Master Agreement

United States Marshals Service
Department of Justice

American Federation of Government Employees
Local 2272, AFL-CIO

September 25, 2015

USMS Publication 4 (Rev. 9/15)

U.S. Department of Justice

United States Marshals Service

Office of the Director

Washington, DC 20530-1000

September 25, 2015

MEMORANDUM TO: United States Marshals Service Supervisors and Managers
Bargaining Unit Employees

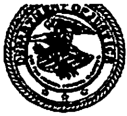
FROM: David L. Harlow
Acting Director

SUBJECT: 2015 Master Agreement

I am pleased to introduce the attached negotiated Agreement between the United States Marshals Service (USMS) and the American Federation of Government Employees Local 2272, AFL-CIO. The Agreement was effected September 25, 2015, and is to remain in effect for 5 years.

In accordance with 5 U.S.C. § 7114(c), this Agreement is approved, endorsed, and is in compliance with applicable laws, rules, and regulations. The Agreement sets forth the parameters for labor-management relations within the USMS and outlines specific rights of bargaining unit employees and management in practices affecting conditions of employment. Negotiated over the course of 2 years in cities across the United States, the Agreement has been adapted to meet the needs of the USMS today while fostering a mutual commitment to cooperation and promoting both the efficiency of our Agency's operations and the well-being of our employees nationwide.

This Agreement represents the sincere efforts of the USMS and the Union to promote cooperative and effective labor-management relations in the best interest of the Agency's most valuable resource: our employees. I encourage all supervisors, managers, and bargaining unit employees to familiarize themselves with its provisions.



U.S. Department of Justice

Justice Management Division

Labor and Employment Law Office

Washington, D.C. 20530

July 23, 2015

Michael Prout
Chief Negotiator
US Marshals Service
Washington DC 20530-1000

Derek Willingham
Chief Negotiator
AFGE
80 F Street NW
Washington, DC 20001

Dear Mr. Prout and Mr. Willingham,

Pursuant to 5 U.S.C. § 7114(c), we have reviewed the revised collective bargaining agreement between the U.S. Department of Justice, United States Marshals Service and the American Federation of Government Employees, Local 2272, AFL-CIO. Please be advised that with the changes provided to us dated June 29, 2015, that provisions that either needed to be clarified or that were deemed nonnegotiable are now in accordance with the provisions of the Federal Service Labor Management Relations Statute and other applicable laws, rules, and regulations. Therefore, the revised agreement in its entirety is approved, and the parties may execute and implement it. Congratulations to both of you and your teams on reaching this desired result.

Sincerely,

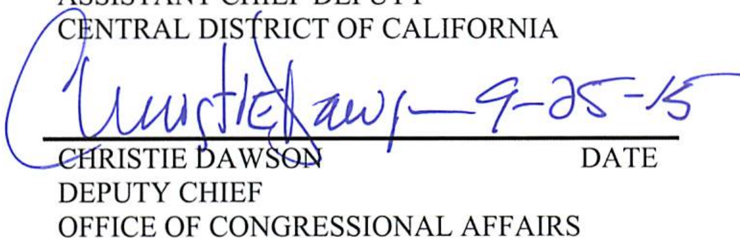
Eric S. Daniels
Assistant Director
for Labor and Employment Law

FOR THE UNITED STATES MARSHALS SERVICE, DEPARTMENT OF JUSTICE

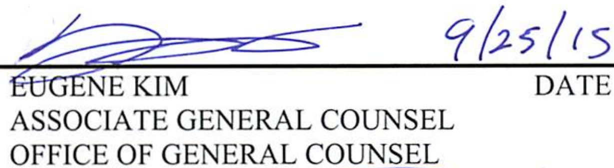
DAVID L. HARLOW — DATE
ACTING DIRECTOR

MICHAEL J. PROUT — DATE
CHIEF NEGOTIATOR
ASSISTANT DIRECTOR

MICHAEL PEERSON — DATE
ASSISTANT CHIEF DEPUTY
CENTRAL DISTRICT OF CALIFORNIA



CHRISTIE DAWSON — DATE
DEPUTY CHIEF
OFFICE OF CONGRESSIONAL AFFAIRS



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SUPERVISORY INSPECTOR
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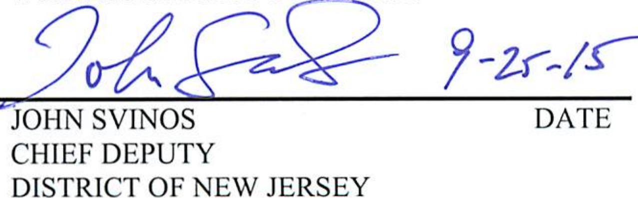

JOHN SVINOS — DATE
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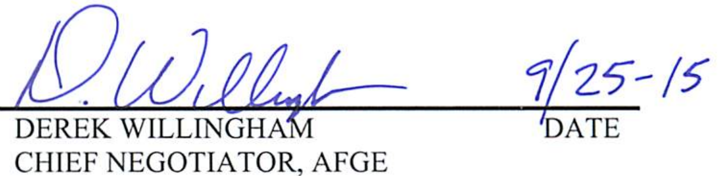
FOR THE AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES (AFGE), LOCAL 2272, AFL-CIO

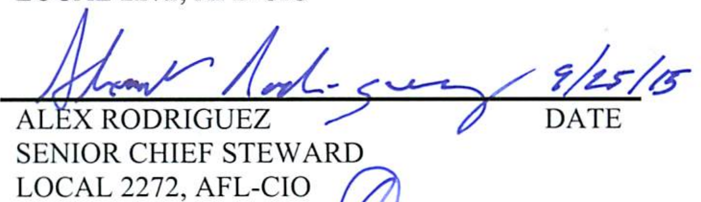
J. DAVID COX, SR. — DATE
PRESIDENT, AFGE



DEREK WILLINGHAM — DATE
CHIEF NEGOTIATOR, AFGE

LUIS FIGUEROA — DATE
PRESIDENT
LOCAL 2272, AFL-CIO

WILLIAM POPE — DATE
STEWARD / LEGISLATIVE AFFAIRS
LOCAL 2272, AFL-CIO



ALEX RODRIGUEZ — DATE
SENIOR CHIEF STEWARD
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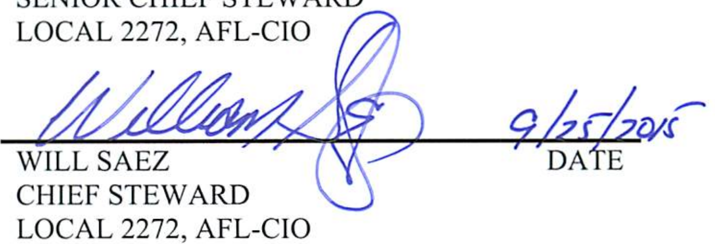

WILL SAEZ — DATE
CHIEF STEWARD
LOCAL 2272, AFL-CIO

FOR THE UNITED STATES MARSHALS
SERVICE, DEPARTMENT OF JUSTICE

9-25-15

ERIC TIMBERMAN DATE
CHIEF DEPUTY
SOUTHERN DISTRICT OF NEW YORK

9-25-2015

JAMES WACHTER DATE
DEPUTY ASSISTANT DIRECTOR (RET.)
HUMAN RESOURCES DIVISION

25 Sep 15

SCOTT WILHELM DATE
CHIEF PILOT
JUSTICE PRISONER & ALIEN
TRANSPORTATION SYSTEM

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PREAMBLE

WHEREAS the American Federation of Government Employees, AFL-CIO (Union) and the United States Department of Justice, U.S. Marshals Service (Agency), also referred to as the Parties, recognize that the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them safeguards the public interest, contributes to the effective conduct of public business, and facilitates and encourages the amicable settlements of disputes between employees and their employers involving conditions of employment; and

WHEREAS the Parties recognize that the public interest demands the highest standards of employee performance and implementation of modern progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the Government; and

WHEREAS the Parties recognize that a mutual commitment to cooperation promotes both the efficiency of the Agency's operations and the well-being of its employees; and

WHEREAS the Parties agree that the dignity of employees will be respected in the implementation and application of this Agreement as well as related personnel policies and practices;

NOW THEREFORE the Parties here by further agree as follows:
To work together through this Master Agreement to identify problems and craft solutions, enhance productivity, and deliver the best quality of service to the nation;

To focus on problems and ways to solve those problems which promote the interests of the public, while recognizing the needs of the other party;

To consider collective bargaining as an opportunity to improve the relationship between the Agency and the Union; and

To recognize that the employees are the most valuable resource of the Agency, and are encouraged, and shall be reasonably assisted, to develop their potential as U.S. Marshals Service employees to the fullest extent practicable.

The Agency agrees to provide a safe and healthful working environment for all employees and will comply with applicable federal, state and local laws and regulations.

This Agreement and such supplementary agreements and memorandums of understanding by both parties as may be agreed upon hereunder from time to time, together constitute an agreement between the Agency and the Union.

ARTICLE 1
RECOGNITION

I. Exclusive Recognition

This Master Agreement is made and entered into between the United States Marshals Service (USMS), the U.S. Department of Justice (DOJ), referred to as the “Agency” and the American Federation of Government Employees (AFGE), Local 2272, AFL-CIO, hereinafter referred to as the “Union”: the exclusive bargaining unit agent for all bargaining unit personnel in the USMS.

II. Purpose

The Agency recognizes the Union as the exclusive bargaining agent under the provisions of the Federal Service Labor-Management Relations Statute, (FSLMRS), Title 5 Chapter 71, hereinafter referred to as the Statute, and the Civil Service Reform Act of 1978, for all the employees in the unit, as the recognized Union for bargaining purposes with respect to conditions of employment as defined in 5 U.S.C. 7103(a)(14), of employees represented by the Union and as provided by law. The Union has the full statutory authority to meet and confer with the Agency for the purpose of entering into collective bargaining agreements concerning changes in conditions of employment covering the above employees and to administer this Master Agreement herein referred to as the Agreement.

The Agency agrees that it will not bargain, negotiate, or enter into any agreement(s), or memoranda of understanding with any other labor organization, association, persons or representatives thereof with respect to the terms and conditions expressed or contained in this Agreement.

This Agreement considers the understanding, agreement, and acceptance of issues, matters, and subjects affecting working conditions of bargaining unit employees represented by the Union. This document anticipates that the subjects, matters, procedures, impacts, arrangements or issues considered in this Agreement are reached with a clear and unmistakable understanding between the Union and the Agency. If the Agency seeks to change any prospective issues or working conditions not covered by this Agreement, the Agency understands its responsibility to only implement those changes subject to any bargaining obligation it may have with the Union pursuant to law and as dictated by this Agreement.

This Agreement revokes the prior 1996 Master Agreement in effect between the Agency and the Union.

III. Certification of Unit

The Union was certified as the exclusive representative of bargaining unit employees on August 20, 1974, in Case No. 22-5070(Ro). The term "employee" as used in this Agreement means any employee of the Agency represented by the Union. Except as provided by 5 U.S.C. 7103, the bargaining unit consists of all nonprofessional employees of the United States Marshals Service, including

Deputy U.S. Marshals GS-082, Detention Enforcement Officers GS-1802, Aviation Enforcement Officers GS-1801, and administrative employees not excluded by Executive Order or Statute.

In addition, all GS-1811s are excluded from the bargaining unit either by application of law or E.O. 12171. Other employees that are also excluded from bargaining unit coverage and representation by Statute and court decision include the following: professional employees, confidential employees, temporary employees with no reasonable expectation of continuous employment, internal investigators, supervisors, management officials, contract guards, and federal personnel workers in other than a purely clerical capacity.

ARTICLE 2
PRECEDENCE OF LAWS AND REGULATIONS

I. Nothing in this Agreement revokes, reverses, or changes any prior written agreement(s) entered into between the Union and the Agency unless specifically referenced. To the extent there may be a conflict with this Agreement and any other prior written agreement(s) not specifically revoked, a reasonable interpretation shall be required to give full force and effect to both this Agreement and the other prior written agreement**.**

II. The parties are governed by laws, regulations, and policies of the appropriate authorities. When a government wide regulation imposes upon the Agency required means and methods of work, policies, regulations, and/or guidance that affect working conditions, it is understood that such requirements shall be implemented pursuant to the direction provided by the controlling authority. Impact and Implementation (I&I) bargaining shall be required prior to implementing the direction in connection with the implementation of the change in working conditions, as required**.**

III. Bargaining will take place prior to the implementation of other changes in working conditions such as Agency regulation or policy relating to personnel policy practices as well as procedures affecting working conditions, unless the effect is de minimis. If the change is more than de minimis and required for the necessary functioning of the agency (or other time sensitive circumstances) or if the change is needed due to an emergency, then bargaining may take place post-implementation in light of the circumstances**.**

IV. Waiver of Rights

Any lawful waivers of the rights given to management or the union by the Federal Labor Management Relations Statute, 5 U.S.C. Chapter 71, must be clearly and unmistakably made.

V. Past Practices

Any prior benefits, practices and/or memoranda of understanding which were in effect on the effective date of this Agreement at any level (national, council, regional and/or local), shall remain in effect unless superseded by the new agreement or in accordance with 5 U.S.C. Chapter 71.

ARTICLE 3
EFFECTIVE DATE AND DURATION OF AGREEMENT

I. Effective Date

This Agreement shall take effect on September 25, 2015.

This agreement is governed by 5 USC 7114 (c), 5 USC 7117, 5 USC 7111 (F) (3) (A)

II. Duration

This Agreement shall remain in full force and effect for five (5) years from its effective date. This Agreement shall automatically renew itself from year to year thereafter unless either party furnishes written notice of the desire to renegotiate in accordance with Section III of this Article. The agreement in existence at the time of such notice remains in effect until completion of renegotiations or until automatic extension if renegotiations are not completed by the subsequent anniversary date.

III. Renegotiation

A. Notice to the Other Party

If either party desires to renegotiate any terms of this Agreement, it will furnish written notice to the other party, identifying the Articles that it wishes to change, not more than one hundred and twenty (120) or less than ninety (90) days prior to the expiration date, beginning five (5) years from the effective date and continuing each one (1) year anniversary thereafter.

B. Commencement of Ground Rules for Negotiation

In the event such notice is given by either party, the parties will begin negotiating ground rules for the new negotiations within sixty (60) days from the date of receipt of notice of the proposed changes. If negotiations are not completed by the anniversary date, the Agreement will be automatically extended until a new agreement is negotiated.

IV. Reopener

Either party may propose negotiations during the term of this Agreement to reopen, amend, or modify this Agreement, but such negotiations may be conducted only by mutual consent of the parties. Such negotiations shall be conducted in accordance with Article 4, Mid-Term Bargaining.

V. Amendments and Modifications

This Agreement may only be amended, modified, or renegotiated in accordance with the provisions of this Agreement.

ARTICLE 4
MID-TERM BARGAINING

I. Purpose

This Article shall be administered in accordance with 5 U.S.C. Chapter 71 and this Agreement. The purpose of this Article is to prescribe the criteria and procedures by which the Parties shall engage in negotiations during the term of the Agreement.

II. Procedures

A. Notice of Proposed Change

Either Party may propose changes in conditions of employment during the life of the Agreement which is not already covered by the Agreement in accordance with 5 U.S.C. 71. However, if the Union proposes any changes that are nonnegotiable or outside of the scope of bargaining as permitted by law, the Agency has no obligation to bargain over such proposal. Any declaration of non-negotiability will be in accordance with the Statute and until such time as a determination is made by the third party, no changes as proposed will take place and status quo will be maintained. If the Agency declares a proposal non-negotiable, the Union has a right to pursue a negotiability appeal, with all the associated rights and responsibilities. The initiating Party will provide the other Party with advance written notice, as described in Section 3 below, not less than 30 days prior to the proposed implementation date of any change affecting conditions of employment. The notice will, at minimum, contain the following information:

1. The nature and scope of the proposed change;
2. A description of the change;
3. An explanation of the initiating Party's plans for implementing this change;
4. An explanation of why the proposed change is necessary; and
5. The proposed implementation date.

The Union has the right to bargain over proposed changes initiated by the Agency to working conditions if the proposed change, or its impacts, are not covered by this Agreement and if the proposed change is more than de minimis (as defined in Appendix A - Definitions), or if the change is not being implemented pursuant to a controlling or higher authority's direction (per Article 1, Recognition).

III. Bargaining Procedures/Ground Rules

The following bargaining procedures will be used and shall constitute the ground rules for any bargaining session between the parties:

A. Upon written notification of the proposed change from the initiating party, the receiving party will serve a written bargaining request to; (Agency) the Chief, Employee and Labor Relations (or his/her designee), (Union) President National Local (or his/her designee) within fourteen (14) calendar days of receipt of the written notification. If the service date falls on a weekend or federal holiday, the service date will automatically be extended to the next business day. Service may be effectuated by mail (including federal express and UPS), fax transmissions, or email. If service is made by mail, service will be considered to have taken place by the postmark date. If service is made by fax or email, service will be considered to have taken place upon transmission.

B. Briefing Sessions. Either Party may request a briefing session to explore or explain the change and its impact on unit employees. This session may be scheduled in advance of the start of actual negotiations, or as a part of the time allotted for bargaining.

C. The responding party has fourteen (14) days after it has served its written bargaining request, to serve the proposing party its counter proposal. The initiating party may grant extensions to the respondent. Reasonable extension requests will normally be granted. Failure to submit a counter proposal within the time allotted shall be construed as a clear and unmistakable waiver to bargain over the proposed change so long as the substance of the proposed change does not interfere with any statute, or regulation.

D. Upon timely submission of the Respondent's proposal, the Agency and Union shall arrange a bargaining session to take place as soon as practicably possible with consideration of the reasonable availability of the required personnel in order to conduct a proper bargaining session. Bargaining sessions shall take place during regular duty hours of all parties (even when bargaining takes place via technological means, when agreed upon, as described below) unless otherwise agreed by the Parties.

E. The parties agree that bargaining sessions take place via telephone conference or other technological methods such as with the use of video-teleconferencing or Microsoft Lync to determine the need to bargain in person. When determining the need for travel, the parties will consider substance of bargaining, expected duration, and the cost associated with travel. If the subject of bargaining relates to a Union proposal and the Union requires that bargaining take place in person, the Agency is responsible to pay the travel and expenses for all Union representatives. If the subject of bargaining relates to an Agency proposal and either party requires that bargaining take place in person, the Agency agrees to pay the travel and expenses for up to three Union representatives. However, if the Union believes that it will require more than 3 Union representatives for the bargaining session, the Agency in good faith shall consider whether to approve additional representatives that it shall pay the travel and expenses.

When bargaining is to take place in person, the parties may only agree on a location that has a reasonable nexus to the proposed change or where travel may be performed with the most benefit to the public.

F. For issues subject to bargaining under this section, the Agency will ensure that the relevant managers for the Division or District or an authorized designee participate in the bargaining session. The number of employees representing the Union, for whom official time is authorized, shall not exceed the number of individuals designated to represent the Agency. The Union will notify the Agency at least one-week prior to the start of negotiations of which the Union negotiators will be so Union representatives will have sufficient time to be excused from their regular duties in order to serve on official Union time.

G. Neither party may raise additional subjects of bargaining after submission of their initial proposals except by mutual agreement. However, each party may modify their proposals or positions during the course of the negotiation to permit realistic good faith bargaining of all aspects related to the issue.

H. The Agency and the Union will be represented at the bargaining sessions at all times by one who is authorized to bind or commit each of the respective parties.

I. During the actual bargaining session, the parties shall discuss the proposals submitted. Each party is free to call a caucus for its bargaining team to discuss matters internally. If bargaining cannot be completed within the duty hours of one day, or the previously agreed upon allotted time, the parties shall continue bargaining on any future mutually agreed upon date until an agreement is reached. In the event continued bargaining may not take place due to impact to the Agency's mission and or scheduling conflicts, the Parties may agree to either caucus until scheduled to return or place the matter in abeyance until rescheduled.

J. If agreement cannot be reached on the matters under negotiation because a matter is deemed non-negotiable, the Union is entitled to receive a written non-negotiability determination from the Agency and pursue a negotiability appeal with the FLRA pursuant to the FLRA negotiability appeal procedures. The Agency agrees to the status quo, unless the matter must be implemented due to an emergency (as defined in Appendix A, Definitions) or because of the necessary functioning of the Agency, until such time as the FLRA has made a ruling.

K. Upon completion of the negotiations, after all proposals have been resolved and or disposed of, the chief negotiators for each party will sign to indicate agreement without undue delay.

L. Arrangements. Negotiations will be held in a suitable meeting room provided by the Agency at a mutually agreed upon site. The Agency will furnish the Union negotiating team with a caucus room of similar size to the

Agency's caucus room, subject to availability, such as a conference room or other private meeting space which is in close proximity to the negotiation room. When similar size spaces for Union caucuses are not available within proximity, the Agency will work with the Union to find a suitable space.

M. Subject to availability, the Agency will provide the Union negotiating team with customary and routine office equipment, supplies, and services, including but not limited to computer(s) with Internet/intranet access, telephone(s), desks and/or tables and chairs, office supplies, and access to at least one printer and one photocopier. When such equipment, supplies, etc. are not available yet deemed necessary, the Agency will work with the Union to attempt to resolve any issues.

N. 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. This will not serve as a bar to the Parties concluding by mutual consent a general agreement on those items which have been or remain to be negotiated.

O. This procedure does not preclude the Parties from revising any proposals to overcome questions of scope of bargaining or duty to bargain during the period of negotiations.

P. Any provisions disapproved during Agency-head review may be referred to the FLRA by the Union. Any provision held within the scope of bargaining will be incorporated into the Agreement so long as an agreement is reached. The parties will commence negotiations within a reasonable period after receipt of an FLRA decision overruling the Agency head's determination that the Union's proposal is outside the scope of bargaining.

Q. Absent mutual agreement, representatives who participate in alternate work schedules, first 40 tours of duty, and flexiplace schedules of the Parties may be temporarily converted to regular tours of duty (i.e., Monday through Friday) and work hours adjusted according to the agreed-upon hours of negotiations.

R. No official transcript or electronic recordings will be made during the negotiations; however, each Party may designate a note taker to keep notes and records during the sessions. Each Party may bring a designated note taker, in addition to the agreed upon teams, who will be paid pursuant to Section 2(e.) of this Article.

S. Observers shall be permitted in negotiating sessions only by the mutual consent of the Parties.

IV. Emergency Procedures

Nothing in this Article or Agreement shall preclude the Agency from implementing changes in working conditions that may be subject to bargaining but is required to carry out its mission during an emergency (See Appendix A – Definitions) or for the necessary functioning of the Agency (See Appendix A – Definitions). In such circumstances, post-implementation bargaining may take place pursuant to the procedures described in this Article.

A. Purpose

The following establishes methods used to negotiate matters only affecting a single district or division where this Agreement and or Agency policy does not control or otherwise affect those matters intended to be negotiated, or such matters where because of the uniqueness of some districts or divisions this Agreement and Agency policy may not cover such matters, or where districts or divisions have policies that may be specific to those locations, e.g. pilot rest, report times for employees of special units, etc. Nothing in this section or Agreement changes or waives Management's duty to inform the Union of changes in matters related to employment and or waives the rights of the Union to bargain such changes fully.

B. Local Agreements

1. Review of Local Agreements/Policies and MOU

No future local district/divisional MOU or future agreement agreements may supersede this agreement unless authorized by law or agreed upon by the parties. As mentioned in Article 2 (Precedence of Laws and Regulations), Section 1, nothing in this Agreement revokes, reverses, or changes any prior written agreement(s) entered into between the Union and the Agency unless specifically referenced in this agreement. Future local agreements will be bargained according to this article and reduced to a local MOU.

2. Procedures for Negotiating Local MOU

The Parties agree to use all sections and subsection of this article, unless more intimate or informal methods are mutually agreed upon by the parties.

ARTICLE 5
LABOR MANAGEMENT COOPERATION COMMITTEE

I. Policy

In the interest of performing the Agency's mission, providing efficient and effective service to the public, and improving morale and the quality of work life for employees, the Agency and the Union will engage in cooperation and collaboration.

II. Labor Management Cooperation Committee

The Agency and the Union entered into a charter on December 7, 2011 to work productively together. For purposes of this agreement, the enacted charter will continue to provide the basis for a Labor Management Cooperation Committee and may be amended by agreement between the Agency and the Union (See Appendix F).

A. Local District/Division Cooperation Committees

When requested or needed, local district/division level labor-management cooperation committees may be formed to address and resolve issues which only affect employees/management of that particular district/division. When requested and needed the local parties agree to consult both the National Local as well as the Agency's Labor Relations in order to first try and determine if the issue(s) is already raised and being addressed and or for guidance on forming a local district/division cooperation committee.

III. Labor Management Training

The parties understand the potential benefit of labor management training. The Labor Management Cooperation Committee may make recommendations to Agency managers for joint training. However, nothing in this Article provides an entitlement or requirement to provide Labor Management Training. The Agency will consider the recommended topic for training, whether it believes any particular Union officials and/or Labor Relations personnel would benefit from such proposed training and whether it has the resources to support the particular training.

IV. Union Recommended Agency Training

The Agency and the Union understand that training recommendations are suggestions. The Union may recommend Labor Management Training to Agency managers and the Agency will thoroughly review those recommendations. Agency management will ultimately determine whether the recommended training is in the best interest of the Agency.

V. Duty Status

All approved training participants will be on duty time.

VI. Travel and Per Diem for Approved Training

All participants in approved training will be on official travel consistent with government-wide regulations and the Official Travel article of the Agreement.

ARTICLE 6
PROCESS FOR UNION DUES DEDUCTIONS

I. Purpose

Participation or membership in a labor organization is a protected right by statute. The following outlines the procedures and regulations used for bargaining unit employees choosing to have dues with the Union deducted by payroll deduction. Nothing in this Agreement shall require an employee to become, or to remain a member of the Union, or to pay money to the Union except pursuant to a voluntary written authorization by the employee for the payment of dues through payroll deductions.

A. Statute

Dues withholding from bargaining unit employees shall be administered in accordance with 5 U.S. Code Chapter 71, "The Federal Service Labor-Management Relations Statute," as amended and this Agreement.

B. Intent

This Article provides for a fair and equitable system by which Union dues may be collected from bargaining unit employees in a timely and regular basis without having an adverse impact on the day to day operations of the organization.

II. Union Dues

Bargaining unit employees may authorize the payment of labor organization dues to the Union by voluntarily completing a Standard Form 1187, "Request for Payroll Deductions for Labor Organization Dues," or its equivalent. Information as to which employees elect to pay dues will only be used in conducting official business and will not be disseminated to any individual without a need for this information.

III. Dues Subject To Withholding

A. Dues

The term "dues" includes regular and periodic dues, fees, and assessments of the exclusive representative of the unit. The Agency shall honor the assignment and make allotments pursuant to the assignment.

B. Time to Process

All regular and periodic dues allotments will be processed by the parties in a timely manner.

IV. Allotments (Payroll Deductions)

A. Payroll Deduction Form (SF-1187)

Union members who desire to make an allotment for payment of dues will request such allotments by completing the SF-1187. The Union will procure the forms as needed and will make them available to the Union members.

B. Submission of Form to the Union

Completed allotment forms will be submitted to the Union President or other authorized officer who will complete the certification portion of the form. The Union, in turn, will promptly submit all such forms received from employees to the USMS Office of Employee and Labor Relations section for processing.

C. Allotment Beginning

Allotments will be effective at the beginning of the 2nd pay period following the receipt of a properly completed Standard Form 1187 to the USMS Office of Employee and Labor Relations. The Union may contact Labor Relations for assistance in resolving discrepancies.

D. Costs to Employee

Any authorized payroll allotment processed through the National Finance Center will be made at no cost to the Union or the employee.

E. Temporary Assignment

Employees who temporarily cease dues allotment because of a temporary assignment to a position not in the bargaining unit will have their dues allotment automatically reinstated upon transfer back into a bargaining unit position.

V. Payment and Union Dues Deduction Report

A. Agency Remittance

The Agency will make a remittance to the Union for amounts withheld on a biweekly basis. The remittance will be a single check or electronic funds transfer for the balance of the dues withheld and will be made payable to the Union.

B. Deduction Report

The payment will be accompanied by a monthly Union Dues Deduction Report containing:

1. Identification of the Union;

2. Total amount of the remittance;

3. Name of employee, date, and the amount deducted;

4. Names of employees for whom deductions were stopped.

5. Reports will be provided to the Union in a format that can be sorted by the Union. (e.g. Microsoft Excel)

VI. Changes in Dues Withholding Amounts

A. Reporting Changes in Dues

The Union may change the amount of the Union dues deducted per employee. The Union President or other authorized Union officer shall forward a statement to the USMS Office of Employee and Labor Relations indicating the dues change. In addition, the Union will communicate to Bargaining Unit employees the amount and effective date of the dues increase.

B. Procedure

Such statement must be received ten (10) workdays prior to the first day of the pay period in which such change is to be effective. Changes will be effective the first pay period after timely receipt by the USMS Office of Employee and Labor Relations.

VII. Dues Revocation

A. Anniversary Date

Union members who have authorized Union dues withholding may revoke their payroll deduction of dues once a year on the anniversary date of the first withholding by submitting Standard Form 1188, "Cancellation of Payroll Deductions for Labor Union Dues" to the USMS Office of Employee and Labor Relations.

B. Cancellation Form (SF-1188)

Members wishing to revoke their payroll deduction must submit an SF-1188, or its equivalent to the appropriate Union official. The Union will procure the forms as needed and will make them available to the Union members.

C. Procedure

Upon receipt of the properly completed SF-1188, the Union representative must:

1. Certify by date and signature, or other date stamping device, that the date the SF-1188 is given to the Union is accurate and true.

2. The SF-1188 must be submitted to the Union more than 90 calendar days prior to the anniversary date.

3. The Union official will, by reference to the Union Dues Deduction Report, determine the anniversary date of the allotment.

4. The ending date of the pay period in which the anniversary date appears will be entered in Item (6) on the SF-1188 and initialed by the Union official.

5. The SF-1188 will be delivered to the USMS Office of Employee and Labor Relations one pay period prior to the date entered in Item (6).

D. Termination of Dues

Notwithstanding Section 7.1 of this Article, deduction of dues with respect to an employee will terminate with the start of the first payroll period after which any of the following occurs:

1. Loss of exclusive recognition by the Union;

2. Separation of the employee for any reason;

3. Notice to the Employer from the Union that the employee has been suspended or expelled from the membership of the Union;

4. Transfer, reassignment, or promotion or demotion of an eligible member to a position excluded from the Union's recognition; or

5. Activation of an employee into active duty military status.

E. Changes in Bargaining Unit Status

If the Agency removes a dues paying employee from dues withholding based on a belief that the employee's position is outside the bargaining unit, and the Federal Labor Relations Authority determines that the Agency acted improperly, the Agency will promptly reinstate the employee's dues withholding authorization and make the Union whole for all lost income.

VIII. Reinstatement of Separated Employee

If an employee who has been separated by the Agency is reinstated by an arbitrator, the Merit Systems Protection Board, the Equal Employment Opportunity Commission, or a court of competent authority, and the Agency is required to make the employee whole, dues withholding will be continued for that employee without submitting a new SF-1187, provided that the employee was a dues paying Union member at the time of his/her separation, and the employee chooses to resume dues withholding. Dues withholding will resume with the effective date of the reinstatement only. The Union will coordinate with the Office of Employee and Labor Relations.

ARTICLE 7
EMPLOYEE RIGHTS

I. Right to Unionism

In accordance with 5 U.S.C. 7102 and 5 U.S.C. 7103, each employee shall have the right to join or assist the Union, or to refrain from such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Such rights include:

The right to act for a labor organization in the capacity of a representative, and the right, in that capacity, to present the views of the labor organization to heads of the USMS organizational components, and other officials of the executive branch of the Government, the Congress, or other appropriate authorities; and

The right to engage in collective bargaining with respect to conditions of employment as provided by law and this agreement through representatives chosen by employees under the provisions of the law and the Statute; and

The right to engage in protected activities concerning equal opportunity in employment in accordance with this Agreement.

II. Right to Representation

A. Contacting the Union

Bargaining Unit Employees have a right to the representation and assistance of the Union, for those matters within the Union's jurisdiction. Employees may contact in person, by phone or other electronic means privately with a Union representative during duty hours for representational matters in accordance with the Master Agreement, the Civil Service Reform Act of 1978 and the statute. The employee will request to be released from duties to exercise this right. Employees will be released to exercise this right unless there is an operational exigency.

B. Meeting with Union Representatives

Employees who desire to meet with Union officials shall coordinate with their supervisor. Workload permitting, the employee should be excused within one business day to meet with his/her representative. If the employee cannot be made available, then the supervisor will inform the employee when he/she can be made available.

C. Agency Communications with Employees

Consistent with 5 U.S.C. 71, the Agency will not communicate directly with employees regarding conditions of employment in a manner that will improperly bypass the Union under law.

III. Personal Rights

A. Treatment of Employees

All employees shall be treated fairly and equitably in all aspects of personnel management and without regard to political affiliation, race, color, religion, national origin, gender, sexual orientation, marital status, age, or disabling condition, and with proper regard and protection of their privacy and constitutional rights.

B. Mutual Treatment

Managers and employees will deal with each other in a professional manner and with courtesy, dignity, and respect.

C. Management to Employee Discussions

The Agency will make every reasonable effort to conduct discussions between supervisors and employees, other than run-of-the-mill work conversations, in private.

D. Arrests of Employees

If an employee is to be served with a warrant or subpoena, it will be done in private to the extent that the Agency has knowledge of and can control the situation.

E. Right to Communicate with Elected Representatives

In accordance with existing statutes and regulations, employees have the right to present their personal views to Congress subject to the restrictions of the Hatch Act (5 USC 7324), the Executive Branch or other authorities without fear of penalty or reprisal. Bargaining unit employees are not authorized to represent the agency when expressing their personal views.

F. Storage Space of Personal Belongings

1. The Agency shall make its best efforts to provide, to the extent such resources exist, lockable accommodations for the secure storage of personal belongings for employees while on duty.
2. Upon request, the Agency will instruct employees on filing a claim for reimbursement under 31 U.S.C. 3721 and will make forms available in case of loss of personal property.
3. Any search of these accommodations must be done for good reason and in compliance with applicable laws and regulations. At least two (2) people must be present at any search.

G. Personal and Private Life

Employees shall have the right to live their private lives and practice their personal beliefs without undue interference, coercion or unlawful discrimination at the workplace so long such acts do not violate the relevant standards of conduct. In addition, this section is not intended to preclude or interfere with the Agency's right in taking disciplinary or adverse action for personal conduct so long as the Agency determines such alleged conduct has a nexus to the employee's position.

H. Resignation or Retirement Decision

An employee's decision to resign or retire, if eligible, shall be made freely and in accordance with prevailing regulations.

1. If an employee is facing termination, the employee may resign, freely and in accordance with prevailing regulations any time prior to the effective date. The employee may withdraw his or her resignation prior to the effective date subject to the parameters of 5 CFR 715.202 (b).

I. Employee Break Area

The Agency will generally provide employees with access to break areas in close proximity to their work areas. The break areas should include kitchen facilities, including sink, refrigerators, and accommodations for additional appliances (e.g. for heating, toasting, making coffee and tea, etc). These areas should be away from the general public whenever possible.

In cases in which it is impractical to provide onsite space for meals, the Agency may work with the Union to identify locations where employees can spend these non-work periods.

J. Space for Employee Fitness Activities

An employee may participate in approved fitness activities in accordance with USMS Training Directive 14.2 on Fitness. In instances where an official fitness facility is not available, an employee may request of local Agency management for use of alternate space (conference or training rooms) in conjunction with the USMS Fitness directive. This space may be made available during normal operating hours for use by employees to the extent that these activities do not cause a disruption to the office. Where convenient government facilities exist nearby but are not otherwise within the district or division, the Union and the local Agency management may explore a joint use program. Operational employees will be provided space in accordance with the Agency's Fitness in Total (FIT) policy.

IV. Official Records and Files

A. Voice Recordings

No personal voice recordings may be collected, maintained, or retained without the knowledge and consent of another employee except in accordance with law, government-wide regulation and this Agreement. An exception to this section is a criminal or administrative investigation.

B. Personnel Records

Personnel records will be maintained in accordance with OPM regulations and only officials with legitimate need to know may access personnel records.

C. Notice of Records

Employees are advised that the Agency maintains systems of records, including an Official Personnel File (OPF) and a local district/division file. If district/division management maintains another system of personnel records, management will ensure the Employee is aware. Access to these records will be guided by the following section.

D. Accessing Personnel Records

Employees have immediate access to their respective OPF through the online Electronic Official Personnel File (e-OPF). Employees will be granted a reasonable amount of time to examine any of their personnel records. Access and correction of personnel records will be granted without cost to leave or loss of pay.

E. Notification of Changes to Personnel Records

Pursuant to the Privacy Act (5 USC 552a), employees may request copies of any material placed in their personnel records and request amendment of a record pertaining to the employee. The Agency shall then either make any relevant corrections or inform the employee of its refusal to amend the record along with its rationale and how the employee may request a review of that refusal.

F. Manager's Personal Notes

Managers shall exercise sound judgment and discretion in maintaining personal notes pertaining to an employee. Personal notes may not be used in any disciplinary, adverse, or performance based action unless the employee has been provided the opportunity under the standards of procedural due process to review any notes that the proposing official relied upon in proposing disciplinary action.

V. Compensation

A. Receipt of Pay

Employees are entitled to timely receipt of all compensation earned by them for the applicable pay period. The Agency will make every effort to ensure that employees receive their pay on the established payday in their designated bank account. The employee is responsible for updating the National Finance Center (NFC), Employee Personal Page (EPP), and routinely completing WebTA submissions.

B. Late Payment of Earnings

In case of untimely receipt of pay, the Agency will coordinate with the National Finance Center (NFC) on behalf of the employee. (NFC).

C. Assistance to Employees Suffering from Late Payment of Earnings

The Agency will assist affected employees by verifying to the bank or other institution (e.g. creditors) the amount of pay that is due and that the Agency is taking every step to replace the missing funds, upon request by the employee.

VI. Whistleblower Protection

Bargaining Unit employees are protected by the Whistleblower Protection Act against reprisal for the lawful disclosure of information, which the employee reasonably believes evidences a violation of law, rule or regulation, or evidences gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to health or safety.

VII. Voluntary Activities

Employees may not be required to contribute money in the Combined Federal Campaign, purchase U.S. bonds, or donate blood in any organized blood drive. Participation or nonparticipation will not advantage or disadvantage employees.

VIII. Statutory Requirements

Personnel management will be conducted in accordance Title 5 of the U.S. Code, OPM Regulations, and the applicable USMS Policy, if not spoken to in this agreement.

IX. Commute Options

The parties agree to explore alternative commuting options and to encourage their use. The Agency will make appropriate arrangements for employees to advertise ride-sharing opportunities in accordance with government wide regulations. Government vehicles may not be used to provide ride-sharing opportunities.

Where possible, the Agency will work closely with public transportation agencies to ensure the availability of public transportation to the facility in support of accommodating mobility impaired employees.

X. Transit Subsidies

Transit subsidies are designed to encourage employees to use mass transportation in commuting to reduce air pollution, noise, and traffic congestion in metropolitan areas. When available, qualified employees shall receive a subsidy in the form of transit vouchers for purchase of "fare media" or reimbursement that must be used toward public transportation commuting costs.

ARTICLE 8
MANAGEMENT RIGHTS

I. Statutory Rights

Nothing in this Agreement is intended to be nor shall be construed as affecting the statutory authority of any management official of the Agency:

A. to determine the mission, budget, organization, number of employees, and internal security practices of the Agency; and

B. in accordance with applicable laws

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

2. to assign work, to make determinations with respect to contracting out, and to determine the personnel by which Agency operations shall be conducted

3. with respect to filling positions, to make selections for appointment from

a. among properly ranked and certified candidates for promotion; or

b. any other appropriate source; and

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

II. Permissive Rights

Nothing in this Agreement shall preclude the Agency and the Union from negotiating

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

B. procedures which management officials of the Agency will observe in exercising any authority under this Article; or

C. appropriate arrangements for employees adversely affected by the exercise of any authority under this Article by such management officials.

III. Contractual Rights

In addition to the statutory rights provided to the Agency described above, the Agency may also rely upon this Agreement and the procedures in this Agreement to take actions described in any of the Articles in this Agreement and/or any other agreements reached between the Agency and the Union.

ARTICLE 9
UNION RIGHTS

I. Exclusive Representation

Pursuant to 5 U.S.C 7114 (a)(1), the Agency recognizes the Union as the exclusive representative of the employees in the unit certified by the Federal Labor Relations Authority ("FLRA") in Case No. 22-5070(Ro). As such, the Union is entitled to act for and negotiate collective bargaining agreements covering all employees in the unit. The Union is responsible for representing the interests of all employees in the unit it represents without discrimination and without regard to labor organization membership. Union representatives who participate in unprotected activities may be subject to disciplinary or adverse action.

II. Union Representatives

The Union may designate its own representatives. The Union will notify the Agency on an annual basis of the name, title, and work location of its representatives. If there is a change any time during the year, the Union will notify the Agency of the current list of officials.

A. Official Time for Union Representatives

Employee union representatives will receive official time for the performance of representational duties in accordance with Article 10, Official Time.

III. Representation Requirements

A. Formal Discussions

1. Pursuant to 5 U.S.C. 7117(a) (2) (A), the Union shall be given the opportunity to be represented at any formal discussion between one or more employees it represents and one or more representatives of the Agency concerning any grievance (to include settlement discussions) or any personnel policy or practice or other general condition of employment. This right to be represented does not extend to informal discussions between an employee and a supervisor concerning a personal problem, counseling, or work methods and assignments.

2. The representative designated by the Union will be given advance notice of any formal discussion that is to be held. If that official or designee is not available, the Agency shall contact the Union President. This advance notice will be given unless management has been prevented from doing so due to a significant impact to the mission. In situations involving a meeting with a large group of employees (such as a meeting with a Branch, Division or Office) unless a formal discussion is initiated by a bargaining unit employee, the Agency will notify the Union at least two (2) workdays in advance of the meeting.

4. If the Union elects to be represented at a formal discussion, the Union will inform the Chief, Labor Relations (or designee) in writing as soon as practicable. The Union should participate virtually through audio or video conferencing when the subject of the formal discussion is determined by the Union to permit virtual participation. Should in-person attendance be unavoidable, as determined by the Union president following consultation with Labor Relations, travel expenses will be the Agency's responsibility, not to exceed five times per fiscal year, unless mutually agreed upon.

5. During any formal discussion, the Union representative will be allowed to inform those in attendance that he/she is present in his/her Union capacity and will be able to perform representative functions in that capacity as such during the formal discussion. Union representatives may ask relevant questions and present a brief statement before the conclusion of the meeting outlining the Union's position concerning the issues presented by management.

B. Investigatory Examinations

1. As provided in 5 U.S.C. 7114 (a) (2) (B) and Section 2 of Article 38, Disciplinary and Adverse Actions, the Union has the right to be represented at any examination of an employee in the bargaining unit by a representative of the Agency in connection with an investigation if:

   a. The employee reasonably believes that the examination may result in disciplinary action against the employees; and

   b. The employee requests representation.

2. The Union will determine which representative will be assigned to any particular investigatory examination. It is understood by all parties that the Union may not unduly delay an examination in order to have a particular representative present.

3. The Union representative will be given a reasonable amount of time to arrive at the examination. Once the employee requests representation no further questioning will take place until the representative arrives. If representation is requested but not available, the examination will be postponed for a reasonable period of time, not to exceed three business days.

4. In an emergency (as defined in Appendix A), if no representative is immediately available, the Agency may commence the investigatory examination before the Union is able to provide a representative.

5. The Union is responsible for its travel expenses for representation unless mutually agreed upon.

IV. Office Space, Furnishings and Equipment

A. Union Office Space

1. The Agency will provide the Union with office space to the extent available and subject to the parameters of this Agreement to allow the Union to effectively perform its representational functions, including maintaining its files; conducting private conversations with employees, while still conducting other business.

2. The Agency will assign permanent offices within USMS space to three USMS employees that are National Local 2272 Executive Officers.

3. The agency will provide up to 5 office spaces, within USMS space, dedicated to the Union upon request by the local president and upon availability, as determined by the Chief of the Office of Construction Management. The geographic locales of these office spaces will be at the discretion of the local president, subject to availability.

4. The size of the office shall be typical to that of the average office within that district or division. This space will have lockable doors, which are only accessible to the assigned union representative(s), with the understanding that key control to the door will also be maintained by designated USMS management, building, or safety personnel. The Agency is responsible for rent, utilities, and maintenance for Union assigned spaces.

5. No construction or dislocation of current occupants will occur. Acquisition of additional space for this purpose is prohibited. The Chief of the Office of Construction Management, may consider alternative space, as necessary, in coordination with district/division management and the Union President. Union assigned space is not exempt from government/Agency-wide space reductions.

6. The Agency may grant office space to additional Executive Officers and representatives based upon a request from the Union contingent on availability of space, increase in Union membership and activity, and in consideration of government-wide space reductions.

B. Furnishings and Equipment

1. The Union office space will be furnished commensurate with USMS policy and what is generally used in that work location.

2. The Union office space will be equipped with a computer, printer, telephone, access to a color printer, network copier, and other equipment commensurate with USMS policy and what is generally used in that work location. When practicable, the Agency may utilize “all-in-one” devices to avoid the cost of additional equipment.

3. Computer equipment will allow access to the Agency's network, e-mail, and Intranet. Should the Union desire additional equipment or connectivity, the Union will coordinate the request with the Information Technology Division. The Union will be responsible for incurred costs related to additional equipment or connectivity.

4. The Agency will provide the Union President with a smart phone (e.g., Blackberry or iPhone), with e-mail capability.

5. The Agency will provide routine cleaning and maintenance service in Union occupied space in Agency facilities. The Union is responsible for ensuring accessibility to its space during normal cleaning and maintenance schedules.

6. The Union will be granted access to photocopiers and internal mail (pursuant to Section VI of this Article), teleconference facilities, video conference facilities, video equipment (i.e., TV and DVD player), and other office services routinely used in that work location. The Union will follow the same reservation and use procedures as all other users.

7. The Union will be given access to conference rooms for meetings requiring that size space. The Union will follow the same reservation and use procedures as all other users.

8. Such facilities shall be made available for Union meetings and membership drives, before or after duty hours or during lunch periods if such space is not already committed. The Union will follow the same reservation and use procedures as all other users.

9. Access to Agency space and equipment as described in Sections 6 through 8 of this Article is subject to availability and Agency policy directives. All use of information technology will conform to ITD standards (i.e. Rules of Behavior).

10. Labor Relations may provide financial support to districts or divisions if available in order to support compliance with this section of the agreement.

V. Bulletin Boards

A. The Union will be granted access to create and manage a National Local Team Site on the Agency's intranet post notices, manage a site-based bulletin board, and communicate with bargaining unit employees. All intranet usage is subject to Agency Information Technology directives and governance.

B. The Agency will permit the Union to provide lockable bulletin boards, no larger than 48 inches by 36 inches in size, exclusively for Union use, upon Union request. The Union and local management will coordinate the location and requirements for installation in space accessible and regularly utilized by all Bargaining Unit employees.

C. The Agency encourages and supports the Unions use of electronic delivery of information to Agency employees.

VI. Communication

A. E-Mail

1. The Union may communicate with Agency officials, bargaining unit employees, neutral third parties, or members of the public via the Agency's e-mail system. The Union will comply with all Information Technology directives.

2. The Union may send messages to more than one recipient at a time in accordance with Information Technology directives.

3. Consistent with 18 U.S.C. 1913, electronic mail transmissions shall not be used to urge or promote lobbying activities by employees either in support of or in opposition to any legislation or appropriation of Congress.

B. Distribution of Literature

Official publications of the Union, which may include newsletters, fliers, or other notices, may be distributed on Agency property by Union representatives during approved or official time or non-duty time, consistent with Article 10, Official 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, and may not relate to internal Union business including recruiting or lobbying.

C. Telephones Directories

1. The Agency will provide access to a telephone directory with the work phone numbers of all unit employees, and all management representatives.

2. The National Local Union office telephone number will be included in the Agency's online telephone directory.

D. Mail

Consistent with U.S. Postal regulations, the Union shall have use of Agency 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., except where required or to meet time frames imposed by a third party (e.g., EEOC, arbitrator, FSIP, FLRA) or by the National Agreement.

E. Private Messenger/Delivery Services

The Union will be provided access to any private messenger or delivery services (e.g., UPS, Fed Ex) used by the Agency. The Agency will endure the cost of use by Union representatives for transmittal to Agency Officials or neutral third parties for representational matters where no lower cost alternative is available. For all internal Union matters, the Union will endure the costs of messenger/delivery services.

VII. Information Provided to the Union

A. To the extent not prohibited by law or government-wide regulation, the Agency will respond to the Union in connection with a request for information pursuant to the standards of 5 U.S.C. 7114(b)(4). Union requests for information will be made through the Chief, Labor Relations (or designee).

B. The Union shall provide the Agency a minimum of 30 days for such information to be retrieved per the request. If the Agency considers that the information request does not meet the relevant statutory standards, the Agency will notify the Union as soon as practicably possible in accordance with the Statute. If additional time is needed by the Agency shall inform the Union of the estimated additional time necessary beyond the minimum 30 days and will make its best efforts to comply with such representation in accordance with the Statute.

C. The Agency will provide the Union with reasonable advance written notice of surveys concerning conditions of employment that vitally affects bargaining unit employees. The Agency will also provide the Union with an advance written copy of survey results as soon as possible so long as the Union presents a Request For Information pursuant to 5 U.S.C. 7114(b)(4) and meets the requisite standards. This section is not intended to preclude any Union involvement in such surveys that may exist in accordance with past practice, the parties' mutual agreement, or statute.

VIII. Labor Recognition Week

A. Labor Recognition Week

One (1) week each year, to coincide with Labor Day, will be scheduled as Labor Recognition Week. During that week, the Union may use the Agency's break areas and or mutually agreed upon spaces in headquarters and all work locations having bargaining unit employees, to publicize the contributions of organized labor, particularly AFGE, to society and Federal employees. The Agency agrees to recognize this event on the Agency's intranet site home page in a similar fashion as other Agency recognitions, i.e. National Hispanic Heritage Month.

B. Administrative Time

All bargaining unit employees will be provided with one (1) hour of administrative time to participate in Labor Recognition Week activities which will be publicized jointly by the Agency and the Union.

C. Official Time

The Union will be afforded a bank of 40 hours of Official Time for allocation to employees (other than Union officials) for use to prepare and conduct Labor Recognition Week activities. This time will be over and above the time allocations found in the Official Time article.

ARTICLE 10
OFFICIAL TIME

I. Purpose

In order to develop and maintain effective labor-management relations, the Agency agrees to grant official time to accomplish specified functions set forth herein. However, it is the Union representatives' individual responsibility to seek official time when it is necessary.

A. The parties understand that official time shall be granted to the designated and agreed upon Union representatives on a reasonable basis for the purposes of collective bargaining (to include bargaining on matters covered under Labor Management Cooperation on representatives who shall be afforded official time to perform representational functions in accordance with the law and this Agreement. Union officials may not be evaluated for job performance measures while conducting representational activities.

B. In accordance with 5 U.S.C § 7131(b) official time may not be expended for any activities performed by employees relating to internal Union business (including solicitation of membership, election of Union officials, and collection of dues). Failure to comply may subject employees to disciplinary action.

II. Authorized Use of Official Time

A. A Union officer may be authorized official time only for the following purposes:

1. To prepare and represent the Union on grievances filed by the Union;
2. To respond to grievances initiated by the Agency
3. To prepare the Union's case and represent the Union in an arbitration hearing;
4. To participate in meetings arranged by the Agency
5. To represent the Union in negotiating with the Agency;
6. To participate in the implementation of policies and procedures by the Agency that affect the working conditions of the bargaining unit employees;
7. To participate in statutory appeals procedures; or
8. To travel to one of the instances above (normal duty hours only)

B. Official time for employees and representatives is provided under separate authority in order to participate in certain statutory appeal procedures. This includes, but is not limited to, proceedings before the Federal Labor Relations Authority and the Equal Employment Opportunity Commission. Such official

time is not limited by this Article, and will not be charged against any amount of official time granted to the Union under Section 4.1.

C. Official time will be coded on the Time and Attendance system utilizing the proper codes.

III. Requesting Official Time

Union representatives must seek and obtain the approval from an immediate supervisor well in advance of a representational activity on official time to provide the supervisor ample opportunity to assess whether there would be an adverse effect on operations. The Agency acknowledges that some representational activities preclude requests for official time in advance. In these instances, supervisors will make every effort to release Union representatives without undue delay. If the representative cannot be released at the time of the request, the representative and the supervisor will make its best efforts to agree to a mutually agreeable time for departure, normally within 24 hours. The Union representative will be given time to inform any bargaining unit employees involved about the delay. Union representatives will be permitted to leave their assigned work area on official time as authorized under this agreement after reporting to their immediate supervisor or appropriate management official to request permission and identifying the purpose of their activity, in relation to Section 2 of this Article.

When making the request for official time, the representative will, at a minimum, advise the supervisor of the estimated amount of official time needed, the date and time when the official time will be used, where the representational function will occur, and the reason for which the official time is requested. Permission to conduct official Union business, including representational assistance activities, will normally be granted unless absence of the representative from his or her duties as determined by the immediate supervisor would cause adverse effect on the mission of his or her area.

While on official time, if the Union representative needs to leave the work site and his or her supervisor is temporarily absent from the site, the representative will notify the supervisor by calling their mobile phone or and or sending an e-mail message indicating where they are and approximately how long they will be gone.

If the Union representative exceeds the amount of official time granted by the supervisor, the Union representative shall inform the supervisor as soon as practicably possible in order to receive approval for the additional amount of requested official time. No later than by the end of the relevant pay period, the Union representative will inform the immediate supervisor how much official time the Union representative used during that particular pay period.

IV. Telework/Alternate Work Site

When necessary and to do so would not adversely impact the Agency mission, Union officials may request to telework or use an alternate work site in order to complete necessary tasks found to be acceptable for official time. Union officials

understand that if needed, due to mission essential issues e.g. staffing problems, emergencies, supervisors may require the Union official to return to their assigned duty station.

V. Allocation of Official Time

A. Elected Officials and Appointees

The Union President (or designee) shall be authorized to use up to 75% of his or her yearly work hours to perform representational activities. In addition, one other Union official shall be authorized up to 50% of the official's yearly work hours to perform representational activities.

A bank of 4800 hours of official time will be made available to the Union for use by other Union representatives for all representational activities. The Union President (or designee) will be responsible for administering the bank and allocating hours to individual representatives. The Union President (or designee) will inform the Agency of the Union representatives who are authorized to use the official time. Official time shall be approved without charge to leave or loss of pay.

B. Newly Designated Union Representatives

When a new Union representative is designated, the Agency will permit the representative up to eight (8) hours of official time to receive a Union representative orientation on the administration of the Agreement, no later than one (1) month from the date of designation.

VI. Allegations of Abuse

Alleged abuses of official time shall be brought by supervisors and management officials on a timely basis to the attention of the Chief of Labor Relations. The Chief of Labor Relations will then discuss the matter with the Assistant Director, Office of Professional Responsibility for subsequent discussions with the President of the Union. When instruction or correction may be provided by the President of the Union, Management will consider accepting such correction as a suitable remedy for alleged abuse and may agree to take no further disciplinary action for time offenses. Discussion does not preclude Agency discipline or adverse action when the allegation appears to be warranted and when such abuse would be apparent and to a reasonable person.

VII. Travel and Expenses on Official Time

Unless otherwise specified, the Union is responsible for paying the travel, per diem, and expenses for its Union representatives.

VIII. Training

A. Training Hours

A bank of up to 160 hours of official time will be made available to the Union annually for the purpose of Union officers and representatives to attending labor relations training or orientation as outlined in 5.2 above. The Union President will be responsible for administering the bank and allocating hours to individual representatives. The Union will keep the Chief of Labor Relations informed in writing of the hours, names of Union representatives, type of training, and training bank balance on a quarterly basis.

B. Coordination with District/Division Management

The Union will seek approval through Labor Relations for all official time related to training and agrees to work with District/Division Management when requesting training time and travel to avoid any unnecessary impacts to the Agency's mission. Proper notice will be provided to the District/Division Management by Labor Relations.

C. Approval of Official Time for Training

Official time for training will be approved except in cases where the absence of the employee or employees will significantly adversely impact the Employer's work requirements. When a request for official time for training is disapproved for any reason, the reasons for such disapproval will be furnished to the representative who made the request, and to the Union President within 72 hours of the of request. In such circumstance, the parties will exercise their best efforts to reach a mutually agreeable resolution to include seeking alternate dates for training.

ARTICLE 11
EMPLOYEE TRAVEL

I. Official Travel General

A. Acknowledgement

The nature of the mission of the Agency is such that it might be necessary for bargaining unit employees to travel officially on behalf of the government.

Agency travel is governed by the General Services Agency (GSA), Federal Travel Regulations (FTR) 41 Code of Federal Regulation, Chapter 301-Temporary Duty Travel Allowances (TDY), and applicable USMS Policy Directives.

Some of these regulations are highlighted in this Article for clarification, but are not all-inclusive, and remain subject to, changes in the FTR, GSA, or USMS Policy Directives, and/or subject to impact and implementation bargaining as necessary.

B. Travel greater then Twelve (12) Hours

When employees travel on official business requiring written orders/authorization, i.e., travel for more than twelve (12) hours, orders/authorization will be prepared and allowances authorized consistent with the applicable law, rule, regulation, and the terms of this Agreement.

Employees are responsible for insuring that all travel arrangements are properly made, and that the travel authorization is completed, submitted and approved, and addresses all anticipated travel needs. Employees are responsible for insuring that due care and diligence are exercised in safeguarding official travel charge cards, tickets, and other transportation and payment documents.

C. Authorization of Travel

Travel Orders/Authorization shall be issued in advance of the date on which the travel is to begin, except in cases of urgent or unusual situations. In the absence of such circumstances, orders/authorization will be issued sufficiently in advance to permit the employee to complete all travel arrangements prior to the travel, including lodging arrangements, obtaining transportation requests or tickets, and advance funds if required.

D. Local Travel

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.

E. Compensation

Compensation during travel is governed by applicable law, rule, regulation, and Article 25, Overtime, of this Agreement.

F. Special Circumstance

Only in emergency and special circumstance situations may a local district/division arrange alternative forms of travel payment to assist an employee in mandatory travel.

II. Government Travel Charge Cards

The Agency does not submit employees for personal credit checks to obtain Government Travel Cards (GTC). A GTC is sponsored by the Agency on behalf of the employee.

A. Protection Against Adverse Impacts (Prompt Payment)

All employees are subject to GTC holder agreement terms and related fees and are required to follow procedures for reimbursement. Employees will not be required to pay for late fees caused by Agency delays in reimbursement.

III. Scheduling Travel

A. Normal Conditions

To the maximum extent practicable, the Employer will schedule and arrange for the travel of bargaining unit employees to occur during normal working hours within the employee's regularly scheduled work hours.

If travel is required outside the employee's regular work hours, or on a non-regular work day, the travel time may qualify as hours of employment and the employee may be eligible for overtime pay, depending on the nature of the travel. Travel time that qualifies as hours of employment does not necessarily make the employee eligible for overtime pay, however. (See applicable regulations).

B. Greater than Twelve Hour Travel (12 Hour Rule)

Employees will not be required to travel away from their normal duty stations when it is reasonably foreseeable in advance that they will be away from their normal duty station for more than 12 hours without appropriate TDY orders or other written authorization. In cases where such travel exceeds 12 hours (scheduled or unscheduled) and the travel was necessary for the Agency's mission, the Agency agrees to allow bargaining unit employees to submit claims for reimbursement through the Agency travel voucher system for compensation related to meals and incidental expenses (M&IE) when the conclusion of travel occurs at the employee's normal POD.

C. Administratively Uncontrolled Travel

When travel results from an event that cannot be scheduled or controlled administratively, such travel may be considered hours of employment for pay purposes pursuant to appropriate provisions of Article 25, Overtime, and statute. Disputes arising under this subsection may be adjusted through the use of the grievance/arbitration procedures under Articles 39, Negotiated Grievance Procedure, and 40, Arbitration.

D. Extended Travel

Districts and divisions will generally advise employees of extended travel with as much advance notice will be given prior to assignment. Management will work with an employee in unforeseeable circumstances where extended travel becomes necessary.

E. Duration of TDY (Normal Circumstances)

Except in unusual circumstances, employees will not be required to stay away from their duty stations more than two (2) consecutive weekends.

IV. Per Diem Allowances

A. Per Diem Allowances

The per diem allowance (also referred to as subsistence allowance) is a daily payment instead of reimbursement for actual expenses for lodging, meals, and related incidental expenses. The per diem allowance is separate from certain transportation expenses and miscellaneous expenses. The per diem allowance covers all charges, including taxes and service charges where applicable for lodging, meals, and incidental expenses as allowed by applicable law, rule, regulation, and the terms of this Agreement.

B. Established Per Diem Rates

Per diem rates will be established according to applicable law, rule, and regulation.

C. Actual Expense

V. Advances

A. Rule

Employees are authorized to obtain advanced travel funds in accordance with applicable GTC regulations and approval of ATM use on the travel authorization.

VI. Temporary Lodging

Travel lodging should be acquired in the fashion that is most advantageous to the government and pursuant to the government travel regulations. In most travel situations, the employee may choose lodging within the per diem rate.

However, employees may be required to stay in government furnished housing in certain travel circumstances such as for training.

A. Sharing Rooms

Bargaining unit employees traveling on official business for any purpose except training will not be required to share a room.

VII. Promotional Items

A. 7.1 Employee Rights

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 Agency in accordance with applicable law, rule, regulation, and the provisions of this Agreement.

VIII. Reimbursements

A. Electronic Claims for Reimbursement

As applicable, employees will speak with their managers about submitting claims for reimbursement through the electronic travel system. At an employee's request, supervisors will arrange for instruction in the use of this system.

B. Time for Submission

Reimbursement claims will normally be submitted by employees within five (5) work days after the completion of the travel or every thirty (30) days for employees on continuous travel status.

C. Time for Reimbursement

Employees will be reimbursed all properly submitted and approved claims within 30 calendar days after their submissions to the Agency.

D. Denial

If a portion or the entire claim for expenses submitted by employees for reimbursement is denied, employees shall receive a written notification from the Agency of all disallowed expenses at the time they are notified of payment of undisputed expenses or not more than seven (7) calendar days later. This notice shall state the reason(s) in detail as to why expenses were disallowed.

Procedures will be made available to employees, informing them of their right to request reconsideration of expenses if they have additional information; and explain the process of employees challenging disallowances.

E. Disputes

Any disputed disallowances of reimbursement claims may be resolved through the grievance/arbitration procedures of Articles 39, Negotiated Grievance Procedure and 40, Arbitration, of this Agreement.

F. Late Fees

The Agency shall pay employees late fees for all reimbursements that are not paid within thirty (30) days of employees' submission of proper claims to designated Agency officials. Late payments shall be calculated in accordance with applicable law, rule, regulation, and the provisions of this Agreement.

IX. Accommodating Special Needs

Consistent with its obligations under applicable laws, rules, regulations, and the provisions of this Agreement, the Agency shall provide reasonable accommodations to employees with qualified special needs as defined by FTR §§ 300-3.1 and 301-13 by paying for additional travel expenses as permitted.

Depending on the circumstances, these additional expenses may include, but not be limited to:

A. Transportation and per diem expenses incurred by a family member or other attendant who must travel with the employee to make the trip possible;

B. Specialized transportation to, from, and/or at TDY duty locations;

C. Specialized services provided by a common carrier to accommodate employees' special needs;

D. Costs for handling baggage that is a direct result of employees' special needs;

E. Renting and/or transporting a wheelchair;

F. Premium-class accommodations when necessary to accommodate employees' special needs; and

G. Services of an attendant, when necessary, to accommodate employees' special needs.

X. Privately Owned Vehicles (POVs)

A. Voluntary Use

Ownership or use of a privately owned vehicle is not a condition of employment. Their use by employees for official government business is

entirely and strictly voluntary. Employees' use or non-use of their POVs is a non-merit factor; therefore, It is not subject to consideration in an employee's performance appraisal. An employee authorized to use his POV will not be required to carry a passenger(s).

B. Agency Responsibility

If an employee is either unable or unwilling to use his or her POV for official government business, it is the Agency's responsibility to provide transportation.

C. Mileage and Related Expenses

When an employee volunteers the use of his/her POV and that use is authorized by the Agency as advantageous to the government based upon a comprehensive and accurate cost comparison, the requested mileage allowance and related expenses allowed by applicable law, rule, regulation, and the provisions of this Agreement are authorized. When authorized for the personal convenience of the employee, reimbursement will not exceed the cost of commercially procurable transportation.

D. Calculation

Mileage calculations between permanent duty stations and alternate duty point(s), and return directly to permanent duty stations are fully reimbursable with no off-sets.

E. Alternate Duty Location or Point(s)

If an employee is directed and utilizes POV travel to an alternate duty location outside the local area of the permanent duty station (PDS), the employee will be fully reimbursed for the mileage above normal commuting costs. The local area for this Article only is defined as a mileage radius of 20 miles with the PDS at the center.

F. Emergency Repairs

The Agency will grant duty time to an employee in connection with necessary emergency repairs as verified by the Agency to a privately owned vehicle when the emergency arises while the employee is in official travel status and was authorized to utilize POV. In such situations, the employee will, as soon as practicable (within an hour, if possible), provide the supervisor with an estimate of the situation and obtain appropriate instructions. Duty time will be granted by the Agency upon presentation by the employee of reasonable, acceptable explanation or documentation relating to the emergency.

ARTICLE 12
USE OF GOVERNMENT VEHICLES

I. Government Owned Vehicle Policy

Employees who are authorized to operate government vehicles will do so consistent with applicable city, state and federal laws, DOJ Orders, Agency policy directives and all other official regulations related to the safe operation of government vehicles as they relate the employee's position and assigned duties. Employees should be familiar with state and federal laws for safe operation of motor vehicles.

II. Use of Personally Owned Vehicles

Privately Owned Vehicles (POV) are those vehicles privately owned or controlled by USMS employees which may be used in the conduct of official government travel but may not be used in the conduct of official operational duties. If an employee elects to travel via POV while on official travel, and such use is authorized prior to the travel, the Agency agrees to pay the employee according to the Federal Travel Regulation (FTR).

III. Use of GOV for Official Business

Administrative employees, GS-082 Deputy United States Marshals, GS-1801and GS-1802 Detention Enforcement Officers/Aviation Enforcement Officers are not authorized to be assigned an official government vehicle for travel from home-to-work unless they need to use the vehicle for a particular assignment at the start or end of the workday. Such usage is subject to local district/management approval on a case-by-case basis.

IV. Emergency/Safety Equipment

All government vehicles expected to respond in an emergency situation will be equipped with appropriate emergency equipment. The operation of the vehicle, even in an emergency, priority must be given to the safety of passengers and general public as well as the preservation of private and government property. The operator bears the burden of justifying why he or she operated the vehicle in an emergency manner.

V. Misuse of GOV

Any employee who uses an official government vehicle for purposes other than those as authorized by this Agreement, GSA and USMS policy may be subject to disciplinary action. Disciplinary action for inappropriate use of an official government vehicle will carry a penalty based on determination whether the offense was a violation of statute or policy. The penalty may range from a letter of reprimand to removal.

VI. Union Officials

With district or division management approval, and when available, Union officials may use the government vehicle to conduct official business on official time, when the action promotes the efficiency of the Agency, and is in the interest of the mission and the Public (representation and contract enforcement). Mission priorities will take precedence over use of government vehicles. Local management and Union officials will work together to ensure the best practices of use of GOV.

ARTICLE 13
PARKING

I. General

The parties agree that parking is a substantive subject for all USMS employees. However, since the circumstances surrounding employee parking differs for various districts, offices, and divisions, the Parties will allow for local negotiations on how parking should be assigned in conjunction with the General Services Administration (GSA) and Federal Property Management Regulations (FPMR). Assignment of USMS controlled parking spaces considers mission essential requirements first.

The parties agree that secure, adequate, and accessible parking should be considered for all employees in situations where it is financially and physically feasible for a district, office, division to acquire such space in accordance with GSA and the FPRM, and in consideration of USMS policy.

II. Assignment

When distribution of USMS controlled parking spaces occurs for the purpose of parking personal vehicles, assignments will be made based on seniority (see Appendix A).

The Agency agrees that if reassignment of currently occupied parking becomes necessary, a reasonable notice will be given to the employee and the Union of these changes. The Agency recognizes that significant changes in existing parking will be subject to Impact and Implementation bargaining as outlined in the Article on Mid-Term Bargaining in this Agreement.

III. Shuttle Service

When cost effective, the Agency may provide employee shuttle service, the use of which will be subject to Impact and Implementation Bargaining.

IV. Security

In instances where there are Agency owned parking facilities, the Agency will strive to provide a safe and secure parking area for its employees giving consideration to the following:

A. Adequate Lighting

B. Security Considerations

C. Inspections

D. Pedestrian Crosswalks

E. Signage

F. Reporting Procedures

G. Electronic security measures and security fencing

ARTICLE 14
MERIT PROMOTION

I. Purpose

The purpose and intent of this Article are to ensure that merit promotion principles for all bargaining unit positions are applied in a consistent manner, with equity to 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.

II. Actions Covered By Competitive Procedures

In accordance with 5 CFR 335.103, competitive procedures will apply to the following types of personnel actions:

A. All promotions except those listed under Section 3 of this Article.

B. Reassignment, transfer, or demotion to a position with more promotion potential than the position last held except as permitted by regulations governing reduction-in-force (RIF) and the placement of employees entitled to a retained grade.

C. Movement between pay schedules or classification systems which would be a change to a higher representative rate of pay.

D. Reinstatement to a permanent or temporary position up to the highest grade previously held on a permanent basis under a career or career-conditional appointment when demoted or separated for cause.

E. Transfer from a position in another agency to a higher graded one within the USMS.

F. Selection for training which would give an employee a significant advantage in competing for subsequent promotion, or which is a prerequisite for entry into a different career ladder.

G. Temporary promotions in excess of 120 days. Service under all temporary promotions, term promotions, and details to higher-graded positions that occurred during the preceding twelve months is counted toward the 120-day limitation.

H. Term promotions (unless an exclusion under Excluded Personnel Actions applies, in which case see Temporary Details/Promotions Longer Than 120 Days.

I. Selection for details of more than 120 days to a higher-graded position or to a position with known promotion potential.

III. Actions not Covered by Competitive Procedures

In accordance with 5 CFR 335.103, competitive merit promotion procedures will not apply to the following personnel actions which are exceptions to Section II above:

A. Career Promotions

1. Promotions within a career ladder: An employee may be noncompetitively promoted within a career ladder and may move noncompetitively to other positions at the same grade level with no higher career ladders when all of the following criteria have been met:

    a. The employee was originally appointed to a position with an established career ladder from a civil service register, under a noncompetitive appointing authority or under competitive promotion procedures.

    b. The fact that the initial selection could lead to subsequent promotions within the career ladder without further competition was made known in advance to all potential applicants.

    c. The employee is serving at a minimum of a successful level, meets qualification and training requirements for promotion and the employee’s supervisor recommends the employee for advancement to the next higher grade.

2. Promotion of employees who satisfactorily complete training under a training or executive development agreement approved by OPM if both of the following criteria have been met:

    a. The agreement provides for such promotion.

    b. The employee was chosen under competitive promotion procedures or appointed from a civil service register.

3. Promotions of employees detailed to higher-graded positions or those with known promotion potential for the purpose of training or evaluation if the detail was made under competitive promotion procedures and the fact that the detail could lead to promotion was made known to all employees at the time it was advertised.

4. The permanent assignment of an employee to a position to which the employee had been promoted on a temporary or term basis if the temporary or term promotion was originally made under competitive procedures and the fact that the assignment could lead to a permanent promotion was made known to all competitors at the time it was advertised.

B. Reclassification Actions

1. Employees who occupy positions that are upgraded without a significant change in duties, due to the issuance of a new classification standard or the correction of a classification error.

2. Promotion of an employee whose position is upgraded as a result of a change in duties and responsibilities if all of the following provisions are met:

   a. The employee continues to perform the same basic functions performed in the former position.

   b. The duties of the former position are administratively absorbed into the new position.

   c. The addition of the duties and responsibilities does not adversely affect another incumbent's position.

   d. There is no change in the organizational entity or unit where the position is located.

   e. The upgrade does not result in the promotion of a nonsupervisor to a supervisory position when the supervisory duties are the primary basis for upgrading the position.

   f. The new position has no known promotion potential.

   g. Duties cannot be reassigned to other potions.

   h. The incumbent meets the time-in-grade requirements.

   i. The reclassification action does not change the positions from a one-grade interval to a two-grade interval position.

3. Temporary promotions or details to higher-graded positions for periods of 120 days or less [also see Temporary Promotions in excess of 120 days and Selections for detail of more than 120 days to a higher graded position or to a position with known promotion potential].

4. Reassignment, lateral transfer, reinstatement, or voluntary demotion of a status candidate into a position with no known promotion potential (or a position having no higher promotion potential than one's existing or most recent nontemporary position in the competitive service). A selecting official has the option of considering and selecting, at any point, any candidate who is eligible for noncompetitive placement into a position regardless of the vacancy announcement status or whether a list of competitive eligibles exists. For noncompetitive placement, no formal evaluation procedures are required.

5. Reinstatement of a former career or career-conditional employee, who previously converted to a career SES appointment, to any position and grade for which the employee is qualified.

6. Reinstatement of a former career or career-conditional employee (other than those covered by the preceding paragraph) with reinstatement eligibility to a permanent or temporary position at a grade no higher than the last grade held in a non-temporary position in the competitive service.

7. Re-promotion up to the highest grade previously held on a permanent basis in the competitive service unless demoted or removed for cause.

8. RIF-related reassignments which entail the placement of an employee in one of the following types of positions:

    j. A position in a different pay system which would result in the employee receiving higher pay.

    k. A position with more promotion potential than the employee's former position.

9. Selection of an employee who was afforded priority consideration as a remedy for failure to receive proper consideration in a previous competitive promotion.

10. Placement of retained grade/pay eligibles in positions at the grade held prior to their downgrading.

11. Appointment from the Priority Placement and Referral List to any USMS position for which registered.

IV. Temporary Promotions in Excess of 120 Days

A. Competitive Procedures

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.

B. Commencement of Temporary Promotions

An employee may be directed or detailed to perform higher graded duties. This includes an employee who has been officially detailed to a higher graded position for no more than 120 consecutive days or an employee who has been assigned and performed all the duties of a higher graded position for no more than 120 consecutive days. Should the performance of a higher graded position exceed 120 days, the employee may be temporarily promoted through the use of competitive procedures to that higher graded position if eligible.

C. Interruptions

Details to higher graded positions will not be interrupted for the sole purpose of avoiding temporary promotions.

V. Scope of Competition

Each vacancy will be advertised in accordance with the USMS Merit Promotion Plan. The AD for HRD may make exceptions to the minimum area of consideration resulting from unusual or any other appropriate circumstances in accordance with USMS policy.

Each vacancy will be advertised where candidates are given the opportunity to compete.

A. Consideration

When considering filling nationwide vacancy opportunities, the Agency will first consider qualified and eligible internal candidates in accordance with the employee's geographic interests as indicated during the application process. Consideration does not guarantee selection.

VI. Vacancy Announcements

A. Policy

Vacancy announcements will utilize OPM templates to fulfill OPM and DOJ requirements.

B. Open and Continuous Announcements

Open continuous announcements and announcements for standing registers may be used.

C. Errors or Changes in Announcements

If a vacancy announcement has been posted and any information is later found to be in error or subsequently changed, i.e., area of consideration, duty station, grade change, career ladder of the position, or if there is a change in the factors by which the candidates will be evaluated, the announcement must be amended or reposted citing the change and whether or not the original applicants need to re-file in order to be considered. If the announcement is amended, due consideration will be given to extend the announcement to ensure those who previously applied have sufficient time to make necessary changes to their application.

VII. Employee Applications

A. Filing an Application

To be considered for a vacancy, an employee must sign and file the appropriate application as described in the announcement.

Employees applying for Merit Promotion for consideration of nationwide appointments will have the opportunity to choose up to five preferred districts.

B. Electronic Application

Workload permitting, Bargaining Unit employees are authorized to use Agency computers and duty time to complete the automated applications.

C. Multiple Announcement Applications

When an employee applies for more than one announcement, full consideration will be given for each vacancy applied for, regardless of selection to one or more vacancies.

VIII. Establishing the Referral List

A. Eligibility

To be eligible for promotion or placement, candidates shall meet the minimum qualification standards prescribed or approved by OPM and selective placement factors identified as essential for successful performance by the closing date of the announcement. Ineligible applicants shall be notified in writing of the determination of ineligibility.

B. Standards for Assessment

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

C. Development of Assessment Criteria

When required by the applicable regulations, a job analysis must be conducted to determine the competencies required for the position. This may include the knowledge, skills, abilities, and other characteristics and (if applicable) selective factors required to identify the best-qualified candidates for the position to be filled. Job analysis requirements shall conform to the Uniform Guidelines on Employee Selection Procedures at 29 CFR 1607 and 5 CFR 300, Subpart A.

D. Rating

Qualified candidates competing for promotion shall be rated to determine their possession of the competencies required to be referred to the selecting official.

E. Use of Evaluation Panel

Use of evaluation panels is not required. When an evaluation panel is used, the following conditions will apply:

1. Panel members must be at or above the grade level of the position being filled; should know the requirements of the position being filled; may not be applicants for the position.

2. Rules of nepotism apply and they must not be related by blood, adoption, or marriage to any applicants considered for the position.

3. The panel will be instructed on procedures for rating and ranking applicants.

F. Determining Best Qualified

Promotion eligible candidates will be rated against the criteria set forth in the crediting plan. Rating and ranking will be used to determine the "Best Qualified" (BQ) candidates. If there are 5 or less eligible candidates, rating and ranking is not required and all eligible candidates are to be referred to the recommending/selecting officials. If the number of candidates exceeds 5, the BQ will be at least the top 5. If there is a tie for the last position on the promotion certificate list, all candidates with that score will be referred. Candidates will be referred in alphabetical order to the panel/ranking official.

If a Best Qualified-certificate is to be used for more than one (1) vacancy, additional Best Qualified-candidates (if available) may be added for each additional vacancy.

IX. Selection Procedures

A. Interviewing

1. The selecting official may interview all best qualified candidates who are referred.

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

3. When a face-to-face interview is not possible, a telephone interview or Lync-type session is acceptable.

B. Selection

1. 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, non-disqualifying handicapping condition, sexual

orientation, or age. The selection shall be based solely on merit and job-related criteria.

C. Release and Notification of Applicants

The Human Resources Office 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, provided such an action would benefit the employee.

D. Information Regarding a Selection

The designated Human Resources Specialist will provide the information in this section in a reasonable period of time. Only HR may transmit information concerning a selection to any applicant or authorized person. The selecting official will not discuss the promotion action until after the Human Resources Office has reviewed the selection and notified the selecting official that an offer has been made to the selectee(s).

X. Compensation

An employee's level of compensation upon promotion shall be set in accordance with applicable regulations.

XI. 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.

XII. Information on Promotion Actions

Upon completion of the selection process, the Union may request the information used by the Agency to make the selections. The Agency will provide the requested information consistent with the requirements of law. Crediting plans will not be released at any time. Release of candidate information is subject to the requirements set out in the Privacy Act.

ARTICLE 15
EQUAL EMPLOYMENT OPPORTUNITY

I. Policy

The Agency and the Union affirm their commitment to the policy of providing equal employment opportunity (EEO) to all employees, to establish the Agency as a model agency, and to prohibit discrimination on the bases of race, color, religion, sex, (including sexual harassment, and pregnancy), age, national origin, or disability. In addition, the parties recognize their commitment to the policy of prohibiting discrimination on the basis of marital status, sexual orientation, genetic information, parental status and/or political affiliation as well as to the policy of prohibiting retaliation for opposing any practice made unlawful by Federal regulation and DOJ policy.

II. Equal Employment Opportunity Program

A. Program Goals

1. The Agency's Equal Employment Opportunity (EEO) Program shall be designed to promote equal employment opportunity in every aspect of the Agency's personnel policy and practice in accordance with applicable law and government-wide rules and regulations. The Agency shall conduct a continuing campaign to eliminate discrimination from its personnel practices and policies and employment conditions consistent with this Agreement. The Agency will have a positive, ongoing and results-oriented program of affirmative action and will ensure that all managers and employees are trained accordingly. Programs shall include, but not be limited to, implementation of the following objectives and goals:

2. Identify and eliminate barriers that impair the ability of individuals to compete in the workplace because of race, color, religion, sex, (including sexual harassment, and pregnancy), age, national origin, disability, marital status, sexual orientation, genetic information, parental status and/or political affiliation

3. Continue agency EEO training and education programs for employees and managers.

4. Ensure that unlawful discrimination in the workplace is promptly addressed and corrected

B. Minimum Requirements

Consistent with EEO regulations, the EEO program shall include, but not be limited to:

1. Providing prompt, fair, and impartial processing of allegations at the counseling and complaint stages, and expeditious investigation of

complaints of discrimination filed and accepted through the EEO administrative complaint process;

2. Conducting a continuing campaign to remove every form of prejudice and discrimination from the Agency's personnel policies, practices, and working conditions;

3. Reviewing, evaluating, and training managerial and supervisory personnel to ensure the zealous enforcement and implementation of the equal employment policy and program;

4. Establishing a system for periodically evaluating the effectiveness of the Agency's overall equal employment effort;

5. Maintaining an Alternate Dispute Resolution (ADR) program for both the pre-complaint and the formal complaint process.

6. Providing reasonable accommodations for known physical or mental limitations of employees or applicants with disabilities to include functional redesign where possible (see 11.2).

7. Providing religious accommodations in accordance with DOJ policy and federal regulations for employees that make such requests.

8. The Agency and the Union agree that unacceptable behavior is not permitted and discriminatory practices are subject to appropriate disciplinary action.

III. Equal Employment Opportunity Officer

Consistent with EEO rules and regulations, the Agency will designate an officer of the EEO program, who will report to the Agency head. The program office, consisting of this officer and whatever staff the Agency chooses to assign to this task.

IV. EEO Diversity Committee

The Union President in concert with the EEO Officer will appoint one union representative to serve as a member of the Equal Employment Opportunity Diversity Committee.

V. Participation in EEO & Affirmative Employment Plans

A. Purpose

The establishment and implementation of EEO Affirmative Employment Plans and related plans is a fundamental Agency objective.

B. Requirements

The Agency will continue to provide overall management support and budgetary planning to achieve affirmative action objectives and to establish and

to maintain effective EEO programs that cover all aspects of equal employment opportunity throughout the Agency, as outlined in 29 CFR 1614.102 and EEOC Management Directive 715 (MD-715.

Pursuant to Management Directive-715, the Agency will collect, analyze, and report information required to be reported per MD-715 annually. The information can be located on the EEOC website.

VI. Information and Data

A. Information to Employees

The Agency shall make available to employees written information describing the Agency's EEO programs, the Affirmative Employment Plan, and the EEO complaint process.

B. Information to Union

The Agency agrees to annually make available EEO information in paper or electronic format (as deemed most efficient by the Agency) as requested or at least once a year:

1. Workforce Profile by grade level according to sex, race, national origin, and disabling condition;

2. Workforce Profile by selected professional, administrative, technical, clerical and other white collar categories, and the blue collar occupational category according to sex, race, national origin, age, and disability condition;

3. Promotion trend data for selected positions according to sex, race, national origin, age, and disability condition;

5. Sex, race, national origin, age, and disabling condition data that is maintained by the Agency;

6. Copies of any plans and reports for affirmative programs of equal employment opportunity, including plans and reports for women and minorities, workers 40 years of age and older, and for individuals with disabilities; and

C. Changes as Caused by EEO Program(s)

If the implementation of the Agency's EEO program, plans or reports involve changes in personnel policies, practices, or matters affecting working conditions for bargaining unit employees, the Union will be given a copy of the proposed implementation and an opportunity to exercise its bargaining rights prior to implementation. However, if the purpose of the change is to uproot a practice that may be perceived as contributing to unlawful EEO discrimination, the Agency may implement the change as soon as practicably possible and provide

the Union the opportunity to engage in post-implementation bargaining should the Union desire to bargain the change.

D. Agency Policy/Practice Review

The Agency will review any employment practice or policy which has a disproportionate impact on members of minority groups, women, people 40 years of age and older and people with disabilities with a view toward its elimination or validation.

E. Results-Oriented Programs

The Agency's EEO program and reports and Affirmative Employment Plans will be developed in accordance with Equal Employment Opportunity Commission (EEOC) and Office of Personnel Management (OPM) guidelines.

VII. EQUAL EMPLOYMENT OPPORTUNITY (EEO) REPRESENTATIVE

Subject to need and availability, an employee may be assigned to be their District and/or Division's Equal Employment Opportunity (EEO) Representative and will work with District/Division management towards EEO goals and the objectives of the collateral duty. District/Division managers will select this collateral duty position and every District/Division should have at least one representative. Each designated representative will be required to complete 16 hours of online training through the USDA Graduate School (or other approved training).

Duties

Inform the Office of EEO of EEO-related problems or concerns of employees.

Research and provide to the Office of EEO recruitment sources for women and minority candidates for operational positions and administrative positions in the district.

Research and determine recruitment sources of individuals with disabilities for district administrative positions.

Ensure that the Discrimination Complaint Process poster is displayed in a prominent place in the district.

Ensure that all new employees are given the Discrimination Complaint Process pamphlet and the Director's EEO statement, and receive Prevention of Sexual Harassment training, within 30 days of entry on duty.

Ensure that all employees receive any materials issued by the Office of EEO. Refer to the Office of EEO employees who have potential complaints. District/Division EEO representatives will not counsel employees nor serve as an advocate for the employee. Contacting the EEO representative does not stop the timelines or procedures of an EEO complaint.

Work with the Office of EEO to plan and present cultural programs and observances.

When requested, provide EEO-related data and/or statistics to the Office of EEO.

Establish contacts/relationships with community organizations.

Ensure completion and submission of District Affirmative Employment Program Plan to the Office of EEO.

Time Requirements

Time spent performing these duties may vary depending upon activities upon district management approval. Estimated time expectation is no more than 10% of official duty time.

Supervisory Controls

When performing EEO duties, the EEO Officer has oversight of the function. The Chief of Affirmative Employment Programs and the Complaints Processing Chief will advise incumbent on the regulations and laws pertaining to EEO.

A. Information to Employees

Names, telephone numbers and locations of EEO counselors, an EEO Complaints Process chart, and the Agency's EEO policy statement will be posted on official bulletin boards in locations frequented by bargaining unit employees (e.g., break room or cafeteria). This information will also be available on the Agency's intranet or website.

B. Agency Involvement

The Agency will ensure full cooperation of all Agency personnel with EEO Counselors and EEO personnel in the processing of complaints at all stages of the EEO complaint process or grievance process, as applicable, under this Agreement.

VIII. Discrimination Complaints

A. Employee EEO Grievance

An employee who believes he/she has been discriminated against on the basis of race, color, religion, sex, national origin, age, disability, or reprisal for engaging in EEO activity may pursue an EEO complaint or EEO grievance pursuant to this Article but not both.

B. Union EEO Grievance

See Article 39 on Negotiated Grievance Procedure.

C. Employee Representation

An employee has the right to be accompanied, represented, and advised by a representative of his/her choice (except when such representation presents a conflict with the representatives official or collateral duties) at any stage of the complaint process under the EEO administrative complaint process or negotiated procedures. The employee is entitled to expeditious processing of the complaint or grievance within the time limits prescribed by regulations or by this Agreement. The employee will designate his/her personal representative in writing.

D. Employee Rights

Any employee who wishes to file or has filed an EEO complaint or grievance will be free from coercion, interference, dissuasion, and reprisal.

E. Representative Rights

Any employee, witness or participant who serves, gives evidence or participates in an EEO matter will be free from coercion, interference, dissuasion, or reprisal.

F. Changes in Working Conditions (Result of an EEO Settlement)

If a change in working conditions arises as a result of an EEO settlement that impacts the working conditions of other bargaining unit employees, the Agency will notify the Union and will bargain upon the Union's request in accordance with Article 4, Mid -Term Bargaining.

G. Discrimination Complaint on the Basis of Marital Status, Sexual Orientation, Parental Status, or Political Affiliation

Employees, who believe they have been discriminated against on any protected basis, as indicated above, must first seek EEO counseling in order to take advantage of the EEO process whether it is through an EEO grievance or the EEO procedures provided in 29 CFR 1614.

H. Review/Appeal Rights

The selection of the negotiated grievance procedure contained in this Agreement to process a complaint of discrimination shall in no manner prejudice the right of an aggrieved employee to request the Merit Systems Protection Board (MSPB) to review the final decision in the case of any personnel action that could have been appealed to the Board, or, where applicable, to request the Equal Employment Opportunity Commission (EEOC) to review a final decision in any other matter involving a complaint of discrimination of the type prohibited by any law administered by the Commission. Appeals to the MSPB or to the EEOC shall be filed pursuant to such regulations as the Board or the Commission may prescribe.

IX. EEO Complaint Elections

A. Selection of Resolution

Employees with complaints of discrimination on the bases of race, color, religion, sex, national origin, age, disability, or previous EEO activity may elect to have their complaints resolved by using either the negotiated grievance procedure as provided in this Agreement or the statutory complaint process, but not both.

B. Submission Election

Consistent with Article 39, Grievance Procedure, an employee shall be deemed to have made an election under either the statutory procedure or the negotiated grievance procedure at such time as the complainant files a written grievance or files a formal written complaint under the statutory EEO complaint procedure, whichever comes first. A discussion with an EEO Counselor in no way precludes the filing of a grievance that is otherwise timely.

C. Mixed Case Complaint

A mixed case complaint is a complaint of employment discrimination filed with the Agency EEO office based on race, color, religion, sex, national origin, disability, or age related to or stemming from an action that can be appealed to the MSPB. A "mixed case" appeal is an appeal filed with MSPB alleging an appealable agency action was taken in part or in whole because of discrimination based on race, color, religion, sex, national origin, disability, or age. An employee may file an EEO complaint with the Agency under the agency EEO complaint procedures or an appeal with MSPB under the MSPB procedures. An employee may not file a mixed case complaint under the Agency's EEO procedures and an MSPB appeal on the same matter. Whichever is filed first shall be considered an election to proceed in that forum.

D. Notice of Rights to Employee

At the conclusion of the informal interview process, the EEO counselor shall inform employees in writing of their right to file a grievance, an EEO complaint, or an appeal to MSPB (where applicable) with a written description of the procedures and the time limits for each option. EEO counselors will provide an employee a written description of the procedures for each of the above.

X. Reasonable Accommodations

A. Agency Commitment to Veterans

The Agency is committed to the employment, placement, and advancement of qualified individuals with disabilities and disabled veterans.

B. Accommodation of Individuals with Disabilities

The Agency agrees to make reasonable accommodations for known physical or mental limitations of employees or applicants with disabilities in accordance with Federal law and DOJ and USMS policy. Actions taken in accordance with this agreement will in no way conflict with the language or intent of the Department of Justice Manual and Procedures for Providing Reasonable Accommodation or the United States Marshals Service Reasonable Accommodation Procedures for Individuals with Disabilities.

C. Response to Employee

The Agency will make its best efforts to respond to an employee's request for reasonable accommodation within five (5) 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. 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.

If an employee becomes disabled as recognized and defined under law, the Agency will fulfill its legal obligations to reasonably accommodate the employee.

If an employee Union official becomes disabled as recognized under the law, the Agency will reasonably accommodate the employee Union official if legally obligated to do so.

D. Seniority

The Agency assures the continued employment of employees with disabilities who have been reasonably accommodated by the Agency. Employees will be continued in their current position or in a position of like seniority, status, and pay unless termination of employment is otherwise required by expiration of appointment, by reduction in force, for cause, or for other reasons unrelated to the employee’s disability.

E. Confidential Information

The Agency agrees that it will preserve the confidentiality of personal/personnel medical records and medical data in accordance with the Privacy Act of 1974 (552a). This type of information should be placed in a separate, confidential medical file. Written permission from the employee is required for any release of medical documents and records. All medical records and data will be held in strict confidence.

XI. Sexual Harassment

A. Expectation

Sexual harassment is a form of sex discrimination which undermines the integrity of the employment relationship and adversely affects employee opportunity. All employees must be allowed to work in an environment free from unsolicited and unwelcome sexual behavior. The Agency will provide all bargaining unit employees a work atmosphere free from sexual harassment and make employees aware of the Agency's sexual harassment policy.

B. Confidentiality

Where an employee has brought an allegation of sexual harassment to the attention of the Agency, the Agency shall treat such allegations as confidential and shall reveal no more information concerning such an allegation than is necessary to conduct a full, prompt, and serious investigation.

C. Submission of Complaint

Any employee who believes that he/she has been a victim of sexual harassment may file a grievance, EEO complaint, or a mixed case appeal with the MSPB (if applicable) as set forth in Section 10.3 above and Article 39, Grievance Procedure.

D. Responding Officials

Where an employee elects to use the grievance and arbitration procedures provided in this Agreement to process a complaint of sexual harassment, and the person against whom such an allegation is made is designated to provide a response in the grievance procedure, the grievance will be filed directly at the next higher step with the next highest Agency official.

E. Arbitration

Where a grievance under this Article is taken to arbitration, the arbitration hearing may, upon request of the grievant, be held as a closed hearing. The arbitrator must have had prior experience or training in the area of sexual harassment.

ARTICLE 16
ASSIGNMENT OF PERSONNEL

I. Personnel Authority and Actions

Authority: 28 C.F.R. § 0.111, 28 C.F.R. § 0.138, and 28 C.F.R. § 0.153 vests in the Agency to take final action in matters pertaining to the employment, direction and general administration (including appointment, assignment, training, promotion, demotion, compensation, leave, classification, temporary hiring of experts and consultants, separations and approval of staffing requirements) of personnel.

II. Definitions

A. Detail: 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.

B. Hardship Review Panel: A panel of volunteer USMS operational management personnel who review employee requests for medical hardship transfers and recommend actions to take on them.

C. Family Member: For the purpose of this agreement, a family member is:

1. A spouse and his or her parents

2. Children, including adopted children, stepchildren and grandchildren, and their spouses

3. Parents

4. Brothers and sisters and their spouses

5. Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

D. Personal or Family Medical Situation: A seriously debilitating or life-threatening medical condition affecting an employee or a family member that the employee must address provided it is a new condition or was not known prior to the employee's appointment to his or her current position.

E. Qualified: candidates who meet the established qualification requirements as established by the Office of Personnel Management.

F. Pathways Program: Student hiring authorities for current and recently graduated students.

G. Promotion: the change of an employee to either a higher grade level within the same job classification and pay schedule or to a position with a higher rate of basic pay in a different job classification system and pay schedule.

H. Qualified/Eligible: candidates who meet all minimum qualifications, including appropriate selective factors, and all legal, regulatory and administrative requirements for a position.

I. Reassignment: when an employee switches from one position to another without promotion or demotion.

J. Temporary Promotion: qualified employees who receive temporary promotions to vacant positions for no more than 120 days. Competition is required for temporary promotions of more than 120 days.

III. Documentation

A. The Agency will record details of employees of 30 days or more via the Request for Personnel Action, Standard Form 52.

B. Recording of detail/assignment activity will rest mainly on the employee in coordination with local district/division management.

C. Documentation specific to voluntary reassignments under the Office of Preference (OPREF), Employee Mutual Transfer (EMT), and Medical Hardship programs will be submitted and evaluated as outlined in those sections.

IV. Union Officials

The agency will make a reasonable effort, in coordination with Union leadership, to avoid placing Union officials on details that would prevent them from performing their representational functions when said officials raise such issues. Union officials are not barred from participating in higher graded duties in accordance with Article 14, Merit Promotion, provided such duties remain bargaining unit duties.

V. Staffing Actions

A. Filling Deputy U.S. Marshal (DUSM) Positions

Full-time, permanent Deputy U.S. Marshal positions are filled from Certificates of Eligibles, from the nationwide register established under the Deputy U.S. Marshal exam. At management's option, positions may also be filled by promotion, transfer, reassignment, reinstatement, voluntary change to lower grade of career or career conditional appointees, special appointing authorities or through the Pathways Program.

B. Filling All Other Bargaining Unit Positions

1. General: The U.S. Marshal/Assistant Director will administer the program for filling district full-time and temporary administrative and clerical positions:

a. The U.S. Marshal/Assistant Director must determine if he or she will fill the vacancy from an OPM certificate; from a vacancy announcement open to promotion, reinstatement, transfer, reassignment applicants or from a list of non-competition eligibles under specific hiring authorities.

b. The U.S. Marshal/Assistant Director may pursue one or all, depending upon the availability of eligible applicants; however, only one selection may be made per vacancy.

c. When filled under a vacancy announcement, the above positions will be advertised through the standard vacancy announcement.

VI. Temporary Promotions

A. Temporary Promotions under 120 days

1. District/Division management may decide to fill vacant positions temporarily with qualified/eligible employees for no more than 120 days with

a. In-district employees

b. Employees from another district/division, with proper approval.

B. Temporary Promotions over 120 days (Merit Promotion)

1. District/Division management must fill temporary positions exceeding 120 days through the Merit Promotion process (see Article 14 Merit Promotion)

VII. Use of Details

A. Details will be assigned fairly and will not be used to reward or punish employees. Assignments should be as equitable as possible. Consideration will be made for details which offer career development opportunity when making assignments. Volunteers for details should be solicited and given fair consideration.

B. Details longer than 120 days to positions with a higher grade level must be filled through the Merit Promotion process.

VIII. Reassignments

Requests for voluntary reassignments shall be given prompt and fair consideration and remain at the discretion of management.

A. Operational Employee Requests for Reassignment

The Agency considers requests for reassignment from operational employees (voluntary reassignment at no cost to the government) as one of several means of staffing operational positions in district/division positions and to provide a standard, fair and efficient means of considering individual employee requests.

B. Pilot, EMT and Paramedic Requests for Reassignment

The Agency will consider requests for reassignment from pilots, EMT, Paramedic employees as described in section A above. The Agency may consider unique training requirements (e.g. type rating and certifications) when considering these requests.

C. All Other Administrative Employee Requests for Reassignment

The Agency will endeavor to consider reassignment requests from all other administrative employees as one of several means of staffing district/division positions.

D. The Agency and the Union recognize that there are situations that arise during an employee's career where a personal hardship exists that could be alleviated if the employee relocated to another office. Through existing voluntary reassignment programs (Medical Hardship, Employee Mutual Transfer, and OPREF), the Agency will consider a change of duty location, provided that there is a vacant position which the Agency intends to fill in the employee's current job series and the employee meets the position and skill requirements.

IX. Notification to Employee

The Agency will normally make every effort to notify an employee who has been reassigned to a different place of duty with as much advanced notice as possible.

X. Performance

When an employee is reassigned to a different position, the Agency will give the employee a reasonable period in which to become proficient. The Agency will provide counseling, training, and/or instruction to the employee pursuant to Performance Management principles in an effort to attain satisfactory performance. If satisfactory performance cannot be achieved, the Agency will consider returning the employee to the previous position or a new position at the same grade level, if the position remains vacant or other options are applicable. Management retains the right to address discipline/performance issues as necessary.

XI. Union Officials

The Agency will make a reasonable effort to avoid subjecting Union officials to reassignments that would prevent them from performing their representational functions.

XII. Information to Union

The Union will be notified of any involuntary reassignments per the Procedures for National/Local Mid-Term Bargaining Article 4.

XIII. Relocation Expenses

Employees affected by an involuntary change in duty station may be entitled to relocation expenses in accordance with the Federal Travel regulation.

XIV. Voluntary Reassignment Programs

Employees who have applied for any form of voluntary reassignment, may also apply for vacancies through the competitive process, providing they meet the established criteria for competitive consideration.

The following voluntary reassignment programs currently exist for Deputy United States Marshals (DUSM) and Detention Enforcement Officers (DEO) and Aviation Enforcement Officers (AEO). These programs will be expanded to include all bargaining unit employees within 24 months of the effective date of this Agreement

- Office of Preference (OPREF)
- Employee Mutual Transfer (EMT)
- Medical Hardships

XV. Competitive Procedures

Notification and receipt of a hardship reassignment request prior to the close of an existing vacancy announcement will result in the hardship reassignment being made through the vacancy announcement, provided that that action is not for a promotion and the employee meets the criteria for the reassignment and the basic qualifications for the position. The employee seeking a competitive hardship reassignment will be afforded the same rights and privileges as all other applicants as stated in the vacancy announcement (such as relocation expenses if authorized.)

Employees who have applied for a hardship reassignment may alternatively, or in addition, apply for vacancies through the competitive process. In such a case, competitive procedures apply.

ARTICLE 17
TRAINING

I. Training Policy

It is the policy of the Agency to provide job enrichment to employees through training opportunities, redesigning of jobs, and on-the-job training when appropriate.

Training and development of employees within the USMS is a matter of significant importance. The Agency and the Union recognize that each employee is responsible for applying reasonable effort, time, and initiative in increasing his/her potential value to the Service through self-development and training. The Union, therefore, agrees to encourage employees to take advantage of training and educational opportunities that will enhance the skills and qualifications needed to increase the efficiency of the employees in the performance of their duties. The alignment of employee training and development with agency strategic plans, the assignment of responsibility to ensure the training goals are achieved, and the delegation of training approval authority will be at the lowest appropriate management level.

A. Training Administration

Employee training and development will be administered in accordance with all applicable laws, rules, regulations, USMS policy and the provisions of this agreement.

II. Non-Discrimination

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, handicap, age, sexual orientation, parental 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, and the terms of this Agreement.

III. Training Programs

When developing training programs, the USMS will consider utilizing a variety of training methodologies conducive to adult learning and employ such techniques as appropriate.

A. Training Lists Information

Upon request, the Agency will make available online a current listing of all USMS and DOJ correspondence and training lists.

B. Posting of Training Opportunities

The Agency will post information via LearnUSMS concerning training and education programs as they become available.

C. Nomination Procedures

Training nominations and/or approval will be based on the potential use of the training to improve organizational and individual performance and other criteria established by applicable law, rule, regulation, and the provisions of this Agreement. Nomination and selection for training and career development programs and courses will be made in a fair and equitable manner, in conjunction with USMS Training Division directives on training.

D. Recording Training

The Agency will use Learn USMS to record all approved and completed training.

IV. Individual Development Plan (IDP)

An IDP is a collection of goals, objectives and activities for an Employee. An IDP is a defined career and professional development plan, generally developed collaboratively between an Employee and his/her Supervisor. It reflects the current and future development needs for the Employee, including both the employee's current position as well as desired future positions. It may also include personal goals and not only professional goals.

V. External Training

The Agency may reimburse employees appropriate costs associated with the pursuit of an academic degree, if so directed and in accordance with 5 U.S.C. 4107, US DOJ regulations, Agency policy, and availability of funds. All academic reimbursement will be determined by Agency policy and Training Division approvals.

VI. Overtime and Premium Pay

Overtime and premium pay may be paid to employees in training status as required by law, regulation, and GSA Travel Policy. Employees covered under provisions of Law Enforcement Availability Pay (LEAP) may not claim LEAP hours for training. However, these employees are authorized to claim excludable days for official training as provided for by law and regulation.

VII. Training Committee

The Agency will provide for one Union representative to participate as a full member of the Training Advisory Committee. This Union representative will be afforded travel and per diem consistent with the Committee's requirements for travel.

ARTICLE 18
NEW EMPLOYEE ORIENTATION

I. Goal of Employee Orientation

An effective Orientation Program is an important component in achieving goals to establish and maintain an effective, diverse and motivated work force by ensuring that all employees receive training regarding their rights, benefits, roles and responsibilities as employees of the Agency. The Orientation Program will be administered in accordance with 5 CFR 410, 5 CFR 724.203, as well as applicable USMS new employee orientation policy unless otherwise superseded by this article.

II. Frequency of Employee Orientation

A. Academy Orientation

For those bargaining unit employees whose initial entry on duty takes place by first attending the Academy, initial employee orientation will be provided at the Academy. Further orientation of Academy graduates will be provided as detailed under District/Division Orientation (see section below).

B. District/Division Orientation

When an employee begins service at a district or division, employee orientation training will take place within the first quarter of employment.

III. Employee Orientation Training Plan

The Agency will determine the format, length, content and agenda of the training. The Union will be included on the agenda for purposes of addressing new bargaining unit employees.

IV. Information Provided to the Union

A. The Agency will provide the Union with a list of new bargaining unit employees on a quarterly basis (or as requested in accordance with procedures detailed in Request for Information) which will include the following information:

1. Employee's name;
2. Entry on duty date;
3. Position title, grade and series;
4. Duty station.

B. Notices to the Union

The Union will be notified in advance of the scheduled dates for live sessions of formal employee orientation in a similar fashion as given to the Agency presenters but no less five (5) work days prior to the scheduled event.

V. Employee Orientation Package

A memorandum with an electronic link to save and/or print a hard copy of this Agreement, if desired, will be included as part of any employee orientation package that is distributed to bargaining unit employees.

VI. Union Participation

A. Addressing Employees

The Union will be entitled to address bargaining unit employees during the orientation sessions, and may provide Union Orientation Training to be accessed through an online learning system. The Union will be provided a minimum of thirty (30) minutes to address the bargaining unit employees. This time will normally be provided immediately preceding a break in the orientation program.

B. Union Official and Agency Representative

During a live orientation session, the Union official will be introduced by the Agency representative at each session. No Agency official or representative will be present during the period of time that the Union representative addresses the bargaining unit employees.

VII. Union Presentation – Information Meetings

A. Non-Duty Hours

Union representatives may address a training class during the non-duty hours of the class members with prior authorization.

ARTICLE 19
PERFORMANCE MANAGEMENT

I. Overview

As required by law, employees will be evaluated under a performance evaluation system that includes performance standards and critical elements that are directly related to the employee's job.

The Agency and the Union are committed to providing quality public service. Accomplishment of the Agency mission should be achieved in an environment that recognizes the value of its employees and the importance of teamwork.

A. Objectives

Performance of Agency objectives is a function of systems implemented and administered by management, and individual performance by motivated, trained, and valued individual employees. Improvement in Agency performance will be sought by analyzing work processes and correcting systemic problems and/or revising processes, as appropriate. Consistent with the Agency's commitment to an environment that promotes teamwork, the accomplishment of group or team objectives will be the cornerstone of performance assessment.

B. Purpose

Performance management is the process of creating a work environment or setting in which people are enabled to develop their full potential and perform to the best of their ability. Performance management supports the desire to create a customer serving, motivated, accountable, reliable and dedicated workforce. It provides enough guidance so employees understand what is expected of them

A performance plan contains clear expectations and robust measures that make meaningful distinctions across levels of performance and reinforces accountability. The performance management plan will support human capital decisions such as training and development, succession planning, recognizing top performers, reduction-in-force, etc. Performance plans will be applied so that each employee has the opportunity to excel.

C. Considerations

The areas of consideration will emphasize:

1. Employee development
2. Clear and honest communication between a supervisor and an employee
3. Clarification of work responsibilities within the critical elements of the job and Agency mission

4. Fair and unbiased consideration of individual employee performance
5. Recognition of special skills and contributions

II. Acknowledgement of Receipt

Employees are not required to sign their annual performance rating evaluation; however, the signature denotes receipt of and not necessarily agreement with the rating.

A. Performance Plan

Each employee will be given a copy of the performance standards and critical elements that relate to the employee's position at the beginning of the evaluation period. At that time, the Supervisor and employee will discuss the critical elements and position requirements of the Performance Plan.

B. Relationship to the Position Description

All critical elements to be used for performance appraisals will be, to the maximum extent feasible, directly related to the employee's assigned Position Description, that the supervisor or other appropriate management official has reviewed, determined to be complete and accurate for the duties assigned to the employee, and communicated to the employee at the beginning of the rating period or whenever elements or expectations change during the rating period.

III. Performance Standards

To the maximum extent feasible, performance standards must be based on objective, reasonable, and measurable criteria, and provide a clear means of assessing whether objectives have been met.

A. Job Relationship

Performance standards and critical elements shall be job related and in accordance with guidelines of appropriate authority to permit accurate evaluations of performance. Each employee shall be given a copy of the evaluation. Employees may review and respond to management statements on performance evaluation documents.

IV. Revised Performance Standards

Changes to Agency wide performance standards will be provided to the Union. The Union will be afforded an opportunity to I & I bargain based on any adverse impact before standards are implemented and issued to the employee.

The Union will be notified and allowed an opportunity to attend any meetings that rating officials have with employees to present or discuss the changed performance standards.

V. Communications

A. Union Consultation

Upon receiving a mid-year progress review or a rating of record review, employees may consult with the Union on official time, as stated in this Agreement, to discuss the matter.

B. Timeline for the Beginning of a Rating Period

At the beginning of every rating period, or within 30 days of employment for new employees, employees will meet with their rating official regarding the employee's job functions and responsibilities. The rating official will present to the employee a performance plan, which contains the critical elements, and other performance elements, as well as the performance standards for each of these elements. During this meeting, the rating official and the employee will have a discussion to explain, clarify and communicate the employee's job responsibilities to ensure that there is a clear and common understanding of the duties and responsibilities contained in the employee's position description and performance plan and their relationship to the Agency's mission, and the levels of performance necessary to achieve each summary rating for a given critical or other element.

Employees are encouraged to review the performance plan routinely and to suggest input to the supervisors in support of the mission.

C. Ongoing Performance Discussions

Informal discussions are a standard part of supervision and should occur throughout the rating period. Discussions may be initiated by the supervisor or employee. Discussions may be held one-on-one or with a supervisor. If an employee requests a discussion with his/her rating official to discuss his/her performance, best efforts will be made to schedule it within 15 work days. If, in rare circumstances, this is impossible, the employee's file should be documented to show the request for a discussion and the failure to have one.

Discussions should be candid, forthright dialogues between the supervisor or rating official and employee aimed at improving the work process or product and developing the employee. The discussion will provide the opportunity to assess accomplishments and progress and identify and resolve any problems in the employee's or work team's work product.

Where indicated, the supervisor should provide additional guidance aimed at developing the employee(s), removing obstacles and improving the work product or outcome. Discussions will provide the employee the opportunity to seek further guidance and understanding of his or her work performance and offer suggestions for improving processes. When a supervisor, through daily contact, observes that an employee is experiencing difficulty in maintaining a

satisfactory level of job performance, he/she will discuss the apparent difficulty with the employee.

VI. Overview of Performance Procedures

A. Interim Ratings

When an employee is permanently reassigned, the rating official will prepare an interim rating indicating the employee's performance to date. The interim rating must be considered by the new rating official when preparing the rating of record.

When an employee changes positions within the same organization and there is no substantive change in duties, an interim rating is not required except when there is a change in rating officials.

B. Annual Review Period

All bargaining unit employees will receive an annual performance rating for the period as established by the Agency. The performance rating will be issued in writing to the employees within 60 days of the end of the assessment period.

C. Minimum Rating Period

All employees must be working under a performance plan for a minimum of 90 days before a rating can be given.

When an employee's performance plan changes less than 90 days before the end of the rating period, the employee's rating period may be extended to meet the 90 day minimum rating period requirement.

D. Progress Review

Rating officials will conduct at least one progress review during the rating period. This review will be made at the approximate midpoint of the rating period. Additional progress reviews may be made, and one is required if the rating official believes the employee is not performing at a fully successful level. If, at the time of a progress review, the Agency is aware of an instance(s) of performance deficiency, it shall provide that information to the employee during that progress review.

E. Rating of Record

The Employer agrees that final ratings of record should be completed by the employee's immediate supervisor. This could include second level supervisors. The rating of record shall be based only on the evaluation of actual job performance during the rating year

VII. Uses of the Performance Rating

A. Purposes of Ratings

The performance rating given to employees under this performance assessment system is used for a number of purposes.

1. Within-Grade Increases (WGI). An employee who has attained an "acceptable level of competence" and will be entitled to appropriate within-grade increases.

2. The rating of record will be used in consideration for appropriate awards, promotions, and other personnel actions.

3. This performance rating will be considered in making determinations regarding reductions-in-force (RIF) within the Agency in accordance with Article 29 of this Agreement. 5 CFR 351, and 5 USC 2105.

VIII. Addressing Poor Performance

A. Observance of Deficient Performance

Whenever a rating official observes that an employee's performance on a critical element is beginning to decline, the rating official will discuss the specific shortcomings with the employee and encourage a discussion of the employee's views on his/her performance.

B. Documentation of Unacceptable Performance (PIP/NUP)

In the event that the employee's performance in one or more critical elements appears to be Unacceptable, the rating official will coordinate with HRD/ELR to determine if PIP is necessary and coordinate the documentation and delivery process. The NUP/PIP will be reviewed and approved by HRD/ELR and the reviewing official before it is communicated to the employee. HRD/ELR will conduct all necessary notifications to the Union.

NUP/PIPs will include language that identifies that:

1. The deficient critical element(s) were identified and the employee will be informed of the performance requirements or standards that must be attained in order to demonstrate successful performance.

2. An employee will have a reasonable opportunity to demonstrate performance improvement. The opportunity-to-improve period must be no less than 30 days in duration. This period may be extended by the rating official if circumstances warrant such an extension.

3. The NUP/PIP will be reviewed, approved, and signed by the rating official and the reviewing official before it is put into place for the employee.

4. If, after an opportunity to improve, the employee demonstrates acceptable performance on the NUP/PIP, the rating official will notify the employee that his/her performance has improved to the Successful level or higher. Additionally, the employee will be notified that should their performance decline in any of the NUP/PIP related elements within 12 months after issuance of the NUP/PIP, they will be deemed to be Unacceptable.

5. If, after an opportunity to improve, the employee demonstrates Unacceptable performance, then adverse action proceedings based on Unacceptable performance may begin. These adverse actions are reduction in grade or removal.

6. Any administrative or adverse action initiated under a previous performance appraisal program shall continue to be processed in accordance with the law and policy of that program until the action is resolved.

C. Performance-Based Grievances or Complaints

1. The negotiated grievance procedure is set forth in Article 39, Grievance Procedures.

2. An employee may file a complaint through the Office of Equal Employment Opportunity (EEO) within 45 days of being notified of the rating if the employee believes the rating given is based on race, color, age, religion, sex, national origin, physical or mental disability, sexual orientation, marital status, parental status, or previous participation in the EEO process. An employee may elect the Alternative Dispute Resolution process in accordance with the EEO procedures.

IX. Action Based on Unacceptable Performance

Unacceptable performance is a basis for, removal or reduction in grade as provided by 5 USC 4303.

Normally, an employee will be given not less than thirty (30) days to demonstrate acceptable performance before reduction in grade, or removal based on unacceptable performance is initiated.

A. Process of No Improvement under PIP

The supervisor will discuss the employee's unacceptable performance with the employee. The employee will be given a Performance Improvement Plan (PIP) advising the employee of the specific instances of unacceptable performance, the performance standards for those elements, the fact that the employee will be given an opportunity to demonstrate acceptable performance, what action must be taken to improve performance and what subsequent actions may be taken if performance does not improve Supervisors are encouraged to give the employee written feedback on progress during the PIP.

If the performance has not improved and corrective action is necessary, the Employer will give the employee a written notice of the proposed action, setting forth, in detail, the basis for the action.

If all remedial action fails and the employee's performance is determined to be unacceptable, the supervisor will provide written notification to the employee that the employee may be subject to one of the following actions:

1. When the employee is not capable of performing his or her position at the same grade but is capable of performing the position at a lesser grade the supervisor may propose a reduction in grade.
2. The supervisor may propose a removal.

B. Employee Entitlements

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

1. 30 days advance written notice of the proposed action, which identifies the specific basis (i.e., the critical job duties and responsibilities) for the proposed action including specific instances of unacceptable performance.
2. A representative. The employee must inform the deciding official, in writing, of the representative's name.

C. Timeframe of Decisions

A decision whether to retain, reduce in grade, or remove an employee shall be made not later than thirty (30) days after the date of expiration of the notice period. The employee will be given this decision in writing. Unless the action is proposed by the Head of the Agency, the deciding official will be at a higher management level than the proposing official. The decision will:

1. Specify the instances of unacceptable performance and the critical element(s) for which the employee did not achieve successful performance.
2. Specify the action to be taken, the effective date, and the employee's right to appeal the decision.

D. Appeals

The employee, or the Union on behalf of the employee, may appeal to the Merit Systems Protection Board in accordance with applicable law, or may file a timely written request to invoke arbitration under the terms of Article 40. Arbitration must be invoked no later than (thirty) 30 days after the effective date of the action unless EEO counseling is initiated.

E. Privacy Requirements

The Agency will ensure that the electronic performance management system complies with all privacy requirements including limited access on a need-to-know basis.

ARTICLE 20
AWARDS

I. Purpose and Authority

A. The purpose of the Awards Program, also known as the Agency Performance Management Program, is to recognize and reward employees who perform in an exemplary manner; make significant contributions to the efficiency and effectiveness of government operations; achieve a significant reduction in paperwork; or perform a special act in the public interest in connection with their duties.

B. The authority to give awards is set forth in 5 U.S.C. § 4302, 5 U.S.C. § 4501-4509, and 5 U.S.C. § 5336, and 5 C.F.R. § 451 and 5 C.F.R. § 531. This policy complies with the current Department of Justice (DOJ) Human Resources Order, DOJ 1200.1, Chapter 2-18.

II. Policy

A. Awards are given to recognize employees who, individually or through a team effort, contribute to meeting Agency, DOJ- and/or government-wide goals.

B. There should be a direct relationship between organizational goal attainment and performance recognition.

C. The Agency rewards employees using the following types of awards:

1. Sustained Superior Performance (SSP)
2. Special Act
3. Time-Off
4. Quality Step Increases (QSI)
5. Director's Honorary

III. Sustained Superior Performance Awards (Cash)

A. Awards based solely on the employee's performance rating of record assigned at the end of the appraisal period. These awards recognize sustained levels of successful or higher performance over the course of the rating period. The rating of record is the justification. A cash award or a time off award may be given based on the rating of record, but not both.

B. Criteria: Employee's current rating of record must be Successful, Excellent, or Outstanding. An award for sustained superior performance can only be made on an individual basis. One or more critical elements must be performed for at least six months in a manner clearly exceeding normal requirements. Employee must

not have received another cash performance award within six months before the date of the nomination. A special act award during the six-month period is not disqualifying.

C. Award amounts: Minimum - Generally $250. For sustained superior performance awards, the Human Resources Division, through the Financial Services Division, will provide guidance for award amounts. Statutory maximum amounts: sustained superior performance awards may not be more than 10 percent of the employee's annual rate of basic pay, unless the head of the agency determines that exceptional performance by the employee justifies a higher percent, not to exceed 20 percent of the employee's annual rate of basic pay. Computation of the basic pay includes locality pay, special rate supplements, or similar payments under other legal authority.

IV. Special Act Awards (Cash)

A. Recognize specific accomplishments that exceed normal job requirements. These may be for contributions of a one-time nature that increase productivity, economy or other highly desirable benefits, or a special act in the public interest in connection with official duties. The accomplishments should help to meet the goals of the Agency or the district/division. A narrative justification is required.

1. Criteria: For performance substantially beyond expectations on a specific assignment; an accomplishment which has involved overcoming unusual difficulties; creative efforts that make important contributions; an accomplishment requiring special effort or innovation; exemplary or courageous handling of an emergency situation related to official employment; initiating quality improvements to operations, work flow, cost effectiveness, streamlining, or customer satisfaction; or demonstrating exceptional teamwork by two or more people, or one individual who works well with other team members (Special Act for Teamwork).
2. Award amounts: Minimum - Generally $250; maximum - $7,500.

V. Time Off Awards

Grant time off from duty without loss of pay or charge to leave. They recognize superior accomplishments or other personal efforts that contribute to the quality, efficiency or economy of government operations. These awards may be used to recognize contributions that are of a onetime, non-recurring nature, and may also be used to recognize sustained high-level performance.

A. Types and Criteria:

1. *Special Act:* For making a high quality contribution involving a difficult or important project or assignment; displaying special initiative and skill in completing an assignment or project before a deadline; using initiative and creativity in making improvements in a project, activity, program or service;

ensuring the mission of an organization is accomplished during a difficult period by successfully completing additional work or a project assignment while still maintaining one's own workload; or demonstrating exceptional teamwork by two or more people working together, or one individual who works well with other team members (Special Act for Teamwork). A narrative justification is required.

2. *Sustained Superior Performance Award (Time Off):* The employee's current rating of record must be Successful, Excellent, or Outstanding. A maximum of 40 hours may be given for an Outstanding rating; a maximum of 32 hours may be given for an Excellent rating; and a maximum of 24 hours may be given for a Successful rating. The rating of record is the justification. A cash award or a time off award may be given based on the rating of record, but not both.

3. *Fitness-In-Total Performance (FIT):* Employee must be operational; eight hours may be given for employees who score excellent or superior in all four categories of push-ups, sit-ups, aerobic assessment, and flexibility; four hours may be given for excellent or superior in three of the above categories with no category rated lower than fair; employees must complete all four of the categories to be eligible for a FIT award; Fitness Assessment Summary must be dated within one year of nomination; an employee may receive two time off awards for FIT per leave year if both of the FIT assessments completed during the year meet the qualification requirements. The Fitness Assessment Summary is the justification.

B. Time Off Award Hours, Processing, Limitations, and Approval Authority:

1. Time Off Award Hours:

   a. The minimum time off award is four hours.

   b. The maximum that can be given for one time off award is 40 hours.

   c. The maximum per employee, per leave year, is a total of 120 hours. This total includes all awards from all offices, Director's Awards, and any time off awarded for sustained superior performance.

C. Time Off Award Processing:

1. A time off award is effective at the beginning of the pay period following approval of the award; however, recipients must wait six weeks after the award has been submitted before using it, to allow time for keying by the Human Resources Division.

2. If the total amount of a time off award is not used within one year after its approval, any unused time off is forfeited and is not eligible for restoration.

3. To use the time off, employees must complete Office of Personnel Management (OPM) Form 71, Request for Leave or Approved Absence,

indicating the date(s) they would like to use the time off. The employee should check the block for Other Paid Absence and write "Time Off Award" in remarks. The time off must be approved by the supervisor.

D. Time Off Awards Limitations:

1. A time off award is not transferrable to another federal agency or to another DOJ component.

2. A time off award may not be converted to cash.

3. The written justification for the award must be based solely on the merit of the employee's contribution and shall not be used to compensate or reward employees for working outside of the basic work week or in lieu of premium pay, such as overtime.

4. Intermittent employees are not eligible for time off awards.

5. Promotion has no impact on the granting of a time off award.

E. Time Off Award Approval Authority:

1. Approval authority for time off awards totaling 24 hours or less may be delegated to a lower supervisory level. The approving official must be a supervisor at a higher grade level than the award recipient. Each office must keep a written record of the delegation identifying who may approve awards.

2. Time off awards totaling more than 24 hours, and up to 80 hours, per employee, per leave year, must be approved at the level of the Agency, Assistant Directors and all Staff Officers, and may not be redelegated.

3. Time off awards totaling more than 80 hours per employee, per leave year, must be approved by the Deputy Director.

VI. Director's Honorary Awards (Cash or Honorary Without Cash)

The highest Agency honor that can be bestowed on an employee, Director's awards are presented to those who perform in an exemplary manner or make significant contributions to the efficiency and effectiveness of the Agency.

VII. Employee Improvements and Innovations Awards

Employee Improvements and Innovations should be submitted using Form USM-224, Employee Improvements and Innovations and will be administratively processed by the Management Support Division (MSD), Office of Policy and Records Management (OPRM) to the Deputy Director for consideration. All applicable program guidelines, submission procedures, and potential award criteria are located on the Employee Improvements and Innovations (EII) Program website, currently:

Employee Improvements and Innovations (EII) Suggestion Form

Employee Improvement Search Results

VIII. Quality Step Increases (QSI)

A QSI is an increase in basic pay from one step of the grade to the next step. A QSI provides faster than normal progression through the steps of the General Schedule. Unlike other forms of monetary recognition, a QSI permanently increases an employee's rate of basic pay by one step. The rating of record is the justification.

A. Limitations on QSIs:

QSIs may be allowed by the Director, dependent upon the availability of funding. If funding is available, districts and divisions would be advised of the limitations on QSIs for that year. For example, five or ten percent of the current on board permanent employees of that office could be submitted for QSIs.

B. Criteria:

No more than one QSI may be granted to an employee in a 52-week period. The employee's most recent rating of record must be Outstanding. The employee must have been performing at that grade for a minimum of six months, and there is an expectation that the performance will continue at that level for a minimum of an additional six months.

IX. Superseding Authority

The Assistant Attorney General for Administration will issue guidance on the designated component award reserve for each fiscal year.

X. Cash Award Approval Authority, Amounts, and Issuance

A. Awards in excess of $7,500, as well as cash awards for Schedule C employees, must be approved by the Attorney General. The Director has authority to approve cash awards up to $7,500. This authority may be redelegated.

B. Accordingly, authority to approve cash awards that total more than $2,500 per employee, per fiscal year, is delegated to the Deputy Director. This total includes awards from other offices, but does not include Director's Awards, Attorney General's Awards, or sustained superior performance awards.

C. Authority to approve cash awards that total no more than $2,500 per employee, per fiscal year, is delegated to Agency, Assistant Directors, and all Staff Officers, and may be redelegated to a lower supervisory level. The approving official must be a supervisor at a higher grade level than the award recipient. Each office must keep a written record of the delegation identifying who may approve awards. This total includes awards from other offices, but does not

include Director's Awards, Attorney General's Awards, or sustained superior performance awards.

D. The awarding of a cash sustained superior performance award of up to $2,500 does not impact the limit for cash special act awards for the fiscal year. (For example, an employee may be given a $2,500 sustained superior performance award. The employee may still receive up to a total $2,500 in cash special act awards per fiscal year before the approval of the Deputy Director is required for any additional cash special act awards.)

E. Authority to approve awards that total no more than 80 hours per employee, per leave year, is delegated to USMs, Assistant Directors and all Staff Officers.

XI. Information Provided to the Union

A. The Union may request all reasonable and necessary information regarding awards granted to employees covered by this Article.

B. Upon written request and in accordance with 5 U.S.C. 7114(b)(4), and Article 9, Union Rights, the Agency will provide the Union with any information that is normally maintained by the Agency and is reasonable and necessary to process a grievance if it has not been provided such information pursuant to this provision.

XII. Misconduct Investigations and Disciplinary Actions:

A. Misconduct Within the Last Year:

If an employee is under investigation, is facing a disciplinary action, or has had a disciplinary action greater than a letter of reprimand based on misconduct that took place within the last year, the approving official should consider whether giving an award is appropriate. Consideration should be given to such matters as employee morale and the perception of fairness in the system. The decision is made by the approving official.

B. Disciplinary Action Pending or Greater Than Letter of Reprimand:

If an employee is under investigation, is facing a disciplinary action, or has had a disciplinary action greater than a letter of reprimand based on misconduct that took place within the last year, the approving official is not required to give the employee an award. The decision is made by the approving official.

C. Awards Related to Cash, Director's, Attorney General's, External Organization:

In most cases, an employee under misconduct investigation or involved in an active disciplinary case that could result in a disciplinary action greater than a letter of reprimand is not eligible for a cash, a Director's Award, an Attorney General's Award, or an award by an external organization.

D. Consideration of Pending/Active Misconduct or Disciplinary Case for Award Issuance:

If an employee has a pending investigation or an active disciplinary case, the Office of Professional Responsibility and/or the Office of Employee Relations may be asked to provide information concerning the nature of the issue and the likelihood of confirmed misconduct. The nature of the misconduct, the likelihood of its accuracy, and the amount of time that has passed since the investigation was initiated will be relayed to the Director for consideration in making the final decision.

E. Past Misconduct/Disciplinary Consideration:

If an employee has received a disciplinary action greater than a letter of reprimand in the past two years, and is recommended for a cash Director's Award, an Attorney General's Award or an award by an outside organization, the Office of Employee Relations will indicate the date the offense was committed or when headquarters/management became aware of it (if there was a delay in reporting). If the date of offense or when headquarters became aware of it has occurred within the past two years, this information will be referred to the Director. At the discretion of the Director, the employee may be deemed ineligible for the award based on the nature of the award and its relationship to the offense and its severity.

XIII. Performance Awards

A. Allocation and Distribution

Awards are based solely on the employee's performance rating of record assigned at the end of the appraisal period. These awards recognize sustained levels of successful or higher performance over the course of the rating period. The rating of record is the justification. A cash award or a time off award may be given based on the rating of record, but not both.

B. Criteria

An employee's current rating of record must be Successful, Excellent, or Outstanding. An award for sustained superior performance can only be made on an individual basis. One or more critical elements must be performed for at least six months in a manner clearly exceeding normal requirements. Employee must not have received another cash performance award within six months before the date of the nomination. A special act award during the six-month period is not disqualifying.

XIV. Effects on Leave

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.

ARTICLE 21
POSITION DESCRIPTION

I. General

A. Notice to Employees and Union

Affected employees and the Union will be provided timely notice of personnel management evaluations conducted by either the Agency or OPM that will involve classification audits of bargaining unit employees.

B. Restrictions

The Agency understands that duties should not be reassigned for the purpose of avoiding reclassification of a position during an employee initiated desk audit. The Union understands it might be within that employee's interest to assign duties if duties have been misassigned or should be realigned in support of an existing grade.

Should management have a requirement to reassign work, the existing duties will be documented in consideration of the desk audit.

C. Union Representation

Employees shall have the right to Union representation in all phases of the classification process, including desk audits, covered by this Agreement. Any phase that is not handled by the Agency, such as an appeal process, may preclude representation per OPM. Where desk audits effect a Job Series of employees, travel for Union representatives may be authorized.

D. Union Notification

The Agency will notify the Union in writing as soon as possible when substantive changes will be made in the duties and responsibilities of positions held by bargaining unit employees due to reorganization, or when changes in position classification standards result in classification changes, or for any other reason that changes will be made in position classification standards that could result in classification changes.

E. OPM Classification Standards

When OPM instructs the agency to implement newly issued classification and job grading standards, the agency will do so within a reasonable period of time. The Union will be informed of the new changes and provided with access to the web link for new standards. Current standards or directions to the standards will be provided to the union upon request.

F. Agency Information Provided to OPM

Upon request, the Agency will provide the Union with copies of all Agency information provided to OPM in connection with any classification standards.

G. Union Recommendations

The Agency will consider the Union's oral or written views concerning occupational classification standards. When making recommendations to the Office of Personnel Management the agency will notify the Union of any action taken.

II. Position Descriptions

A. Complete and Accurate Position Description

All employees are entitled to a complete and accurate position description, which clearly and concisely states the major and grade controlling duties, responsibilities, and supervisory relationships of the position. This will be provided to the employee at the time of assignment and upon request.

B. Current and Accurate

The Employer understands that each position covered by this Agreement must be current and accurately described, in writing, and classified to the proper occupational title, series, and grade in accordance with OPM and Agency regulations.

C. Position Descriptions Provided to the Union

Upon written request through Labor Relations, current position descriptions for bargaining unit positions will be provided to the Union in a reasonable response time.

D. Union Review

The Union will be provided the opportunity to review position descriptions, make recommendations and present evidence concerning the adequacy and equity of position descriptions for bargaining unit employees.

Upon enactment of a new, updated, or reclassified position description impacting bargaining unit employee’s conditions of employment the Union will be notified prior to issuance.

E. Employee Review

Employees are encouraged to discuss with their supervisor the accuracy of their position description and to recommend any changes to the position description that will articulate the accuracy of the duties and responsibilities of the position occupied.

F. Changes to Position Descriptions

Whenever an existing position description is amended or new descriptions for bargaining employees are developed, the Agency will provide copies of the amended or new descriptions to the Union and affected employees upon assignment of the employee into the new position.

G. Other Duties Assigned

The phrase "other related duties as assigned" and other phrases having similar meaning as used in position descriptions, means duties related to the basic duties of the position. The Agency may assign other duties that are generally aligned with the employee's scope of duties and position description in support of the mission. Such duties will not diminish the classification of the employee.

H. Employee Questions/Concerns and Rights

If an employee has a question concerning his/her classification or position description, he/she is entitled to discuss his/her position description with his/her supervisor. If the employee wishes to pursue the matter further, he/she may request a desk audit as provided for in Section 3 of this Article, file a grievance as appropriate, or file a classification appeal in accordance with Section 6 of this Article and 5 CFR Part 511, Subpart F. Prior discussion with an Agency official is not required, but is recommended before an employee either requests a desk audit or files a grievance or classification appeal.

III. Desk Audits

A. Desk Audit Requests

Desk audits may occur by request of an employee or with the approval of the employee, by the Union or at the discretion of the Agency. Employees may request a desk audit by notifying their supervisor. Upon such notification, the Agency will acknowledge receipt of the request within ten (10) calendar days or provide an estimate of the additional time needed to reply.

B. Non-employee or Union Initiated Desk Audits

An employee(s) whose position is the subject of a desk audit, and the Union, will be provided timely notice by the Agency prior to the desk audit. Notices will identify the employee(s), position, the reason the audit is being conducted, and propose a time for the audit.

C. Discussion with Employee and Union

During an agency desk audit, the employee and Union representative may discuss the audit with the employee's supervisor and other involved Agency officials (e.g., Human Resources staff). Upon completion of the audit, the

Agency shall designate an official to discuss the findings with the employee and the representative.

D. Location of Desk Audit

As appropriate, desk audits will be performed at the employee's workstation.

E. Completion of Desk Audits

When a desk audit is conducted it will be completed within 180 days of the Union or employee request. This time frame may be extended by mutual consent following Agency notification to the Union, prior to the expiration of time and will include an estimate of necessary time for completion

IV. New Classifications

A. Decisions

Classification decisions rendered by the Agency or OPM having the effect of establishing a grade level that did not exist before within an occupation will be forwarded by the Agency to the Union with the basis for that decision.

B. Promotion

A promotion resulting from the application of a new classification standard or correction of a classification error will normally be effected no later than the beginning of the second pay period following a management decision to promote the incumbent(s), provided he or she meets any applicable qualification, performance, or other requirements for the position in questions.

V. Downgrades

A. Notice of Decision to Downgrade

An employee whose position is reclassified to a lower grade which is based in whole or in part on a classification decision is entitled to a prompt written notice from the Agency. This notice will be issued to affected employees within thirty (30) calendar days of the decision unless otherwise issued by OPM. This includes employees who are eligible for retained grade or pay. The notice will explain:

1. The reasons for the reclassification action;
2. The employee's right to appeal the classification decision to OPM as provided by regulations, if such appeal has not already been made;
3. The time limits within which the employee's appeal must be filed in order to preserve any retroactive benefits under 5 CFR 511.703; and
4. Any other appeal or grievance rights available under applicable law, rule, regulation, or this Agreement.

B. Employee’s Pay and Grade

For a downgraded position, the employee's pay and grade will be maintained in accordance with law and regulations.

C. Priority Referral

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 14, 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. Consideration does not guarantee selection for the position.

1. List of Qualified Eligibles

A listing of the ten 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 highly qualified repromotion eligibles, all highly qualified eligibles will be referred. The seniority of highly qualified candidates is determined by Service Computation Date.

2. Mandatory Selection

If the list of downgraded employees contains five or more highly qualified repromotion eligibles, selection from among those eligibles will be mandatory, unless persuasive reasons for nonselection are provided in writing to the Head of the Agency or designee.

D. Impact Negotiation

The impact of any Agency notice of downgrading will be negotiated with the Union prior to implementation, in accordance with Article 4, Mid-Term Bargaining. If the downgrade is the result of an OPM determination, the implementation of the downgrade will be done in accordance with instructions provided by OPM in the notification of classification decision.

VI. Classification Appeals

A. Appeal Rights

Employees may appeal classification decisions that result in a reduction in their grade or pay through Article 39, Negotiated Grievance Procedures, or through the administrative process provided for under 5 CFR 511.101 et seq. Other classification disputes concerning the establishment or change the title, series,

grade, or pay system of a position will be processed under 5 CFR Part 511, Subpart F in accordance with OPM guidelines.

B. OPM Appeals

Employees or their designated representative may file an appeal with OPM to challenge either the appropriateness of the occupational series or grade of the employee's position or the inclusion under or exclusion of their position from chapter 51 of Title 5 U.S.C. by either the Agency or OPM. However, employees who suffer reductions in grade or pay because of reclassification may opt to resolve disputed classification issues through Article 39, Negotiated Grievance Procedure. The ability to grieve the reduction will not impact any binding decisions issued by the Office of Personnel Management.

C. Statutory Procedure

Classification appeals will be processed in accordance with 5 CFR Part 511, Subpart F, for General Schedule employees; 5 CFR Part 532, Subpart G, for Federal Wage System employees; applicable Agency rules; and the provisions of this Agreement, as appropriate. The Agency will provide employees and their designated representatives with copies of procedures for filing classification appeals through the Agency and OPM channels upon request. Employees who do not wish Union representation will be informed by the Agency of employees' grievance or appeal rights, as appropriate.

ARTICLE 22
EQUAL PAY FOR EQUAL WORK

I. Right of Employees

Employees shall be free from discrimination in their compensation; their protection is covered under the following federal laws:

A. Equal Pay Act of 1963

B. Title VII of the Civil Rights Act of 1964

C. Age Discrimination in Employment Act

D. Title I of the Americans Disabilities Act of 1990

The Equal Pay Act requires that an employee not receive less pay than an individual of the opposite sex for equal work, requiring equal skill, effort and responsibility, under similar working conditions within the same establishment unless the Agency has a recognized reason for the pay differential.

II. Employer

The requirement of "equal work" does not mean that the jobs must be identical, but only that they must be "substantially equal" as derived and interpreted by case law and precedent.

A. Agency Rights

The Agency has an affirmative defense under the Equal Pay Act to pay a differential when it is based on any of the following:

1. Seniority
2. Merit
3. Quantity or quality of production of work
4. Factors other than sex

It is the Agency's burden to prove that these affirmative defenses apply.

III. Correcting Pay Differential

Pay differentials are permitted when they are based on seniority, merit, quantity or quality of production, or a factor other than sex. These are known as "affirmative defenses" and it is the employer's burden to prove that they apply.

In correcting a pay differential, no employee's pay may be reduced. Instead, the pay of the lower paid employee(s) must be increased.

If there is a finding or a violation of the Equal Pay Act by an appropriate third party, an appropriate remedy will be awarded.

A. File Complaint

The Agency and the Union understand that employees have the right to file an equal pay complaint in accordance with 29 U.S.C. 206.d. and the Lilly Ledbetter Fair Pay Act of 2009.

ARTICLE 23
HOURS OF WORK

I. Purpose

This Article shall be administered in accordance with Title 5, United States Code ("U.S.C."), Chapters 61; Title 5, Code of Federal Regulations, Parts 610 and this Agreement. The purpose of this Article is to prescribe the policies covering hours of work for all employees in accordance with applicable law and regulation.

II. Definitions

A. Administrative workweek means any period of seven consecutive 24-hour periods designated in advance by the head of the Agency under 5 U.S.C. 6101.

B. Adverse agency impact means a reduction of the productivity of the Agency, a diminished level of services furnished to the public by the Agency, or an increase in the cost of Agency operations (other than a reasonable administrative costs relating to the process of establishing a flexible or compressed schedule.

Alternative work schedule (AWS) means both flexible and compressed work schedules.

Basic Work Requirement: the number of hours, excluding overtime hours, an employee is required to work, or to account for, by charging leave, excused absence, holiday hours, compensatory time off or time off as an award.

Biweekly pay period means the two-week period for which an employee is scheduled to perform work.

Compensatory Time Off: Compensatory time is time off from work that may be granted to an employee in lieu of overtime pay for irregular and occasional overtime.

Compressed work schedule (CWS) is an 80-hour biweekly basic work requirement that is scheduled by the Agency for less than 10 workdays.

Core hours means the time periods during the workday, workweek or pay period that are within the tour of duty during which an employee covered by a flexible work schedule is required to be present for work.

Flexible hours (or "flexible time bands") means the times during the workday, workweek or pay period within the tour of duty during which an employee covered by a flexible work schedule may choose to vary his or her times of arrival to and departure from the work site consistent with the duties and requirements of the position.

Flexible Work Schedule: schedule by which an employee can select and alter non-core work hours to better balance work, personal and family responsibilities.

Flexitour: This flexible work schedule allows an employee to select start and stop times within the flexible hours. Once selected, the hours are fixed until the agency provides an opportunity to select different starting and stopping times.

Full Time: work schedule of 80 hours per pay period.

Full-Time Employee is 80 hours in a biweekly pay period

Gliding Schedule: For this option an employee has a basic work requirement of eight hours a day and 40 hours a week. The employee may select start and stop times each day within the established flexible hours.

Holiday Work: non-overtime work performed by an employee during a regularly scheduled daily tour of duty on a holiday. 5 C.F.R. § 550.

Irregular or Occasional Overtime Work: overtime work that is not part of an employee's regularly scheduled administrative workweek. 5 C.F.R. § 550.

Maxiflex Schedule: This option contains core hours on fewer than 10 workdays in the biweekly pay period, but the employee still has a basic work requirement of 80 hours during the biweekly pay period. The employee may vary the number of hours worked on a given workday or the number of hours worked each week during the pay period, within the limits established for the Agency, in order to accrue the required 80 hours.

Night Work: regularly scheduled work performed by an employee between 6 p.m. and 6 a.m. It includes any night work performed as part of the employee's regularly scheduled administrative workweek. 5 C.F.R. § 550.

Overtime Pay: payment to employees for officially ordered or approved work exceeding eight hours a day or 40 hours a week. 5 C.F.R. § 550.111

Overtime Work: work that meets either of the definitions set forth below. The term includes both irregular or occasional overtime work and regular overtime work.

Work lasting more than eight hours a day or 40 hours in an administrative workweek that an employee performs on official orders. 5 C.F.R. § 550.111

Regular Overtime Work: overtime work that is part of an employee's regularly scheduled administrative workweek.

Regularly Scheduled Work: work that is scheduled ahead of an administrative workweek under an agency's procedures for establishing workweeks.

Regular Working Hours: Under the FLSA, this refers to the hours and days an employee is normally scheduled to be on duty.

Seniority is established in this order; USMS service time, DOJ service time then federal service based on Service Computation Date (SCD).

Suffered or Permitted Work: any work performed by an employee for the benefit of the agency, whether requested or not, provided the employee's supervisor knows or believes that the work is being performed and has an opportunity to prevent it from being performed. 5 C.F.R. § 551.104

Sunday Work: non-overtime work an employee performs during a regularly scheduled daily tour of duty that includes Sunday. 5 C.F.R. § 550

Tour of Duty: Normally, the hours in and days of an administrative workweek that constitutes the employee's regularly scheduled workweek. Under the FLSA, however, the tours of duty of employees engaged in fire protection or law enforcement activities include all time the employees are on duty.

Variable Day Schedule means a type of flexible work schedule containing core hours on each workday in the week, and in which a full-time employee has a basic work requirement of 40 hours each week of the biweekly pay period, but in which an employee may vary the number of hours worked on a given workday within the week within the limits established by government wide regulations.

Variable Week Schedule means a type of flexible work schedule containing core hours on each workday in the biweekly pay period, and in which a full-time employee has a basic work requirement of 80 hours for the biweekly pay period, but in which an employee may vary the number of hours worked on a given workday or the number of hours each week within the limits established by government wide regulations.

Workday: Under the FLSA, it is defined as the period between when employees begin their principal activities and the cessation of those activities. The workday is not limited to a calendar day. 5 C.F.R. § 551.411

III. Alternative Work Schedules

A. Purpose

The parties recognize that alternative work schedules are designed to assist employees in being more readily available to face the daily challenges of balancing family and work demands, volunteer activities and educational opportunities, as long as they meet the basic work requirement for either a full-time or part-time employee. Therefore, all alternative work schedules in this Agreement will be made generally available to all employees in the bargaining unit, subject to mission requirements and supervisory approval. See Appendix D for examples on AWS schedules.

If district/division management determines that certain positions and/or employees in certain organizational units are not eligible for some or all of the alternative work schedule options, the Agency will provide the Union with a list

of those positions and organizational units and indicate which schedules are inappropriate, along with the reasons for the determination, when and if a determination is made.

At the Union's request, the Parties will negotiate over the impact and implementation of the Agency's proposed exclusions, if any, under the provisions of Article 4 Mid-Term Bargaining. If the Parties are unable to agree, the impasse will be resolved under the provisions of law. Pending a final decision on an impasse and subject to mission requirements, the employee(s) or positions(s) will remain eligible for the AWS option in question.

B. Requests for AWS

1. Requests for alternative work schedules:

   a. Employees may request to change their schedules on a quarterly basis. Employees will have the option prior to the beginning of any calendar quarter (January, April, July, October) to request an alternative work schedule. Requests must be submitted no later than two weeks prior to the first workday of that calendar quarter.

   b. An employee who requests a flexible work schedule must indicate which schedule he or she is requesting – either flexitour, gliding schedule, variable day, variable week, or maxiflex. Employees who request flexible schedules must select starting and stopping times within the flexible time bands, in accordance with regulation.

   c. An employee who requests a compressed work schedule must indicate which schedule he or she is requesting, which day(s) is (are) requested as the non-workday(s), and in the case of the 5/4-9 schedule, which day is requested to be the eight-hour day. The employee must also select a starting and stopping time within the arrival and departure time bands. Once these times have been selected and approved, the employee will not be allowed to vary these times until a new request is submitted and approved (at the calendar quarter).

   d. Approving Officials will make a decision on requests for Flexible Work Schedule and inform the employee within 15 days. If the Approving Official requires more time, he or she will notify the employee and make his or her decision no later than 30 days from the request.

2. Denial of Request of Alternative Work Schedule

   If district/division denies a request for an established alternative work schedule or proposes to terminate an individual employee's participation in an alternative work schedule, he or she will notify the employee in writing and provide the basis for the denial or termination and provide an revised schedule to the employee via a form USM-398. The supervisor may deny an employee's request for or propose to terminate an employee's participation

in a particular alternative work schedule if the supervisor determines that the employees could negatively impact the work unit's coverage requirements, workload, safety and security, and/or the need to respond to the public. Denials of requests to work alternative work schedules will not be arbitrary or capricious. An employee may challenge a denial as set forth in Article 39, Grievance Procedure.

3. Temporary Suspension of Alternative Work Schedules

   Occasions may arise when alternative work schedules must be temporarily suspended as a result of unusual workload or operational demands. The Agency shall make every reasonable effort to avoid suspension of an employee's participation in these work schedules. If the circumstances requiring a suspension of AWS permit, the Agency will endeavor to provide the employee with advance notice of at least one pay period. The Agency will limit the suspension to as short a time frame as necessary to meet the workload or operational demands. If an employee's flexible work arrangement is suspended, it will automatically be restored as soon as possible after the reason for the suspension has been met. For the purposes of this Agreement, "temporarily suspend" is defined as a period of 28 days or 2 pay periods. If the Agency believes that the "temporary suspension" will extend past this period, prior to the end of the period, and any subsequent periods, the Agency will notify the union. Alternative work schedules cannot be temporarily suspended for an indefinite period. Decisions on temporary suspension of AWS for any employee will not be arbitrary or capricious.

4. Terminating Alternative Work Schedules Agency-wide

   If the head of the Agency finds that a particular AWS schedule has had an "adverse Agency impact," as defined in 5 U.S.C. 6131 (b), the Agency must promptly notify the Union that it is reopening this Article to effectively terminate AWS per its authority under 5 U.S.C. 6131. If the parties reach an impasse in collective bargaining with respect to terminating such schedule, the impasse shall be referred to the Federal Services Impasse Panel which will determine whether the Agency's determination is supported by evidence. The AWS schedule may not be terminated until agreement is reached or the Panel acts.

IV. Flexible Work Schedule

The authority to manage the flexible work schedule program is set forth in 5 U.S.C. §§ 6121, 6122, and 5 U.S.C. §§ 5546(a), (b). Flexible work schedule (FWS) for United States Marshals Service (USMS) employees includes:

A. Management Discretion: USMS managers may decide whether to allow voluntary flexible work schedules for their employees based on the needs of the Agency's mission.

1. FWS Options: There are three work schedule options that employees, with their managers' approval, may select from:

    a. Flexitour

    b. Gliding Schedule

    c. Maxiflex Schedule

B. Temporary Duty Station Schedule for FWS: When an employee who is covered by an FWS program is assigned to a temporary duty station using a different schedule, either traditional or alternate work schedule (AWS), the USMS may either allow the employee to continue to use his or her regular flexible schedule or require the employee to change the schedule for that assignment site, subject to mission requirements.

V. Compressed Work Schedule

A. Full-time employees working a compressed schedule in accordance with this Article, who are relieved or prevented from working on a day designated as a holiday, will receive their regular rate of basic pay for the number of hours of their compressed work schedule on that day.

B. A full-time employee working a compressed schedule, who performs non-overtime work on a holiday, is entitled to his or her rate of basic pay plus premium pay equal to his or her rate of basic pay (double time) for the work that is not in excess of the employee's compressed work schedule for that day.

C. A part time employee working a compressed schedule who performs work on a holiday is entitled to holiday premium pay only for work performed during his or her compressed work schedule.

D. Employees must not be required to move their regularly scheduled days off solely to avoid payment of holiday premium pay or reduce the number of holiday hours included in the basic work requirement.

VI. Shift Work

A. More than One Shift

When the accomplishment of the Agency's mission requires that there be more than one shift over the course of a day, the Agency will determine which positions are required to be on duty for more than one shift.

B. Scheduling Consecutive Shifts

Managers will not schedule employees to work more than two (2) of the established work shifts (days, evenings, or nights) within any seven (7) consecutive day periods.

C. Time Between Shifts

Except in emergencies, employees will not be required to report to work unless they have had at least 8 hours off-duty time between work tours. Exceptions may be made with the approval of the employee and supervisor. This will not preclude work on an overtime basis.

D. Rotation of Weekends and Holidays

Rotation of weekends and holidays will be on a fair and equitable basis within a group. The weekends are defined as Saturday and Sunday and may be expanded to include Friday or Monday when scheduling permits.

These rotations may be subject to additional bargaining at the district/division level.

E. Records of Rotations

Records of rotations will be kept by management to ensure fair and equitable treatment of employees. These records will be readily available for review by the employee.

F. Employee Preference for Tour Assignments

Employees may state their preference for initial tour assignments. Conflicts will be resolved by seniority. Refer to definition of seniority in Sec. 2 of this article.

VII. Pre-Shift and Post-Shift Activity

A. Doffing and Donning Clothes/Equipment

When a change of uniform is required or permitted, the Agency normally will provide ten (10) minutes at the beginning and ending of the tour for the employees to change clothes. When such activity must take place before the shift begins or after the shift ends, this time will be compensable.

B. Equipment Clean Up and Return

The Agency will permit reasonable clean-up time immediately prior to the end of each shift for the purpose of returning equipment, tools, and cleaning up the work areas and machinery as necessary in each work area.

VIII. Notification of Schedules

A. Notice to Employees of Schedule Changes

Best efforts will be made to notify employees of their work schedules in advance of the administrative workweek, when operations allow. When possible, the Agency should attempt to identify schedule change requirements and notify employees at least seven (7) days in advance. Insofar as possible,

supervisors should plan and schedule work assignments so that they can be completed within an employee's regular tour of duty.

B. Work Schedules

Every effort will be made to assure that work schedules will not be for more than six (6) consecutive days for eight-hour tours, three (3) consecutive days for 12-hour tours, and four (4) consecutive days for 10-hour tours, and will include not fewer than two (2) consecutive days off.

C. Notice to the Union

Copies of work schedule changes lasting more than 30 days will be provided to the Union as early as possible prior to the proposed implementation date. The Union will notify the Agency if it wishes to bargain regarding such change in accordance with Article 4, Mid-term Bargaining.

IX. Employee Initiated Schedule Adjustments

A. Employee Approved Trades

Where mutually agreeable to all employees affected, employees may trade shifts or tours of duty out of the normal rotation, consistent with the needs of the Agency. All affected supervisors will be notified of the employees' wishes. These trades will be approved unless they interfere with the efficient accomplishment of the Agency's mission.

B. Self Development Accommodations

The Agency will consider changes in individual schedules or assignments to permanent shifts requested by employees to pursue further self-development activities when completion of the courses will equip the employee for more effective work within the Agency. Management retains the discretion to determine whether to grant the request.

C. Adjustment of Work Schedules For Religious Observances

To the extent that modifications in work schedules do not interfere with the efficient accomplishment of an agency's mission, an employee whose personal religious beliefs require that he or she abstain from work at certain times of the workday or workweek must be permitted to work alternative work hours so that the employee can meet the religious obligation. The hours worked in lieu of the normal work schedule do not create any entitlement to premium pay (including overtime pay).

Agencies should require employees to submit a written request for an adjusted work schedule in advance. An employee should specifically state that his or her request for an adjusted work schedule is for religious purposes

When deciding whether an employee's request for an adjusted work schedule should be approved, a supervisor should not make any judgment about the employees religious beliefs or his or her affiliation with a religious organization. A supervisor may disapprove an employee request if modifications of an employees work schedule would interfere with the efficient accomplishment of the agency's mission.

If an employee's request is approved, a supervisor may determine whether the alternative work hours will be scheduled before or after the religious observance.

An employee's request for time off should not be granted without simultaneously scheduling the hours during which the employee will work to make up the time. This provides a clear record of the employees adjusted work schedule. An employee should be allowed to accumulate only the number of hours of work needed to make up for previous or anticipated absences from work for religious observances.

If an employee is absent when he or she is scheduled to perform work to make up for a planned absence for a religious observance, the employee must take paid leave, request leave without pay, or be charged absent without leave, if appropriate. These are the same options that apply to any other absence from an employee's basic work schedule.

The overtime pay provisions of title 5, United States Code, and the Fair Labor Standards Act of 1938, as amended, do not apply to employees who work different hours or days because of religious observances, even if an employee voluntarily works in excess of 40 hours per week or 8 hours per day for this purpose. If an employee is separated or transferred before using the time set aside for religious observances, any hours not used must be paid at the employees rate of basic pay in effect when the extra hours of work were performed.

X. Meal Periods

A. Full-Time Employees

Each agency has the authority to establish its own requirements for meal periods. Workload permitting full-time employees will be granted, on a non-paid basis, a meal period each day so long as the employee satisfies the regular work hours for the day. This break period will be scheduled at or near the mid-point of the shift or tour of duty. The meal period may be up to one (1) hour, provided that employees account for the entire work requirement for the day

B. Meals not Feasible

When a normal, scheduled meal period is not feasible within a shift, a 30-minute working meal period shall be permitted and considered as hours worked for pay purposes, as long as the employee is required to remain at the work site.

XI. Breaks

A. Scheduling Breaks

Workload permitting, a break of 15 minutes may be provided for each four hours of work for employees who work eight-hour tours of duty. The rest period will normally occur in the middle of each four-hour work period. Similar rest periods may be provided for employees who work on other than the normal eight-hour tour of duty. There will be no charge to leave for such breaks. Employees may leave the work area during a break.

B. Breaks After Normal Work Schedule

Work ordered and performed in excess of employees' normal work schedule will include paid 15-minute break periods at the end of every two hours of work.

C. Time Keeping

Employees will not be required to use a time clock, sometimes known as a clock card machine or punch clock or time recorder, or any mechanical and/or electronic timepiece used to assist in tracking the hours worked by an employee. This provision does not preclude employees and their managers from coordinating and certifying their arrival and departure times, as well as any other exceptions to the normal work day.

ARTICLE 24
TELEWORK

I. Policy and Authority

A. Definitions

For purposes of this Agreement, telework refers to an employee's performing assigned duties at a location other than the official duty station. Such an alternative duty station (ADS) can include a government or private telework center, or the employee's home.

B. Policy

This article establishes a formal telework program for all eligible employees of the Agency. It is an additional method the Agency may approve to accomplish work. Telework enhances continuation of Agency essential functions. It further enables the Agency to be better prepared for other emergencies. The telework program is strictly voluntary, and is not an employee entitlement, and is subject to approval by management. However, the Agency expects managers to make reasonable decisions in granting or denying telework participation. A successful telework arrangement should not be suspended, except for clearly defined concerns such as performance/conduct issues or mission related needs.

C. Authority

The Director's authority to supervise the USMS and establish personnel standards with approving authorities for the personnel actions set forth in 5 U.S.C. § 3401; 28 U.S.C. § 561(g); and 5 C.F.R. § 340.

II. Eligibility

A. Eligible Employees

1. This program applies to all eligible employees of the USMS. Eligible employees must have a current performance rating of at least successful to participate in the telework program. Factors such as documented prior discipline, substantiated leave abuse, and/or substantiated performance issues may prohibit participation in the program.

2. Eligible Job Positions: The employee's position must not require the removal of sensitive documents or case files from the USMS-controlled office space in order to perform the duties in a telework environment. For purposes of this directive, telework can be conducted from the employee's home or from another remote worksite approved by the supervisor.

3. Telework and non-telework employees are treated the same for purposes of periodic appraisals of job performance of employees; training, rewarding, reassignment, promoting, reducing in grade, retraining, and removing

employees; work requirements; or other acts involving managerial discretion.

4. An employee with a disability (permanent or temporary) may request to telework under this policy or as a reasonable accommodation. Employees and supervisors are encouraged to contact the Equal Employment Opportunity (EEO) Office for more information about reasonable accommodation.

III. Excluded Positions

Law Enforcement Officers (LEOs) are considered a mobile workforce and are excluded from the telework program based on OPM and DOJ regulation. This includes the 1811, 082, 1801, and 1802 job series.

IV. Duty Hours

A. Employees who conduct telework duties at least three days a week are considered to be teleworking on a full time basis and employees who conduct telework duties two days a week are considered to be teleworking on a part time basis.

B. Employees requesting participation in telework must be available to work during the assigned duty hours and only conduct work related business during those hours.

C. The policies and procedures on pay and for requesting leave (i.e., annual leave, sick leave, or leave without pay (LWOP)) remain unchanged. Employees are required to request approval for leave when unavailable for work during scheduled duty hours and to keep the timekeeper informed of leave usage.

D. Telework is not a substitute for dependent care. Telework arrangements can provide valuable assistance in the management of work/family schedules, but family responsibilities and personal business must not interfere with the performance of official duties at the alternative worksite.

E. For the duration of the agreement period, the employee will work the hours of duty specified unless a change is scheduled and is approved by a supervisor.

F. Under the telework program, all telework duty hours and telework days must be identified in the telework agreement, approved by the supervisor, and must be documented on the USM-399 Telework Request Form.

G. Employees who telework as Situational are only authorized to do so with the agreement of the immediate supervisor.

V. Procedures

A. Form USM-399, Telework Request must be completed by the employee and forwarded for approval to the immediate supervisor and approving official.

B. All requests must be recommended for approval by the first line supervisor and approved by the approving official before an employee may telework.

C. United States Marshals (USMs), Chief Deputy United States Marshals (CDUSMs), Assistant Directors (ADs), and Staff Office Heads are designated as approving officials.

D. The granting of telework is at management discretion.

E. If a telework request is denied, management should provide a written justification for the denial (see USM 399). The employee has the right to address the denial through the USMS grievance process.

F. All employees new to telework must complete the following one-time training prior to participating in the USMS telework program: http://www.telework.gov/tools_and_resources/training/employees/index.aspx

G. All new supervisors must complete the following one-time training: http://www.telework.gov/tools_and_resources/training/managers/index.aspx.

H. Once an employee and supervisor have completed the online training, a certificate must be provided to a District/Division Telework Point of Contact within five days of completion to ensure compliance.

VI. Security, Equipment and Support Services

A. All USMS employees must be in compliance with rules and regulations of Policy Directive, 12.2, The Management, Use, Allocation, Deployment, and Accountability of USMS Information Technology (IT) Resources and Systems and Policy Directive, 12.7, Information Technology (IT) Security.

B. All employees must only use USMS-owned equipment when teleworking. The USMS-owned equipment must only be used for official purposes. The employee is responsible for properly maintaining, protecting, and securing the USMS- owned equipment at all times. The USMS is responsible for providing the employee with all necessary office supplies. The USMS is not liable for damages to employee's personal or real property while the employee is working at the approved alternate worksite.

C. All USMS employees must comply with property accountability in regards to telework. Form USM-325, Hand Receipt, must be present with the employee when he or she teleworks to maintain accountability of USMS-owned equipment (i.e., laptop). The supervisor of the telework employee also must maintain a copy of Form USM-325.

VII. Personal Safety

A. All USMS employees are covered under the Federal Employee's Compensation Act if injured while performing official duties at the official duty station or at an approved designated worksite.

B. Any accident or injury occurring at the designated worksite must be reported immediately to the supervisor. The supervisor of the injured employee must report and investigate the incident immediately.

VIII. Administrative Management

A. A representative from the Human Resources Division (HRD) serves as the Telework Coordinator for the USMS on all telework matters and as a liaison on all telework matters with DOJ.

B. A representative from each District and Division serves as the Telework Point of Contact for the District or Division in order to assist the Telework Coordinator in documenting and reporting telework participation.

C. The employee's regular office remains as the official duty station as it relates to pay, leave, and travel entitlements.

D. Telework employees are eligible for overtime pay, provided that the hours worked were pre-approved by the supervisor.

E. With regards to dismissal and emergency closings, the following applies:

1. Approved telework employees who are scheduled to work when the USMS closes are expected to begin telework on time or request unscheduled leave.

2. Approved telework employees who are working when an early dismissal occurs are expected to continue working.

3. Supervisors may excuse a telework employee from duty during an emergency situation if the emergency adversely affects the telework site (i.e., disruption of electricity, loss of heat, etc.); if the telework employee faces a personal hardship (childcare, eldercare, etc.) that prevents him or her from working successfully at the telework site; if the telework employee does not have the means or the technology to work successfully at telework; or if the telework employee's duties are such that he or she cannot continue to work without contact with the regular worksite.

4. Approved telework employees who are not scheduled to telework during an office closure must notify their supervisor of their intent to use unscheduled leave or unscheduled telework.

5. Employees who are required to work during their regular tour of duty on a day when the USMS is closed or when other employees are dismissed early are not entitled to receive overtime pay or compensatory time off for performing work during their regularly scheduled hours.

6. Additional guidance on dismissal and emergency closings is available on the OPM website in the publication Washington, DC, Area Dismissal and Closure Procedures and at

http://www.telework.gov/policies_and_procedures/closure_dismissal/index.aspx.

F. Supervisors and employees must revisit, revise (if needed), and re-sign Form USM-399, Telework Request no less frequently than once every two years.

IX. Employee Responsibilities

A. Employees must properly adjust their compensation benefits if enrolled in the Employee Transit Program (ETP) when conducting telework. All USMS employees must follow the guidelines and be in compliance with Policy Directive, 7.2, Employee Transit Program (ETP).

B. Employee must demonstrate self-motivation, independence, and dependability in accomplishing work assignments while conducting telework.

C. Employee must be in compliance with the Privacy Act while conducting telework duties as stated in Policy Directive 1.2 Legal, Freedom of Information Act (FOIA)/Privacy Act (PA)

D. Employee must use the appropriate security safeguards such as passwords or locking devices, to ensure that unauthorized users do not have access to government material.

E. Employee must ensure Internet connection is secure and should not telework from non-secure areas. (i.e. wireless internet at a coffee shop or restaurant).

F. Employee may be required to attend meetings, conferences, or training or to otherwise come to the official duty station on days or hours normally scheduled for the alternative worksite.

G. Employee must have a back-up plan if the telework site needs to change and must have supervisor's approval prior to executing.

H. Employee must maintain communication with co-workers and supervisor in order to conduct all job functions and duty requirements.

I. Employee will meet with the supervisor to receive assignments and to review any work as necessary or appropriate.

J. Employee is responsible for recording the hours in the time and attendance system.

K. As stated in E(4)(f), employee must revisit, revise (if needed), and re-sign his or her FormsUSM-399, Telework Request no less frequently than once every two years.

X. Supervisor Responsibilities

A. In accordance with Section 6502(a)(2), under the Telework Enhancement Act of 2010, the supervisor shall terminate any telework agreement at any given

notice if a telework employee has been officially disciplined for being absent without permission for more than 5 days in any calendar year or the employee has been officially disciplined for violations of subpart G of the Standards of Ethical Conduct for 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. USMS Policy Directive 3.23, Telework Page 6 of 7 Effective: 5/20/2011 (Last Updated: 3/19/2013)

B. The supervisor has the right to terminate or suspend any telework agreement if the telework employee's performance declines in conjunction with performance

C. The supervisor must contact HRD, Employee Relations, when terminating a telework agreement for reasons stated under item a. and b. above.

D. The supervisor must monitor all work conducted by a telework employee to ensure the employee is working productively.

E. The supervisor must maintain communication with telework employee and is responsible for the employee’s actions while working from another worksite.

F. The supervisor must maintain accountability of all government property that is being used by telework employees.

G. The supervisor must ensure that a telework employee has conducted all the security measures and completed all the correct USMS forms before the employee begins work at an alternative worksite.

H. The supervisor must ensure the telework employee is conducting duties in a safe and suitable work atmosphere and meeting all work requirements.

I. As stated in E(4)(f), supervisor must revisit, revise (if needed), and re-sign employees’ Forms USM-399, Telework Request no less frequently than once every two years.

XI. District/Division/Staff Office Responsibilities

A. The District/Division/Staff Office will provide, as available, the employee with government-owned equipment in order to perform his or her duty.

B. The District/Division/Staff Office must provide maintenance and repair for all government-owned equipment that is being provided to the employee.

C. The District/Division/Staff Office must ensure that Limited Official Use (LOU) information is protected and safeguarded if an employee has been approved to telework.

D. The District/Division/Staff Office is responsible for any USMS employee who teleworks from a remote worksite.

E. The District/Division/Staff Office is responsible for assigning an employee within its area to serve as a Telework Point of Contact.

ARTICLE 25
OVERTIME

I. General

Overtime is governed by the Fair Labor Standards Act and 5 USC 5542 as applicable.

II. Types of Overtime

A. Regular Overtime

Generally, overtime work scheduled in advance of the administrative workweek 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.

1. Any employee covered under a flexible work schedule program established under Article 27, Compensatory Time may request compensatory time off in lieu of overtime premium pay for regular overtime work. Employees not covered by a flexible work schedule program must receive overtime pay for regular overtime work and cannot receive compensatory time. Additional provisions for earning and receiving compensatory time are found in Section 10 of this Article.

B. Irregular or Occasional Overtime

Generally, overtime work that was not scheduled in advance of the administrative workweek (although it may have been) which was approved by a supervisor 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. A quarter 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. (Use of Comp Time is governed by Article 27 on Compensatory Time).

III. Call-Back Overtime

Call-back overtime is a form of irregular or occasional overtime work performed by an employee on a day when work was not scheduled for the employee or for which he is required to return to his place of employment after having already concluded his tour of duty and departed the work site. In call back overtime situations, the employee will be paid a minimum of two hours of overtime.

IV. Distribution

A. Regular Overtime Distribution

Agency management will consider soliciting volunteers, using rotational lists based on seniority and other equitable constructs (e.g. employee development, operational requirements) for assigning regular overtime work as defined in Sec 2(a) of Overtime Article 25. When no volunteer is present, Agency Management will assign the employee utilizing the rotational list from the least seniority.

Employees may accept or decline to work voluntary regular overtime. Employees may not decline mandatory overtime. Mandatory overtime is a condition of employment.

B. Union Officials and Overtime

Union Officials with scheduled official time assignments may be relieved from working regular overtime if official time cannot be rescheduled or coordinated with another Union Official. Union officials assigned to work mandatory overtime may seek relief from their Supervisor if scheduled Union official time cannot be rescheduled or coordinated with another Union Official.

V. Recording Overtime

Records of overtime offered, worked and refused will be kept by district/division management and may be reviewed by the Union upon request in accordance with 5USC 7114(b)(4).

Employees are responsible for recording overtime assignments via electronic payment system (e.g. Web TA). All overtime information must be submitted to the electronic payment system by employees and approved by a supervisor.

VI. Disputes

The negotiated grievance procedure is the exclusive remedy for the resolution of disputes concerning overtime.

VII. Impact on Leave

Leave will not be a factor in offering or assigning employees overtime. Overtime in conjunction with leave usage in the same pay period is permitted.

VIII. Standby Duty

An employee will be considered on duty and time spent on standby shall be considered hours of work if and in accordance with 5CFR 551.431:

A. The employee is restricted to the Agency'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 Agency'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.

IX. Additional Compensation

Employees are not entitled to any additional compensation for time spent in an on-call status.

ARTICLE 26
LEAVE

I. General

The purpose of this Article is to discuss 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, Chapters 63; Title 5, Code of Federal Regulations, Parts 630 and this Agreement.

A. Purpose of Leave

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

B. Accrual and Use of Leave

Employees will be entitled to accrue and use leave in accordance with applicable laws, regulations, and this Agreement. The Parties agree that the use of accrued annual leave is the right of the employee and not a privilege and should be used by employees. Leave will be accounted for in 15 minute increments as provided in this Article.

C. Leave Earnings

FULL-TIME EMPLOYEES

Years of Service	Earning Rates
Less than 3	4 hours of annual leave for each full biweekly pay period or 13 days per leave year
At least 3, but Less than 15	6 hours of annual leave for each full biweekly pay period plus 4 additional hours for the last full biweekly pay period of the leave year
15 or more	8 hours of annual leave for each full biweekly pay period or 26 days per leave year

PART-TIME EMPLOYEES

Years of Service	Earning Rates
Less than 3	1 hour of annual leave for each 20 hours in a pay status
At least 3, but Less than 15	1 hours of annual leave for each 13 hours in a pay status

15 or more	1 hour of annual leave for each 10 hours in a pay status

Biweekly Pay Period.

1. Full-time Employees. A full-time employee earns leave for each full biweekly pay period. When a full-time employee's absence in a nonpaid status totals 80 hours, the employee's annual leave credit is reduced by 4, 6, or 8 hours depending on the employee's leave category, and the employee's sick leave credit is reduced by 4 hours.

2. Part-time Employees.

   a. Earn annual leave and sick leave for each hour they are in a pay status during the pay period.

   b. Holiday leave hours are credited as hours in a pay status, but holiday hours worked are not.

   c. Hours in a pay status in excess of 80 hours in a pay period are disregarded
   in computing the leave earnings of a part-time employee.

D. Approval of Leave

The Employer has the discretion to approve leave subject to staffing, workload and mission requirements. Employees are entitled to accrue leave and take leave in accordance with law, regulation and this Agreement. Employees desiring leave shall complete a leave request online via WebTA (or other approved methods) stating the type of leave requested and the duration of the leave and submit such request to his/her supervisor.

Employees will be informed of whether their requests for leave have been approved in a timely manner, normally within one (1) work day. When requests are made to use leave on the following day, the response will be made as soon as possible, but no later than the end of the employee’s work shift.

If the leave is disapproved, the employee may request the reason be in writing and the Agency will provide such. The employee may raise the disapproval for reconsideration at the next higher level or may file a grievance under the terms of this Agreement. In the exercise of management discretion, the supervisor will be guided by equity, fairness and workload requirements. Employees may, upon request and with the approval of their supervisor, change previously authorized annual leave to sick leave in accordance with 5 CFR 630.405.

II. Annual Leave

The use and accrual of annual leave is a right afforded to employees and not a privilege. Annual leave will be granted, subject to workload demands, in a manner

which allows each employee to take annual leave. Supervisors determine scheduling and availability of annual leave. Upon request, any denial of annual leave must be accompanied by a written statement of the reasons for the denial.

A. Use/or Lose Restoration

If prevented by emergency from taking previously approved annual leave, employees with use/or lose leave may apply for restoration under governing procedures. The forfeiture or carryover of annual leave balances shall be determined in accordance with applicable regulations.

B. Leave Conflicts

When scheduling leave conflicts occur due to multiple leave requests from employees, an effort should be made by management to resolve the conflict based on the definition of seniority.

C. Changing of Leave by Employee

If an employee requests it, the supervisor may approve a change in the hours or days of approved leave, provided another employee's leave is not affected and workload permits.

D. Unanticipated Annual Leave

1. Employees who are unable to report for duty due to personal emergencies shall notify their supervisors either by phone, text, or email and request leave as soon as possible. As soon as possible means at or before the beginning of the regularly scheduled tour of duty. In exceptional circumstances, 15 minutes past the beginning of the regularly scheduled tour of duty will be acceptable.

   Extenuating circumstances of a highly unusual nature may prevent timely notification and such circumstances will be carefully considered when evaluating leave requests.

2. Employees must request annual leave personally (unless unusual circumstances pertain) for each day that the personal emergency continues unless their supervisors have approved other arrangements. When the employee’s supervisor cannot be reached, the employee should contact management or another designated official (in accordance with local procedures) to make notice.

3. Until such notification is given, supervisors cannot grant annual leave and employees may be considered as absent without leave (AWOL) until such time as they give proper notification and are granted annual leave by their supervisors. Normally, an employee will be considered in a leave without pay (LWOP) status when an employee has leave available but has not made notice as a result of extenuating circumstances.

4. As a condition of granting emergency annual leave, approving officials may require employees to submit certain documentation in support of their requests for leave.

E. Reasons for Leave

Because a request for annual leave may involve business of a highly personal nature that the employee may not wish to divulge, the employee may give a reason of personal business, when requesting annual leave, and will not be required to provide details as to the specific reason, unless the employee is currently on a leave restriction notice.

F. Advanced Annual Leave

1. Employees may be advanced, at the beginning of the leave year or any time thereafter, such annual leave as they may be expected to accrue during the leave year.

2. Approval of requests for advance annual leave is at the discretion of the approving official.

3. Employees may not be advanced annual leave when it is known (or reasonably expected) that they will not return to duty.

4. Before advancing annual leave, approving officials should consider such matters as the expectation of return to duty, recognizing the need for the employee's service, the benefits to the organization in retaining the employee, and the fact that, if the employee separates because of disability or illness (whether by retirement or resignation), the Agency has no authority to require repayment of the amount paid to the employee for advance leave.

5. Under specific conditions regulated by OPM, advanced annual leave is reimbursable to the Agency (e.g. employee leaves to go to another federal agency).

III. Sick Leave

A. Approval

The Agency will approve an employee’s request for sick leave when the employee:

1. Receives medical, dental, or optical examination or treatment

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

4. Provides care for a family member with a serious health condition
5. Makes arrangements necessitated by the death of a family member or attends the funeral of a family member
6. 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
7. 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

B. Scheduling in Advance

Employees should schedule non-emergency medical, dental, optical, psychological, or alcohol/drug counseling appointments as soon in advance as practicable and should request sick leave in advance for such appointments.

C. Timeframe to Report Sick Leave

Employees who are unable to report for duty due to illness or injury shall notify their supervisors either by phone, text, or email and request leave as soon as possible. As soon as possible means at or before the beginning of the regularly scheduled tour of duty. When the employee's supervisor cannot be reached, the employee should contact management or another designated official (in accordance with local procedures) to make notice.

Extenuating circumstances of a highly unusual nature may prevent timely notification and such circumstances will be carefully considered when evaluating leave requests.

Employees are required to request sick leave personally (unless they are too sick to do so) for each day that they are ill or injured unless the supervisor has approved other arrangements. Until such notification is given, supervisors cannot grant sick leave and employees may be considered as absent without leave (AWOL) until such time as they notify their supervisors. Normally, an employee will be considered in a leave without pay (LWOP) status when an employee has leave available but has not made notice as a result of extenuating circumstances.

D. Medical Evidence

Employees will normally not be required to furnish administratively acceptable evidence to substantiate a request for approval of sick leave for three (3) consecutive workdays or less.

Administratively acceptable evidence for approval of sick leave if the sick leave exceeds three (3) consecutive workdays:

1. A medical certificate or other administratively acceptable evidence as to the reason for the absence is required for all absences in excess of three workdays.

2. Approving officials may consider an employee's certification as to the reason for his or her absence as evidence which is administratively acceptable; however, absences in excess of ten workdays must be supported by a medical certificate.

E. Privacy

The Agency will treat as confidential any medical information provided by an employee to any agent or representative of the Agency in support of a request for sick leave. The Agency may disclose such information subject to the Privacy Act of 1974 (552a) and 5 CFR 339 only for purposes of making informed management decisions and only to individuals who have a need to know. Need to know will be contained to the minimum staff necessary and in consideration of the protection of the employee's privacy.

F. Leave Restrictions

The administration of leave procedures is the responsibility of a manager. Managers are responsible for informing employees about proper use of leave procedures. In those instances in which a problem of excessive absenteeism or the possible abuse of sick leave is developing, supervisors may impose leave restrictions require supporting evidence or documentation, in addition to that required of other employees, by providing the employee with a written notice which explains:

1. The reason for requiring the evidence.

2. The type(s) of acceptable evidence (e.g., a certificate from a physician or such other practitioner as may be designated).

3. The time frame within which the supporting evidence or documentation must be furnished.

4. The conditions for presentation of the supporting evidence in order to obtain approval of subsequent sick leave requests.

5. The consequences of not providing such evidence within the prescribed time frame.

Managers will work with employees requiring reoccurring scheduled appointments to determine a schedule to address the needs of the individual balanced with the mission of the district or division. Chronic medical conditions do not negate the agency's authority to administer leave procedures or take corrective action as appropriate.

G. Advanced Sick Leave

Requesting and Granting Sick Leave. Sick leave may be advanced to employees, when required by the exigencies of the situation, in cases of disability or serious illness.

1. Limits on the Amount of Advance Sick Leave That May Be Granted.

    a. Full-time employees may be granted advance sick leave not to exceed 240 hours.

    b. Part-time employees may normally be granted advance sick leave not to exceed 120 hours; however, if circumstances warrant, they may be granted advance sick leave not to exceed 240 hours.

    c. Employees serving probationary or trial periods may be required to exhaust their annual leave before any advance sick leave is granted.

    d. Employees on limited appointments may be advanced sick leave only in the amount which will be earned during the remaining period of employment.

    e. Employees approaching mandatory retirement or those who have applied for optional or discontinued service retirement may be advanced sick leave only in the amount which will be earned prior to the date of retirement.

2. Requesting Advance Sick Leave.

    a. An employee must submit a request for advance sick leave as far in advance of the requested period of absence as possible. In the event of injury or sudden illness, advance sick leave may be granted after the fact provided the employee submits any documentation required in support of the request within the time frame established by the approving official.

    b. An employee requesting advance sick leave must submit the following:

        1) Request for Leave through WebTA.

        2) A medical certificate or other administratively acceptable evidence substantiating the reason(s) for the absence.

3. Granting Advance Sick Leave.

    a. Employees do not have a vested right to advance leave, regardless of the circumstances, and the approval of requests for advance sick leave is at the discretion of the approving official. Before granting advance sick leave, approving officials should consider the following:

1) Whether the employee can be expected to return to duty.

2) The need for the employee's services.

3) The benefits in retaining the employee.

4) The fact that, if the employee separates because of disability or illness (whether by retirement or resignation), the Agency has no authority to require repayment of the amount paid to the employee for advance leave.

5) Under specific conditions regulated by OPM, advanced sick leave is reimbursable to the Agency (e.g. employee leaves to go to another federal agency).

b. Approving officials may not grant advance sick leave to an employee:

1) Who has filed application for disability retirement or has indicated an intention to resign for disability.

2) When a separation date has been established which would preclude the employee from earning enough leave to repay the advance sick leave.

3) When there is other evidence that the employee will not return to duty.

H. Duty Related Injury

In the event an employee receives on-duty injury or exposure to a communicable disease blood borne or airborne pathogen or injury due to exposure to hazardous waste materials, such employee may be placed in approve leave status as provided 20 CFR Part 10.

I. Health Unit Visits

The Employer may allow employees to visit the health unit in a USMS facility for periods of a short duration to receive temporary medical care without charge to leave.

J. Enforced Sick Leave

Employees have the discretion to elect the category of leave (e.g. sick, annual, time off award) used when sick. Placing an employee on sick leave against his or her will is considered an adverse action.

IV. Family Medical Leave

Under the Family and Medical Leave Act of 1993 (FMLA), most Federal employees are entitled to a total of up to 12 workweeks of unpaid leave during any 12-month period for the following purposes:

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

Under certain conditions, an employee may use the 12 weeks of FMLA leave intermittently. An employee may elect to substitute annual leave and/or sick leave, consistent with current laws and OPM's regulations for using annual and sick leave, for any unpaid leave under the FMLA. (The amount of sick leave that may be used to care for a family member is limited. See Sick Leave to Care for a Family Member with a Serious Health Condition.) FMLA leave is in addition to other paid time off available to an employee.

A. Job Benefits and Protection

1. Upon return from FMLA leave, an employee must be returned to the same position or to an "equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment."
2. An employee who takes FMLA leave is entitled to maintain health benefits coverage. An employee on unpaid FMLA leave may pay the employee share of the premiums on a current basis or pay upon return to work.

B. Advance Notice and Medical Certification

1. An employee must provide notice of his or her intent to take family and medical leave not less than 30 days before leave is to begin or, in emergencies, as soon as is practicable.
2. An agency may request medical certification for FMLA leave taken to care for an employee's spouse, son, daughter, or parent who has a serious health condition or for the serious health condition of the employee.

V. Administrative Leave

Management's discretion in granting administrative leave is to be exercised with extreme care and may be used only when no statute, regulation, or executive order operates directly to address employee duty status.

A. Definitions

1. *Administrative Leave/ Excused Absence.* An excused absence is an absence from duty which is administratively authorized without loss of pay or charge to leave. Excused absence is commonly referred to as administrative leave and, even though this term is not specifically recognized in legislation or by regulation, it is construed as having the same meaning as excused absence for the purposes of this agreement.

2. *Official Duty v. Excused Absence.* Employees who are on official duty for travel, training, or to represent the Department at conferences, etc., are covered by the Office of Workers' Compensation Programs (OWCP) and the Federal Tort Claims Act. Conversely, employees who have been granted excused absence without loss of pay or charge to leave are not on official duty and are not covered by the OWCP or the Federal Tort Claims Act.

B. Excused Absence for Individual Employees . Generally, the Agency director determines the situations for which excused absence will be authorized for individual employees. Some of the more common situations for which excused absence may be authorized are:

1. Tardiness and Brief Absence. An employee may be excused for up to one hour for tardiness or other brief absence from duty for reasons which are acceptable to the employee's supervisor.

2. Voting and Registration. An employee who wishes to vote or register to vote in any election or in referendums on a civic matter in his or her community may be excused from duty for a reasonable time for, that purpose, as follows:

   a. Generally, where the polls are not open at least three hours before or after an
   employee's regular hours of work, the employee may be granted an amount of
   excused absence which will permit the employee to report for work three hours after the polls open or leave work three hours before the polls close, whichever requires the lesser amount of time off.

   b. Under exceptional circumstances when the general rule does not permit sufficient time, an employee may be excused for such additional time as may be needed to enable the employee to vote, depending upon the particular circumstances in the individual case, but not to exceed a full day in any case.

   c. If an employee's voting place is beyond normal commuting distance and vote by absentee ballot is not permitted, the employee may be granted sufficient time off in order to make the trip to the voting place to cast a ballot. Where more than one day is required to make the trip to the

voting place, a liberal leave policy shall be observed. Time off in excess of one day shall be charged to annual leave or leave without pay.

d. An employee who votes in a jurisdiction which requires registration in person may be granted time off to register on substantially the same basis as for voting, except that no such time shall be granted if registration can be accomplished on a nonworkday and the place of registration is within reasonable one-day, round-trip travel distance of the employee's place of residence.

3. Employee Assistance Program (EAP) Counseling. An employee may be excused to attend counseling sessions with an EAP counselor from the Agency. An employee who is referred for treatment outside of the Agency must request sick leave, annual leave, or leave without pay for this purpose.

4. Conferences or Conventions. An employee may be excused to attend a conference or convention when it is determined that attendance will serve the best interests of the Agency. Excused absences of this type may be restricted to those situations in which the employee is an official of the organization involved or is a contributor on the agenda.

5. Federal Civil Service Examinations. An employee may be granted excused absence to take a Federal Civil Service Examination for a position for which the employee is to be considered.

6. Physical Examinations. An employee is to be granted excused absence to take a physical examination required by the Department of Justice or other Federal agency, by the Armed Forces for entry into active duty or the Reserves, or one required by a local draft board.

7. Participation in Military Funerals. An employee who is a veteran may be excused up to four (4) hours in a day to participate as a pall bearer, member of a firing squad, or guard of honor in a funeral ceremony for a member of the Armed Forces whose remains are returned from abroad for burial.

8. Injuries Sustained in the Performance of Duty. An employee who is injured in the performance of duty shall, after obtaining treatment for the injury, be excused for the balance of the day on which the injury occurred if circumstances warrant. An employee who has sustained an apparent disabling, job-related, traumatic injury and elects the 45-calendar day continuation of pay provision under Public Law 93-416 shall be given excused absence for up to 45 days.

9. Civil Defense Activities. An employee may be excused to participate in Federally recognized civil defense programs for a reasonable amount of time not to exceed forty (40) hours in a calendar year.

10. Swearing-in Ceremonies. The Agency Director may excuse an employee who has passed a bar examination for the time necessary to be sworn into

membership in the bar. Excused absence not to exceed eight hours each way may also be granted for travel time to and from the swearing-in ceremony.

11. Training Sponsored by a Labor Organization. Refer to Official Time Article 10, Section 8 on Union Training.

C. Court Leave

Court leave is an authorized absence from work status, without charge to leave or loss of pay, which is granted to employees for jury service, or for attending judicial proceedings in a nonofficial capacity as a witness on behalf of a State or local government, or in a nonofficial capacity as witness on behalf of a private party in connection with any judicial proceeding to which the United States, the District of Columbia, or a State or local government is a party.

D. Jury Service

1. Requesting Excusal from Jury Service. The Agency will not request that employees be excused from jury service except in cases of real necessity. Any employee may, of course, request exemption for compelling personal reasons on his or her own initiative.

2. Duration of Jury Service. An employee who is under proper summons from a court to serve on a jury should be granted court leave from the date stated in the summons on which the employee is to report to the time the employee is discharged by the court, regardless of the number of hours per day or days per week the employee actually serves on the jury during the period. However, the term of jury service does not include time during which the employee is excused or discharged by the court for an indefinite period subject to call by the court or for a definite period in excess of one day.

E. Excused from Court

If an employee on court leave is excused from court with sufficient time to enable that employee to return to duty for at least two (2) hours of the scheduled workday, including travel time, the employee shall return to duty unless granted appropriate leave by the Agency.

1. The employee may not be required to return to duty if it would create a hardship on him or her; for example, an employee who is assigned to night duty or one who lives or works a long way from the place where the court is held. Employees who are expected to return to work when excused from jury service, but who prefer not to, must request annual leave or leave without pay.

F. Jury Fees

1. Federal Courts. An employee serving as juror in any Federal court may not receive a fee from the court for jury service which is covered by court leave.

2. State or Local Courts. An employee serving as a juror in a State or local court must return fees received for jury service which is covered by court leave to his or her payroll office.

Reimbursement for Expenses. Payment which represents reimbursement for actual and necessary expenses incidental to service as a juror may be retained by the employee. (The employee should obtain documentation from the court that such payment does not represent a fee for jury service.)

G. Witness Service

1. Judicial Proceeding. This term includes any action, suit, or other proceeding of a judicial nature (including any condemnation, preliminary, informational, or other such proceeding), but does not include an administrative proceeding.

2. Witness in an Official Capacity. When an employee is summoned or assigned by the Department to testify in his or her official capacity or to produce records at a judicial proceeding, the employee is in an official duty status, as distinguished from a leave status, and is entitled to his or her regular pay.

3. Witness in a Nonofficial Capacity.

   a. When an employee is summoned or assigned by the Agency or Department to testify in a nonofficial capacity on behalf of the United States or the government of the District of Columbia, the employee is in an official duty status as distinguished from a leave status, and entitled to his or her regular pay.

   b. When an employee is summoned as a witness in a judicial proceeding to testify in a nonofficial capacity on behalf of a State or local government, or on behalf of a private party in connection with any judicial proceeding to which the United States, the District of Columbia, or a State or local government is a party, the employee is entitled to court leave during the time he or she is absent as a witness.

   c. When an employee appears as a witness in a nonofficial capacity on behalf of a private party in connection with any judicial proceeding to which the United States, the District of Columbia, or a State or local government is not a party, the employee is not entitled to court leave and must request annual leave or LWOP for this type of absence.

H. Overtime

An employee who performs witness service in an official duty status on days for which the employee would have been entitled to receive overtime pay had he or she rendered service in his or her regular position is entitled to the overtime he or she would have received on those days.

I. Witness Fees

1. An employee who serves as a witness on behalf of the United States or the government of the District of Columbia may not be paid witness fees.

2. An employee who serves as a witness: on behalf of a State or local government; in an official capacity on behalf of a private party; or in a nonofficial capacity on behalf of a private party in a judicial proceeding to which the United States, the District of Columbia, or a State or local government is a party, must collect the authorized witness fees and turn them over to his or her payroll office.

3. An employee who serves as a witness in a nonofficial capacity on behalf of a private party in a judicial proceeding to which the United States or the District of Columbia or a State or local government is not a party is entitled to keep the witness fees.

J. Travel Expenses

1. An employee who serves as a witness on behalf of the United States or the District of Columbia, or in an official capacity as a witness on behalf of a State or local government or a private party is entitled to government travel expenses which are to be offset to the extent they are paid by the court, authority, or party which caused the employee to be summoned.

2. An employee who serves in a nonofficial capacity as a witness is entitled to keep any travel expenses paid by the court, authority, or party which caused the employee to be summoned.

K. Granting Court Leave

1. Permanent and temporary employees with regularly scheduled tours of duty may be granted court leave.

2. Employees on leave without pay, although otherwise eligible may not be granted court leave when called to jury service since court leave is available only to employees who, except for jury service, would be on duty or leave with pay.

L. Excused Absence for Groups of Employees Excused absence may be authorized for groups of employees in the following situations.

3. Closing an Activity. When it becomes necessary to close Federal installations or offices (or portions thereof) for brief periods when:

    a. The normal operations of an establishment are interrupted by events beyond the control of management or employees, such as emergency conditions caused by extreme weather conditions, fires, floods, or serious interruption to public transportation services.

b. Machines break down, power failures occur, or structures need to be repaired or rebuilt.

c. It is in the public interest to relieve employees from work to participate in civil activities which the Federal Government is interested in encouraging.

d. Federal work may not be properly performed because of a local holiday. When such holidays occur, employees must actually be prevented from working by one of the following circumstances:

   1) The building or office in which the employees work is physically closed, or building services essential to proper performance of work are not operating.

   2) Local transportation services are discontinued or interrupted to the point where employees are prevented from reporting to their work location.

   3) The duties of the employees consist largely of dealing directly with employees and officials of local establishments which are closed in observance of the holiday and there are no other duties (consistent with their normal duties) to which the employees can be assigned on the holiday.

M. Employee Funeral

If a fellow Employee is slain while on duty, the Agency will permit as many fellow employees to attend the funeral services as possible, without charge to annual leave.

N. Hot or Cold Working Conditions

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

2. Individual employees affected by unusual levels of temperature to the extent that they are incapacitated for duty, or to the extent that continuance on duty would affect their health, may be granted annual or sick leave.

3. Before administrative excusal may be granted, it must be clearly established by reasonable standards of judgment that the conditions are such as to actually prevent working. When making such decisions, management officials must take into consideration the physical requirements of the positions involved as well as the temperature of the work area.

O. Adverse Weather Conditions.

1. Washington Metropolitan Area. Decisions to curtail Federal operations due to adverse weather conditions in the Washington D.C. metropolitan area will be made by the Director, Office of Personnel Management (OPM) and the Department will follow the OPM guidelines.

2. Field Office Locations. The heads of Federal Executive Boards or similar organizations of Federal officials are responsible for the development and dissemination of special adverse weather leave policies and procedures for their locales

VI. Leave for Medical Donations

A. Bone Marrow Donations

Employees may use up to seven (7) days of paid leave each year, in addition to annual and sick leave, to serve as a bone marrow donor.

B. Organ Donations

Employees may use up to 30 days of paid leave each year, in addition to annual and sick leave, to serve as an organ donor.

C. 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.

VII. Funeral Leave

A. Armed Forces Relative

1. Funeral leave is granted to allow an employee to make arrangements for, or to attend the funeral of, or memorial service for, an immediate relative who dies as a result of wounds, disease, or injuries incurred as a member of the Armed Forces while serving in a combat zone.

2. An immediate relative means:

a. Spouse and parents thereof.

b. Children, including adopted children, and spouses thereof.

c. Parents.

d. Brothers and sisters, and spouses thereof.

e. Any person related by blood or affinity whose close association with the deceased was such as to have been the equivalent of a family relationship.

3. “Armed Forces” refers to the Army, Navy, Air Force, Marine Corps, and Coast Guard.

4. Combat zone means those areas determined by the President in accordance with section 112 of the Internal Revenue Code.

B. Restrictive Nature of Funeral Leave

The requirement that funeral leave be granted is limited rather strictly by the inclusion of the words "in a combat zone" in section 112 of the Internal Revenue Code. This inclusion effectively precludes the granting of funeral leave in connection with the deaths of servicemen incurred in the line of duty elsewhere in the world.

C. Funeral Leave

Charges Funeral leave granted should be recorded on time and attendance reports in the OTHER column with an appropriate explanation under REMARKS.

VIII. Religious Observances

A. The Agency may grant employees time off from their regular work schedules for religious observances and permit them to work compensatory overtime to offset the lost work time.

B. The premium pay provisions for overtime work in title 5, United States Code and the Fair Labor Standards Act (FLSA) do not apply to overtime work performed to compensate for time off for religious observances. Overtime work under these conditions is not convertible to pay under title 5 or the FLSA.

IX. Voluntary Leave Transfer Program

The Agency will consider employee requests to be placed in the voluntary leave program as provided by DOJ regulations and this Article.

X. Non-Paid Leave

A. AFGE National Officers

The Agency may approve leave without pay for three (3) years to any employee elected a National Officer of AFGE. Such leave may be extended for an additional three (3) years. Further extension is subject to Agency discretion. Leave without pay status will be terminated when the employee leaves office. In such an event, the employee maintains federal benefits and rights to the extent as provided by law.

B. Absence without Leave (AWOL)

1. GENERAL INFORMATION. Absence without leave, commonly referred to as AWOL, is an absence from duty that is not authorized or approved

(including leave which is not approved until required supporting evidence or documentation is submitted), or for which a leave request has been denied.

2. AWOL CHARGES. The minimum charge for AWOL in the Department is fifteen (15) minutes; additional charges are in multiples thereof.

3. RECORDING AWOL

   a. Recording an absence as AWOL is not a disciplinary action; however, AWOL can become the basis for initiating disciplinary action.

   b. Recording an absence as AWOL does not necessarily mean that the employee has an insufficient reason for requesting leave, but that the employee's presence is required and the reason for requesting leave is one for which approval is not mandatory.

   c. Absences initially charged as AWOL may, subsequently, be charged to an approved leave category, i.e., annual or sick leave or leave without pay, etc., when:

      1) The employee submits the required supporting evidence within the time prescribed by the approving official.

      2) The approving official determines that the employee has a satisfactory reason for not obtaining approval for the absence or not notifying his or her supervisor of the reason for the absence in a timely manner.

   d. Changing AWOL to an approved leave status means that the employee can no longer be disciplined for being AWOL, but may still be subject to discipline for not properly requesting the leave even though it is eventually approved.

   e. Pay is forfeited for all absences recorded as AWOL.

C. Leave Without Pay (LWOP)

1. General Information.

   a. Leave without pay, commonly referred to as LWOP, is a temporary nonpaid status and approved absence from duty granted upon an employee's request. LWOP is an approved absence and is not to be confused with absence without leave or AWOL, which is an unauthorized absence from duty.

   b. An employee cannot be placed on LWOP without his or her consent.

   c. LWOP may not be imposed as a penalty nor is it to be used for periods of unauthorized absence.

2. LWOP Charges. The minimum charge for LWOP in the Department is fifteen (15) minutes; additional charges are in multiples thereof.

   a. Requesting LWOP

      1) An employee must submit a request for LWOP as far in advance of the requested period of absence as possible. When LWOP cannot be requested in advance because of illness, injury, or other personal emergency, LWOP may be approved after the fact provided the employee submits any required documentation within the time frame established by the Agency or the approving official.

      2) An employee requesting LWOP for 30 days or less must submit the following:

         a) Request for Leave through WebTA.

         b) Such additional documentation as the approving official may prescribe.

      3) An employee requesting extended LWOP of more than 30 days must submit the following:

         a) Request for Leave through WebTA.

         b) A memorandum to the approving official detailing the reason(s) for the absence. If the employee is requesting LWOP for medical reasons, he or she must submit a medical certificate or other administratively acceptable evidence substantiating the reason(s) for the absence.

         c) Such additional documentation as the Agency or approving official may prescribe.

3. Union Activities.

   An employee may be granted leave without pay 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 consideration. 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.

4. Mandatory Approval of LWOP

   a. General.

1) Entitlement. Employees who are members of a reserve component of the Armed Forces or the National Guard are entitled to military leave for active duty or active duty for training.

2) Reserve Components. The reserve components of the Armed Forces are:

   a) The Army Reserve.

   b) The Navy Reserve.

   c) The Marine Corps Reserve.

   d) The Air Force Reserve.

   e) The Coast Guard Reserve.

   f) The Army National Guard of the United States.

   g) The Air National Guard of the United States.

3) Distinction Between Military Leave and Military Furlough. Military Leave is absence with pay which normally does not exceed 15 calendar days per fiscal year for active duty or active duty for training while MILITARY FURLOUGH is absence due to extended active duty for general service with the Armed Forces.

b. Coverage.

1) Employees Eligible for Military Leave.

   a) Full-time employees with permanent, TAPER, or term appointments, or temporary appointments of one year or more.

   b) Part-time permanent career employees (16-32 hour tour per week) as defined in section 3401 (2), title 5, United States Code.

2) Employees Not Eligible for Military Leave.

   a) Employees with temporary appointments of less than one year.

   b) Employees with temporary appointments not to exceed one year.

   c) Employees with intermittent work schedules.

   d) Part-time temporary employees with schedules of less than 16 hours per week or more than 32 hours per week.

c. Entitlement.

1) Active Duty or Active Duty for Training.

a) Full-time employees who perform active duty or active duty for training are entitled to military leave at the rate of 15 days per fiscal year.

b) Part-time career employees who perform active duty or active duty for training are entitled to military leave at that percentage of the rate prescribed under paragraph 3a(1) which is determined by dividing the number of hours in the employee's regularly scheduled workweek by 40. This rate of accrual is based upon the number of hours in the regularly scheduled workweeks of the employees and not upon the number of hours they may work in a week.

2) Active Duty for Law Enforcement Purposes.

a) Full-time employees who are activated for either Federal or State service to enforce the law during periods of civil disturbance, domestic violence, insurrection, rebellion, etc., are entitled to military leave with pay not to exceed 22 workdays in a calendar year.

b) Employees who perform active duty for law enforcement purposes for more than 22 workdays in a calendar year may use any unused military leave which is available for active duty or training to cover the excess.

3) Parade or Encampment of Members of the National Guard of the District of Columbia.

Full-time employees who are members of the National Guard of the District of Columbia are entitled to military leave with pay for all days (no limit) of parade or encampment ordered or authorized under title 39, District of Columbia Code.

4) Offsetting Military Pay Against Civilian Pay.

Employees who perform active duty as described in paragraph 3b or 3c are subject to the provisions of 5 U.S.C. 5519, that is, their salaries earned as Reservists or Guardsmen will be deducted from their civilian pay.

d. Charges

1) The minimum charge for military leave is one day and additional charges are in multiples thereof.

2) Nonworkdays falling within a period of absence on military training duty are charged against the days of military leave allowed during the fiscal year, but nonworkdays occurring at the beginning or end of the period are not.

e. Accumulation.

Military leave that is not used in a fiscal year accumulates for use in the succeeding fiscal year; however, no more than 15 days may be carried over into the succeeding fiscal year. The total maximum accumulation for military leave is 30 days in any fiscal year.

1) Unused military leave which is carried forward for use in the succeeding fiscal year is in addition to the days which are credited at the beginning of the fiscal year.

2) That fractional part of a day of military leave which accrues to a part-time career employee during a fiscal year, cannot be used or rounded off. It is carried forward into the succeeding fiscal year, provided it does not cause the amount forwarded to exceed 15 days.

f. Requesting Military Leave

1) Requests for military leave will be accompanied by written military orders or other acceptable certification by the employee's reserve component.

2) Upon returning to duty, the employee will furnish documentation which shows and certifies the actual days served on active duty or active duty for training.

g. Granting Military Leave

1) Right to Military Leave. The right to military leave or a leave of absence to perform necessary military service is generally absolute, and requests for such leave will normally be granted upon request. However, the request for such leave must be reasonable, both in the context of the employee's military obligation and the requirements of the Agency.

2) Reasonableness of Request.

a) Requests to perform active or inactive duty for training, particularly when they recur frequently, should not be viewed as requiring automatic approval. While the right to a leave of absence to perform necessary military is generally absolute, the length of absence requested, the number of times absence is requested, and the amount of notice provided by the employee must be reasonable both in the context of the Reservist's military obligation and the requirements of the Agency.

b) Each request should be weighed in terms of the workload of the Agency and the extent to which the employee's services can be spared. In situations where the request appears to be unreasonable, or the employee cannot be spared from his or her

civilian duties, the approving official should contact the military unit and attempt to make some other mutually satisfactory arrangements for the training (e.g., reschedule the active duty for training) before the request is approved.

3) Full-Time or Part-Time Employees. If these employees are not entitled to, do not request, or have exhausted their military leave, they shall be granted annual leave or leave without pay (LWOP), as requested, for the performance of active or inactive duty for training, provided the request is reasonable.

4) Temporary Employees (Appointed for 1 Year or Less). These employees may be granted annual leave or LWOP for the performance of active or inactive duty for training.

5) Employees Ordered to an Initial Period of Active Duty for Training of Not Less Than 3 Consecutive Months. These employees may, at the option of the Agency be granted annual leave or LWOP, as requested, or be furloughed or separated.

6) Employees (Except Temporary Employees) Who are to Continue on Active Duty for an Extended Period (Usually More Than 1 Year). These employees shall be furloughed or separated after exhausting any requested military leave to which they are entitled.

XI. Furloughing or Separating Employees for Military Service.

The Agency should be aware that the life insurance of an employee who enters military service on active duty or active duty for training will continue without cost for up to twelve months. An individual who is separated by The Agency is no longer an employee for life insurance purposes and FEGLI coverage must terminate. Approving officials should consider this outcome when deciding whether an employee should be separated, furloughed, or placed on leave of absence.

XII. AFGE Sponsored Events

The Agency may authorize annual leave or leave without pay to employees to attend an AFGE sponsored convention.

An employee who is a steward or other Union official may request annual leave or Leave Without Pay ("LWOP") to attend internal Union functions which are not covered by Official Time as set forth in Article 10. Normally, an advanced notice of seven (7) work days will be required and will be approved subject to workload, mission, and staffing considerations.

ARTICLE 27
COMPENSATORY TIME

I. General

Compensatory time (Comp time) off for "non-exempt" employees is governed by the Fair Labor Standards Act (FLSA). Compensatory time off for "exempt" employees is governed by Title 5 (5 CFR 550.114). Not to be confused with "Compensatory Time Off for Travel". Overtime pay, referenced in this section, is covered under title 5 USC 5542, and the FLSA as applicable.

II. Definitions

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 off may be approved in lieu of overtime pay for irregular or occasional overtime work for both FLSA exempt and nonexempt employees.

B. Compensatory Time Earned is equal to the amount of time spent in overtime work, e.g., one hour and fifteen minutes of overtime work yields one hour and fifteen minutes of compensatory time.

III. Compensatory Time Off By Employee Type

A. FLSA Non-Exempt Employees:

The Agency will provide overtime pay for all approved overtime work performed by nonexempt employees. The Agency may grant compensatory time off for approved overtime work performed by an FLSA non-exempt employee but may not require the employee to accept compensatory time off in lieu of payment for overtime work performed. The Agency will consider employee requests for compensatory time off in lieu of overtime pay for FLSA non-exempt employees. An FLSA non-exempt employee may decline compensatory time off in lieu of overtime and such declination will not be held against the employee or affect eligibility for future incurrence of overtime.

B. FLSA Exempt Employees:

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. The Agency may require that an FLSA exempt employee receive compensatory time off in lieu of overtime pay for irregular or occasional over time work if the employee's rate of basic pay is above the rate for GS-10, Step 10.

IV. Agreement

When there is a significant (other than de minimis) change to the existing practice in the manner by which compensatory time off is granted, approved, or denied, both parties agree to bargain over the impact and implementation.

V. Compensatory Time Off Limitations by Employee Type:

A. Time Limits for FLSA-exempt employees:

An FLSA-exempt employee must use accrued compensatory time off by the end of the 26th pay period after the pay period during which it was earned; an FLSA-exempt employee whose earned compensatory time off would otherwise be forfeited due to an exigency of service beyond the employee's control must receive payment for the

B. Time Limits for FLSA-nonexempt employees:

An FLSA-nonexempt employee must use accrued compensatory time off by the end of the 26th pay period after the pay period during which it was earned; if accrued compensatory time off is not used by an FLSA-nonexempt employee within 26 pay periods, or if the FLSA-nonexempt employee transfers to another agency or separates from Federal service before the expiration of the 26 pay period time limit, the employee must be paid for the earned compensatory time off at the overtime rate in effect when earned.

VI. Compensation for Time Spent in Travel

A. Time Spent in Travel for FLSA Non-Exempt Employees

Time spent in travel will be considered hours of work, and thus compensable in accordance with 5CFR 551.422 (a), if:

1. The employee is required to travel during regular working hours; (i.e. during the regularly scheduled administrative work week).
2. The employee is required to work during travel (e.g. by being required to drive a government vehicle or perform other work while traveling);
3. The employee is required to travel as a passenger on a one-day assignment away from the official duty station; or
4. The employee is required to travel as a passenger on an overnight assignment away from the official duty station during hours on nonworking days that correspond to the employee's regular working hours.

B. Time Spent in Travel for FLSA Exempt Employees

Time spent on official travel during non-working is not considered hours of work for overtime purposes. Credit for official travel during non-working hours is provided only through compensatory time off for travel.

C. Compensatory Time for Travel

The Agency shall credit an employee, on an hour-for-hour basis, with compensatory time off for time in a travel status in accordance with 5 CFR Part 550, Subpart N – Compensatory Time Off for Travel if:

1. The employee is required to travel away from the official worksite; and
2. The travel time is not otherwise compensable hours of work.

VII. Compensatory Time for Religious Observances

The Agency will make every effort to accommodate the practice of religious beliefs by individual employees consistent with Agency needs. An employee whose personal religious beliefs require the abstention from work during certain periods of the work day or work week, may request Management consider an alternative work schedule for time lost for meeting those religious requirements.

ARTICLE 28
RETIREMENT

I. Purpose

This Article shall be administered in accordance with Title 5, Code of Federal Regulations, Part 831 and 842, and this Agreement. The purpose of this Article is to outline some of the policies covering retirement for all employees in accordance with applicable law and regulation.

II. Retirement

A. Retirement Seminars

The Agency will provide a retirement planning program to be made available at least once per year. The retirement planning program can take on a variety of mediums to include webinars or other electronic means. The retirement training program will provide access to supplemental information materials and resources such as the OPM web site and other retirement and information counseling. Employees in the bargaining unit who are within six (6) years of retirement eligibility are entitled to participate in one (1) such retirement planning program during duty hours.

B. Involuntary Separation

1. Employees subject to involuntary separation resulting from medical disqualification or loss of position resulting from reduction in force or position abolishment will be provided information concerning their rights and options under disability retirement, discontinued service retirement or deferred retirement.

2. Employees who are involuntarily separated as a result of inability to perform their assigned duties will be notified by the Agency in the removal letter of their right to file to the Office of Personnel Management (OPM) for disability retirement within one (1) year after the date of separation.

3. Information, guidelines, eligibility and procedures for the filing of these and other forms of retirement can be found on the OPM retirement webpage.

III. Credentials and Badges

Administrative employees may apply for and be issued administrative credentials upon retiring.

Operational employees may apply for and be issued retirement credentials and badges upon retiring. The credential for retired operational employees meets the requirement of 18 USC 926C, “Law Enforcement Officers Safety Act of 2004”.

The Agency will issue retirement badges and credentials to retirees in good standing and in accordance with policy directive 17.08 on Badges and Credentials

authorized pursuant to 28 U.S.C. § 561 and 18 U.S.C. § 926C which addresses identification for retired law enforcement personnel, and this Agreement.

IV. Withdrawal of a Retirement Application

An employee may withdraw a retirement application at any time prior to its effective date, provided the withdrawal is communicated to the Agency in writing. The Agency may decline a request to withdraw a retirement application before its effective date only when the Agency has a valid reason and explains that reason to the employee. A valid reason includes, but is not limited to, administrative disruption or the hiring or commitment to hire a replacement.

V. Financial Planning Information

Employees are provided access to information on the Thrift Savings Plan, retirement pension plans, benefits information, the Employee Assistance Program (EAP) and retirement tools, including an online learning system.

ARTICLE 29
REDUCTION IN FORCE AND/OR FURLOUGH

I. General

A reduction in force (RIF) will comply with all government-wide regulations in effect as of the effective date of this Agreement, and the provisions of this Agreement.

II. Avoidance of RIF

A. Last Resort

To the extent that is practicable and not prohibited by law, and without interfering with the accomplishment of the Agency's mission, the Agency will resort to a RIF only after all other means of managing with the cause for considering a RIF have been reasonably exhausted.

B. Alternatives

To minimize the adverse impact on employees, the Agency shall, whenever practical, accomplish the goals otherwise achieved by a RIF through attrition and cost reduction

C. Cost Study Prior to RIF

Any cost studies done to determine the need for a RIF may be provided to the Union. Otherwise, the Union may file a RFI for such information.

III. Information to Be Provided to the Union

A. Notice to Union

The Agency will notify the Union of any reduction in force as far in advance of notification to affected employees as is possible. The information to be provided to the Union will include:

1. The specific reasons why the Agency considers a RIF to be necessary and what alternatives to RIF were rejected.
2. The competitive area in which the RIF will be conducted;
3. The competitive levels to be initially affected;
4. The number and work location of employees involved;
5. The final retention registers that were created for the RIF;
6. The proposed effective date.

B. Updated Information

The Agency 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 affected positions, revised dates, and listings of job offers made.

IV. Information Provided to Employees

A. Employee Rights and Options

If early retirement or buy-out opportunities are offered to employees prior to the effective date of the RIF, the Agency will provide information to employees concerning the early retirement or buy-out programs through briefings or other format. Eligibility requirements, and the application processes will be explained. The effects of a buyout or early retirement on severance pay, reemployment, and continued health insurance coverage will also be explained. Questions and answers on these programs will be solicited from employees and answered by agency representatives.

B. Employee Briefings

When specific RIF notices are distributed, the Agency will provide a briefing(s) for the affected employees to explain the RIF process. The Agency will explain how RIF retention is determined, the scope of the particular reduction in force, employee placement opportunities, availability of severance pay computations and services to employees who are designated for separation in the RIF. A representative of the Agency will take employee questions and attempt to provide immediate answers. If immediate answers cannot be provided, then answers to those questions will be made available to all employees who were invited to the briefing. In addition, the Agency will designate someone who will receive and respond to additional employee questions. A representative of the Union will be invited to attend these briefings, and will be given thirty (30) minutes at the conclusion of the briefing to speak with the bargaining unit employees without any management representative being present.

V. Furloughs

A. Employee Rights

For furloughs lasting longer than 30 days, employees may request to be furloughed on consecutive days due to personal circumstances. Both parties recognize there is a potential disadvantage to an employee taking consecutive days of furlough as the Agency may later determine that due to further budget reducing actions the number of days of furlough is reduced.

B. Lapse of Appropriation

Employees who are furloughed during a lapse of appropriation may be retroactively paid and otherwise compensated to the extent permitted by law and regulation.

VI. Employee Personnel Records

A. Employee Verification

As far in advance as possible of an anticipated RIF, the Agency will notify employees of the need to review their personnel records and ensure that these records are complete and accurate. This notice will advise employees to ensure that their records are up to date concerning:

1. Veterans preference;
2. Three most recent performance ratings of record received during the previous four-year period;
3. All periods of federal civilian and military service;
4. Completed training;
5. Current licenses and certifications;
6. Updated resume.

B. Agency's Duty to Resolve Discrepancies

The Agency will attempt to expeditiously resolve any discrepancies raised by the employee.

VII. Use of Vacant Positions

A. Filling Vacancies

In order to minimize displacement actions that would result from a reduction in force, the Agency will strive to use vacancies within the Agency to mitigate RIF effects.

B. Restricting Outside Hiring

The Agency will not fill any vacant position in the bargaining unit through outside hiring or through promotion as long as there are available employees in receipt of a specific RIF separation notice and who qualify for the vacant position.

C. Waiving Qualifications

The Agency may exercise its discretion granted by law and regulation to waive non-mandatory qualifications in order to place employees who are affected by the RIF in continuing positions.

VIII. Services to Employees Released in a RIF

A. Placement Offers

1. The Agency will be diligent in providing employees with all placement opportunities available under law and regulation.

2. Employees who receive job offers will have a reasonable amount of time, in accordance with regulation, to respond as to whether they will accept or decline the offer. The time will be not less than 3 calendar days for a local position, and 7 calendar days for a position requiring relocation. Management will grant one extension to employees considering relocation that articulate circumstances requiring additional time, up to an additional 7 calendar days. Upon mutual agreement, the parties may extend or lessen these time frames.

3. Relocation of employees, occurring as a result of any action under the RIF, will be deemed in the best interest of the government and such employees will be provided those benefits provided by law, rule, regulation and/or which are within the discretion of the Agency.

4. When the Agency assigns an employee to a position which requires a move to another geographic area, the employee may 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.

5. The Agency will notify employees of the services available under its Career Transition Assistance Plan (CTAP) and how to obtain them.

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

B. Unemployment Compensation

1. The Agency will strive to have representatives of the Unemployment Insurance Agencies from all states in which employees would file claims come to the Agency and make presentations regarding benefits, eligibility requirements, and application procedures.

2. Employees facing removal as the result of a RIF will be granted up to 8 hours of administrative leave before the effective date of the RIF to apply for unemployment benefits.

C. Severance Pay

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

D. Employment outside the Agency

1. Those employees who cannot be placed within the Agency will receive aggressive assistance in finding employment outside the Agency, whether in another Federal agency, a State or local government, or the private sector. 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;

    e. Official time to visit inter-agency job centers or attend job interviews.

2. To the extent permitted under law and regulation, the Agency may provide information concerning the services of subsections 'a' through 'd' to employees after the date of the employee's separation.

IX. Transfer of Function

A. Definition

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 identifiable form in another competitive area where it was not being performed at the time of transfer.

B. Notice to Union

When the Agency determines that a TOF is necessary, the Agency will inform the Union as far in advance as practicable, giving the reason for the action, the approximate number, 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 4, Mid Term Bargaining.

C. Positions Affected

The Agency will identify which positions will transfer with the function in accordance with Office of Personnel Management regulations in effect as of the effective date of this Agreement.

D. Employee Rights

Employees whose positions have been designated as transferring with the function will be notified in writing. The notice will state that the employee is being offered the opportunity to volunteer for transfer with his 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 applicable salary, including locality pay, of the employee's position at the new work site;
3. 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;
4. A statement that should the employee be selected to transfer with his or her position, the Agency may pay moving expenses in accordance with statute and government-wide regulation;
5. A statement that it is possible that not all volunteers will be able to transfer with their position;
6. A statement that should the employee chooses 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;
7. The deadline for responding will be not less than 3 calendar days for a local position, and 7 calendar days for a position requiring relocation. Management will grant one extension to employees considering relocation that articulate circumstances requiring additional time, up to an additional 7 calendar days. Upon mutual agreement, the parties may extend or lessen these time frames.

E. Insufficient Qualified Volunteers

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

F. Excess Qualified Volunteers

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.

G. Vacant Positions

The Agency 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 qualified and who have applied for such vacancy. The Agency will not incur PCS cost if the vacant position is outside the employee's local commuting area. Adverse action notices will not be issued pending a review of available vacant positions.

X. Additional Negotiations

Nothing in this Article will prevent the Union from initiating additional negotiations when a reduction in force or transfer of function is announced.

ARTICLE 30
CONTRACTING OUT (RESERVED)

The parties shall endeavor within 180 days from November 19, 2014 to meet and negotiate this article. The Union shall provide its proposal to the Agency at a minimum of 30 days prior to negotiations.

When negotiations conclude, the agreed upon language will replace this article. The pendency of this article shall not preclude the ratification of this contract.

ARTICLE 31
ISSUED CLOTHING & EQUIPMENT

I. Purpose and Issuance:

A. **Purpose:** Agency Duty Uniforms consist of specific clothing and equipment worn by operational personnel in accordance with mission related duties as directed by Agency management, as delegated by policy directive. Agency personnel shall not wear duty uniforms, or parts of duty uniforms, unless they are authorized. All Agency uniform items bearing official Agency markings, including depictions of the badge, remain the property of the Agency. Any deviation from the standard duty uniform and equipment must be approved by the Deputy Director. All duty uniform items and equipment shall meet the specifications outlined by Agency policy on Duty Uniforms.

B. **Issuance:** All personnel authorized to wear a uniform will be issued "duty uniforms" in accordance with, and as defined by the Agency and/or district/division policy. Employees will receive their first uniform issuance upon entry into service. Districts/division management will ensure employees who wear uniforms daily will have five uniforms total within the first two weeks of arrival at the district/division based on best practices (for example, a cold/hot weather climate).

II. Duty Uniform Replacement

The Agency will reissue or reimburse an employee authorized to wear a uniform for unserviceable gear (as defined in Agency policy) based on best practices (for example, a cold/hot weather climate). Requests for reissuance will be completed generally within 2 weeks.

The Agency will replace unserviceable holsters and related duty weapon equipment in accordance with the Agency policy directive for uniforms.

III. Personal Clothing Reimbursement Damage While on Duty

In the event of damage to or loss of personal property, incident to service the employee must follow the Agency policy directive for tort claims.

IV. Protective Vests

A. Stab/Shank Proof Vests:
Upon request, the manager may purchase stab proof or shank proof vests.

B. Ballistic Resistant Vests:
Ballistic or bullet resistant vest will continue to be issued to all operational employees as described in Agency policy.

V. Agency/Union Clothing

A. The Agency agrees that uniformed employees affected by this article will be allowed to wear the following adornments or modified clothing on or with official uniforms. When conducting an official operation, Management may require employees to remain in the duty uniform as described in Agency policy.

1. One official AGENCY/AFGE Local 2272 lapel pin.
2. AGENCY/AFGE Local 2272 hats.
3. AGENCY/AFGE Local 2272 wind breaker type jackets.

ARTICLE 32
DRUG FREE WORKPLACE

The use of illegal or illicit drugs as well as the abuse of prescription drugs by federal employees whether on or off duty is contrary to the efficiency of the Service (Executive Order 12564).

Employees are bound to the Agency Drug Free Workplace Policy 3.5 which explains standards of behavior and drug testing protocols.

ARTICLE 33
HEALTH AND SAFETY

I. General

Maintaining safe and healthful work environments, as a shared value by the Union and Agency, is necessary for the accomplishment of the Agency's mission and contributes to a high quality of life for employees. The Agency will provide and maintain conditions and places of employment that are free from recognized hazards and unhealthful working conditions, consistent with the applicable requirements of the Occupational Safety and Health (OSH) Act of 1970, Public Law 91-596, Section 19, Federal Agency Safety Programs and Responsibilities (29 U.S.C. § 668); Executive Order (EO) 12196, OSHP for Federal Employees; 29 C.F.R. § 1960, Basic Program Elements for Federal Employee, OSHP; Department of Justice (DOJ) Order 1779.2B, OSHP.

A. Alternative and Supplementary Standards

The Agency agrees to impact and implementation bargaining on changes related to Occupational Health and Safety standards as specified in Article 4 of this Agreement on Mid-Term Bargaining.

B. Safety Coordinator

The DSHO (District Safety and Health Officer) is a collateral duty employee appointed by district/division management as the safety and health coordinator. Each district/division should have at least one appointed DSHO. The DSHO is responsible for implementing the USMS OSHP (Occupational Safety and Health Program) for their district/division. The Employer agrees to post at each district office and headquarters a poster in accordance with OSHA regulations. Among the information, the poster will list the names and phone numbers of the Union and Employer designated persons to contact for safety and health matters. (See USMS Policy for more on DHSO responsibilities)

C. Changes to Occupational Health and Safety Protocols

All changes to Occupational Health and Safety protocols outlined in this Agreement that are subject to impact and implementation bargaining will be done in accordance with Article 4 on Mid-Term Bargaining.

D. Occupational Health and Safety Publications

The Agency will conspicuously post in each establishment, and keep posted, a poster informing employees of the provisions of the OSH Act of 1970, Executive Order 12196, Occupation Safety and Health Programs for Federal Employees for their district/division, from February 1 to April 30 of the year following the year covered by the form.

E. Comprehensive Analysis

The Agency will obtain and accumulate data concerning occupational accidents, injuries, and illnesses that relates to all illnesses and injuries that involve loss of consciousness, restricted work activity or job transfer, days away from work, or medical treatment beyond first aid.

The Union will be provided this information annually or upon request.

F. Employee Reports of Unsafe or Unhealthy Conditions

No employee is subject to restraint, interference, coercion, discrimination, or reprisal for filing a report of an unsafe or unhealthful working condition, or other authorized participation in the USMS OSHP activities, and/or because of the exercise by such employee on behalf of himself/ herself or others of any right afforded by Section 19 of the OSH Act of 1970, Executive Order 12196, Occupation Safety and Health Programs for Federal Employees, 29 C.F.R. § 1960, subpart G, and/or this Agreement.

II. Safety and Health Committees

If the Agency determines a need for an Agency Safety or Health Committee, to include investigatory, steering or other committee, the Union will be provided one seat on such a committee and will be afforded equal participation in the committee as all other members. Participation and attendance for the Union will be the same as other committee members, e.g. travel, if needed, paid by the agency.

III. Personal Protective Equipment

Personal Protective Equipment (PPE), as required by the Agency or its districts/divisions, to protect employees from hazardous conditions encountered during the performance of their official duties, will be provided at no cost to employees when required to wear PPE (e.g. gloves for prisoner handling, respirator, face shield, hearing protection).

A. PPE Determinations

When the Agency makes a determination of the need for any PPE, the Union will have the opportunity to provide suggestions or recommendations.

B. PPE Training

The Agency will provide Employees training and information on PPEs. The Agency will give the Employee notice of any training related to required use of PPE. Any training that is issued subsequent to a change in working conditions related to the use of PPEs may be subject to impact and implementation discussions as related to Article 4 on Mid-Term Bargaining, and/or Article 17 on Training.

IV. Unsafe/Unhealthful Conditions

Any employee or employees, who believe that an unsafe or unhealthful working condition exists in any worksite, has the right to report such condition to the appropriate Agency supervisor, manager or executive, Designated Agency Safety and Health Official (DASHO), and/or the Union. An inspection of potentially serious and other conditions will be made within the timeframe established by applicable regulations. All Agency determinations and actions on imminent danger reports will be put in writing to the reporting employee explaining the basis for the findings and actions within the timeframe established by applicable regulations.

A. Dangerous Conditions

When the Agency or other appropriate authority determines that a dangerous or potentially dangerous condition exists at a worksite, employees at that worksite will be notified as soon as practicable so that precautionary steps can be taken.

B. Notices of Hazardous Conditions

The Agency shall post a notice of hazardous conditions discovered in worksites as required by applicable laws, rules, and regulations. The notice shall be posted, at or near the location of the hazard and shall remain posted until the cited condition has been corrected. Such notices shall contain a warning and description of the unsafe or unhealthful condition and any required precautions to the full extent required by applicable laws, rules, and regulations.

C. Abatement of Unsafe and Unhealthful Conditions

The Agency shall promptly abate or facilitate the required measures to mitigate any unsafe and unhealthful working condition. Toward this end, any equipment, devices, structures, clothing, supplies, tools, or instruments that are found to be unsafe will be removed from service, locked-out, and/or tagged-out or rendered inoperative, as appropriate.

D. Emergency Situations

Employees should refer to the District/Division’s Occupant Emergency Plan.

E. Abatement Plan

An abatement plan will be prepared by the expert resource, and if the abatement of an unsafe or unhealthy working condition is not possible within thirty (30) calendar days, such a plan shall contain a proposed timetable for the abatement and a summary of steps being taken to protect employees from being injured as a result of the unsafe or unhealthy working conditions in the interim. A copy of this interim plan should be posted for all affected employees and provided to the Union President.

F. Assistance When Exertion beyond Safe Limits

The Agency shall provide relief or assistance to employees required to lift items, or to operate machinery or equipment requiring exertion beyond safe limits specified in applicable laws, rules, regulations, or original equipment manufacturer (OEM) instructions.

G. Outside Activities in Hot Weather

The Agency has the responsibility to provide adequate protections and take measures to reduce the risk and prevent heat-related illnesses and deaths. The Agency will ensure that adequate supplies of potable water are available to employees required to work out of doors in high heat conditions.

H. Non-Climate Controlled Buildings

The Agency has the responsibility to provide adequate protections and take measures to reduce the risk and prevent heat-related illnesses and deaths.

1. The Agency will not expose employees to work environments that exceed a heat index of 129°, except when the Agency determines the exigency of business requires employee exposure. When the exigency of business requires employee exposure to work environments that exceed a heat index of 129°, the Agency will limit employee exposure only the amount of time necessary to effect the immediate business need.

2. The Agency will work with the Union to conduct heat safety training for all bargaining unit employees as required.

3. When leasing issues do not prohibit, the district/division will make every effort to post first aid signs on heat stress where the heat indices are in excess of 90° or above.

I. Construction/Maintenance Chemicals

In facilities where the Agency maintains control over construction/maintenance chemicals, there will be no application of insecticides, carpet glue, HVAC cleaning agents, paint, or other like construction or maintenance chemicals during work hours in enclosed spaces occupied by employees. Whenever insecticides or pesticides are used in large scale, the Agency will attempt to notify employees in advance, and provide information on whether the application is indoors or out, or during work hours or not, if known. Employees with special health needs will be reasonably accommodated.

J. Reassignment of Work

The Agency will, consistent with its right to assign work, make a reasonable attempt to temporarily reassign tasks of employees who provide acceptable medical documentation that particular tasks presently assigned pose a heightened health hazard to that employee.

V. Imminently Dangerous Situations

A. Reporting Imminently Dangerous Situations

Employees will report imminently dangerous situations by the most expeditious means available to any supervisor or manager who is immediately available. An employee making imminent danger reports may file an oral or written report with Agency. In the absence of a management official, the employee is expected to use sound judgment. When the Agency requires an employee who reports an imminent d

B. Union Request for Information

The Union may request via 5 U.S.C. 7114(b)(4) all reports of imminent danger situations so that it may provide representational duties on behalf of employees. Upon request, Employees and the Union will be told when the imminent danger situation will be inspected, and be given an opportunity to be present during an inspection. Inspections of imminent danger situations will occur within the timeframe established by applicable regulations.

C. Safety Inspections

The Union will be notified and given the opportunity to be represented for any instance where a safety inspection is to take place related to a reported unsafe or unhealthy working conditions (other than LEO Activities taking place in the field) and also be given the opportunity to acquire an independent subject matter expert to conduct an independent inspection. The Agency agrees to review the independent inspection and consider the best options for remedy. The Union will bare all cost associated with such inspections unless the results of the inspection and recommended changes are agreed upon by the Agency.

VI. Work-Related Injuries and Illnesses

A. Investigative Reporting on Accidents

Upon request the Agency shall forward to the Union all investigative reports of accidents involving employees. The report shall conform to the requirements established by applicable regulation (currently 29 CFR 1960.29) within a reasonable period of time of its completion, normally one business week. Reasonable extensions may be requested. .

Annually, upon request, the Agency will provide copies of the injury and illness data required by 29 C.F.R. Subpart I to the Union within a reasonable period of time of its completion, normally one business week. Reasonable extensions may be requested. These data will be grouped by organizational component – from smallest to largest – and identify organizational components and geographical areas covered.

Upon request, the Agency will also provide the Union within the first calendar month of each year, its workers compensation data for the prior year. The

Agency will make available to the Union upon request, raw data (e.g., incident reports, workers' compensation claims, etc.) upon which the reports are based.

B. Efforts to Reduce Injuries

The Agency will institute an on-going effort to reduce injuries resulting from repetitive movement by:

1. Making training and information available to employees concerning how to reduce and eliminate the incidence of repetitive movement injuries;

2. Providing for periodic rest breaks;

3. Providing appropriate ergonomic furniture designed to reduce or prevent such injuries;

4. Facilitating the reporting of injuries caused by work-related repetitive movement;

5. Consulting with employees to identify job with high potential for injury.

C. Communicable Diseases

The Employer will provide each employee who is at risk to exposure to airborne and/or blood-borne pathogens immunization as required by law. This is in accordance with OSHA • 29 CFR 1910.134 – Respiratory Protection Standard and 1910.1030, Blood-borne Pathogens

1. Positive Test Results

   If an Agency employee contracts or tests positive for a communicable disease and the employee believes that the disease is job-related, all issues concerning compensation, payment for medical treatment, use of leave etc., will be governed by applicable law and regulation (e.g. FECA, 20 CFR Parts 1, 10 and 25, Disability Retirement under Title 5, U.S.C. , OSHA Blood-borne Pathogen Standard (29 CFR 1910.1030)

2. Health Status of Prisoners

   On a local level, each district/division will request local law enforcement agencies to inform the Agency of the health status of prisoners who are being transferred to Agency custody. The parties recognize that state law may restrict such notification, and that the notification arrangements necessarily will depend upon the cooperation of individual law enforcement agencies. The Agency will perform health screening according to Agency policies. Once the Agency has notice that a prisoner has a communicable disease, the appropriate supervisor will be notified. The prisoner processing personnel will make notations in the Agency database and prepare notices (i.e. USM-130) in accordance with policy so employees of other agencies may be on notice to take Universal Precautions.

3. Handling Prisoners with Communicable Diseases

   In addition to training conducted at FLETC, the Agency will provide training in the districts/divisions to educate Agency personnel on the risks associated with handling prisoners with communicable diseases, and provide current medical information on communicable diseases. The Agency will provide updated medical information updates to the districts/divisions on an ongoing basis.

VII. Workplace Violence

Violence constitutes a health and safety hazard in the workplace. Exposure to violence can result in both physical and emotional harm to employees. Although it is the Agency's obligation to provide a safe and secure working environment, the Agency and Union agree to work together to prevent workplace violence and to minimize the occurrence and effects of violence in the workplace should it occur. Employees will report incidents of violence in the workforce in accordance with established Agency or government wide reporting protocols.

VIII. First Aid Supplies

The Agency shall maintain adequate first aid supplies at each worksite. All employees will have reasonable access to these supplies.

IX. Hazardous Materials

The Agency will maintain a current list of all hazardous materials in each location and will maintain paper copies of current Safety Data Sheets (SDS) in each workplace where such materials are used or stored.

A. Hazardous Chemicals/Employee Identification

   The Agency will identify each employee by worksite using hazardous chemicals in the performance of his/her duties.

B. Hazardous Chemical Substitution

   When feasible, the Agency will use the least hazardous alternative.

C. SDS Requirement

   All chemicals and hazardous materials purchased shall require SDS with the purchase.

D. Annual Information for Safe Handling and Disposal

   Employees will be given information at least annually on the safe handling and disposal of each hazardous chemical and material used in the worksite.

E. Exposure to Hazardous Chemicals

All employees exposed to hazardous chemicals and materials at work will be informed of their exposure to each hazard, the amount of exposure, the level of safe exposure (if there is a standard), and the risks associated with the hazardous chemicals and materials to which they were exposed.

ARTICLE 34
MEDICAL REQUIREMENTS AND FITNESS FOR DUTY

I. Purpose

This Article is generally reflective of the circumstances under which medical documentation may be acquired and examinations and evaluations conducted to determine the nature of a medical condition which may affect safe and efficient performance (reference 5 CFR 339).

II. Conditions Requiring Fitness for Duty Examinations

The Agency may direct an employee to undergo a fitness for duty examination under those conditions authorized by this Article or in accordance with 5 CFR 339.

III. Restricted Duty

A designated employee who fails to meet medical standards will be given a reasonable opportunity to correct his/her deficiencies.

During a period in which an employee is temporarily restricted due to physical and or medical conditions, from performing the full range of duties for the position the Employer may assign such employee to light duty without loss of pay provided that light duty work assignments are available and the employee is able to perform such duties, consistent with light duty assignments available set forth in the USMS Employee Medical Policy 3.5. Light duty assignments may be considered outside of the individual's duty station.

IV. Medical Examinations

Medical examinations and standards are administered at the direction of the Office of Employee Health Programs in accordance with 5 CFR 339 and the contents of this article.

All medical examinations mandated or offered pursuant to this Article shall be at no cost to the employee and performed on duty time at no charge to leave. Unless otherwise noted, medical examinations are required to be completed by the facility/physician designated by the Agency.

A. Directed or Offered Medical Examinations

When the Agency directs or offers a medical examination under the provisions of prevailing regulations and this Article, it shall inform the employee in writing of its reasons for directing the examination and the consequences of failure to cooperate. The Agency shall designate the examining physician and shall permit the employee the opportunity to submit medical documentation to the designated Agency examining physician from his or her personal physician for review.

B. Reasons for Offered Medical Examination

The Agency may, at its option, offer a medical examination in accordance with 5 CFR 339, and to assess an employee for possible personnel action such as when an individual has made a request for accommodation for medical reasons for a change in duty status, assignment, or working conditions or any other benefit or special treatment (including reemployment on the basis of full or partial recovery from a medical condition).

C. Who Pays for the Examinations

The Agency will require periodic medical examinations for employees covered by medical standards at the Agency's expense. Employees cannot go to his/her own private physician for his/her physical examination.

D. Medical Evaluations while on Worker's Compensation or on Limited Duty Assignment

The Agency may require an employee receiving worker's compensation benefits or assigned to limited duties as a result of an on-the-job injury to report for medical evaluation when the results of the evaluation may affect a personnel decision.

E. Federal Occupational Health Facility (FOH)

In instances where an employee is utilizing an Federal Occupational Health (FOH) facility or FOH-designated facility, and those facilities are, in the view of the employee, unsafe or unsanitary, the employee may elect to return to his/her duty station and notify his/her supervisor and the Office of Employee Health Programs in writing (by email) with specific details . The Office of Employee Health Programs will address corrective action and direct the employee accordingly.

In instances where no FOH facility or FOH-designated facility is available, the district/division management should notify the Office of Employee Health Programs. The Office of Employee Health Programs will address corrective action, as stipulated by the Federal Acquisition Regulations (FAR) and direct the district/division accordingly. In rare circumstances, after pursuing all possible FOH and FAR resolutions, the Agency may elect to direct an employee to utilize his/her personal physician or mutually agreed upon personal physician at the Agency's expense.

V. Medical Documentation

Any medical documentation requested by the Agency in order to make an informed management decision regarding an employee's performance, conduct or ability to remain in a position because of medical reasons, will be consistent as outlined in 5 CFR 339.

A. Health Problems

If Management is addressing a performance or conduct problem with an employee and the employee elects to divulge a health problem, the employee shall be permitted an opportunity to voluntarily provide medical evidence documenting the health problem affecting his or her performance or conduct in accordance with Sec. 5.2.

B. Medical Documents Provided by an Employee

Any medical documentation furnished by an employee may, upon request of the employee, be provided directly to the Office of Employee Health Programs for review.

C. Release of Medical Information

The Agency agrees that all medical information or documentation furnished by the employee (e.g. USM-522) to the Agency will be subject to the Privacy Act of 1974 (5 U.S.C. 552a) and disclosure will only be made to those individuals who have a need to know in order to make informed management decisions regarding the employee's performance, conduct or request for an accommodation. All employees are held to the standards under the Privacy Act.

D. Authorized Storage

Any medical documentation that is provided to the Agency by an employee will be secured and only accessible to those officials who have authorization to review the documentation.

VI. Employee Rights

An employee that is found to be not medically qualified following a Fitness for Duty Examination may request and is entitled to Union representation when discussing his/her medical determination with officials from the Office of Employee Health Programs or those designees listed in the medical disqualification letter.

VII. Inability to Perform Assigned Duties

If, as a result of a fitness for duty examination or review of medical documentation, an employee is determined by the Office of Employee Health Programs to be permanently medically disqualified and unable to perform the full functions of their job safely and effectively or causes elevated risk to their health and safety, the Agency, at its discretion, may endeavor to accommodate and reassign.

Reassignment may be made to a vacant administrative position for which they qualify in the USMS or other agencies within the Department of Justice outside the employees commuting area. Relocation costs, as with other assignments not required by management, will not be paid for by the USMS.

A. Voluntary Reduction in Grade

In the event a position at the same grade is not available, or the employee is not qualified at the same grade, the Agency, at its discretion, may work with the employee to accommodate and offer the employee an opportunity to accept a position through a voluntary change to a lower grade to a position for which they qualify. If the employee accepts the position, pay will be set in accordance with applicable statutes and regulations.

B. Disability Retirement

The Agency will notify the employee of his/her right to apply for disability retirement prior to initiating any personnel actions against the employee related to medical fitness. If the employee elects to file for disability retirement, the Agency will consider authorizing the employee sick leave, annual leave or leave without pay pending the receipt of a decision from the Office of Personnel Management.

VIII. Licenses Requiring Medical Certification

Agency pilots (GS-2181) are subject to medical standards contained within their position description.

Agency personnel requiring specialized licenses such as a Commercial Driver License (CDL) may be required to maintain additional medical certification(s) in accordance with applicable state regulations.

ARTICLE 35
EMPLOYEE ASSISTANCE PROGRAM (EAP)

I. Policy

The Parties agree and recognize that some employees in the work place may experience situations in their personal lives that may impact their ability to perform their duties. Limited services are available through the EAP at no cost to the employee for dealing with the impact of medical conditions and medical-behavioral problems and alcohol abuse, drug abuse, generic mental health problems, marital and family distress, job stress and financial problems. Services are also widely available for financial and legal counseling.

II. Employee Assistance Program

A. Program Requirements

The Agency agrees to maintain an EAP and make this service available to all employees at no cost subject to limitations described herein. The EAP will be staffed with, or connect employees to professional counselors who will assist employees in addressing problems that have an impact on maintaining satisfactory job performance and/or health.

B. Participation

Employees are encouraged to seek employee assistance through self-referral. Other EAP services are also available via management, medical, and/or other support service referrals.

C. Services

The EAP services provided by the Agency will consist of the following:

1. Confidential, free, short-term consultation/counseling services
2. Referral and/or follow-up services, where appropriate (For Example: to a community based service or professional resource that provides treatment and/or rehabilitation; to help an employee readjust to his or her job during and after treatment).
3. Training for managers and supervisors on EAP usage and referral process

D. Supervisor Responsibilities

Supervisors should inform employees of the availability of EAP services. Supervisors will not attempt to diagnose employee problems.

E. Information to Employees

The Agency will post information regarding EAP in written and electronic formats for employee awareness and education.

III. Voluntary Participation and Employee Responsibility

A. Employee Participation

No employee will be required to participate in EAP.

B. Attending EAP Sessions

Employees must notify, coordinate, and provide documentation for their EAP counseling appointments with their Supervisor prior to leaving the work place. Employees who do not want their supervisors to know of their attendance must make arrangements for EAP appointments outside of duty hours or request leave in accordance with Article 26, Annual Leave or Sick Leave of this Agreement for appointments during duty hours.

IV. Access to EAP Services

A. Use of Leave/Excused Absence

Supervisors may grant periods of excused absence to an employee for participation in EAP or education activities upon employee request. Employees will be granted an excused absence from duty without charge to pay or leave, to meet with an EAP counselor for up to six (6) counseling/assessment sessions per year.

B. Community Based Services

Employees who are referred to community based services will request leave in accordance with Article 26 on Leave of this Agreement.

V. Confidentiality of the Program

A. Confidentiality

All confidential information and records concerning an employee's counseling and treatment through the EAP will be maintained in accordance with EAP procedures and regulations, Department of Justice, and Agency policy and procedures.

B. Confidentiality and the Agency's Use of Records

Confidentiality is a key provision of the EAP and is afforded to employees who choose to enter the program or are referred to the program by management. If an employee "self-refers," no information will be released to anyone unless the individual indicates the possibility of any type of domestic abuse or other criminal conduct, or if failure to release information would be life threatening.

1. EAP counselors are required to report cases of child abuse, elder abuse and spousal abuse where required by state law; however, only information that is necessary to ensure the safety of all involved parties may be released.

2. With self-referrals, EAP staff responding to phone or other inquiries regarding an employee's former or current EAP status must state that they can neither confirm nor deny an employee's participation in the EAP without an EAP-executed release.

3. In management referrals, the EAP Administrator will acknowledge whether or not the referred employee contacted the EAP; no additional information will be released without the employee's written permission. Logistical information shared between the USMS EAP staff and the USMS EAP contractor staff is not considered a disclosure and does not require a release. The EAP staff will encourage the employee to release information that may assist in the resolution of the problem, such as the employee's participation in the program, program reports from a licensed therapist, and necessary information to permit the supervisor to grant leave for counseling or treatment.

C. EAP Employee Records Administration

1. The EAP records of employees referred for assistance will be preserved with the same confidentiality as all other medical records. Information concerning a participant's status with the EAP may not be divulged without the express written consent of the employee or as otherwise permitted by law. Records or notes of those voluntarily seeking assistance are privileged and will not be referred to or made a part of an employee's official personnel folder. While employee's substance abuse records may be part of the EAP's filing system, such records must be handled in accordance with 42 CFR 2 and the requirements of 42 USC 290ee-3. EAP counseling records of employees with alcoholism will be preserved in accordance with the requirements of 42 U.S.C. § 290dd-2.

2. Management officials who release information concerning an employee in the EAP to a third party without the employee's permission are subject to possible criminal penalties or fines and discipline.

3. An employee may have a representative present at meetings with management officials related to their participation in EAP.

VI. Confidentiality and its Relationship to Unacceptable Performance, Disciplinary and Adverse Action

A. General

The EAP supplements, but does not replace, existing procedures for dealing with employee performance and conduct. The Agency may apply disciplinary procedures appropriate to the conduct of the Employee in conjunction with a referral to the employee for EAP services. In evaluating an employee's work performance and job-related conduct, with an employee's written consent, management may consider whether an employee referred to counseling is cooperating with a recommended plan of counseling. In such an instance,

management would need to have sufficient information (medical documentation) regarding the EAP treatment plan, progress and timeline with anticipated milestones, in order to provide such consideration.

B. Disciplinary/Adverse Action Considerations

Referral assistance of EAP to an Employee will not affect the processing of a disciplinary/adverse action for the employee's misconduct or criminal activities if the nature of the offense and the nature of the employee's duties warrant that action. However, an employee's EAP participation could be viewed as mitigation by management when considering a proposed disciplinary/adverse action.

Management may consider holding a disciplinary/adverse action in abeyance for a specified period while the employee undergoes treatment under terms and conditions agreed to by the employee and management. When Management agrees to hold in abeyance the disciplinary/adverse action pursuant to a written agreement, the potential disciplinary/adverse action will be disposed of in accordance with the terms of the agreement.

Should the employee violate any terms of the agreed upon conditions or is involved in similar misconduct during the abeyance period, any disciplinary/adverse action will be processed in accordance with the terms of the agreement, the procedures and appeal rights outlined in 5 CFR 752 and Article 38, Discipline/Adverse Action of this Agreement. Any new or unrelated misconduct will be processed in accordance with this Agreement or Agency policy.

ARTICLE 36
FITNESS-IN-TOTAL (FIT) PROGRAM

I. Fitness

A. USMS employees are encouraged to participate in fitness programs. The ultimate goal of the FIT program is to promote and provide a safe and ready workforce, along with long-term enhancements by advocating an active and healthy lifestyle.

B. The Standard fitness assessment consisting of the 1.5-mile run, push-ups, sit-ups, flexibility, and body composition will continue to be used for documentation of FIT participation, successful graduation of training, and mandatory FIT testing, as appropriate.

C. Alternate Aerobic Fitness Test: The Schwinn-Dawson Airdyne bicycle may be used as an alternative aerobic fitness test. This alternative may be used in place of the 1.5-mile run by voluntary participants, mandatory employees who are unable to complete the run due to illness or injury, and mandatory participants who are over 40 years of age and do not wish to perform the run.

D. Allowable Fit Activities: For the purpose of defining what fitness activities are authorized and thus for which OWCP coverage through the Federal Employees Compensation Act (FECA) may be allowed, this directive defines the list of "approved fitness activities" and guidance for implementation by USMS managers.

1. Employees who are injured while participating in the FIT Program and have fully complied with the directive requirements will be supported in a claim under FECA and OWCP. Claims will be supported when:

    a. The employee was a current FIT program participant at the time of the injury. A current FIT participant is normally defined as "having completed a FIT assessment within the previous six months."

    b. b. The employee was performing an "approved" FIT activity as defined below in section D.4.b. Approved Fit Program Activities in a safe and responsible manner.

    c. c. The employee followed the prescribed procedures for participating in the approved fitness activities.

    d. d. Administrative employees are covered under OWCP when participating in FIT activities during duty hours.

2. The approved activity will take place at a USMS fitness facility or other fitness facility authorized by district or division management (private or public gym, track, running trail, park, etc.) An employee's residence may be substituted for an approved facility by district or division management for good reason. (Exception: Administrative employees that do not have

immediate access to USMS facilities will seek approval from their manager to participate in a FIT related activity during work hours).

3. Prior to allowing an employee's participation in "approved" FIT activities, district or division management will have the employee sign an "acknowledgment of receipt" of this FIT directive. This acknowledgment is to be maintained in the district/division's file as long as the employee is assigned to the district/division.

4. Approved Fit Activities:

   a. Approved activities performed should directly enhance performance in any element of the physical efficiency battery and/or support required job skills and incorporate any of the following principles:

      - aerobic power
      - muscular strength
      - endurance
      - flexibility

   b. Approved Fit Program Activities when performed as part of a structured exercise program are:

      - brisk walking
      - swimming
      - running or jogging (treadmill or outdoors)
      - cross training (elliptical type equipment)
      - cycling (stationary or outside for aerobic condition-not recreation)
      - stair climbing (actual or machine)
      - row machine
      - Nordic skiing
      - weight training (resistance training)
      - jump rope
      - calisthenics
      - flexibility exercises
      - aerobics training (low impact, step or dance, aerobic machines)
      - fitness assessment test

ARTICLE 37
FIREARMS/INTERMEDIARY WEAPONS

I. General

This Article reflects Agency policy on when, where, and under what circumstances, employees shall be authorized or required to carry firearms and less than lethal weapons and which classification of employees are authorized or required to carry which weapons. Carriage of firearms and less than lethal devices are also subject to law, regulation, and this Agreement. This Article will also describe instances where the carriage of personally owned weapons may be authorized for on and off duty and by which type of employee.

Carriage, storage and handling of firearms are pursuant to Agency Policy Directive 2.3.

II. Issued/Personal Firearms

Operational employees occupying the GS-082, GS-1801, GS-1802 and GS-1811 positions are authorized to carry, use and maintain Agency issued firearms and/or approved and authorized personally owned firearms on duty as provided for by law, regulation, Agency Policy and this Agreement.

III. Departmental Legal Representation

In situations where an Agency operational employee is named as a defendant in a legal action involving the use of force (i.e. firearms and intermediary weapons) within the scope of their duties, provision of legal representation to the employee will be determined under 28 CFR 50.15 and 50.16.

IV. Use of Force and Related Inquiries

All operational personnel are bound by the DOJ and Agency Use of Force Policies. All Use of Force questions should be communicated by the employee to his/her Supervisor or local District/Division Firearms Instructor. Managers should consult the Training Division for all other firearms related inquiries.

V. Off-Duty Carry

Agency employees of the GS-1811and 082 series are authorized (but not required) to carry an approved handgun off duty.

Agency employees of the GS-1801 and GS-1802 series (Detention/Aviation Enforcement Officers) are not authorized to carry Agency issued firearms or less-than- lethal devices off-duty, unless authorized by district/division management on a case by case basis. These employees are considered law enforcement officers under the provisions of the Law Enforcement Officers Safety Act of 2004 and may choose to carry personally owned firearms while in an off-duty status if all provisions of the Act are met. The Law Enforcement Officers Safety Act (LEOSA)

authorizes individuals to carry firearms in their personal capacity but does not confer law enforcement authority.

A. Operational Employees

The Agency will make every effort to ensure operational employees will have reasonable accommodations for safe storage of personally owned firearms that an employee is currently qualified with and meets Agency policy on types of authorized handguns and secondary firearms. GS-1801 and GS-1802 series employees are authorized to carry, qualify, and store up to two personally owned secondary firearms that they are currently qualified to carry on duty.

B. Personally Owned Weapons (On Duty)

Personally owned weapons for duty carry must comply with the Agency policy on firearms, including but not limited to weapons specifications, training, maintenance, procurement, and/or position classification, and is subject to Agency protocols on approval/disapproval.

VI. Weapons Removal

In all situations, including disciplinary proceedings, suspensions (in consideration of the next section), and when an employee poses a danger to himself or herself or the public, managers may remove weapons and credentials from USMS employees when they determine that it is in the best interests of the USMS.

A. Disciplinary/Adverse Actions

During periods of suspension, district/division managers may collect and secure weapons and credentials of operational employees. Generally, employees may retain weapons and credentials during the proposal phase of disciplinary proceedings.

During periods of proposed removal, district/division managers will collect and secure weapons and credentials of operational employees. District/division managers will coordinate weapons removal during disciplinary proceedings with the Office of Professional Responsibility.

B. Limited Duty

In the event an employee has temporarily had their authority to carry a firearm rescinded and they remain in a duty status, the employee will be assigned duties that do not require the carriage of a firearm until the employee's situation is resolved.

C. Qualifications

All Agency operational personnel are subject to the Agency's policy on firearms including qualification and proficiency standards. In the event an operational employee can no longer demonstrate the necessary proficiency to

maintain the authority to carry a firearm, the Agency may consider the employee for other positions for which the employee is qualified. This provision is not intended to replace or conflict with established reasonable accommodation procedures.

VII. Shooting Incidents

A. On Duty

All operational employees; and any other employee authorized by the Agency to carry a firearm as a duty requirement, who discharge their firearms in an incident occurring on duty/TDY duty or when authorized carriage of Agency firearms must immediately report the incident to their supervisor. He or she will not make a statement to law enforcement but will make a general proffer to the Agency supervisory official who responds to the scene. He/she will then be removed from the scene and treated for trauma, if necessary, and will not return to the office or leave the TDY district until authorized to do so by District management in coordination with the Office of Professional Responsibility. An employee may elect to have union representation for an interview with the investigating Agency.

B. Off Duty

All bargaining unit employees involved in off duty shooting incidents are advised by the Union to seek private legal representation and must notify their chain of command immediately or as soon as reasonably possible.

C. Medical/Mental Health

The Agency will consult all operational employees who discharged a firearm and determine whether an examination or treatment for injury or trauma is necessary. If so, the on-the-scene supervisor will see that each employee who needs examination or treatment is removed from the scene and examined by a physician. Unless exigent circumstances exist, the Agency or appropriate designee will remain with the employee until there is no further need for an Agency presence. If the employee(s) involved in the shooting are transported to a medical facility, the Supervisory Deputy U.S. Marshal at the scene will provide the treating facility with U.S. Department of Labor (DOL) Form CA-16, Authorization for Examination and/or Treatment.

The Agency or employee may contact the Employee Assistance Program staff during non-duty hours for assistance following a shooting incident.

The Chief Inspector for the Peer Support Program (PSP) and Critical Incident Response Team (CIRT) will be notified by the Communications Center through the Agency Significant Incident notification procedures of any Agency involved shooting. Members of the USMS Critical Incident Response Team (CIRT) will respond to assist those individuals involved in the shooting incident. After involved employees have given their statements to appropriate authorities,

district/division management will make their employees available to CIRT for a time frame determined by CIRT.

The employee may speak to the USMS Critical Incident Response Team. However, the employee should refrain from discussing facts related to the shooting incident until after he/she has provided a formal statement to the investigating Agency.

Employees involved in a shooting incident may be placed on Administrative Leave in accordance with Agency directive, Leave Administration, and in coordination with the Employee Assistance Program. While on administrative leave, involved employees shall be responsible for cooperating with the Office of Professional Responsibility, EAP and any other Agency personnel or other appropriate authorities the Office of Professional Responsibility or the Office of General Counsel deem appropriate.

All other medical/mental health considerations following a shooting incident should be referred to the complete Agency policies on Firearms, Shooting Incidents, Use of Force, Less Than Lethal Devices, general human resources, medical, OWCP, and other related policy.

D. Vocational Rehabilitation

If a bargaining unit employee is cleared of a use of deadly force incident but unable to remain in his/her position as a result of mental trauma or other physical injuries, the Agency will assist the employee within the regulations prescribed under 5 U.S.C. 8101, et seq.

VIII. Training

All Agency employees who are authorized to carry firearms will be trained in their use and will qualify with them according to Agency Policy. This requirement applies to all authorized firearms used by an employee on duty.

As a general rule, any required proficiency training, demonstration or qualification will be held during the employee’s normal tour of duty. Employees shall be allocated sufficient practice rounds of ammunition as set forth in Agency policy. Additional rounds may be requested and approved locally by district/division management.

A. Less-Than-Lethal Devices

Agency operational employees are to use only authorized less than lethal devices, that they are trained by the agency to use and which their district/division managers may authorize them to carry on-duty, when necessary. Less than lethal devices may be carried and used by authorized and trained personnel in accordance with the USMS Use of Force and Firearms policies. Operational employees in the GS-1801 and GS-1802 job series are not authorized to carry less than lethal devices while off-duty unless approved by district/division management.

B. Training Injuries

Upon request, the Agency will provide the Union President information containing data which reflects the number of employee injuries during firearms and intermediate force training for the purpose of injury trend analysis.

C. Medical Treatment

The Agency will ensure medical treatment is available as needed when conducting training.

D. First Aid Training

Basic first aid training will be made available to firearms instructors and less than lethal instructors and any other personnel deemed necessary by district/division management.

IX. Carrying a Personally Owned Weapon

This Agreement shall not be construed as interfering with the right of an employee as a private citizen to carry a privately-owned weapon in an off-duty status in accordance with applicable statutes but to clarify the difference between the use of personally owned weapons while in an on-duty or off-duty status.

X. Off-duty Storage

Off-duty storage for Agency-issued firearms should be done in accordance with Agency policy and established practices.

XI. Pregnant Operational Employees

It is the policy of the Agency to ensure the safety of pregnant operational employees and to make accommodations in their assignments in order to meet, when possible, any physical limitations. Due to the potential harm from the effects of loud noises and lead exposure on prenatal development, pregnant employees shall not participate in weapons qualification or practice unless specifically cleared to do so by their physician and noted in their medical documentation as outlined in Agency policy. This restriction may require assignment of limited duties if weapons proficiency has not been checked. Employees returning to full duties after a pregnancy-related absence shall be subject to the current Agency weapons requirements.

The Agency policy for Pregnant Operational Employees provides instructions and guidance on the use of leave, provision of medical documentation (i.e. USM 522-A), and an explanation of limited duty status, and other provisions regarding pregnant operational employee activities and restrictions in relations to firearms and intermediary weapons.

XII. Disabilities

In accordance with 29 CFR 1614.704, employees with certified disabilities who are in positions requiring the carry of a weapon may be eligible for reasonable accommodation, as long as the accommodation does not constitute an undue hardship to the Agency. Employees who believe they may be eligible for reasonable accommodations should discuss their needs with their Supervisor, and if necessary, contact an EEO Counselor and/or the Union.

ARTICLE 38
DISCIPLINARY AND ADVERSE ACTIONS

I. Statement of Purpose and Policy

A. Objective:

The objective of discipline is to correct employee behavior so as to promote the efficiency of the Service. It is not to be punitive in nature. The concept of progressive discipline, which is designed primarily to correct employee behavior at the lowest level possible, will guide managers in making decisions regarding discipline. A common pattern of progressive discipline is reprimand, short term suspension, long term suspension and removal. Any of these steps may be bypassed when the severe nature of the behavior makes a lesser form of discipline inappropriate. Agency discipline will adhere to 5 CFR 752 and 5 CFR 432.

B. Counseling:

To the extent practicable, discipline should be preceded by counseling which is informal in nature and not recorded in an employee's Official Personnel File (OPF). Counseling and warnings will be conducted privately and in such a manner as to avoid embarrassment to the employee.

C. Consistently Applied:

Disciplinary and adverse actions will be consistently applied. The Agency will administer disciplinary and adverse action procedures and determine appropriate penalties to all employees in a fair and equitable manner. The deciding official will always be different from the official who proposed a disciplinary or adverse action.

II. Timeliness of Discipline

If the Agency believes that disciplinary or adverse action may be necessary; such action will be initiated in a reasonable amount of time after the offense was proven or confirmed by the Agency.

III. Weingarten Rights

A. Employee Rights:

1. The employee can request to be represented at any examination of the employee by the Agency in connection with an investigation if:
2. The employee reasonably believes that the examination may result in disciplinary action (i.e. letter of reprimand, suspension, and/or removal) against the employee, and;
3. The employee requests representation.

B. Union Representation

1. The Union will determine which representative will be assigned to any particular investigatory examination. It is understood by all parties that the Union may not unduly delay an examination in order to have a particular representative present.

2. The Union representative will be given a reasonable amount of time to arrive at the examination. Once the employee requests representation no further questioning will take place until the representative arrives. If representation is requested but not available, the examination will be postponed for a reasonable period of time, not to exceed three business days.

3. The Union is responsible for its travel expenses for representation unless mutually agreed upon.

C. Emergency Exception

In an emergency (As defined in the Definitions Appendix A), if no representative is immediately available, the Agency may commence the investigatory examination before the Union is able to provide a representative.

IV. Letter of Reprimand

A. Requirements

An official Letter of Reprimand is a written disciplinary action which specifies the reasons for the action. 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 the OPF for up to one year. This reprimand will be removed from the OPF if the employee separates from the Agency prior to the end of the one year period. The supervisor may remove the reprimand earlier than the expiration of the one year period if the situation warrants such action. The supervisor must coordinate with the Office of Professional Responsibility, Discipline Management.

B. Copies of Material Provided to Employee/Union

Upon request, the employee and/or his designated representative will be provided, within 14 days, copies of all material relied upon in the issuance of a letter of reprimand.

V. Suspensions of 14 days or Less (Excludes Letters of Reprimand)

A. Employee Rights

1. An employee against whom a suspension for 14 days or less is proposed is entitled to:

2. An advance written notice of 10 days stating the specific reasons for the proposed action;

3. The right to review and receive copies of all material relied upon in the proposed action;

4. Ten calendar days to respond orally and in writing and to furnish affidavits and other documentary evidence in support of the response. The employee will be given a reasonable amount of duty time, but in no case less than eight hours, to prepare and present a response to the proposal.

5. Be represented by an attorney or other representative. The representative may be disallowed if the representation creates a conflict between the interest or position of the representative and that of Agency or, where the representative is an Agency employee whose release from his or her official position would give rise to unreasonable costs or whose priority work assignments preclude his or her

VI. Removal, Suspension for More Than 14 Days, Reduction-in-Grade, Reduction-in-Pay, and Furlough of 30 Days or Less

A. Employee Rights

1. An employee against whom such an action is proposed is entitled to:

a. An advance written notice of 30 days stating the specific reasons for the proposed action;

b. The right to review and receive copies of all material relied upon in the proposed action;

c. Ten calendar days to respond orally and in writing and to furnish affidavits and other documentary evidence in support of the response. The employee will be given a reasonable amount of duty time, but in no case less than eight hours, to prepare and present a response to the proposal.

d. Be represented by an attorney or other representative. The representative may be disallowed if the representation creates a conflict between the interest or position of the representative and that of Agency or, where the representative is an Agency employee whose release from his or her official position would give rise to unreasonable costs or whose priority work assignments preclude his or her release.

B. Additional Charges

If the Agency wishes to add additional charges between the times it proposes disciplinary action and when a decision is issued, the Agency will ensure the employee and/or his or her representative is afforded reasonable time to prepare a response whether oral or written.

VII. Requests for Time Extensions to Prepare & Present Reply

The Agency will not unreasonably deny a request for extension of the time to respond to proposals.

VIII. 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 CFR 339).

IX. Off-Duty Conduct

The Agency has the right to discipline off-duty misconduct so long as the Agency determines and demonstrates such alleged conduct has a nexus to the employee's position according to MSPB standards and 5 CFR 752.

X. Agency Decision

A. Reasons for Action

In arriving at its written decision on any proposed disciplinary or adverse action, the Agency shall consider the information specified in the notice of proposed action. It shall also 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. The Agency shall also consider the Douglas Factors, which are attached to this Agreement as Appendix D. The decision will specify how the relevant factors were 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.

B. Decision Notice

If the decision is to effect an action it will specify the reason therefore, the effective date, the action to be taken, and the employee's appeal rights regarding the decision.

XI. Irrevocable Appeal Decision

The choice of the appeal forum is irrevocable. An employee shall be deemed to have exercised his/her option at such time as the employee timely initiates an appeal to the MSPB, or timely files a written grievance, whichever occurs first.

XII. Letter of Clearance

Should a Proposing or Deciding Official determine that an employee should be cleared; a Letter of Clearance will be issued in a timely manner (normally 30 days) to the employee.

XIII. Retirement Prior to Pending Discipline

Employees who are eligible to retire and subject to discipline and/or adverse action may elect to retire prior to a final decision being issued.

ARTICLE 39
GRIEVANCE PROCEDURE

I. Purpose

The purpose of this Article is to provide a mutually acceptable method for the prompt and equitable settlement of grievances filed by bargaining unit employee(s), the Union or the Agency.

II. Coverage & Scope

A grievance means any complaint:

A. By an employee(s) concerning any matter relating to the employment of the employee;

B. by the Union concerning any matter relating to the employment of any employee;

C. or by any employee(s), the Union or the Agency concerning:

1. the effect or interpretation, or a claim of breach, of a collective bargaining agreement;

2. any claimed violation, misinterpretation or misapplication of any law, rule or regulation affecting conditions of employment; or

3. an alleged action on the part of management in connection with a proposed change to working conditions that the Union or employee contends or believes is unlawful or otherwise inappropriate.

D. Grievances on the following matters are excluded from the scope of this procedure:

1. any claimed violation of subchapter III of chapter 73 of Title 5 U.S.C. relating to prohibited political activities;

2. retirement, life insurance or health insurance;

3. a suspension or removal under 5 U.S.C. 7532 relating to national security;

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.

6. Any personnel action (to include also the proposed action and the incidents which form the basis for the action) if the employee has elected to initiate the statutory appeal procedure of the agency's EEO appeals process, the EEO, the FLRA, or the MSPB to challenge, in any way, the personnel action. Initiate an action is defined as filing or authorizing the filing of an

appeal under another appeals procedure. Employees are subject to all regulations governing other appeals procedures.

7. An appeal of an adverse action based on performance under 5 U.S.C. 4303 or efficiency under 5 U.S.C. 7512 if the employee elects the statutory appeal procedure provided under 5 U.S.C. 7701;

8. A Union appeal of an adverse action or an allegation of discrimination against any employee if the Union is not expressly designated by the employee as his/her representative on the matter.

9. Issues raised as Unfair Labor Practices complaints including issues or matters that were not raised but could have been raised in the ULP complaint cannot be raised as grievances under the NGP.

10. Non-selection for promotion from a group of properly rated and ranked certified candidates. (Appeal rights are contained in applicable laws and regulations).

11. An employee can file a grievance alleging unsafe or unhealthful working conditions or alternatively file an Office of Safety and Health Administration (OSHA) complaint but not both.

12. Issues or matters that are time barred per this Agreement.

13. Issues or matters that may have occurred while an employee was a member of the bargaining unit but is no longer a member of the bargaining unit unless the grievance had already been initiated while the employee was a member of the bargaining unit.

If any grievance brought fits within the categories listed in this section, any party at any time without its acts or omissions being construed as a waiver, to include up to Arbitration, may move to dismiss the grievance as not grievable or arbitrable pursuant to this section.

III. Exclusivity

A. Who may Initiate Grievances

Grievances may be initiated by employee(s) covered by this Agreement and/or their Union representative or by the Agency. Representation of bargaining unit employees shall be the sole and exclusive province of the Union.

B. President's Grievance

When a matter affects multiple employees of the bargaining unit or in matters where there is an allegation of a contract violation by management which may have an impact on more than one employee not having one single management/supervisor (i.e. a job series or group/division of employees) and or

the Union, the National Local President may file a President's grievance. President's grievances will be filed at the Step Two (2) level.

C. Exclusive Procedure

Except as provided by law, this is the exclusive procedure available to bargaining unit employees, the Union or the Agency for the resolution of grievances within its scope.

IV. Representation

A. Election of Representation

Upon filing of a grievance, an employee may elect to be self-represented or represented by a Union representative. Anyone whom the Union has designated in writing is the representative of the Union.

B. Right of Union Presence at Proceedings

Union officials who are representing an employee's grievance have the right to be present during any proceeding under the negotiated grievance procedure.

C. Communication

Where the grievant elects Union representation, meetings and communication with regard to the grievance and any attempts at resolution shall be made through the designated Union representative.

D. Scheduling Meetings (Same Schedule)

When the grievant and the representative are on the same fixed shift, all steps in the grievance process will be scheduled during that shift, unless the Parties mutually agree otherwise.

E. Scheduling Meetings (Different Schedules)

In situations where the grievant(s) and representative are on different work schedules and/or locations, the Parties will make every reasonable effort to schedule all steps in the grievance process to the common work times of the grievant(s) and representative unless the parties mutually agree otherwise.

V. Resolution of Grievances & Employee Standing

The Union and the Agency agree that grievances should be settled in an orderly, prompt and equitable manner so that the efficiency of the Agency may be maintained and morale of employees shall not be impaired. Every effort shall be made by the Agency and the Union to settle grievances at the first level of supervision. Employees and their representatives will be unimpeded and free from restraint, interference, coercion, discrimination or reprisal, consistent with 5 U.S.C. Chapter 71 and this Agreement, in seeking adjustment of grievances. Employees shall be authorized necessary time while on duty to prepare and participate in

grievances, including individual or group grievances. This time will generally be up to 8 hours; however, employees may request additional time as necessary.

VI. Grievability/Arbitrability Questions

To the extent there is a question about grievability/arbitrability refer to Article 40 on Arbitration.

VII. Time Limits

Prior to filing a grievance, the grievant or the Union is encouraged to informally address the issue or matter with the relevant management official to resolve the issue at the lowest level possible.

A grievance must be presented within 35 days after the date of the incident giving rise to the grievance or 35 days after the incident became known or should have been known. The "continuing violation" doctrine shall only apply if the discrete act, omission, or change that precipitated the alleged continuing violation occurred no more than one year prior to the grievance filing date. Failure to abide by these time limitations shall render the grievance time barred.

The grievant must follow all the process steps in order to move the grievance to the next level in the process. The grievant must also provide documentation to show the response or lack thereof at each stage in the grievance and present a tabbed case file if applicable to denote the documents submitted.

If an applicable time limit falls on either the weekend or on a federal holiday, the deadline will automatically be extended to the next business day.

A. Proof of Service

Proof of service shall be a return post office receipt executed by the person served; or a written acknowledgment from the person served when hand delivered; or an email confirmation making notice of receipt from the person being served.

B. Extensions

All the time limits in this Article may be extended by mutual consent.

VIII. Options

A. Rights to File Under 5 U.S.C. 7121

In accordance with 5 U.S.C. 7121, an employee at his/her option may raise matters covered under Sections 4303 (Unacceptable Performance) and 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. Rights to File Under 5 U.S.C. 2302

Similarly, an employee affected by a prohibited personnel practice under 5 U.S.C. 2302(b)(1) of the Civil Service Reform Act 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.

C. Requirements for EEO

Before filing a grievance which alleges discrimination, the employee must first discuss the allegation with an EEO counselor. This discussion must be within 45 calendar days after the event causing the allegation or after the date the employee became aware of the event. The counselor shall have 30 calendar days to resolve the matter informally. If the counseling is unsuccessful, he/she will give the employee a written notice stating his/her right to file either a formal complaint under the statutory EEO procedure or a grievance under this procedure. If the employee elects to file under the negotiated procedure, he/she shall proceed under Section 9 of this article within 15 working days from the date of an employee's final interview with the EEO counselor and attach a copy of the counselor's notification to the grievance. The steps will then follow in sequence as described under the grievance procedure.

IX. Procedures for Employee Grievances

A. Requirement to Coordinate with Union

Bargaining Unit employees seeking to file a grievance on their own behalf must submit all grievances to the local union office 5 business days before beginning Step 1 of the grievance process. When submitting a Step 1 grievance, the employee shall certify that he or she has submitted a copy of the grievance along with the date, time, and name of Union official to whom the submission was made.

B. Step One (1)

A grievance must be submitted in writing, and presented to the Step One (1) management official, the first-line supervisor or the lowest-level management official with the authority to resolve the grievance. The management official receiving a grievance will coordinate with the Office of Labor Relations in responding to the grievance or to determine the responsible management official with the authority to address the grievance. The written grievance should normally contain a description of the matter(s) being grieved, including the Article(s) of the Agreement that is involved. The parties will meet either in

person or electronically within five work days of receiving the grievance and discuss the grievance informally.

The responsible management official shall issue a written decision within 30 days of the grievance being filed. The Employer may request the Union or employee grant an extension. If a decision is not issued within the time allotted, the Union or employee may elevate the grievance to Step 2.

C. Step Two (2)

If either the employee or the Union is not satisfied with the grievance decision in Step One, the Employer has not responded to the Step One grievance in a timely manner, or the grievance is a President's grievance as described above, the employee or Union may pursue a Step Two grievance. The Step Two grievance shall be submitted to the Chief of Labor Relations (or the designee) for processing within 14 days after the employee or Union has the right to pursue a Step Two grievance (or 30 days if it is a President's Grievance per the time lines described previously). If a Step One decision has been issued, the employee or Union shall describe in specific written detail the reasons and rationale for the disagreement with the Step One decision.

Upon receipt of a Step Two grievance, the Chief of Labor Relations (or the designee) shall coordinate the grievance process with a management official at least one level above the management official that rendered or should have rendered the Step One decision. In the unlikely event that there is no management official with authority at least one level above the Step One management official, the grievance will automatically be converted to a Step Three grievance with a decision to be rendered by the Step Three grievance official described below. The written decision, unless the Union grants an extension, shall be issued within 30 days of the filing of the Step Two grievance. If a decision is not given at the allotted time, the grievance may be elevated to a Step Three grievance as described below.

To the greatest extent practicable, the Chief of Labor Relations (or his/her designee) may conduct or coordinate with appropriate management officials a Step 2 grievance meeting with the Union and/or grievant. The meeting may be conducted via electronic or telephonic means but will be conducted within seven work days.

If an employee elects to grieve a disciplinary decision of a Deciding Official, this grievance will begin at Step 2.

D. Step Three (3)

If either the employee or the Union is not satisfied with the grievance decision in Step Two or the Employer has not responded to the Step Two grievance in a timely manner, the employee or Union may pursue a Step Three grievance. The Step Three grievance shall be filed with the Chief of Labor Relations (or the designee) for processing within 14 days after the employee or Union has the

right to pursue a Step Three grievance. If a Step Two decision has been issued, the employee or Union shall describe in written detail the reasons and rationale why it disagrees with the Step Two decision.

Upon receipt of a Step Three grievance, the Chief of Labor Relations (or the designee) shall coordinate with the Director or the designated Grievance Official. The Director or the designated Grievance Official shall render a final decision, unless the employee or Union grants an extension, within 30 days after receipt of the Step Three grievance.

To the greatest extent practicable, the Chief of Labor Relations (or his/her designee) may conduct or coordinate with appropriate management officials a Step 3 grievance meeting with the Union and/or grievant. The meeting may be conducted via electronic or telephonic means.

If the Employer does not issue a decision within the allotted time, the aggrieved party may invoke arbitration per Article 40.

X. Grievance Decisions

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.

XI. Failure to Meet Requirements

A. In employee grievances, failure on the part of the Agency to meet any of the time requirements of this procedure will permit the grievance to advance to the next step.

B. If the grievant, after receiving a decision fails to timely pursue the grievance, the grievance shall be terminated.

C. Failure to issue a decision will not in and of itself terminate a grievance.

XII. Withdrawal

The Union, acting as the responsible representative of all employees in the bargaining unit, may, at any step of this procedure, withdraw on a nondiscriminatory basis from the grievance.

ARTICLE 40
ARBITRATION

I. Purpose

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 Agency, which are not satisfactorily resolved by the Negotiated Grievance Procedure found in Article 39 of this Agreement. A referral to arbitration can be made only by the Union or the Agency.

II. Invocation of Arbitration

Any party wishing to arbitrate a grievance not settled through the grievance procedures must serve written notice invoking arbitration to the Chief of Labor Relations (or the designee) within 30 days after either the receipt of a Step 3 decision or the lack of a Step 3 decision within the timeframes provided. The written notice invocation must describe the reasons the Union disagrees with the Step 3 decision if a Step 3 decision was issued. Failure to describe the reasons and rationale for the disagreement shall result in the rejection of the invocation of arbitration without the requirement of the nonmoving party having to participate in arbitration.

Upon receipt of a proper invocation of arbitration, the Employer shall as soon as reasonably practicable request from the Federal Mediation and Conciliation Service (FMCS) a panel of 7 potential arbitrators.

A. Preliminary Procedures

1. The moving party shall contact the opposing party within 14 days after both receive a list of arbitrators from the FMCS. Unless otherwise agreed, the parties will take turns striking an arbitrator's name from the list, repeating this procedure until one name remains. The remaining person shall be the duly selected arbitrator. If the FMCS provides an odd number of names of arbitrators, the Union shall strike a name first. If the FMCS provides an even number of names of arbitrators, the Employer shall strike a name first.

2. If the moving party fails to contact the other party within 14 days as described above, the moving party has failed to exercise its right to arbitration and the other party is under no obligation to proceed to hearing on the issue.

3. The Employer is responsible for selecting the location of the arbitration hearing along with ensuring the availability of the proper facilities to hold the hearing. The selection of a hearing site will consider such factors as the overall cost to the government, the issues to be considered in the hearing, the location of the grievant, witnesses or the evidence in the dispute.

4. All arbitration hearings shall be scheduled during the regular work week except by mutual consent of the parties.

5. Arbitration hearings shall be closed except by mutual consent of the parties.

B. Closed Forum Hearings

When a grievance concerns a complaint of sexual harassment, as defined in Article 15, Equal Employment Opportunity, the hearing shall be a closed forum upon request of the Union.

III. Authority of the Arbitrator

The Arbitrator's authority shall be limited to deciding only the issue or issues presented in a grievance or other jurisdictional issues that can be raised at any time. If the parties do not agree on a joint submission of the issue for arbitration, each party may submit its proposed framing of the issue at the hearing and the Arbitrator shall determine the issue to be heard. The Arbitrator has full authority to award appropriate remedies and attorney fees as provided by law and regulation.

IV. Jurisdictional Issues

If the non-moving party contends that an Arbitrator lacks jurisdiction to hear the grievance based upon either non-grievability or non-arbitrability, the non-moving party may require a two-step arbitration hearing where the first issue to be decided prior to hearing the merits of the matter is whether the Arbitrator has jurisdiction. The intent to proceed with a two-step arbitration hearing must be disclosed to the other party prior to the actual selection of an Arbitrator. Failure to disclose to the other party prior to the selection of the Arbitrator to proceed on a two-step basis will result in the selected Arbitrator having jurisdiction to render a decision on both jurisdiction on the substantive matter in the same hearing without the requirement of a two-step arbitration hearing.

The parties understand that the selection of an Arbitrator on the issue of jurisdiction where a two-step arbitration hearing is required shall only empower the Arbitrator to render an Award on jurisdiction. If it is decided that an Arbitrator has jurisdiction, a new Arbitrator, unless the parties agree otherwise, shall be selected to hear the substantive matter. The selection process for the new Arbitrator to hear the substantive matter will follow the same procedures described in the previous section for selecting Arbitrators.

After the selection of the Arbitrator, the parties may agree to require the Arbitrator to render a decision by written briefs with supportive documentation or require the Arbitrator to hold an actual hearing to adjudicate the issue of jurisdiction.

V. Failure to Proceed

If for any period of at least 6 months after arbitration has been invoked the moving party does not demonstrate continued and active pursuit of the issue underlying the

arbitration request, the non-moving party may consider the matter abandoned with prejudice and no longer agree to hear the matter before an Arbitrator. Failure to demonstrate continued active pursuit may be established by inaction, continuous failure to respond to a non-moving party's request in connection with some aspect of the arbitration, or continuous requests for delays without any good cause shown.

VI. Rules for Expedited Arbitration

The following expedited arbitration process is available to provide a swift and economical method for the resolution of identified disputes. If the Union wishes to utilize expedited arbitration, the Union President or designee shall within ten (10) days of the date arbitration is invoked, notify the principal management official of its intent to request expedited arbitration. The Union may, however, withdraw its request for the expedited arbitration procedure at any time prior to the setting of the hearing date. Group grievances may be included by mutual consent. Expedited arbitration may not be used for Union or Employer grievances.

A. Matters for Expedited Arbitration

The Parties agree that the following matters may be submitted for expedited arbitration, at the option of the Union:

1. Suspensions for 14 days or less;
2. Oral or written reprimands;
3. Actions imposing sick leave restrictions;
4. Sick leave, annual leave, LWOP, or AWOL disputes;
5. Denial of WIGI;
6. Individual disputes over AWS or telework;
7. Disputes over performance appraisals;
8. Career ladder promotions; or
9. Health and safety issues.

B. The following rules apply to the conduct of the expedited arbitration hearing:

1. Briefs will not be filed either before or after the hearing and a transcript will not be made unless mutually agreed to by the Parties or required by the arbitrator;
2. Parties will be encouraged to use stipulations of fact and expected testimony for uncontroverted evidence;
3. Parties may present closing statements orally at the conclusion of the hearing;

VII. Pre-Arbitration Hearing Procedure

The parties shall abide by the following pre-arbitration hearing procedure for both arbitration hearings on the issue of jurisdiction and hearings based upon a substantive matter, and it may only be amended by agreement of the parties. Failure to abide by these procedures will lead to a delay of the hearing until all procedures are completed to satisfaction, if not its automatic dismissal:

A. Legal Theories or Arguments Pre-Submission

At least 2 weeks prior to the scheduled hearing date, each party shall submit to the other party in writing its various legal theories and arguments as to why it believes it should prevail before the arbitrator. The written submission is to include the legal theories or arguments the party intends to raise in addition to its proposed framing of the issue and the remedy, if any, requested. Failure to address the legal theories or arguments per this submission but raised for the first time at any stage thereafter shall result in the other party having the opportunity to either continue, reopen, or delay the hearing to ensure it is able to secure the proper witnesses to respond or testify to the new argument or theory or any other reasonable means to ensure that the party have a full opportunity to respond to the new argument or theory that had not been previously disclosed. If prior to the scheduled hearing date, but after the legal theory or argument pre-submission has been served to the other party, either party discovers an additional legal theory or argument it wishes to raise, the party shall promptly notify the other party in writing of the additional legal theory or argument. Upon receipt, the party receiving the additional legal theory or argument may unilaterally choose to continue, reopen, or delay the hearing based upon the new legal theory argument or proceed with the scheduled hearing date.

B. Documents

At least 15 days prior to the scheduled hearing date, each party shall serve to the other party copies of all documents it intends to introduce as evidence during the hearing. If a document that has not been disclosed to the other party is introduced as evidence during the hearing, the other party shall have the right to continue the hearing until a later date to ensure it has an opportunity to provide rebuttal evidence to address the new document.

C. Pending Requests for Information

If after Arbitration has been invoked the Union has a pending Request for Information related to the Arbitration, the pending Request for Information shall not constitute grounds to delay the hearing. However, if the Union reasonably believes the information requested will be relevant to the hearing, it shall consider the processing time and other factors (e.g., possible need to pursue a ULP charge if the Employer does not turn over the information) prior to agreeing to a hearing date.

D. Witnesses

At least 15 days prior to the scheduled hearing date, each party shall serve to the other party a witness list along with written proffers as to what a witness will testify. If a party believes a particular witness is irrelevant, repetitive, or has other reasons it believes a witness should be excluded, the parties may attempt to mutually resolve the issue. If the issue cannot be resolved, the parties may schedule a conference call with the Arbitrator at least seven days in advance of the scheduled hearing date to have the Arbitrator resolve the issue.

The grievant and employees who are called as witnesses, shall be excused from their duties to the extent necessary to participate in the arbitration hearing without loss of pay or charge to leave. Approved witnesses may be provided up to 4 hours of official time to prepare and assist the Union with preparation for the arbitration hearing. Travel expenses for Union witnesses shall be the responsibility of the Union. Travel expenses for Employer witnesses shall be the responsibility of the Employer. Either party may require their respective witnesses to testify by phone or video teleconference or other electronic means to save on expenses.

VIII. Ex Parte Communications with Arbitrator

There will be no communication with the arbitrator unless both Parties are participating in the communication.

IX. Arbitration Hearing

Arbitration hearings will provide all parties the opportunity to present an opening statement, present testimony, and introduce and enter evidence into the record. Although the Federal Rules of Civil Procedure or the Federal Rules of Evidence need not be strictly applied, such rules of procedure and evidence shall serve as guides to the parties and the Arbitrator in connection with the conduct of the hearing.

Either party may request the hearing be transcribed. If the hearing is transcribed, an original transcript shall be provided to the Arbitrator. If both parties agree to have the hearing transcribed, the costs shall be borne equally by the parties. If only one party requests the hearing to be transcribed, the cost shall be borne by the requesting party. If only one party requests the hearing to be transcribed, the requesting party will have exclusive use of and access to the transcript and the other party shall not be entitled to a copy of the transcript or to review the transcript.

Either party may request the opportunity to submit post hearing briefs at a mutually agreed upon date after the hearing. If after the post hearing briefs have been served, either party raises a new argument or legal theory not previously disclosed pursuant to the Legal Theory or Arguments Pre-Submission described above, the Arbitrator shall grant the other party the right to submit a reply to address the new argument or legal theory or introduce new evidence by hearing or otherwise depending on the circumstances of the new theory or argument. Time frames to

submit either a reply or the introduction of new evidence by hearing or otherwise shall be mutually worked out between the parties and the Arbitrator to ensure the other party has reasonable opportunity to respond.

X. Arbitrator's Award

The Arbitrator will be requested to render the decision as quickly as possible but not later than 30 days after the close of the record unless the parties agree to extend the time limit.

The Arbitrator's award shall be binding on the parties subject to an exception pursuant to the FLRA regulations being pursued.

The appropriate Party will immediately take the actions required by the final award within thirty (30) days after it becomes final and binding, except as provided by the Award. This section does not apply to the expedited arbitration procedure.

XI. Ambiguity in Arbitrator's Award

Once an Arbitrator issues an Award, the Arbitrator is without jurisdiction to reopen the Award. However, if relevant language in the Award contains an ambiguity, either party can request the Arbitrator to clarify the ambiguity. However, a party does so at its own peril as it is possible that requesting an Arbitrator to clarify an alleged ambiguity may result in the party not having enough time to pursue any exceptions based upon the alleged ambiguity.

XII. Cost of Arbitration

A. Expenses

All fees and expenses of retaining an Arbitrator will be borne equally by the Employer and the Union. However, in the event that an arbitrator clearly and without dispute rules in favor of one party, the other party is responsible for the cost of the arbitration.

If the underlying matter is a disciplinary action imposed upon an employee grievant, the Employer will pay the travel and expenses of only the individual grievant to attend the hearing. Otherwise, the Union is responsible for the travel and expenses for all its representatives, grievants, and witnesses.

B. Cost of Reporter or Transcripts

The cost of a reporter or transcript, if used, shall be shared equally by the Parties if it is mutually agreed by the Parties to have one prior to the date of the hearing, or where requested by the arbitrator. Absent mutual agreement, either Party may unilaterally request that a transcript be prepared but must bear all costs incurred in its preparation. The Parties are encouraged to use only those reporters or transcription companies which will provide electronic copies of transcripts in an effort to save time and money.

C. Resolution Prior to Hearing and or Postponement

If, prior to the arbitration hearing, the Parties resolve the grievance, any cancellation fees shall be borne equally by both Parties. If a Party requests postponement, that Party shall bear the full cost of any rescheduling fees or postponement fees.

XIII. Attorney Fees & Expenses

A. Explanation Arbitrator's Award of Fees

1. By statute, an arbitrator, notwithstanding the functus officio doctrine, has jurisdiction to resolve a motion for attorney fees from the Union after an award becomes final and binding.
2. The arbitrator's award on the issue of attorney fees will be issued within thirty (30) days of the arbitrator's receipt of the Agency's response to the Union's request. The arbitrator will provide a detailed explanation of why fees were or were not granted, as well as the hours and rates allowed.
3. All charges of the arbitrator incurred in connection with the award of attorney fees will be shared equally by the parties.

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APPENDIX A:
Definition of Terms

Definitions

Absence without official leave (AWOL): is a period of absence without pay for which the employee did not obtain approval or for which a request for leave which has not been approved which is therefore unpaid.

Accrued Leave: the leave earned by an employee during the current leave year that is unused at any given time in that year.

Accumulated leave: the unused leave remaining to the credit of an employee at the beginning of a leave year.

Administrative workweek: any period of seven consecutive 24-hour periods designated in advance by the head of the Agency under 5 U.S.C. 6101.

Adverse action: is an official personnel action per the standards of 5 CFR 1201.3, usually taken for conduct reasons, which adversely affects an employee. Adverse actions are of a more severe nature than a disciplinary action. They include removal, suspension for more than 14 days, reduction in grade or pay, and furlough for 30 days or less.

Agency: Refers to the United States Marshals Service.

Agreement: Refers to the Master Agreement between the United States Marshals Service and the International Council of U.S. Marshals Service Locals.

Alternative Discipline: provides a choice or an alternative to traditional discipline, usually when the traditional penalty would be less than removal, and there has been an admission of misconduct.

Alternative work schedule (AWS): both flexible and compressed work schedules.

Annual Leave: is a period of approved absence with pay from official duties. It is intended to allow the employee vacation, rest and recreation. It is also intended for the employee's use in attending to personal or emergency business, to extend the time available to the employee under some other leave programs, and for use with specific military entitlement.

Arbitration: An official process, wherein a neutral third party, will resolve Labor/Management grievances by rendering a final and binding decision.

Bargaining Unit Employee: Refers to a member of the bargaining unit as defined in Article 1 of this Agreement.

Conditions of Employment: Refers to personnel policies, practices, and matters, whether established by rule, regulation, or otherwise, affecting working conditions, except that such term does not include policies, practices, and matters, (1) relating to prohibited political activities; (2) relating to the classifications of any position; or (3) to the extent such matters

are provided for by Federal statute.

Confidential Employee: Per 5 U.S.C. 7103 (a) (13), an employee who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations.

Basic work requirement: the number of hours, excluding overtime hours, an employee is required to work or to account for by charging leave, credit hours, excused absence, holiday hours, compensatory time off or time off as an award. For full-time employees, the basic work requirement is 80 hours per biweekly pay period. A part-time employee's basic work requirement is the number of hours the employee is scheduled to work in a biweekly pay period.

Biweekly pay period: the two-week period for which an employee is scheduled to perform work.

Compressed work schedule (CWS): in the case of a full-time employee, an 80-hour biweekly basic work requirement that is scheduled by the Agency for less than 10 workdays; and in the case of a part-time employee, a biweekly basic work requirement of less than 80 hours that is scheduled by the Agency for less than 10 workdays and that may require the employee to work more than eight hours in a day.

Core hours: the time periods during the workday, workweek or pay period that are within the tour of duty during which an employee covered by a flexible work schedule is required to be present for work.

Credit hours: any hours within a flexible work schedule which are in excess of an employee's basic work requirement and which the employee elects to work so as to vary the length of a workweek or a workday.

Day: is a calendar day, unless specified otherwise.

Detail: is the temporary assignment of an employee to a different position or set of duties for a specified period with the employee returning to his/her original position at the end of the detail. There is no formal position change. Officially the employee continues to hold the position from which detailed and keeps the same status and pay.

Disciplinary action: is an official personnel action, usually taken for conduct reasons, which adversely affect an employee. Disciplinary actions include written reprimands and suspensions for 14 days or less.

Dues: The term "dues" includes regular and periodic dues, fees, and assessments of the exclusive representative of the unit. The Agency shall honor the assignment and make allotments pursuant to the assignment.

Emergency: An incident that requires immediate questioning of an employee, when waiting for a Union representative could compromise public safety (e.g. escape, shooting incident with injuries).

Employee: Refers to a member of the bargaining unit as defined in Article 1 of this Agreement.

Employer: Refers to the United States Marshals Service.

Exclusive Representative: Any labor organization which is certified as the exclusive representative of employees in an appropriate unit pursuant to 5 USC 7111. For the purposes of this Agreement, the International Council of U.S. Marshals Service Locals, C-210, American Federation of Government Employees is the exclusive representative of all bargaining unit employees of the United States Marshals Service.

Excused Absence (**Administrative Leave**): is an approved absence from duty without loss of pay and without charge to leave.

Family member: the following relatives of the employee.

a. Spouse and parents thereof;
b. Children, including adopted children and spouses thereof;
c. Parents;
d. Brothers and sisters, and spouses thereof; and
e. Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.
f. Grandparents and grandchildren, and spouses thereof;
g. Domestic partner and parents thereof, including domestic partners of any individual in a. through f. of this definition

Flexible work schedule (FWS): a work schedule established under 5 U.S.C. § 6122, that in the case of a full-time employee, has an 80-hour biweekly basic work requirement that allows an employee to determine his or her own schedule within the limits set by this Agreement; and in the case of a part-time employee, has a biweekly basic work requirement of less than 80 hours that allows an employee to determine his or her own schedule within the limits set by this Agreement.

Flexitour: a type of flexible schedule in which an employee is allowed to select starting and stopping times within the flexible hours. Once selected, the hours are fixed until the Agency provides an opportunity to select different starting and stopping times.

Furlough: the placing of an employee in a temporary status without duties or pay because of lack of work or other non-disciplinary cause.

Gliding Schedule: a type of flexible work schedule in which a full-time employee who has a basic work requirement of eight hours in each day and 40 hours in each week, may with supervisory approval, select a starting and stopping time each day, and may change starting and stopping times daily within the established flexible hours.

Hardship Review Panel: A panel of volunteer USMS management personnel who review employee requests for medical hardship transfers and recommend actions to take on them.

Indefinite Suspension: the placing of an employee in a temporary status without duties or pay pending investigation, inquiry, or further agency action. The indefinite suspension continues for an indeterminate period of time and ends with the occurrence of the pending conditions set forth in the notice of action which may include the completion of any subsequent administrative action.

Last Chance Agreements: In lieu of removing an employee, the agency and the employee may enter into an agreement in which the proposal removal will be held in abeyance for an agreed upon period of time and under which the employee accepts an agreed upon discipline short of removal. The employee agrees not to engage in discipline during the abeyance period that would constitute a breach of the agreement. If the employee fails to adhere to the terms of the agreement, the employer may affect the removal of the employee without further due process and provide the employee with an extremely limited right of reviewing the removal.

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 law, rules, regulations and this Agreement.

Leave year: the period beginning with the first day of the first complete biweekly pay period in a calendar year and ending with the day immediately before the first day of the first complete biweekly pay period in the following calendar year.

Management: Refers to supervisors, management officials, and all others in managerial positions. Management and Employer are synonymous.

Management Official: An individual in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the agency.

Management Policy: Refers to the inclusion of policies in this Agreement are primarily for information, guidance, and direction and are not subject to bargaining.

Management Rights: As provided by the Statute (5 U.S.C. 7106), refers to the statutory authority of Management Officials of the Agency to determine the mission, budget, organization, number of employees, and internal security practices of the Agency; and in accordance with applicable laws to hire, assign, direct, layoff, and retain employees of the Agency or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees to assign work, to make determinations with respect to contract out, and to determine the personnel by which Agency operations shall be conducted. With respect to filling positions, to make selections for appointment from among properly ranked and certified candidates for promotion; or any other appropriate source; and to take whatever actions may be necessary to carry out the Agency's mission during emergencies.

Maxiflex Schedule: a type of flexible work schedule that contains core hours in fewer than 10 workdays in the biweekly pay, and in which a full-time employee has a basic work requirement of 80 hours for the biweekly pay period, but in which an employee may vary the number of hours worked on a given workday or the number of hours each week within the limits established by the Agency.

Medical documentation or documentation of a medical condition: is a statement from a licensed physician or other appropriate practitioner who provides information the Agency considers necessary to enable it to make an employment decision. To be acceptable, the diagnosis or clinical impression must be justified according to established diagnostic criteria and the conclusions and recommendations must not be inconsistent with generally accepted professional standards. The determination that the diagnosis meets these criteria is made by or in coordination with a physician, or if appropriate, a practitioner of the same discipline as the one who issued the statement.

Medical conditions: is a health impairment which results from injury or disease, including psychiatric disease.

Medical standard: is a written description of the medical requirements for a particular occupation based on a determination that a certain level of fitness of health status is required for successful performance.

Non-professional Employee: An employee who does not meet the criteria found in 5 C.F.R. 551.207.

"**Official duty station**" and "**Official worksite**": are both defined to mean an area within the boundaries of the city, town or other established area to which the employee normally reports to work.

Parties: Refers to both the Union and the Employer.

Past Practice: Refers to mutually understood and accepted practices affecting conditions of employment. Such practices may not conflict with Employer policies and regulations.

Pathways Program: Student hiring authorities for current and recently graduated students.

Personal or Family Medical Situation: A seriously debilitating or life-threatening medical condition affecting an employee or a family member that the employee must address provided it is a new condition or was not known prior to the employee's appointment to his or her current position.

Professional Employee: An employee who meets the requirements of 5 C.F.R. 551.207.

Progressive Discipline: is the process of using increasingly severe steps or measures when an employee fails to correct behavior after being given a reasonable opportunity to do so.

Promotion: the change of an employee while continuously employed to either a higher grade level within the same job classification and pay schedule or to a position with a higher rate of basic pay in a different job classification system and pay schedule.

Qualified/Eligible: candidates who meet all minimum qualifications, including appropriate selective factors, and all legal, regulatory and administrative requirements for a position established by the Office of Personnel Management.

Qualified person with a disability: with respect to employment, a person with one or more impairment(s) who, with or without reasonable accommodation, can perform the essential functions of the position in question, without endangering the health and safety of him/herself or others and who meets the experience and/or education requirements (which may include passing a written test) of the position in question; or meets the criteria for appointment under one of the special appointing authorities for persons with disabilities.

Reassignment: is the movement of an employee to another position for which he/she qualifies at the same grade level and with an equivalent target grade or equivalent band level, if applicable without promotion or demotion. On reassignment within the General Schedule pay system, the employee's salary is set at their existing rate of pay.

Removal: is an involuntary separation from federal service which terminates the employer-employee relationship.

Sick leave: is a period of approved absence with pay from official duties. It is intended to allow the employee time for physical or mental incapacitation and medical, dental, and optical examinations and/or treatment. It is also intended for the employee's use in family medical situations, bereavement, and for adoption purposes, in accordance with applicable law, rules, regulations and this Agreement.

Statute: Refers to the Federal Service Labor-Management Relations Statute, Title 5, United States Code, Chapter 71.

Supervisor: An individual employed by an agency having authority in the interests of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances or to effectively recommend such action.

Suspension: means placing an employee in a temporary status without duties or pay for misconduct.

Temporary promotion: is the temporary assignment of an employee to a higher graded position for a specified period of time, for no more than 120 days with the employee returning to his/her permanent position upon the expiration of the temporary action. Competition is required for temporary promotions of more than 120 days.

Tour of duty: the hours of a day and the days of an administrative workweek that constitute an employee's regularly scheduled administrative workweek. Tour of duty under a *flexible work schedule* means the limits set by this Agreement within which an employee must complete his or her basic work requirement. Under a *compressed work schedule* or other *fixed schedule*, tour of duty is synonymous with basic work requirement.

Transfer of Function (TOF): 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 been performed in the other competitive area(s) affected.

Union: Refers to the International Council of U.S. Marshals Service Locals, C-210, American Federation of Government Employees.

Union Official: Refers to any accredited National Representative of the Union, the duly elected or appointed officials of the International Council of U.S. Marshals Service Locals, C-210, including stewards.

Variable Day Schedule: a type of flexible work schedule containing core hours on each workday in the week, and in which a full-time employee has a basic work requirement of 40 hours each week of the biweekly pay period, but in which an employee may vary the number of hours worked on a given workday within the week within the limits established in this Agreement.

Variable Week Schedule: a type of flexible work schedule containing core hours on each workday in the biweekly pay period, and in which a full-time employee has a basic work requirement of 80 hours for the biweekly pay period, but in which an employee may with supervisory approval vary the number of hours worked on a given workday within the week within the limits established in this Agreement.

Weingarten: Refers to the right of bargaining unit employees to request Union representation to be present at examinations for interrogations of employees as set forth in the Statute (5 United States Code 7114 (a) (2) (B).

APPENDIX B: Federal Service Labor-Management Relations Statutes

§ 7101. Findings and purpose

(a) The Congress finds that--

(1) experience in both private and public employment indicates that the statutory protection of the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them--

(A) safeguards the public interest,

(B) contributes to the effective conduct of public business, and

(C) facilitates and encourages the amicable settlements of disputes between employees and their employers involving conditions of employment; and

(2) the public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the Government.

Therefore, labor organizations and collective bargaining in the civil service are in the public interest.

(b) It is the purpose of this chapter to prescribe certain rights and obligations of the employees of the Federal Government and to establish procedures which are designed to meet the special requirements and needs of the Government. The provisions of this chapter should be interpreted in a manner consistent with the requirement of an effective and efficient Government.

§ 7102. Employees' rights

Each employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided under this chapter, such right includes the right--

(1) to act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the executive branch of the Government, the Congress, or other appropriate

authorities, and

(2) to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this chapter.

§ 7103. Definitions; application

(a) For the purpose of this chapter--

(1) "person" means an individual, labor organization, or agency;

(2) "employee" means an individual--

(A) employed in an agency; or

(B) whose employment in an agency has ceased because of any unfair labor practice under section 7116 of this title and who has not obtained any other regular and substantially equivalent employment, as determined under regulations prescribed by the Federal Labor Relations Authority;

but does not include--

(i) an alien or noncitizen of the United States who occupies a position outside the United States;

(ii) a member of the uniformed services;

(iii) a supervisor or a management official;

(iv) an officer or employee in the Foreign Service of the United States employed in the Department of State, the International Communication Agency, the Agency for International Development, the Department of Agriculture, or the Department of Commerce; or

(v) any person who participates in a strike in violation of section 7311 of this title;

(3) "agency" means an Executive agency (including a nonappropriated fund instrumentality described in section 2105(c) of this title and the Veterans' Canteen Service, Department of Veterans Affairs), the Library of Congress, the Government Printing Office,

and the Smithsonian Institution but does not include--

(A) the Government Accountability Office;

(B) the Federal Bureau of Investigation;

(C) the Central Intelligence Agency;

(D) the National Security Agency;

(E) the Tennessee Valley Authority;

(F) the Federal Labor Relations Authority;

(G) the Federal Service Impasses Panel; or

(H) the United States Secret Service and the United States Secret Service Uniformed Division.

(4) "labor organization" means an organization composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose the dealing with an agency concerning grievances and conditions of employment, but does not include--

(A) an organization which, by its constitution, bylaws, tacit agreement among its members, or otherwise, denies membership because of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

(B) an organization which advocates the overthrow of the constitutional form of government of the United States;

(C) an organization sponsored by an agency; or

(D) an organization which participates in the conduct of a strike against the Government or any agency thereof or imposes a duty or obligation to conduct, assist, or participate in such a strike;

(5) "dues" means dues, fees, and assessments;

(6) “Authority” means the Federal Labor Relations Authority described in section 7104(a) of this title;

(7) “Panel” means the Federal Service Impasses Panel described in section 7119(c) of this title;

(8) “collective bargaining agreement” means an agreement entered into as a result of collective bargaining pursuant to the provisions of this chapter;

(9) “grievance” means any complaint--

(A) by any employee concerning any matter relating to the employment of the employee;

(B) by any labor organization concerning any matter relating to the employment of any employee; or

(C) by any employee, labor organization, or agency concerning--

(i) the effect or interpretation, or a claim of breach, of a collective bargaining agreement; or

(ii) any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment;

(10) “supervisor” means an individual employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment, except that, with respect to any unit which includes firefighters or nurses, the term “supervisor” includes only those individuals who devote a preponderance of their employment time to exercising such authority;

(11) “management official” means an individual employed by an agency in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the agency;

(12) “collective bargaining” means the performance of the mutual obligation of the representative of an agency and the exclusive representative of employees in an appropriate unit in the agency to meet at reasonable times and to consult and bargain in a good-faith

effort to reach agreement with respect to the conditions of employment affecting such employees and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but the obligation referred to in this paragraph does not compel either party to agree to a proposal or to make a concession;

(13) "confidential employee" means an employee who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations;

(14) "conditions of employment" means personnel policies, practices, and matters, whether established by rule, regulation, or otherwise, affecting working conditions, except that such term does not include policies, practices, and matters--

(A) relating to political activities prohibited under subchapter III of chapter 73 of this title;

(B) relating to the classification of any position; or

(C) to the extent such matters are specifically provided for by Federal statute;

(15) "professional employee" means--

(A) an employee engaged in the performance of work--

(i) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital (as distinguished from knowledge acquired by a general academic education, or from an apprenticeship, or from training in the performance of routine mental, manual, mechanical, or physical activities);

(ii) requiring the consistent exercise of discretion and judgment in its performance;

(iii) which is predominantly intellectual and varied in character (as distinguished from routine mental, manual, mechanical, or physical work); and

(iv) which is of such character that the output produced or the result accomplished by such work cannot be standardized in relation to a given period of time; or

(B) an employee who has completed the courses of specialized intellectual instruction and study described in subparagraph (A)(i) of this paragraph and is performing related work

under appropriate direction or guidance to qualify the employee as a professional employee described in subparagraph (A) of this paragraph;

(16) “exclusive representative” means any labor organization which--

(A) is certified as the exclusive representative of employees in an appropriate unit pursuant to section 7111 of this title; or

(B) was recognized by an agency immediately before the effective date of this chapter as the exclusive representative of employees in an appropriate unit--

(i) on the basis of an election, or

(ii) on any basis other than an election,

and continues to be so recognized in accordance with the provisions of this chapter;

(17) “firefighter” means any employee engaged in the performance of work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment; and

(18) “United States” means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, and any territory or possession of the United States.

(b)(1) The President may issue an order excluding any agency or subdivision thereof from coverage under this chapter if the President determines that--

(A) the agency or subdivision has as a primary function intelligence, counterintelligence, investigative, or national security work, and

(B) the provisions of this chapter cannot be applied to that agency or subdivision in a manner consistent with national security requirements and considerations.

(2) The President may issue an order suspending any provision of this chapter with respect to any agency, installation, or activity located outside the 50 States and the District of Columbia, if the President determines that the suspension is necessary in the interest of national security.

§ 7104. Federal Labor Relations Authority

(a) The Federal Labor Relations Authority is composed of three members, not more than 2 of whom may be adherents of the same political party. No member shall engage in any other business or employment or hold another office or position in the Government of the United States except as otherwise provided by law.

(b) Members of the Authority shall be appointed by the President by and with the advice and consent of the Senate, and may be removed by the President only upon notice and hearing and only for inefficiency, neglect of duty, or malfeasance in office. The President shall designate one member to serve as Chairman of the Authority. The Chairman is the chief executive and administrative officer of the Authority.

(c) A member of the Authority shall be appointed for a term of 5 years. An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced. The term of any member shall not expire before the earlier of--

(1) the date on which the member's successor takes office, or

(2) the last day of the Congress beginning after the date on which the member's term of office would (but for this paragraph) expire.

(d) A vacancy in the Authority shall not impair the right of the remaining members to exercise all of the powers of the Authority.

(e) The Authority shall make an annual report to the President for transmittal to the Congress which shall include information as to the cases it has heard and the decisions it has rendered.

(f)(1) The General Counsel of the Authority shall be appointed by the President, by and with the advice and consent of the Senate, for a term of 5 years. The General Counsel may be removed at any time by the President. The General Counsel shall hold no other office or position in the Government of the United States except as provided by law.

(2) The General Counsel may--

(A) investigate alleged unfair labor practices under this chapter,

(B) file and prosecute complaints under this chapter, and

(C) exercise such other powers of the Authority as the Authority may prescribe.

(3) The General Counsel shall have direct authority over, and responsibility for, all employees in the office of General Counsel, including employees of the General Counsel in the regional offices of the Authority.

§ 7105. Powers and duties of the Authority

(a)(1) The Authority shall provide leadership in establishing policies and guidance relating to matters under this chapter, and, except as otherwise provided, shall be responsible for carrying out the purpose of this chapter.

(2) The Authority shall, to the extent provided in this chapter and in accordance with regulations prescribed by the Authority--

(A) determine the appropriateness of units for labor organization representation under section 7112 of this title;

(B) supervise or conduct elections to determine whether a labor organization has been selected as an exclusive representative by a majority of the employees in an appropriate unit and otherwise administer the provisions of section 7111 of this title relating to the according of exclusive recognition to labor organizations;

(C) prescribe criteria and resolve issues relating to the granting of national consultation rights under section 7113 of this title;

(D) prescribe criteria and resolve issues relating to determining compelling need for agency rules or regulations under section 7117(b) of this title;

(E) resolves issues relating to the duty to bargain in good faith under section 7117(c) of this title;

(F) prescribe criteria relating to the granting of consultation rights with respect to conditions of employment under section 7117(d) of this title;

(G) conduct hearings and resolve complaints of unfair labor practices under section 7118 of this title;

(H) resolve exceptions to arbitrator's awards under section 7122 of this title; and

(I) take such other actions as are necessary and appropriate to effectively administer the provisions of this chapter.

(b) The Authority shall adopt an official seal which shall be judicially noticed.

(c) The principal office of the Authority shall be in or about the District of Columbia, but the Authority may meet and exercise any or all of its powers at any time or place. Except as otherwise expressly provided by law, the Authority may, by one or more of its members or by such agents as it may designate, make any appropriate inquiry necessary to carry out its duties wherever persons subject to this chapter are located. Any member who participates in the inquiry shall not be disqualified from later participating in a decision of the Authority in any case relating to the inquiry.

(d) The Authority shall appoint an Executive Director and such regional directors, administrative law judges under section 3105 of this title, and other individuals as it may from time to time find necessary for the proper performance of its functions. The Authority may delegate to officers and employees appointed under this subsection authority to perform such duties and make such expenditures as may be necessary.

(e)(1) The Authority may delegate to any regional director its authority under this chapter--

(A) to determine whether a group of employees is an appropriate unit;

(B) to conduct investigations and to provide for hearings;

(C) to determine whether a question of representation exists and to direct an election; and

(D) to supervise or conduct secret ballot elections and certify the results thereof.

(2) The Authority may delegate to any administrative law judge appointed under subsection (d) of this section its authority under section 7118 of this title to determine whether any person has engaged in or is engaging in an unfair labor practice.

(f) If the Authority delegates any authority to any regional director or administrative law judge to take any action pursuant to subsection (e) of this section, the Authority may, upon application by any interested person filed within 60 days after the date of the action, review such action, but the review shall not, unless specifically ordered by the Authority, operate

as a stay of action. The Authority may affirm, modify, or reverse any action reviewed under this subsection. If the Authority does not undertake to grant review of the action under this subsection within 60 days after the later of--

(1) the date of the action; or

(2) the date of the filing of any application under this subsection for review of the action;

the action shall become the action of the Authority at the end of such 60-day period.

(g) In order to carry out its functions under this chapter, the Authority may--

(1) hold hearings;

(2) administer oaths, take the testimony or deposition of any person under oath, and issue subpenas as provided in section 7132 of this title; and

(3) may require an agency or a labor organization to cease and desist from violations of this chapter and require it to take any remedial action it considers appropriate to carry out the policies of this chapter.

(h) Except as provided in section 518 of title 28, relating to litigation before the Supreme Court, attorneys designated by the Authority may appear for the Authority and represent the Authority in any civil action brought in connection with any function carried out by the Authority pursuant to this title or as otherwise authorized by law.

(i) In the exercise of the functions of the Authority under this title, the Authority may request from the Director of the Office of Personnel Management an advisory opinion concerning the proper interpretation of rules, regulations, or policy directives issued by the Office of Personnel Management in connection with any matter before the Authority.

§ 7106. Management rights

(a) Subject to subsection (b) of this section, nothing in this chapter shall affect the authority of any management official of any agency--

(1) to determine the mission, budget, organization, number of employees, and internal security practices of the agency; and

(2) in accordance with applicable laws--

(A) to hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;

(B) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted;

(C) with respect to filling positions, to make selections for appointments from--

(i) among properly ranked and certified candidates for promotion; or

(ii) any other appropriate source; and

(D) to take whatever actions may be necessary to carry out the agency mission during emergencies.

(b) Nothing in this section shall preclude any agency and any labor organization from negotiating--

(1) at the election of the agency, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;

(2) procedures which management officials of the agency will observe in exercising any authority under this section; or

(3) appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials.

Subchapter II. Rights and Duties of Agencies and Labor Organizations

§ 7111. Exclusive recognition of labor organizations

(a) An agency shall accord exclusive recognition to a labor organization if the organization has been selected as the representative, in a secret ballot election, by a majority of the employees in an appropriate unit who cast valid ballots in the election.

(b) If a petition is filed with the Authority--

(1) by any person alleging--

(A) in the case of an appropriate unit for which there is no exclusive representative, that 30 percent of the employees in the appropriate unit wish to be represented for the purpose of collective bargaining by an exclusive representative, or

(B) in the case of an appropriate unit for which there is an exclusive representative, that 30 percent of the employees in the unit allege that the exclusive representative is no longer the representative of the majority of the employees in the unit; or

(2) by any person seeking clarification of, or an amendment to, a certification then in effect or a matter relating to representation;

the Authority shall investigate the petition, and if it has reasonable cause to believe that a question of representation exists, it shall provide an opportunity for a hearing (for which a transcript shall be kept) after reasonable notice. If the Authority finds on the record of the hearing that a question of representation exists, the Authority shall supervise or conduct an election on the question by secret ballot and shall certify the results thereof. An election under this subsection shall not be conducted in any appropriate unit or in any subdivision thereof within which, in the preceding 12 calendar months, a valid election under this subsection has been held.

(c) A labor organization which--

(1) has been designated by at least 10 percent of the employees in the unit specified in any petition filed pursuant to subsection (b) of this section;

(2) has submitted a valid copy of a current or recently expired collective bargaining agreement for the unit; or

(3) has submitted other evidence that it is the exclusive representative of the employees involved;

may intervene with respect to a petition filed pursuant to subsection (b) of this section and shall be placed on the ballot of any election under such subsection (b) with respect to the petition.

(d) The Authority shall determine who is eligible to vote in any election under this section

and shall establish rules governing any such election, which shall include rules allowing employees eligible to vote the opportunity to choose--

(1) from labor organizations on the ballot, that labor organization which the employees wish to have represent them; or

(2) not to be represented by a labor organization.

In any election in which no choice on the ballot receives a majority of the votes cast, a runoff election shall be conducted between the two choices receiving the highest number of votes. A labor organization which receives the majority of the votes cast in an election shall be certified by the Authority as the exclusive representative.

(e) A labor organization seeking exclusive recognition shall submit to the Authority and the agency involved a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives.

(f) Exclusive recognition shall not be accorded to a labor organization--

(1) if the Authority determines that the labor organization is subject to corrupt influences or influences opposed to democratic principles;

(2) in the case of a petition filed pursuant to subsection (b)(1)(A) of this section, if there is not credible evidence that at least 30 percent of the employees in the unit specified in the petition wish to be represented for the purpose of collective bargaining by the labor organization seeking exclusive recognition;

(3) if there is then in effect a lawful written collective bargaining agreement between the agency involved and an exclusive representative (other than the labor organization seeking exclusive recognition) covering any employees included in the unit specified in the petition, unless--

(A) the collective bargaining agreement has been in effect for more than 3 years, or

(B) the petition for exclusive recognition is filed not more than 105 days and not less than 60 days before the expiration date of the collective bargaining agreement; or

(4) if the Authority has, within the previous 12 calendar months, conducted a secret ballot election for the unit described in any petition under this section and in such election a

majority of the employees voting chose a labor organization for certification as the unit's exclusive representative.

(g) Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules or decisions of the Authority.

§ 7112. Determination of appropriate units for labor organization representation

(a) The Authority shall determine the appropriateness of any unit. The Authority shall determine in each case whether, in order to ensure employees the fullest freedom in exercising the rights guaranteed under this chapter, the appropriate unit should be established on an agency, plant, installation, functional, or other basis and shall determine any unit to be an appropriate unit only if the determination will ensure a clear and identifiable community of interest among the employees in the unit and will promote effective dealings with, and efficiency of the operations of the agency involved.

(b) A unit shall not be determined to be appropriate under this section solely on the basis of the extent to which employees in the proposed unit have organized, nor shall a unit be determined to be appropriate if it includes--

(1) except as provided under section 7135(a)(2) of this title, any management official or supervisor;

(2) a confidential employee;

(3) an employee engaged in personnel work in other than a purely clerical capacity;

(4) an employee engaged in administering the provisions of this chapter;

(5) both professional employees and other employees, unless a majority of the professional employees vote for inclusion in the unit;

(6) any employee engaged in intelligence, counterintelligence, investigative, or security work which directly affects national security; or

(7) any employee primarily engaged in investigation or audit functions relating to the work of individuals employed by an agency whose duties directly affect the internal security of the agency, but only if the functions are undertaken to ensure that the duties are discharged

honestly and with integrity.

(c) Any employee who is engaged in administering any provision of law relating to labor-management relations may not be represented by a labor organization--

(1) which represents other individuals to whom such provision applies; or

(2) which is affiliated directly or indirectly with an organization which represents other individuals to whom such provision applies.

(d) Two or more units which are in an agency and for which a labor organization is the exclusive representative may, upon petition by the agency or labor organization, be consolidated with or without an election into a single larger unit if the Authority considers the larger unit to be appropriate. The Authority shall certify the labor organization as the exclusive representative of the new larger unit.

§ 7113. National consultation rights

(a) If, in connection with any agency, no labor organization has been accorded exclusive recognition on an agency basis, a labor organization which is the exclusive representative of a substantial number of the employees of the agency, as determined in accordance with criteria prescribed by the Authority, shall be granted national consultation rights by the agency. National consultation rights shall terminate when the labor organization no longer meets the criteria prescribed by the Authority. Any issue relating to any labor organization's eligibility for, or continuation of, national consultation rights shall be subject to determination by the Authority.

(b)(1) Any labor organization having national consultation rights in connection with any agency under subsection (a) of this section shall--

(A) be informed of any substantive change in conditions of employment proposed by the agency, and

(B) be permitted reasonable time to present its views and recommendations regarding the changes.

(2) If any views or recommendations are presented under paragraph (1) of this subsection to an agency by any labor organization--

(A) the agency shall consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and

(B) the agency shall provide the labor organization a written statement of the reasons for taking the final action.

(c) Nothing in this section shall be construed to limit the right of any agency or exclusive representative to engage in collective bargaining.

§ 7114. Representation rights and duties

(a)(1) A labor organization which has been accorded exclusive recognition is the exclusive representative of the employees in the unit it represents and is entitled to act for, and negotiate collective bargaining agreements covering, all employees in the unit. An exclusive representative is responsible for representing the interests of all employees in the unit it represents without discrimination and without regard to labor organization membership.

(2) An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at--

(A) any formal discussion between one or more representatives of the agency 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 agency in connection with an investigation if--

(i) the employee reasonably believes that the examination may result in disciplinary action against the employee; and

(ii) the employee requests representation.

(3) Each agency shall annually inform its employees of their rights under paragraph (2)(B) of this subsection.

(4) Any agency and any exclusive representative in any appropriate unit in the agency, through appropriate representatives, shall meet and negotiate in good faith for the purposes of arriving at a collective bargaining agreement. In addition, the agency and the exclusive

representative may determine appropriate techniques, consistent with the provisions of section 7119 of this title, to assist in any negotiation.

(5) The rights of an exclusive representative under the provisions of this subsection shall not be construed to preclude an employee from--

(A) being represented by an attorney or other representative, other than the exclusive representative, of the employee's own choosing in any grievance or appeal action; or

(B) exercising grievance or appellate rights established by law, rule, or regulation;

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

(b) The duty of an agency and an exclusive representative to negotiate in good faith under subsection (a) of this section shall include the obligation--

(1) to approach the negotiations with a sincere resolve to reach a collective bargaining agreement;

(2) to be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on any condition of employment;

(3) to meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays;

(4) in the case of an agency, to furnish to the exclusive representative involved, or its authorized representative, upon request and, to the extent not prohibited by law, data--

(A) which is normally maintained by the agency in the regular course of business;

(B) which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and

(C) which does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining; and

(5) if agreement is reached, to execute on the request of any party to the negotiation a written document embodying the agreed terms, and to take such steps as are necessary to implement such agreement.

(c)(1) An agreement between any agency and an exclusive representative shall be subject to approval by the head of the agency.

(2) The head of the agency shall approve the agreement within 30 days from the date the agreement is executed if the agreement is in accordance with the provisions of this chapter and any other applicable law, rule, or regulation (unless the agency has granted an exception to the provision).

(3) If the head of the agency does not approve or disapprove the agreement within the 30-day period, the agreement shall take effect and shall be binding on the agency and the exclusive representative subject to the provisions of this chapter and any other applicable law, rule, or regulation.

(4) A local agreement subject to a national or other controlling agreement at a higher level shall be approved under the procedures of the controlling agreement or, if none, under regulations prescribed by the agency.

§ 7115. Allotments to representatives

(a) If an agency has received from an employee in an appropriate unit a written assignment which authorizes the agency to deduct from the pay of the employee amounts for the payment of regular and periodic dues of the exclusive representative of the unit, the agency shall honor the assignment and make an appropriate allotment pursuant to the assignment. Any such allotment shall be made at no cost to the exclusive representative or the employee. Except as provided under subsection (b) of this section, any such assignment may not be revoked for a period of 1 year.

(b) An allotment under subsection (a) of this section for the deduction of dues with respect to any employee shall terminate when--

(1) the agreement between the agency and the exclusive representative involved ceases to be applicable to the employee; or

(2) the employee is suspended or expelled from membership in the exclusive representative.

(c)(1) Subject to paragraph (2) of this subsection, if a petition has been filed with the Authority by a labor organization alleging that 10 percent of the employees in an

appropriate unit in an agency have membership in the labor organization, the Authority shall investigate the petition to determine its validity. Upon certification by the Authority of the validity of the petition, the agency shall have a duty to negotiate with the labor organization solely concerning the deduction of dues of the labor organization from the pay of the members of the labor organization who are employees in the unit and who make a voluntary allotment for such purpose.

(2)(A) The provisions of paragraph (1) of this subsection shall not apply in the case of any appropriate unit for which there is an exclusive representative.

(B) Any agreement under paragraph (1) of this subsection between a labor organization and an agency with respect to an appropriate unit shall be null and void upon the certification of an exclusive representative of the unit.

§ 7116. Unfair labor practices

(a) For the purpose of this chapter, it shall be an unfair labor practice for an agency--

(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

(2) to encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;

(3) to sponsor, control, or otherwise assist any labor organization, other than to furnish, upon request, customary and routine services and facilities if the services and facilities are also furnished on an impartial basis to other labor organizations having equivalent status;

(4) to discipline or otherwise discriminate against an employee because the employee has filed a complaint, affidavit, or petition, or has given any information or testimony under this chapter;

(5) to refuse to consult or negotiate in good faith with a labor organization as required by this chapter;

(6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter;

(7) to enforce any rule or regulation (other than a rule or regulation implementing section

2302 of this title) which is in conflict with any applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed; or

(8) to otherwise fail or refuse to comply with any provision of this chapter.

(b) For the purpose of this chapter, it shall be an unfair labor practice for a labor organization--

(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

(2) to cause or attempt to cause an agency to discriminate against any employee in the exercise by the employee of any right under this chapter;

(3) to coerce, discipline, fine, or attempt to coerce a member of the labor organization as punishment, reprisal, or for the purpose of hindering or impeding the member's work performance or productivity as an employee or the discharge of the member's duties as an employee;

(4) to discriminate against an employee with regard to the terms or conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

(5) to refuse to consult or negotiate in good faith with an agency as required by this chapter;

(6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter;

(7)(A) to call, or participate in, a strike, work stoppage, or slowdown, or picketing of an agency in a labor-management dispute if such picketing interferes with an agency's operations, or

(B) to condone any activity described in subparagraph (A) of this paragraph by failing to take action to prevent or stop such activity; or

(8) to otherwise fail or refuse to comply with any provision of this chapter.

Nothing in paragraph (7) of this subsection shall result in any informational picketing which does not interfere with an agency's operations being considered as an unfair labor practice.

(c) For the purpose of this chapter it shall be an unfair labor practice for an exclusive representative to deny membership to any employee in the appropriate unit represented by such exclusive representative except for failure--

(1) to meet reasonable occupational standards uniformly required for admission, or

(2) to tender dues uniformly required as a condition of acquiring and retaining membership.

This subsection does not preclude any labor organization from enforcing discipline in accordance with procedures under its constitution or bylaws to the extent consistent with the provisions of this chapter.

(d) Issues which can properly be raised under an appeals procedure may not be raised as unfair labor practices prohibited under this section. Except for matters wherein, under section 7121(e) and (f) of this title, an employee has an option of using the negotiated grievance procedure or an appeals procedure, issues which can be raised under a grievance procedure may, in the discretion of the aggrieved party, be raised under the grievance procedure or as an unfair labor practice under this section, but not under both procedures.

(e) The expression of any personal view, argument, opinion or the making of any statement which--

(1) publicizes the fact of a representational election and encourages employees to exercise their right to vote in such election,

(2) corrects the record with respect to any false or misleading statement made by any person, or

(3) informs employees of the Government's policy relating to labor-management relations and representation,

shall not, if the expression contains no threat of reprisal or force or promise of benefit or was not made under coercive conditions, (A) constitute an unfair labor practice under any provision of this chapter, or (B) constitute grounds for the setting aside of any election

conducted under any provisions of this chapter.

§ 7117. Duty to bargain in good faith; compelling need; duty to consult

(a)(1) Subject to paragraph (2) of this subsection, the duty to bargain in good faith shall, to the extent not inconsistent with any Federal law or any Government-wide rule or regulation, extend to matters which are the subject of any rule or regulation only if the rule or regulation is not a Government-wide rule or regulation.

(2) The duty to bargain in good faith shall, to the extent not inconsistent with Federal law or any Government-wide rule or regulation, extend to matters which are the subject of any agency rule or regulation referred to in paragraph (3) of this subsection only if the Authority has determined under subsection (b) of this section that no compelling need (as determined under regulations prescribed by the Authority) exists for the rule or regulation.

(3) Paragraph (2) of the subsection applies to any rule or regulation issued by any agency or issued by any primary national subdivision of such agency, unless an exclusive representative represents an appropriate unit including not less than a majority of the employees in the issuing agency or primary national subdivision, as the case may be, to whom the rule or regulation is applicable.

(b)(1) In any case of collective bargaining in which an exclusive representative alleges that no compelling need exists for any rule or regulation referred to in subsection (a)(3) of this section which is then in effect and which governs any matter at issue in such collective bargaining, the Authority shall determine under paragraph (2) of this subsection, in accordance with regulations prescribed by the Authority, whether such a compelling need exists.

(2) For the purpose of this section, a compelling need shall be determined not to exist for any rule or regulation only if--

(A) the agency, or primary national subdivision, as the case may be, which issued the rule or regulation informs the Authority in writing that a compelling need for the rule or regulation does not exist; or

(B) the Authority determines that a compelling need for a rule or regulation does not exist.

(3) A hearing may be held, in the discretion of the Authority, before a determination is made under this subsection. If a hearing is held, it shall be expedited to the extent

practicable and shall not include the General Counsel as a party.

(4) The agency, or primary national subdivision, as the case may be, which issued the rule or regulation shall be a necessary party at any hearing under this subsection.

(c)(1) Except in any case to which subsection (b) of this section applies, if an agency involved in collective bargaining with an exclusive representative alleges that the duty to bargain in good faith does not extend to any matter, the exclusive representative may appeal the allegation to the Authority in accordance with the provisions of this subsection.

(2) The exclusive representative may, on or before the 15th day after the date on which the agency first makes the allegation referred to in paragraph (1) of this subsection, institute an appeal under this subsection by--

(A) filing a petition with the Authority; and

(B) furnishing a copy of the petition to the head of the agency.

(3) On or before the 30th day after the date of the receipt by the head of the agency of the copy of the petition under paragraph (2)(B) of this subsection, the agency shall--

(A) file with the Authority a statement--

(i) withdrawing the allegation; or

(ii) setting forth in full its reasons supporting the allegation; and

(B) furnish a copy of such statement to the exclusive representative.

(4) On or before the 15th day after the date of the receipt by the exclusive representative of a copy of a statement under paragraph (3)(B) of this subsection, the exclusive representative shall file with the Authority its response to the statement.

(5) A hearing may be held, in the discretion of the Authority, before a determination is made under this subsection. If a hearing is held, it shall not include the General Counsel as a party.

(6) The Authority shall expedite proceedings under this subsection to the extent practicable and shall issue to the exclusive representative and to the agency a written decision on the

allegation and specific reasons therefor at the earliest practicable date.

(d)(1) A labor organization which is the exclusive representative of a substantial number of employees, determined in accordance with criteria prescribed by the Authority, shall be granted consultation rights by any agency with respect to any Government-wide rule or regulation issued by the agency effecting any substantive change in any condition of employment. Such consultation rights shall terminate when the labor organization no longer meets the criteria prescribed by the Authority. Any issue relating to a labor organization's eligibility for, or continuation of, such consultation rights shall be subject to determination by the Authority.

(2) A labor organization having consultation rights under paragraph (1) of this subsection shall--

(A) be informed of any substantive change in conditions of employment proposed by the agency, and

(B) shall be permitted reasonable time to present its views and recommendations regarding the changes.

(3) If any views or recommendations are presented under paragraph (2) of this subsection to an agency by any labor organization--

(A) the agency shall consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and

(B) the agency shall provide the labor organization a written statement of the reasons for taking the final action.

§ 7118. Prevention of unfair labor practices

(a)(1) If any agency or labor organization is charged by any person with having engaged in or engaging in an unfair labor practice, the General Counsel shall investigate the charge and may issue and cause to be served upon the agency or labor organization a complaint. In any case in which the General Counsel does not issue a complaint because the charge fails to state an unfair labor practice, the General Counsel shall provide the person making the charge a written statement of the reasons for not issuing a complaint.

(2) Any complaint under paragraph (1) of this subsection shall contain a notice--

(A) of the charge;

(B) that a hearing will be held before the Authority (or any member thereof or before an individual employed by the authority and designated for such purpose); and

(C) of the time and place fixed for the hearing.

(3) The labor organization or agency involved shall have the right to file an answer to the original and any amended complaint and to appear in person or otherwise and give testimony at the time and place fixed in the complaint for the hearing.

(4)(A) Except as provided in subparagraph (B) of this paragraph, no complaint shall be issued based on any alleged unfair labor practice which occurred more than 6 months before the filing of the charge with the Authority.

(B) If the General Counsel determines that the person filing any charge was prevented from filing the charge during the 6-month period referred to in subparagraph (A) of this paragraph by reason of--

(i) any failure of the agency or labor organization against which the charge is made to perform a duty owed to the person, or

(ii) any concealment which prevented discovery of the alleged unfair labor practice during the 6-month period,

the General Counsel may issue a complaint based on the charge if the charge was filed during the 6-month period beginning on the day of the discovery by the person of the alleged unfair labor practice.

(5) The General Counsel may prescribe regulations providing for informal methods by which the alleged unfair labor practice may be resolved prior to the issuance of a complaint.

(6) The Authority (or any member thereof or any individual employed by the Authority and designated for such purpose) shall conduct a hearing on the complaint not earlier than 5 days after the date on which the complaint is served. In the discretion of the individual or individuals conducting the hearing, any person involved may be allowed to intervene in the hearing and to present testimony. Any such hearing shall, to the extent practicable, be

conducted in accordance with the provisions of subchapter II of chapter 5 of this title, except that the parties shall not be bound by rules of evidence, whether statutory, common law, or adopted by a court. A transcript shall be kept of the hearing. After such a hearing the Authority, in its discretion, may upon notice receive further evidence or hear argument.

(7) If the Authority (or any member thereof or any individual employed by the Authority and designated for such purpose) determines after any hearing on a complaint under paragraph (5) of this subsection that the preponderance of the evidence received demonstrates that the agency or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, then the individual or individuals conducting the hearing shall state in writing their findings of fact and shall issue and cause to be served on the agency or labor organization an order--

(A) to cease and desist from any such unfair labor practice in which the agency or labor organization is engaged;

(B) requiring the parties to renegotiate a collective bargaining agreement in accordance with the order of the Authority and requiring that the agreement, as amended, be given retroactive effect;

(C) requiring reinstatement of an employee with backpay in accordance with section 5596 of this title; or

(D) including any combination of the actions described in subparagraphs (A) through (C) of this paragraph or such other action as will carry out the purpose of this chapter.

If any such order requires reinstatement of an employee with backpay, backpay may be required of the agency (as provided in section 5596 of this title) or of the labor organization, as the case may be, which is found to have engaged in the unfair labor practice involved.

(8) If the individual or individuals conducting the hearing determine that the preponderance of the evidence received fails to demonstrate that the agency or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, the individual or individuals shall state in writing their findings of fact and shall issue an order dismissing the complaint.

(b) In connection with any matter before the Authority in any proceeding under this section, the Authority may request, in accordance with the provisions of section 7105(i) of

this title, from the Director of the Office of Personnel Management an advisory opinion concerning the proper interpretation of rules, regulations, or other policy directives issued by the Office of Personnel Management.

§ 7119. Negotiation impasses; Federal Service Impasses Panel

(a) The Federal Mediation and Conciliation Service shall provide services and assistance to agencies and exclusive representatives in the resolution of negotiation impasses. The Service shall determine under what circumstances and in what manner it shall provide services and assistance.

(b) If voluntary arrangements, including the services of the Federal Mediation and Conciliation Service or any other third-party mediation, fail to resolve a negotiation impasse--

(1) either party may request the Federal Service Impasses Panel to consider the matter, or

(2) the parties may agree to adopt a procedure for binding arbitration of the negotiation impasse, but only if the procedure is approved by the Panel.

(c)(1) The Federal Service Impasses Panel is an entity within the Authority, the function of which is to provide assistance in resolving negotiation impasses between agencies and exclusive representatives.

(2) The Panel shall be composed of a Chairman and at least six other members, who shall be appointed by the President, solely on the basis of fitness to perform the duties and functions involved, from among individuals who are familiar with Government operations and knowledgeable in labor-management relations.

(3) Of the original members of the Panel, 2 members shall be appointed for a term of 1 year, 2 members shall be appointed for a term of 3 years, and the Chairman and the remaining members shall be appointed for a term of 5 years. Thereafter each member shall be appointed for a term of 5 years, except that an individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced. Any member of the Panel may be removed by the President.

(4) The Panel may appoint an Executive Director and any other individuals it may from time to time find necessary for the proper performance of its duties. Each member of the Panel who is not an employee (as defined in section 2105 of this title) is entitled to pay at a

rate equal to the daily equivalent of the maximum annual rate of basic pay then currently paid under the General Schedule for each day he is engaged in the performance of official business of the Panel, including travel time, and is entitled to travel expenses as provided under section 5703 of this title.

(5)(A) The Panel or its designee shall promptly investigate any impasse presented to it under subsection (b) of this section. The Panel shall consider the impasse and shall either--

(i) recommend to the parties procedures for the resolution of the impasse; or

(ii) assist the parties in resolving the impasse through whatever methods and procedures, including factfinding and recommendations, it may consider appropriate to accomplish the purpose of this section.

(B) If the parties do not arrive at a settlement after assistance by the Panel under subparagraph (A) of this paragraph, the Panel may--

(i) hold hearings;

(ii) administer oaths, take the testimony or deposition of any person under oath, and issue subpenas as provided in section 7132 of this title; and

(iii) take whatever action is necessary and not inconsistent with this chapter to resolve the impasse.

(C) Notice of any final action of the Panel under this section shall be promptly served upon the parties, and the action shall be binding on such parties during the term of the agreement, unless the parties agree otherwise.

§ 7120. Standards of conduct for labor organizations

(a) An agency shall only accord recognition to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. Except as provided in subsection (b) of this section, an organization is not required to prove that it is free from such influences if it is subject to governing requirements adopted by the organization or by a national or international labor organization or federation of labor organizations with which it is affiliated, or in which it participates, containing explicit and detailed provisions to which it subscribes calling for--

(1) the maintenance of democratic procedures and practices including provisions for periodic elections to be conducted subject to recognized safeguards and provisions defining and securing the right of individual members to participate in the affairs of the organization, to receive fair and equal treatment under the governing rules of the organization, and to receive fair process in disciplinary proceedings;

(2) the exclusion from office in the organization of persons affiliated with communist or other totalitarian movements and persons identified with corrupt influences;

(3) the prohibition of business or financial interests on the part of organization officers and agents which conflict with their duty to the organization and its members; and

(4) the maintenance of fiscal integrity in the conduct of the affairs of the organization, including provisions for accounting and financial controls and regular financial reports or summaries to be made available to members.

(b) Notwithstanding the fact that a labor organization has adopted or subscribed to standards of conduct as provided in subsection (a) of this section, the organization is required to furnish evidence of its freedom from corrupt influences or influences opposed to basic democratic principles if there is reasonable cause to believe that--

(1) the organization has been suspended or expelled from, or is subject to other sanction, by a parent labor organization, or federation of organizations with which it had been affiliated, because it has demonstrated an unwillingness or inability to comply with governing requirements comparable in purpose to those required by subsection (a) of this section; or

(2) the organization is in fact subject to influences that would preclude recognition under this chapter.

(c) A labor organization which has or seeks recognition as a representative of employees under this chapter shall file financial and other reports with the Assistant Secretary of Labor for Labor Management Relations, provide for bonding of officials and employees of the organization, and comply with trusteeship and election standards.

(d) The Assistant Secretary shall prescribe such regulations as are necessary to carry out the purposes of this section. Such regulations shall conform generally to the principles applied to labor organizations in the private sector. Complaints of violations of this section shall be filed with the Assistant Secretary. In any matter arising under this section, the

Assistant Secretary may require a labor organization to cease and desist from violations of this section and require it to take such actions as he considers appropriate to carry out the policies of this section.

(e) This chapter does not authorize participation in the management of a labor organization or acting as a representative of a labor organization by a management official, a supervisor, or a confidential employee, except as specifically provided in this chapter, or by an employee if the participation or activity would result in a conflict or apparent conflict of interest or would otherwise be incompatible with law or with the official duties of the employee.

(f) In the case of any labor organization which by omission or commission has willfully and intentionally, with regard to any strike, work stoppage, or slowdown, violated section 7116(b)(7) of this title, the Authority shall, upon an appropriate finding by the Authority of such violation--

(1) revoke the exclusive recognition status of the labor organization, which shall then immediately cease to be legally entitled and obligated to represent employees in the unit; or

(2) take any other appropriate disciplinary action.

Subchapter III. Grievances, Appeals, and Review (Refs & Annos)

§ 7121. Grievance procedures

(a)(1) Except as provided in paragraph (2) of this subsection, any collective bargaining agreement shall provide procedures for the settlement of grievances, including questions of arbitrability. Except as provided in subsections (d), (e), and (g) of this section, the procedures shall be the exclusive administrative procedures for resolving grievances which fall within its coverage.

(2) Any collective bargaining agreement may exclude any matter from the application of the grievance procedures which are provided for in the agreement.

(b)(1) Any negotiated grievance procedure referred to in subsection (a) of this section shall--

(A) be fair and simple,

(B) provide for expeditious processing, and

(C) include procedures that--

(i) assure an exclusive representative the right, in its own behalf or on behalf of any employee in the unit represented by the exclusive representative, to present and process grievances;

(ii) assure such an employee the right to present a grievance on the employee's own behalf, and assure the exclusive representative the right to be present during the grievance proceeding; and

(iii) provide that any grievance not satisfactorily settled under the negotiated grievance procedure shall be subject to binding arbitration which may be invoked by either the exclusive representative or the agency.

(2)(A) The provisions of a negotiated grievance procedure providing for binding arbitration in accordance with paragraph (1)(C)(iii) shall, if or to the extent that an alleged prohibited personnel practice is involved, allow the arbitrator to order--

(i) a stay of any personnel action in a manner similar to the manner described in section 1221(c) with respect to the Merit Systems Protection Board; and

(ii) the taking, by an agency, of any disciplinary action identified under section 1215(a)(3) that is otherwise within the authority of such agency to take.

(B) Any employee who is the subject of any disciplinary action ordered under subparagraph (A)(ii) may appeal such action to the same extent and in the same manner as if the agency had taken the disciplinary action absent arbitration.

(c) The preceding subsections of this section shall not apply with respect to any grievance concerning--

(1) any claimed violation of subchapter III of chapter 73 of this title (relating to prohibited political activities);

(2) retirement, life insurance, or health insurance;

(3) a suspension or removal under section 7532 of this title;

(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.

(d) An aggrieved employee affected by a prohibited personnel practice under section 2302(b)(1) of this title which also falls under the coverage of the negotiated grievance procedure may raise the matter under a statutory procedure or the negotiated procedure, but not both. An employee shall be deemed to have exercised his option under this subsection to raise the matter under either a statutory procedure or the negotiated procedure at such time as the employee timely initiates an action under the applicable statutory procedure or timely files a grievance in writing, in accordance with the provisions of the parties' negotiated procedure, whichever event occurs first. Selection of the negotiated procedure in no manner prejudices the right of an aggrieved employee to request the Merit Systems Protection Board to review the final decision pursuant to section 7702 of this title in the case of any personnel action that could have been appealed to the Board, or, where applicable, to request the Equal Employment Opportunity Commission to review a final decision in any other matter involving a complaint of discrimination of the type prohibited by any law administered by the Equal Employment Opportunity Commission.

(e)(1) Matters covered under sections 4303 and 7512 of this title which also fall within the coverage of the negotiated grievance procedure may, in the discretion of the aggrieved employee, be raised either under the appellate procedures of section 7701 of this title or under the negotiated grievance procedure, but not both. Similar matters which arise under other personnel systems applicable to employees covered by this chapter may, in the discretion of the aggrieved employee, be raised either under the appellate procedures, if any, applicable to those matters, or under the negotiated grievance procedure, but not both. An employee shall be deemed to have exercised his option under this subsection to raise a matter either under the applicable appellate procedures or under the negotiated grievance procedure at such time as the employee timely files a notice of appeal under the applicable appellate procedures or timely files a grievance in writing in accordance with the provisions of the parties' negotiated grievance procedure, whichever event occurs first.

(2) In matters covered under sections 4303 and 7512 of this title which have been raised under the negotiated grievance procedure in accordance with this section, an arbitrator shall be governed by section 7701(c)(1) of this title, as applicable.

(f) In matters covered under sections 4303 and 7512 of this title which have been raised

under the negotiated grievance procedure in accordance with this section, section 7703 of this title pertaining to judicial review shall apply to the award of an arbitrator in the same manner and under the same conditions as if the matter had been decided by the Board. In matters similar to those covered under sections 4303 and 7512 of this title which arise under other personnel systems and which an aggrieved employee has raised under the negotiated grievance procedure, judicial review of an arbitrator's award may be obtained in the same manner and on the same basis as could be obtained of a final decision in such matters raised under applicable appellate procedures.

(g)(1) This subsection applies with respect to a prohibited personnel practice other than a prohibited personnel practice to which subsection (d) applies.

(2) An aggrieved employee affected by a prohibited personnel practice described in paragraph (1) may elect not more than one of the remedies described in paragraph (3) with respect thereto. For purposes of the preceding sentence, a determination as to whether a particular remedy has been elected shall be made as set forth under paragraph (4).

(3) The remedies described in this paragraph are as follows:

(A) An appeal to the Merit Systems Protection Board under section 7701.

(B) A negotiated grievance procedure under this section.

(C) Procedures for seeking corrective action under subchapters II and III of chapter 12.

(4) For the purpose of this subsection, a person shall be considered to have elected--

(A) the remedy described in paragraph (3)(A) if such person has timely filed a notice of appeal under the applicable appellate procedures;

(B) the remedy described in paragraph (3)(B) if such person has timely filed a grievance in writing, in accordance with the provisions of the parties' negotiated procedure; or

(C) the remedy described in paragraph (3)(C) if such person has sought corrective action from the Office of Special Counsel by making an allegation under section 1214(a)(1).

(h) Settlements and awards under this chapter shall be subject to the limitations in section 5596(b)(4) of this title.

§ 7122. Exceptions to arbitral awards

(a) Either party to arbitration under this chapter may file with the Authority an exception to any arbitrator's award pursuant to the arbitration (other than an award relating to a matter described in section 7121(f) of this title). If upon review the Authority finds that the award is deficient--

(1) because it is contrary to any law, rule, or regulation; or

(2) on other grounds similar to those applied by Federal courts in private sector labor-management relations;

the Authority may take such action and make such recommendations concerning the award as it considers necessary, consistent with applicable laws, rules, or regulations.

(b) If no exception to an arbitrator's award is filed under subsection (a) of this section during the 30-day period beginning on the date the award is served on the party, the award shall be final and binding. An agency shall take the actions required by an arbitrator's final award. The award may include the payment of backpay (as provided in section 5596 of this title).

§ 7123. Judicial review; enforcement

(a) Any person aggrieved by any final order of the Authority other than an order under--

(1) section 7122 of this title (involving an award by an arbitrator), unless the order involves an unfair labor practice under section 7118 of this title, or

(2) section 7112 of this title (involving an appropriate unit determination),

may, during the 60-day period beginning on the date on which the order was issued, institute an action for judicial review of the Authority's order in the United States court of appeals in the circuit in which the person resides or transacts business or in the United States Court of Appeals for the District of Columbia.

(b) The Authority may petition any appropriate United States court of appeals for the enforcement of any order of the Authority and for appropriate temporary relief or restraining order.

(c) Upon the filing of a petition under subsection (a) of this section for judicial review or under subsection (b) of this section for enforcement, the Authority shall file in the court the record in the proceedings, as provided in section 2112 of title 28. Upon the filing of the petition, the court shall cause notice thereof to be served to the parties involved, and thereupon shall have jurisdiction of the proceeding and of the question determined therein and may grant any temporary relief (including a temporary restraining order) it considers just and proper, and may make and enter a decree affirming and enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Authority. The filing of a petition under subsection (a) or (b) of this section shall not operate as a stay of the Authority's order unless the court specifically orders the stay. Review of the Authority's order shall be on the record in accordance with section 706 of this title. No objection that has not been urged before the Authority, or its designee, shall be considered by the court, unless the failure or neglect to urge the objection is excused because of extraordinary circumstances. The findings of the Authority with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any person applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to adduce the evidence in the hearing before the Authority, or its designee, the court may order the additional evidence to be taken before the Authority, or its designee, and to be made a part of the record. The Authority may modify its findings as to the facts, or make new findings by reason of additional evidence so taken and filed. The Authority shall file its modified or new findings, which, with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The Authority shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the judgment and decree shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

(d) The Authority may, upon issuance of a complaint as provided in section 7118 of this title charging that any person has engaged in or is engaging in an unfair labor practice, petition any United States district court within any district in which the unfair labor practice in question is alleged to have occurred or in which such person resides or transacts business for appropriate temporary relief (including a restraining order). Upon the filing of the petition, the court shall cause notice thereof to be served upon the person, and thereupon shall have jurisdiction to grant any temporary relief (including a temporary restraining order) it considers just and proper. A court shall not grant any temporary relief under this section if it would interfere with the ability of the agency to carry out its

essential functions or if the Authority fails to establish probable cause that an unfair labor practice is being committed.

Subchapter IV. Administrative and Other Provisions

§ 7131. Official time

(a) Any employee representing an exclusive representative in the negotiation of a collective bargaining agreement under this chapter shall be authorized official time for such purposes, including attendance at impasse proceeding, during the time the employee otherwise would be in a duty status. The number of employees for whom official time is authorized under this subsection shall not exceed the number of individuals designated as representing the agency for such purposes.

(b) Any activities performed by any employee relating to the internal business of a labor organization (including the solicitation of membership, elections of labor organization officials, and collection of dues) shall be performed during the time the employee is in a non-duty status.

(c) Except as provided in subsection (a) of this section, the Authority shall determine whether any employee participating for, or on behalf of, a labor organization in any phase of proceedings before the Authority shall be authorized official time for such purpose during the time the employee otherwise would be in a duty status.

(d) Except as provided in the preceding subsections of this section--

(1) any employee representing an exclusive representative, or

(2) in connection with any other matter covered by this chapter, any employee in an appropriate unit represented by an exclusive representative,

shall be granted official time in any amount the agency and the exclusive representative involved agree to be reasonable, necessary, and in the public interest.

§ 7132. Subpenas

(a) Any member of the Authority, the General Counsel, or the Panel, any administrative law judge appointed by the Authority under section 3105 of this title, and any employee of the Authority designated by the Authority may--

(1) issue subpenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence from any place in the United States; and

(2) administer oaths, take or order the taking of depositions, order responses to written interrogatories, examine witnesses, and receive evidence.

No subpena shall be issued under this section which requires the disclosure of intramanagement guidance, advice, counsel, or training within an agency or between an agency and the Office of Personnel Management.

(b) In the case of contumacy or failure to obey a subpena issued under subsection (a)(1) of this section, the United States district court for the judicial district in which the person to whom the subpena is addressed resides or is served may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

(c) Witnesses (whether appearing voluntarily or under subpena) shall be paid the same fee and mileage allowances which are paid subpenaed witnesses in the courts of the United States.

§ 7133. Compilation and publication of data

(a) The Authority shall maintain a file of its proceedings and copies of all available agreements and arbitration decisions, and shall publish the texts of its decisions and the actions taken by the Panel under section 7119 of this title.

(b) All files maintained under subsection (a) of this section shall be open to inspection and reproduction in accordance with the provisions of sections 552 and 552a of this title.

§ 7134. Regulations

The Authority, the General Counsel, the Federal Mediation and Conciliation Service, the Assistant Secretary of Labor for Labor Management Relations, and the Panel shall each prescribe rules and regulations to carry out the provisions of this chapter applicable to each of them, respectively. Provisions of subchapter II of chapter 5 of this title shall be applicable to the issuance, revision, or repeal of any such rule or regulation.

§ 7135. Continuation of existing laws, recognitions, agreements, and procedures

(a) Nothing contained in this chapter shall preclude--

(1) the renewal or continuation of an exclusive recognition, certification of an exclusive representative, or a lawful agreement between an agency and an exclusive representative of its employees, which is entered into before the effective date of this chapter; or

(2) the renewal, continuation, or initial according of recognition for units of management officials or supervisors represented by labor organizations which historically or traditionally represent management officials or supervisors in private industry and which hold exclusive recognition for units of such officials or supervisors in any agency on the effective date of this chapter.

(b) Policies, regulations, and procedures established under and decisions issued under Executive Orders 11491, 11616, 11636, 11787, and 11838, or under any other Executive order, as in effect on the effective date of this chapter, shall remain in full force and effect until revised or revoked by the President, or unless superseded by specific provisions of this chapter or by regulations or decisions issued pursuant to this chapter.

APPENDIX C:
USMS Table of Offenses and Penalties

The USMS Table of Offenses and Penalties, maintained by the Agency Office of Professional Responsibility, may be located through the USMS Intranet by clicking on http://intranet.usms.doj.gov/sites/hqs/OI/Documents/Table%20of%20Disciplinary%20Offenses%20and%20Penalties.pdf

APPENDIX D:
The Douglas Factors

Factors to Be Considered in Determining the Appropriate Penalty in Disciplinary and Adverse Actions

The Douglas Factors
[Douglas v. Veterans Administration, 5 M.S.P.R. 280 (1981)]

(1) The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;

(2) The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;

(3) The employee's past disciplinary record;

(4) The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;

(5) The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's ability to perform assigned duties;

(6) Consistency of the penalty with those imposed upon other employees for the same or similar offenses;

(7) Consistency of the penalty with any applicable agency table of penalties;

(8) The notoriety of the offense or its impact upon the reputation of the agency;

(9) The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;

(10) Potential for the employee's rehabilitation;

(11) mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and

(12) The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

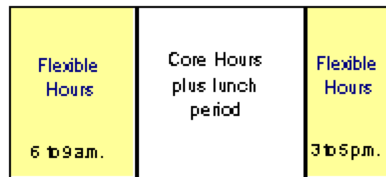
APPENDIX E:
Alternate Work Schedule Examples

Models of Flexible Work Schedules

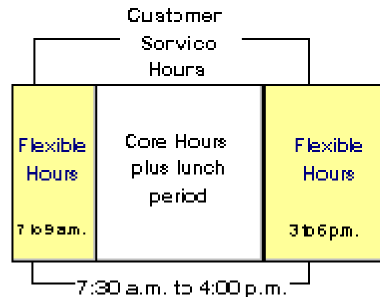
	Flexitour	*Gliding Schedule*	*Variable Day Schedule*	*Variable Week Schedule*	*Maxiflex*
Basic Work Requirement	A full-time employee must work 8 hours a day, 40 hours a week, and 80 hours in a biweekly pay period.	(See Flexitour.)	A full-time employee must work 40 hours a week.	A full-time employee must work 80 hours in a biweekly pay period.	(See Variable Week Schedule.)
Tour of Duty	Agencies establish flexible hours surrounding core hours, which include a standard meal period.	Agencies establish flexible and core hours. Gliding schedules provide for flexible time bands at the start and end of the workday and may also allow for flexible hours at midday (during the lunch break). Employees must work during core hours.	(See Gliding Schedule.)	(See Gliding Schedule.)	(See Gliding Schedule.) However, agencies may choose not to establish core hours on each workday, thus providing maximum flexibility for employees
Core Hours	An employee must account for missed core hours (if permitted) with leave, credit hours, or compensatory time off.	(See Flexitour.)	(See Flexitour.)	(See Flexitour.)	(See Flexitour.) Employees may work fewer than 10 days biweekly because of the absence of core hours on one of the normal workdays (e.g., "Flexible 5/4-9").
Overtime Work	Overtime work is work in excess of 8 hours in a day or 40 hours in a workweek, ordered in advance by management. See 5 U.S.C. 6121(6).	(See Flexitour.)	(See Flexitour.)	(See Flexitour.)	(See Flexitour.)
Flexibility	Employees select arrival and departure times subject to agency approval. (This results in a fixed schedule until the next selection period, as determined by the agency.) At the request of an employee, the agency may approve an adjusted arrival and departure time.	Employees may vary arrival and departure times on a daily basis during the established flexible hours.	(See Gliding Schedule.) An employee may also vary the length of the workday. An agency may limit the number of hours an employee may work on a daily basis.	(See Variable Day Schedule.) An employee may also vary the length of the workweek.	(See Variable Week Schedule.)

Models of Flexible Work Schedules (Continued)

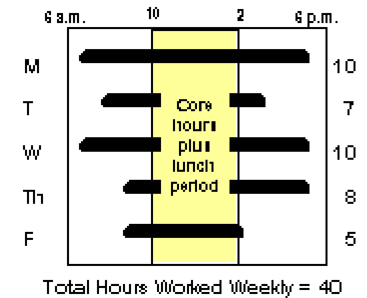
Flexitour Schedule



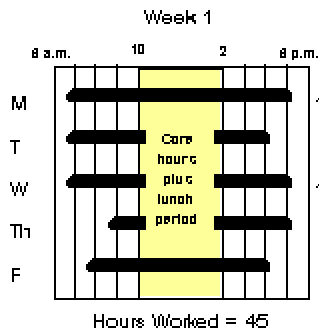
Gliding Schedule



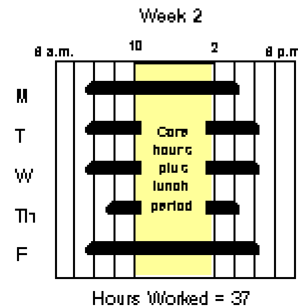
Variable Day Schedule



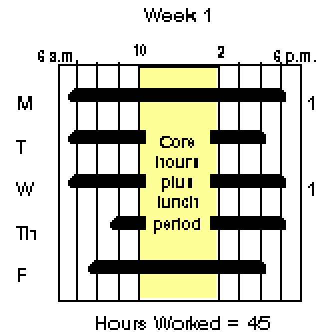
Variable Week Schedule – Week 1



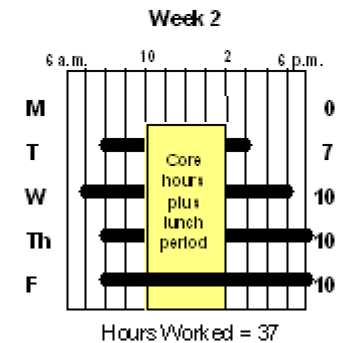
Variable Week Schedule – Week 2



Maxiflex Schedule – Week 1



Maxiflex Schedule Week 2



Description	Hours
Total Hours Worked Biweekly	82
Basic Work Requirement	80
Remaining Credit Hours	2

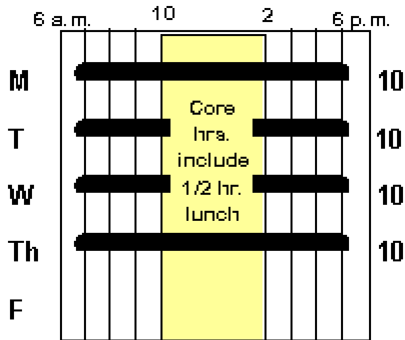
Note:

These models typify the more common types of flexible work schedules. The flexitour and gliding schedule examples show daily work schedules. The variable day schedule example is a weekly schedule. The variable week schedule and maxiflex examples are biweekly work schedules. These models are not meant to be all inclusive. Agencies (and offices) should develop schedules tailored to meet their specific needs.

Models of Compressed Work Schedules

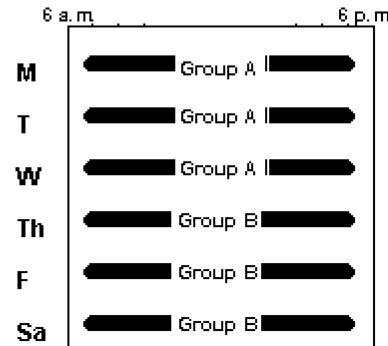
	Four-Day Work Week	*Three-Day Work Week*	*5/4-9 Compressed Plan*
Basic Work Requirement	A full-time employee must work 10 hours a day, 40 hours a week, and 80 hours in a biweekly pay period.	A full-time employee must work 13 hours and 20 minutes a day, 40 hours a week, and 80 hours a biweekly pay period.	A full-time employee work eight 9-hour days and one 8-hour day for a total of 80 hours in a biweekly pay period.
Tour of Duty	The "tour of duty" is established by the agency and is limited to four 10-hour days.	The "tour of duty" is established by the agency and is limited to three 13-hour and 20-minute days in a week and 80 hours in a biweekly pay period.	The "tour of duty" is established by the agency and is less than 10 workdays in a biweekly pay period.
Overtime Work	Overtime work is work ordered or approved in advance by management and is in excess of the compressed work schedule's basic work requirement.	(See Four-Day Workweek.)	(See Four-Day Workweek.)

Four-Day Work Week



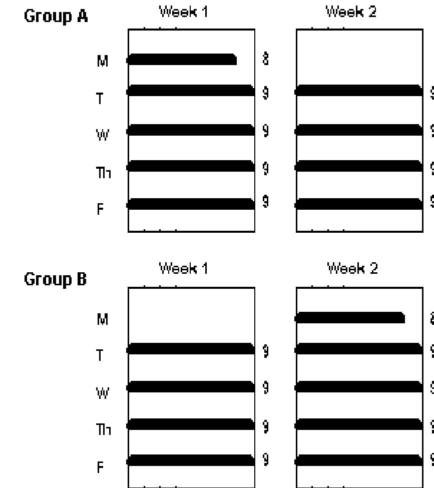
Total Hours Worked Weekly = 40

Three-Day Work Week



Each group works 13 hours, 20 minutes per workday, for a total of 40 hours per week

5/4-9 Compressed Plan



Total hours worked by Group A = 80
Total hours worked by Group B = 80

Note:

These models typify the more common types of compressed work schedules. They are not meant to be all inclusive. Agencies (and offices) should develop schedules tailored to meet their specific needs.

APPENDIX F:
Labor Management Cooperation Committee Charter

Labor Management Forum Overview and Charter

Purpose of Forum

Section 3 (a) (1) of Executive Order 13522 requires that the U.S. Marshal Service establish department or Agency level labor-management committee or council to help identify problems and propose solutions to better serve the public and the Agency's mission.

This Overview and Charter will serve as the guidelines and ground rules to help the U.S. Marshal Service Labor Management Forum work most productively together over the course of the forum's lifespan. This is a living document and may be updated as the need arises throughout the course of the forum's facilitation and progress. Any updates will be discussed with and ratified by the forum members.

Forum's Charter and Guiding Principles

1. The Forum will generally be comprised of two teams of three members each.

2. As deemed necessary if beneficial for the purposes of the Forum, the size of the teams may be increased or decreased, and subcommittees may be formed.

3. Subject matter experts (SME) may be invited by either team to participate in Forum meetings. If the parties have agreed to meet in person (bi-quarter), the travel expenses will be paid by the Agency subject to availability of funds. SME who are employees of the Agency regardless of which party is requesting their use, shall be provided official time for travel and per diem consistent with USMS Travel Policy Directives and Article 5 of the Master Agreement.

   Reimbursement for travel and expenses incurred by subject matter experts (SME) are subject to availability of funds.

4. For planning purposes only, Forum meetings will tentatively be reserved for the second Wednesday of the second month of each quarter of the calendar year. The final decision of whether to conduct an actual Forum meeting will be made each quarter with as much collaboration as practicably possible between the USMS and Union but no later than two weeks prior to the tentative reserved date as just described if at least one party is requesting that a Forum meeting take place. The parties recognize that Forum meetings should only take place if there are enough substantive items on the agenda worth holding a Forum meeting. In addition, the parties remain at liberty upon mutual agreement to decide on an ad hoc basis whether the time is ripe or within the best interest of the parties to hold a Forum meeting depending on the types and timing of issues that might arise.

5. If the parties are in agreement that a Forum meeting would be beneficial, the location and method (i.e., in person or by speakerphone) of subsequent meetings will be determined by mutual agreement.

6. If either party is interested in holding a Forum meeting at the reserved tentative date during the quarter, the party requesting the Forum meeting shall submit to the other party at least two weeks before the reserved tentative date of the Forum meeting or unless otherwise agreed. This will aid in determining whether the parties mutually agree that a Forum meeting is necessary at the tentative reserved time. Otherwise, the parties could continue to seek Forum meetings on an ad hoc basis as also described in paragraph 4 above.

7. The parties understand that the establishment of this Forum and Charter was made within the spirit and intent of Executive Order 13522. Similarly, this Charter acts as guiding principles for the establishment and procedure to invoke Forum meetings and is not an agreement that confers or creates any new legal rights or obligation on either party.

Communications

Upon the first labor management forum meeting, forum members will discuss and agree upon frequency of meetings and location to hold meetings. Forum meetings will be recorded by the designated Recorder.

- Meeting agendas will be provided upon the start of every forum meeting. Meeting minutes will be posted to forum's SharePoint site within approximately two (2) weeks after meetings.
- Forum team members will meet on the dates and times agreed upon in the initial meeting. During each meeting, a "parking lot" will be used to record topics that require discussion at a later date.
- Issues, risks, change requests, and action items will be recorded by the Forum Recorder and will be reviewed by the forum and updated at each meeting.
- The Forum Facilitator will be responsible for facilitating and keeping meetings on track. The forum members will accept the Facilitator's decision to table or "park" a discussion topic.

Decision Making

Items and issues discussed in the forum are not open for bargaining negotiation. The forum is a venue for management representatives and labor representatives to discuss workplace issues, jointly share ideas on potential solutions, and improve productivity and efficiency in a collaborative and constructive manner.

Everyone must agree on how decisions will be made to ensure that everyone can live with the decisions made and to ensure that a potential resolution can move forward. Consensus means that everyone can live with the decision. It doesn't mean everyone has to agree 100%.

Pre-Decisional Involvement (PDI)

The goal of PDI is an opportunity afforded to bargaining unit employees, through their union representatives, to have meaningful input which results in better quality decision-making.

PDI does not obligate the USMS to reach a specific decision or take a specific action.

PDI is strictly voluntary as both parties must commit to using PDI.

PDI is a process, not an outcome.

PDI is a discussion, not bargaining.

PDI requires trust, patience, effective problem-solving skills, constructive communication skills and commitment.

Personal Courtesies and Behavioral Ground Rules

- Sending "stand ins" to forum meetings will not be allowed unless approved by the Forum Chair or Co-chair prior to forum meetings.
- Each forum member is encouraged to participate. Come to the table in good faith and be committed to making this forum a success.
- Only one forum member will speak at a time. Please be courteous and do not "overtalk" or interrupt one another.

- Respect all ideas. Every forum member's contribution of thoughts and ideas are encouraged, valued and appreciated.
- Open disagreement with constructive feedback is OK. The reality is not everyone has the same opinions or interests. Remember to respectfully agree to disagree.
- Disrespectful behavior such as verbal attacks, cursing, fist pounding, shouting, table pounding, and finger pointing will not be acceptable. This labor management forum is established to communicate and collaborate in a non-adversarial environment.
- All cell phones and other communication devices must be silenced during meetings and used on an exception basis only.
- Forum members will appreciate the sensitive nature of information discussed during the forum and will share with care. Where applicable, documents will include a footer indicating that information is confidential.
- Respect each other's rights and responsibilities within the Labor Management Statute.
- "Sidebar" conversations between forum members during forum team meetings will not be allowed.
- Focus on the issues and try to separate people from the problem.
- Be open to possibilities and options not previously considered.
- Forum team members will keep each other informed.
- It is the responsibility of each forum member to stay current on the forum's activities, action items and process, even when he or she has missed a meeting.

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