement (see Appendix 1);
8. The employee is willing to sign and abide by the Telework Program Agreement, which is in the policy that is negotiated with the Union to fulfill bargaining obligations;
9. The employee has successfully completed an interactive Telework training program, unless the Secretary determined that training was unnecessary because the employee was already Teleworking under a work arrangement in effect before the Telework Enhancement Act of 2010 was enacted (5 U.S.C. Section 6503); and,
10. The employee can satisfy the home or Telework worksite requirements.

A. An employee new to the Department, who is currently serving a probationary period normally must be employed in his/her position under performance standards for at least ninety (90) calendar days and the employee's performance appears to be at the "Results Achieved" level (equivalent to "Fully Successful") before he/she will be eligible to participate in the Telework Program (exceptions on a limited basis may be granted for weather related circumstances). Supervisors will provide regular and frequent review of probationers' and trainees' work performed at an alternative workstation to ensure that employees are meeting performance requirements. Formal training periods do not include the normal progression of an employee through a career ladder.

B. If the Employer determines that any bargaining unit employee position is ineligible for Telework, the Employer will notify the Union.

C. The Telework training described in Subsection 44.03 (A) (9) will include Telework policies and guidelines, as well as personal, health and safety, and occupational aspects of

Telework arrangements. Telework training will be offered to regional employees as often as it is to Headquarters employees.

D. All managers of teleworkers are required to complete Telework training (5 U.S.C. 6503(a)(1)(B)).

Section 44.04 - Requests

A. Employees will have the option to request to perform work at an alternative workstation on a regularly scheduled basis (fixed Telework schedule). Agreements will be renewed annually. A change in supervisors will require a review of the current Telework agreement.

B. Requests for a fixed Telework schedule will be made in writing to the employee's first-line supervisor and the designated approving/PO official, who are responsible for approving or denying the request. If the employee wishes, a meeting will be held with the supervisor to discuss the request. Supervisors must act on fixed Telework schedule requests within ten (10) workdays. Employee requests that meet the requirements of Section 44.03 (Eligibility) above will be approved. If the request is denied, the supervisor will respond in writing and include the reasons for the denial.

C. Employees may request to Telework on an as-needed basis (that is, on an occasional, one-time, or irregular basis that is apart from any regularly scheduled Telework). Such requests will be made in writing or by email.

D. With supervisory approval, an employee may work temporarily at a different alternative workstation than the site listed in his/her Telework agreement.

E. On a case-by-case basis, the employee and manager may mutually agree to change a fixed Telework schedule to meet ad hoc needs.

Section 44.05 - Call-Backs

A. An employee who Teleworks must be available to work at the official duty station on their Telework day(s), normally within a one (1) day notice, when a supervisor makes the determination their presence is required. A Teleworker may request to Telework on an alternate day when they are required to report to the official duty station on a regularly scheduled Telework day.

B. While Teleworking, and then required to return to the official duty station, the Teleworker must report within a reasonable amount of time. Items to take into consideration are traveling distance, mode of transportation, etc.

Section 44.06 - Removal from Telework

A. The Employer may remove an employee from the Telework Program, usually due to one (1) or more of the following reasons:

1. The employee is placed on a leave restriction in accordance with Article 39, Leave Policy. The employee is eligible to re-request participation upon lifting of the leave restriction.
2. The employee is placed on a Performance Improvement Plan (PIP) in accordance with Article 23, Performance Appraisals. The employee is eligible to re-request participation sixty (60) days after expiration of the PIP.
3. The employee's failure to adhere to the requirements specified in the Telework Program Agreement (Appendix 1).

4. Conditions have changed so that all of the employee's work must now be done only at the employee's regular workplace.
5. The employee no longer meets the eligibility requirements listed in Section 44.03.
6. The employee has demonstrated inability to adhere to the provisions of the Agreement, to include reduced work production, non-responsiveness to telephone calls, non-availability, or working at the alternative workstation has proven to place an undue burden on other office staff.
7. The employee's alternative worksite no longer meets prescribed acceptable standards.
8. The employee does not meet the performance-related eligibility related requirements.
9. The employee does not meet the conduct-related eligibility related requirements.
10. The employee was reassigned or detailed to a new position. A new agreement is required.

B. When a decision is made to remove an employee from the Telework Program, the employee must be given written notice indicating the reason(s) for removal. Unless otherwise specified, the employee may reapply for Telework Program participation thirty (30) calendar days after removal from the Program, provided that her/his performance is at least "Results Achieved," "Fully Successful," or the equivalent.

C. Managers will make a bona fide effort to counsel employees about specific problems before cancelling an employee's participation in Telework. The counseling will be confirmed in writing and consistent with Section 44.06.

Section 44.07 - Problems Affecting Work Performance

Employees will promptly inform managers whenever any problems arise at the Telework site, which adversely affect their ability to perform work at the AWS. Examples include situations such as equipment failure, power outages, telecommunications difficulties, etc. Unless there is an office closure situation, the employee will be required to find other work at the alternative workstation, report back to the assigned workplace during normal duty hours, or request personal leave.

Section 44.08 - Temporary Changes

A. Employees may be required to report to their regular workplace for previously unscheduled training, other meetings, or to perform work on a short term basis that cannot otherwise be performed at the alternative workstation or accomplished via telephone or other reasonable alternative methods.

B. Employees may also be required to report to their regular workplace for unanticipated operational exigencies to perform work which cannot be performed on another workday, at the alternative workstation, via telephone, or other reasonable alternative methods. In such cases, employees will be provided reasonable advance notice when possible, and be provided a reasonable amount of time to report.

Section 44.09 - Hours of Work and Leave

Employees performing work at the alternative workstation are subject to the same workday requirements and time and attendance reporting as they would be if they were performing work at the official duty station. Employees will continue to be covered by all provisions of Article 32, Overtime, and Article 39, Leave Policy.

Section 44.10 - Emergency Closing/Late Openings/Early Dismissals

A. Discretionary closings: When employees are released from duty for all or part of the day at the regular work place as a discretionary benefit, such as closing down early the day before a holiday, employees who are Teleworking that day are considered on duty and will receive the same discretionary benefits as employees at the regular workplace.

B. During a disruption in Government operations, such as an OPM-declared emergency, ED will require employees under a formal signed Telework Agreement to continue to work on a workday if the employee is working from their alternative/Telework location, when the Department offices are closed to the public; the Government or Department dismisses early, or announces delayed arrival. For example, if the employee is Teleworking at home and the main office closes, normally the Telework employee will continue working at home. However, if for any reason beyond the control of the employee, he or she cannot perform work at home (such as a power failure or natural disaster), the supervisor may grant administrative leave, consistent with Department policy.

C. An employee on a Telework Agreement, who Teleworks from a remote location, will be required to work during any closure of his/her regular worksite/duty location, unless the remote location is also impacted by the same emergency that affected his/her regular worksite.

D. No Additional Pay or Paid Time Off for Employees Who Telework: Employees who Telework during their regular tour of duty on a day when the Department is closed (or when other employees are dismissed early) are not entitled to receive overtime pay, credit hours, or compensatory time off for performing work during their regularly scheduled non-overtime hours.

Section 44.11 - Equitable Treatment of Teleworkers

As required by 5 U.S.C. Section 6503(a)(3), Teleworkers and non-Teleworkers will be treated the same for the purposes of:

A. Periodic appraisals of job performance;

B. Training, rewarding, reassigning, promoting, reducing in grade, retaining, and 'removing employees;

C. Work requirements; or,

D. Other acts involving managerial discretion. Supervisors will not require a greater level of reporting on daily assignments/work completion from employees participating in the Telework Program than they require of non-participating employees. Employees will retain the autonomy to prioritize work responsibilities consistent with grade requirements.

Section 44.12 - Additional Requirements

Employees participating in the Telework Program will be required to:

A. Observe existing policies for requesting leave, in accordance with Article 39, Leave Policy;

B. Utilize any Government owned/lease equipment for official purposes only as currently required at their official duty station; and,

C. Adhere to applicable Government regulations governing information management and electronic security procedures for safeguarding data and databases.

Section 44.13 - Equipment Support

A. The Employer will continue to provide reasonable resources to support Telework capabilities.

B. Federal agencies may use appropriated funds to pay for telephone installation and basic service in private residences for official Government business only and specific to Telework. POs may also pay for the use of employee's personal phone for business related long distance phone calls. Current GSA regulations (41 CFR 101-7i) allow for reimbursement of expenses incurred as a result of official duties on SF 1164, including telephone call expenses approved by the Department. However, some POs, due to budget constraints or other Management reasons, may choose not to pay for such items.

C. The employee will be responsible for home maintenance, or any other incidental costs (e.g., electricity) associated with the use of the alternative workstation. The Employer will be responsible for the maintenance and repair of Government owned equipment (e.g., a Government owned computer). The Employer will be responsible for the cost (installation and maintenance) of a dedicated data line if required by the Employer to enhance accessibility and/or for the employee to contribute to coverage. The employee does not relinquish any entitlement to reimbursement for appropriately authorized (in advance, if appropriate) expenses incurred while conducting business for the Department as provided for by law and implementing regulations.

Section 44.14 - Telework Centers

The Parties will meet periodically, at either Party's request, to discuss the feasibility of establishing Telework centers. Discussions will focus on accessibility of GSA sites, employee interest, and availability of Department funding. Prior to establishing Telework centers, the Parties will negotiate consistent with Article 8, Labor-Management Negotiating Procedures, and Article 9, Mid-Term Negotiations at the Local Level, of this Agreement.

Section 44.15 - Emergency Situations

A. Under 5 U.S.C. Section 6504(d), the Employer is required to incorporate Telework into the Continuity of Operations Plan (COOP).. To the extent possible, the Employer will provide the Union PDIPDI in planning how Telework will be incorporated into the COOP. To ensure compliance with the Federal Emergency Management Department's Federal Continuity Directive and COOP, the Department will continue to perform its mission by placing employees on as-needed Telework agreements so that during a wide range or emergencies, including localized acts of nature, accidents, and technological or attack-related emergencies the essential functionality of the Department will be preserved.

B. In emergency situations, non-essential ED employees who have approved Telework Agreements in place may request to work unscheduled Telework with supervisory approval.

Section 44.16 - Temporary Suspension or Denial of Telework

A. The Employer reserves the right to temporarily suspend the Telework Program for individual employees where operational exigencies require all employees to report to the regular workplace. The Employer will notify the employees of the expected date for resumption of the suspended schedule.

B. Employees may file grievances using the procedures in Article 42 if they believe their Telework request or agreement was wrongfully denied or terminated. Telework requests or

agreements may be denied or terminated only for business reasons such as those described in Sections 44.03 or 44.06, and managers must provide written justification.

Section 44.17 - Telework Managing Officer

Under 5 U.S.C. Section 6505, the Employer is required to designate a Telework Managing Officer. The Employer shall keep the Union informed of the name and title of its Telework Managing Officer.

Section 44.18 - Reports

Under 5 U.S.C. 6506(d), the Chief Human Capital Officer is required to submit a report to the Chief Human Capital Officers Council each year on Employer efforts to promote Telework. The Employer shall provide the Union with a copy of this report consistent with the Privacy Act and ED Policy. Section 6506(b) requires OPM to report to Congress on each Agency's Telework Program. If OPM requests information from the Employer to complete this report, the Employer will provide a copy of this information to the Union.

If the Employer or supervisor administers Telework surveys to employees, the results of those surveys will be shared with the Union.

Appendix 2 – Telework Agreement

The following constitutes an agreement between:

__________________________________ and __________________________________

(Principal Office) *(Employee Name)*

of the terms and conditions of the Telework Program. The supervisor and employee agree:

The Type of Telework Schedule is: ☐ Fixed ☐ As Needed

1. To adhere to the applicable guidelines, policies, and procedures of the Telework Program;
2. The employee's official duty station is typically not changed by his/her participation in the Telework Program. However, in accordance with 5 CFR 531.605(d), if an employee on a Telework work schedule is not scheduled to report to the regular worksite at least once a week on a regular and recurring basis, then the Telework site becomes the official worksite and duty station. If the Telework site is located in a different locality pay area, then the employee's pay must be adjusted for the new locality pay area. All pay, leave and travel entitlements will be based on the employee's official worksite/duty station.
3. The employee will complete a new alternative work schedule that incorporates the days and times at the alternative worksite.
4. Requests for leave should be made in accordance with applicable law, OPM regulations, Department policy, and, where applicable, the Collective Bargaining Agreement.
5. The employee will continue to work in pay status while working at his/her alternative worksite. If the employee works overtime that has been approved in advance, he/she will be compensated in accordance with applicable law, OPM regulation, Department policy, and, where applicable, the Collective Bargaining Agreement. The employee understands that the Department is not required to compensate unapproved overtime work. Credit hours and comp time will be covered under compensation.
6. The employee must ensure a safe and healthy work environment and will sign a self certification checklist that proclaims the alternative worksite is free of work-related safety and health hazards. Management may deny or rescind a Telework Agreement based on safety problems in the home. Provided the employee is given forty eight (48) hours advance notice and Management has reasonable cause to believe that a hazardous work environment exists, Management may have the home-office inspected for compliance with safety requirements.
7. The employee is covered under Federal Employees' Compensation Act if injured in the course of performing official duties at the alternative duty station.
8. 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 employee's residence. By participating in this program, the employee does not relinquish any entitlement to reimbursement for authorized expenses incurred while conducting business for the Government, as provided for by Statute and implementing regulations.

9. The employee will apply approved safeguards to protect Government/Department records from unauthorized disclosure or damage and will comply with Privacy Act requirements set forth in the Privacy Act of 1974, Public Law 93-579, codified at Section 552a, Title 5 U.S.C. and specific Department confidentiality requirements.
10. Standards of conduct (34 CFR Part 73) continue to apply to employees working at alternative worksites.
11. For purposes of the Telework Program and provided the employee is given at least forty eight (48) hours advance notice, Management may inspect the employee's home worksite during the employee's normal working hours. An employee may request that a Union representative accompany Management on an alternative worksite visit.
12. The employee agrees to limit performance of officially assigned duties to his/her official duty station, Department-approved alternative duty stations, or other locations approved by the supervisor. Failure to comply with this provision may result in loss of pay, termination from the Telework Program and/or other appropriate disciplinary action.
13. The employee, after two (2) weeks' notice or less if agreed to by the supervisor, may terminate participation in the Telework Program. After two (2) weeks' notice, Management has the right to remove the employee from the Program for failure to adhere to Telework procedures contained herein.
14. During an OPM declared emergency situation, Teleworkers who are working from an alternative/Telework location, will be required to continue to work, even if the Federal Government is declared 'closed to the public', grants early dismissal or allows delayed arrival at one (1) or more ED locations. If the emergency situation requires activation of the Department's COOP or BCP, 'emergency' employees will follow the guidance of the applicable plan for the emergency situation.

________________________________ ________________

(Department Telework Managing Officer) *(Date Reviewed)*

Employee’s Alternative Workplace Address(es) and Phone Number(s):

________________________________ ________________

________________________________ ________________

________________________________ ________________

____

Employee Date

⌋ Recommend Approval Δ Recommend Disapproval for the following reason(s):

____

____

____

______________________________________ ________________________

Supervisor Date

⌋ Approved Δ Disapproved, for the following reason(s):

____

____

____

______________________________________ ________________________

Approving Official Date

______________________________________ ________________________

Agency Telework Managing Officer Date Reviewed