DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS) & NATIONAL TREASURY EMPLOYEES UNION (NTEU)

2023 National Agreement

JULY 2, 2023

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ARTICLE 1: COVERAGE

This Agreement will apply to United States Department of Health and Human Services (HHS) professional and nonprofessional employees in the following Operating Divisions and Staff Divisions:

- Office of the Secretary and Administration on Aging (Administration on Community Living (ACL)), including General Schedule and Wage Grade Employees;
- Administration for Children and Families (ACF);
- Centers for Disease Control and Prevention, National Center for Health Statistics in the Washington, D.C. metropolitan area;
- Food and Drug Administration, nationwide;
- Health Resources and Services Administration;
- Indian Health Service, Engineering Services, including General Schedule Employees and Wage Grade Employees; and
- Substance Abuse and Mental Health Services Administration, nationwide.

Excluded from the Agreement are:

- Administration for Children and Families

  All management officials, supervisors, student assistants, student aides employed under the "stay-in-school program," presidential management interns and employees described in 5 U.S.C. 7112 (b)(2), (3), (4), (6), and (7).

- Centers for Disease Control and Prevention Employees of the Public Health Service Commissioned Corps, management officials, supervisors, and employees described in 5 U.S.C. 7112 (b)(2), (3), (4),(6), and (7).

- Food and Drug Administration

  All professional and nonprofessional employees of the FDA Minneapolis District and FDA Minneapolis Center for Microbiology Investigation, all management officials, supervisors, and employees described in 5 U.S.C. 7112 (b)(2), (3), (4), (6), and (7).

- Health Resources and Services Administration

  All management officials, supervisors, summer employees, Commissioned

Officers, stay-in school students, student trainees, interns, employees of the Bureau of Primary Health Care, Division of National Hansen's Disease Program at Baton Rouge, Louisiana (formerly the Gillis W. Long Hansen's Disease Center at Carville, Louisiana), and employees described in 5 U.S.C. 7112 (b) (2), (3), (4), (6), and (7).

- Indian Health Service

  All management officials, supervisors, temporary employees with appointments of 90 days or less, and employees described in 5 U.S.C. 7112 (b)(2), (3), (4), (6),and (7).

- Office of the Secretary and Administration on Aging (Administration on Community Living (ACL))

  All management officials, supervisors, summer interns, summer aides, and employees described in 5 U.S.C. 7112 (b)(2), (3), (4), (6), and (7).

- Substance Abuse and Mental Health Services Administration

  All employees of the Public Health Service Commissioned Corps; student appointees, summer appointees, Advisory Council members, unpaid workers, management officials, supervisors, and employees described in 5 U.S.C. 7112 (b)(2), (3), (4), (6), and (7).

ARTICLE 2: CONTRACT DURATION AND TERMINATION

SECTION 1

A. This agreement will become effective thirty-one (31) days from the execution or agency head review approval, whichever occurs first, consistent with 5 U.S.C. § 7114.

B. Within the 30 (thirty) calendar day review period, the Employer may, at its option, notify the Union of the Employer's anticipated disapproval of the negotiated language pursuant to 5 USC §7114(c), identifying any portion of the language with which it has specific concerns. The Parties may thereafter attempt to negotiate an adjustment of the provision(s) at issue.

C. If upon Agency Head review, any provision(s) or Articles(s) is (are) determined to be inconsistent with law, rule, or regulation, NTEU retains all rights to challenge that determination and to renegotiate the agreement. Should NTEU prevail on a negotiability challenge, that language will be incorporated into the agreement. Where the Union decides not to challenge the Agency Head disapproval, the parties will renegotiate the agreement, and may mutually agree to limit the scope of bargaining. Negotiations will commence within forty-five (45) days of the date of the Agency Head disapproval, unless mutually agreed otherwise.

SECTION 2

A. This Agreement shall remain in full force and effect until five (5) years from its effective date. It shall be automatically renewed from year to year thereafter unless reopened for negotiation pursuant to the provisions of subsections B and C below. In addition, either Party may reopen up to four (4) articles of this contract at the thirty (30) month anniversary of this Agreement. Any such notice of a mid-term reopener must be provided in writing during the month in which the thirtieth (30th) anniversary month falls.

B. The Agency may give written notice to the National President of NTEU, or the Union may give written notice to the Secretary of HHS, or an appointed designee (National Labor Relations Office mailbox), between sixty (60) calendar days and one hundred five (105) calendar days prior to the initial expiration date and each one-year anniversary date thereafter, of its intention to reopen and renegotiate the Agreement, or any portion of the Agreement.

C. If either party gives notice of intent to reopen and renegotiate, the terms of this agreement will continue in full force and effect, during those term negotiations until a new agreement is approved and effective. If either party elects to terminate any permissive subjects of bargaining contained within this Agreement upon its expiration, the party so electing will notify the other party and identify the specific contract provisions that are being terminated.

SECTION 3

Nothing in this Agreement shall serve as a waiver by either party of the right to negotiate over matters that are affected by a change (during the life of this Agreement) to the Federal Service Labor-Management Relations Statute that expands or contracts the scope of bargaining in the Federal Sector.

SECTION 4

In the event that any provisions of the Agreement shall at any time be found, declared, or made invalid by a court of competent jurisdiction or by operation of any law, government-wide rule or regulation, or decree, or Executive Order, the entire Agreement will not be invalidated.

SECTION 5

Neither party surrenders any rights other than those specifically governed and enunciated by this Agreement.

ARTICLE 3: MID-TERM BARGAINING

SECTION 1

This Article establishes the ground rules for mid-term bargaining between the parties**.**

The parties recognize that each has a responsibility to consider the other's issues and to make a good faith attempt to find acceptable solutions. Except where specifically noted otherwise, Section 2 procedures govern both local and national mid-term matters.

SECTION 2: Agency Initiated Change Bargaining Procedures

When the Employer wishes to implement changes in personnel policies, practices and working conditions which are not specifically covered by this CBA, the Employer will provide the Union advance notice of the proposed changes in conditions of employment of bargaining unit employees that are more than de minimis and/or over which there is otherwise a duty to bargain. Any such notice shall meet statutory requirements. Notice of changes shall be provided sufficiently in advance of the proposed date of the change, but no less than fourteen (14) calendar days, taking into consideration the nature and scope of the proposed change and the need for timely implementation.

A. Local Negotiations

When the Employer notifies the Union of changes that are local rather than national in scope (as defined in § 2B1 below), this notice shall be served as follows:

1. When the proposed changes affect employees within a single NTEU Chapter, such notice will be served on the appropriate chapter president and any subsequent negotiations will be done in the Headquarters, Regional Office or the District Headquarters Office, absent agreement to do it at some other site.

B. National Negotiations

1. When the Employer's proposed changes are national in nature, that is, they would affect employees within the jurisdiction of more than one chapter, the notice shall be provided to the President of NTEU, with a copy to the NTEU National Negotiator for HHS if known.

C. Service may be by certified return receipt mail, e-mail, or hand delivery to the designated Agency or Union representative. In the case of emails, the system's delivery receipt date constitutes the presumptive notice receipt date subject to rebuttal. Even where possible to do so, the parties will not modify email delivery receipt date(s) to affect service delivery. Notices will contain a description of the change, the need for the change, the anticipated impact on the bargaining unit, information as to the appropriate contact person, and a

proposed implementation date. Any relevant written material will also accompany the notice.

D. Within seven (7) calendar days of receiving the Employer's notice of proposed changes, the Union may also request to negotiate or request a briefing regarding the proposed changes. Where the Union requests a briefing, the Employer will provide its available dates for the briefing and shall hold the briefing on mutually agreed dates as soon as practicable, but normally no later than fourteen (14) calendar days after the Union's request. Briefings will normally be held virtually (e.g., tele-conference, web-conference, or videoconference). Where the matter involves local space, furniture, parking, and/or lease-related changes, the briefing will be held in person upon request by the Union. The parties may mutually agree to hold other briefings in person.

E. Within 14 calendar days of submission of a request to negotiate, or the date of a briefing (whichever is later), the Union will submit its proposals to the Agency in writing. Reasonable extensions of time for submitting proposals will be granted.

F. Unless the parties agree otherwise, negotiations over mid-term changes shall normally commence no later than twenty-one (21) calendar days after the parties' exchange of proposals.

G. Bargaining must conclude no later than ninety (90) days from the date of the first negotiation meeting in section 2F above. The parties may agree to a shorter or longer time period in which to complete negotiations. If the parties fail to reach agreement by the end of the bargaining period, either party may contact the Federal Mediation and Conciliation Service (FMCS) to initiate mediation.

SECTION 3: Union Initiated Bargaining

A. When the Union notifies the Employer of its intention to initiate mid-term bargaining, it shall serve notice on the National Labor Relations Office (NLRO) Director.

B. Service made via e-mail should be sent to (NLRO@HHS.gov).

C. The parties shall follow the bargaining processes and timeframes outlined in this article for all union-initiated bargaining (e.g., briefing and submission of initial proposals).

SECTION 4

The parties agree that the following mid-term bargaining ground rules will be incorporated into this Agreement.

A. Procedures Governing Negotiations

1. The Union is entitled to have up to four (4) bargaining unit members present and on the official time for national bargaining. For all other bargaining, the Union is entitled

to have up to three (3) bargaining unit members present and on official time. The number of professional staff members on the Union team will generally not exceed two NTEU staff members at any given time. A designee for each party shall be appointed to serve as a Chief Negotiator. To the extent practicable, a party changing negotiators will notify the other Chief Negotiator. The parties will also avoid routine rotation of bargaining team members for midterm matters, to the extent practicable.

Either party may designate up to two (2) observers for each negotiating session to include Professional NTEU staff members.

2. The parties agree to conduct negotiations remotely (e.g., tele-conference, web-conference, or videoconference) at the election of either party, subject to the following:

    a. Where the parties mutually agree, local bargaining will take place in person:

        i. For matters involving space, furniture, parking and/or lease-related changes; and

        ii. Where the parties do not mutually agree to in-person bargaining, at either party's request, one bargaining session for matters covered in section (a) above will be in-person.

        iii. A bargaining session includes consecutive days of scheduled bargaining. At the election of the party requesting the in-person bargaining, the bargaining session may be scheduled for up to three (3) consecutive days, not including days to travel.

    b. At either party's request, for national bargaining, up to one (1) bargaining session will be conducted in person, unless mutually agreed otherwise. A bargaining session includes consecutive days of scheduled bargaining. At the requesting party's election, the bargaining session may be scheduled for up to three (3) consecutive days.

    c. In person local negotiations will be conducted at the appropriate local Employer's office as determined by the Employer (e.g., the location of the space change, where practicable). In person national negotiations will be held at the parties' National Headquarters in Washington, DC, and the sites will alternate between NTEU and HHS. The Agency will provide the location and host the first negotiation. The Employer will also arrange for free parking for any employee representatives participating in bargaining who do not normally work at the bargaining site, where the Employer controls the parking and there is space available.

3. In accordance with 5 U.S.C. §7131(a) and Article 10 of this Agreement, official time will be granted to employees representing the Union at the bargaining table in the

negotiating of a collective bargaining agreement. Employees representing the Union may request and be approved additional reasonable official time by the Agency in accordance with 5 U.S.C. §7131(d) to prepare for negotiations. Observers will not be allowed official time during any of these proceedings.

4. Negotiations will be conducted at times and dates mutually agreed to by the parties during the regular working hours of 8:30 am – 5:00 pm. Subject to management's right to assign work, NTEU bargaining unit team members will be released to participate in bargaining, absent a specific need for that employee to perform necessary duties which conflict with the scheduled bargaining and cannot be reassigned or rescheduled. If a bargaining unit team member cannot be released, at NTEU's option, the bargaining will be rescheduled to a mutually agreed date and time, normally within seven (7) calendar days.

5. Minutes. No official minutes of the proceedings of the negotiating sessions shall be made. However, each party shall be allowed to prepare unofficial minutes for its own use. Recording of the proceedings is not permitted.

6. Authority. Each party shall be represented at the negotiations at all times by one duly authorized Chief Negotiator who is prepared and authorized to discuss and negotiate on matters subject to negotiations and to sign-off on agreements for their respective party.

7. The parties may initial and use the designation "TA" to reflect tentative agreement on specific proposals or language. However, all agreements are tentative until full agreement is reached pursuant to subsection 4A9 below.

8. Caucuses. It is agreed that either party requesting a caucus will be provided a suitable site. There is no limit on the number of caucuses that may be held, but each party will make every effort to restrict the number and length of caucuses.

9. Final Agreement. The agreement shall not be completed and finalized until all proposals have been disposed of by mutual consent. The agreement must be signed by both parties. Agreements negotiated pursuant to this article will be subject to Agency head approval pursuant to 5 USC § 7114(c). In the event of disapproval, the Union will have the option of renegotiating the entire midterm matter, provided the parties have not agreed otherwise, for example, by the inclusion of a severability provision. The option to renegotiate the entire midterm matter must be exercised by the Union by notice to the Employer within twenty-one (21) days of notice of disapproval, unless the disapproval is challenged (e.g., a petition for review of negotiability). Any provisions disapproved by the Agency head review may be referred to the FLRA by the Union and any such provision held to be negotiable by the FLRA will be incorporated into the agreement.

   In accordance with 5 U.S.C. Chapter 71, either party may initiate mid-term bargaining by proposing changes in conditions of employment. Within thirty (30)

days of the effective date of this Agreement, the Employer will provide written notification to the Union of the appropriate management officials to whom midterm bargaining issues should be submitted. The Employer will promptly notify the Union of any changes to the list of designated officials.

10. Negotiability Issues. Issues as to whether a proposal is negotiable or not shall be resolved in accordance with 5 U.S.C. §7117(c).

11. The Union and the Employer will incorporate any agreement into a Memorandum of Understanding (MOU), and each party will sign the MOU.

12. Agreements created during the term of this agreement contain a provision indicating an effective date and an expiration date. Any MOU created during the term of this agreement that does not contain an expiration date will expire upon the expiration of the parties' term Agreement.

13. Specific provisions of MOU's and past practices that are inconsistent with this Agreement are extinguished upon the effective date of this Agreement.

14. HHS/NTEU MOUs will be maintained by HHS in an electronic repository on the HHS intranet that will be available to both parties and to bargaining unit employees. The repository listing should be reviewed on a bi-annual basis.

B. Mediation

1. At the beginning of bargaining, the Parties may notify the appropriate Federal Mediation and Conciliation Service (FMCS) office in each instance of an ongoing matter subject to this process.

2. Either Party has the right to request the assistance of an FMCS mediator at the appropriate FMCS office at any time during bargaining. It is understood that a Party will not request FMCS intervention unless it has a basis to believe that bilateral efforts between the Parties will not result in an agreement in a timely manner. The requesting Party should notify the other Party of its intention to request FMCS assistance.

3. When mediation has been requested, the Parties will schedule a mediation session with the mediator as soon as practical, if appropriate. The Parties will make every attempt to hold any mediation sessions, telephonically or in person, as expeditiously as possible.

4. Either party may request the services of the Federal Service Impasses Panel in accordance with 5 U.S.C. §7119. Neither Party waives any right to exercise any of its statutory rights and remedies such as unfair labor practices, negotiability appeals, nor Agency head review. By mutual consent, the parties may modify the ground rules contained in this Article.

C. At all stages of the process, the Parties will communicate and bargain in a good faith effort to reach agreement in an expeditious manner.

SECTION 5

Unless otherwise permitted by law, the Employer will not implement any changes until it has provided proper and timely notice to the Union and the parties have completed all negotiations, including any impasse proceedings. Nothing herein shall be deemed to waive the Employer's authority as provided by law to implement proposed changes in conditions of employment before the completion of bargaining. When the Employer initiates a change, it will provide all necessary relevant information to the Union at the time of the briefing that it has not already provided with the notice. If the Union makes a request for information during the briefing or before proposals are submitted that meets a particularized need with respect to the proposed change, all time frames will be tolled until the Employer provides the requested information.

SECTION 6: Travel

A. Local travel expenses for bargaining within the commuting area will be paid by the Employer.

B. The Employer will pay 100% of all reasonable travel and per diem expenses for one employee representative per chapter located outside the commuting area in local bargaining.

C. The Parties will attempt to schedule any bargaining so that it coincides with other travel that may be reimbursed under this contract, e.g., cooperation committee meetings, etc.

D. In national bargaining, the Employer will pay all reasonable travel and per diem expenses for two (2) employee representatives or, if greater, the number equal to one-half the number of management representatives involved in the negotiations, including members of the Labor Relations staff.

SECTION 7

If one party seeks to terminate an MOU (either local or national) or a past practice (either local or national and including those past practices that arose from an expired agreement), that is not inconsistent with this agreement, the party must, consistent with the Statute and this Article, provide specific notice to the other party of its intention to terminate the practice or agreement and bargain in accordance with law, rule and regulation. All agreements and past practices remain in effect until bargaining is completed, including impasse procedures, except as provided in Section 4A13 above.

SECTION 8

Neither party has an obligation to bargain over any matter that is specifically addressed by the provisions of this Agreement.

SECTION 9

If the Employer reorganizes any of the covered operating divisions at any time during the life of this Agreement such that the new structure no longer aligns with this Article's definitions of local and national issues, the Union may at its sole option reopen this Article and bargain over what will constitute a local or national issue consistent with the new organization.

SECTION 10

The parties, to the extent required by law, agree to bargain over any proposal pertaining to a subject specified in 5 U.S.C. § 7106(b)(1).

SECTION 11

If the last day of a timeframe established by this Article falls on a non-workday (e.g., Saturday, Sunday, or legal holiday), the deadline will be extended to the next regular workday. The parties may mutually agree to extent any of the timeframes in this Article.

ARTICLE 4: EFFECT OF LAW AND REGULATION

SECTION 1

A. In the administration of all matters covered by this Agreement, all management officials and employees are governed by all existing and/or future laws.

B. All government-wide regulations of the Office of Personnel Management (OPM), General Services Administration (GSA), Office of Management and Budget (OMB), Office of Government Ethics (OGE), and other government agencies with authority to promulgate such regulations, in effect as of the effective date of this Agreement, have full force and authority. To the extent they may be inconsistent with the provisions of this Agreement; the government-wide regulations will supersede and govern.

C. To the extent that provisions of any Department policy, regulation, rule, instruction, or manual, including personnel policies contained in the FDA's IOM, are in specific conflict with this Agreement, the provisions of this Agreement will govern.

SECTION 2

A. Any rule or regulation published after the effective date of this Agreement, over which the Employer is obligated to bargain to the extent required by law, will not be enforced for bargaining unit employees either 1) until the Parties have fulfilled their bargaining obligations in accordance with the FLMRS, or 2) if it conflicts with the specific terms of the Agreement. An exception to this provision will be if the Parties mutually agree to accept enforcement of the rule, regulation, etc. If they agree, the rule or regulation will be effective upon agreement.

B. Further, Section 2A above shall not apply to any government-wide rule or regulation that the Employer is obligated by law to implement immediately upon issuance of the regulation.

SECTION 3

The Employer will make an electronic link available from the DHHS website to OPM directives, GSA Federal Travel Regulations, HHS Travel Manual, DHHS regulations, DOL Office of Workers' Compensation Programs, etc.

SECTION 4

In accordance with Article 3, the Employer will notify the Union of changes to Department policies, regulations, rule, instruction, or manuals, including personnel policies contained in the FDA's IOM, affecting conditions of employment as required by 5 U.S.C. § 7114. This section

affects changes in personnel policies or working conditions that do not conflict with this Agreement and is not intended to override the provisions of Section 1C above.

ARTICLE 5: EMPLOYEE RIGHTS AND RESPONSIBILITIES

SECTION 1

As provided by 5 U.S.C. § 7102, 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 5 USC Chapter 71. Such rights include the right:

A. 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 the Employer, the heads of agencies, and other officials of the executive branch of the Government, the Congress, or other appropriate authorities; and

B. To engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this Agreement.

C. On a semi-annual basis, the Employer will inform bargaining unit employees of their right to a free and fair choice to join the union and include in that message information on where to access the NTEU website.

SECTION 2

A. In accordance with 5 U.S.C. § 7114(a)(2)(B), employees have the right to Union representation upon their request, at any examination of them by a representative of the Employer in connection with an investigation if the employee reasonably believes that the examination may result in disciplinary or adverse action against her/him. The Employer recognizes the need for these examinations to be conducted in a manner that assures that the privacy of the employee is protected.

B. The Employer will electronically distribute a semi-annual notice to all employees advising them of their right to representation in such examinations and investigations if they so request such representation.

C. If an employee requests Union representation under this Article and a Union representative is not available for whatever reason (including non-release from duty), the examination will be terminated for a period of time not to exceed one (1) workday to secure a Union representative. If, however, the examination will be in a field office outside of a regional or district office, or in a headquarters office located in the field, the examination may be postponed no longer than two (2) workdays or sooner pending travel authorization in order for the employee to secure a representative.

D. If the Union cannot physically attend the examination, they may participate by telephone or video conference if available. The Union may also designate an ad hoc representative to accompany the employee in person. The ad hoc representative must request official time pursuant to Article 10, Union Representatives/Official Time of this Agreement.

E. The Employer recognizes the need for these examinations to be conducted in a manner that assures that the privacy of the employee is protected. When possible, conduct these meetings outside the normal workplace of employee.

SECTION 3

The Agency's forms shall be used in conjunction with this article by HHS authorized personnel.

These forms are attached for information purposes only. The parties recognize that these forms may need to be updated and/or changed to comply with requirements by law. Any changes to such forms will be provided to the Union in advance, and subject to any legal bargaining obligations. The Administrative Warning form will be used when an employee is not suspected of a crime and the Employer is compelling the employee to answer questions (this is used for non-suspects and for administrative investigations).

A. An employee being interviewed by a representative of the Employer in connection with either a criminal or non-criminal matter has certain entitlement/rights when any representative of the Agency, e.g., Inspector General, contractor, etc., is conducting the interview. This section sets forth those rights as well as the procedures that, unless precluded by law, must be followed by the Employer representative conducting the interview.

B. When an employee is interviewed by the Employer, and the employee is the subject of an investigation, the employee will be informed of the general nature of the matter (i.e., criminal or administrative misconduct) being investigated and be informed whether or not the interview is related to possible criminal misconduct by the employee. This information shall be on a form (see Appendix 5-1), which, unless precluded by law, the employee will initial and date at the outset of the interview.

C. **(**Weingarten Rights) When the Employer conducts an interview of an employee regarding a non-criminal matter and the employee is a potential recipient of any form of discipline or adverse action, the Employer shall advise the employee of their right to Union representation prior to the commencement of questioning. Failure on the part of the Employer to inform the employee of this right at the time of the interview will not be the sole basis for a grievance.

D. **(**Third Party Witness Interviews) Prior to beginning interviews with employees who are being interviewed as third-party witnesses, the Employer, unless precluded by law, will

provide employees with a form (such as Appendix 5-3), which shall be signed and dated by the employee at the outset of the interview.

E. (Miranda Rights) When employees who are the subject of a criminal investigation is in custody by the Employer, they shall be informed of their Constitutional rights. Unless precluded by law, the Employer will give the statement in writing on a form (such as Appendix 5-4) to secure the employee's signature prior to commencement of questioning.

F. (Beckwith Rights). In a non-custodial interview involving possible criminal matters, an employee will be advised of their rights and the consequences of refusing to answer the questions posed to them on the grounds that the answers may tend to incriminate him. The information shall be on a form (Appendix 5-5), and unless precluded by law, the Employer will provide the statement in writing for the employee to sign prior to the commencement of questioning.

G. (Kalkines Rights). In an interview involving possible criminal matters, where prosecution has been declined by appropriate authority, an employee will be required to answer questions only after the Employer representative has provided the employee with the appropriate assurances. Prior to requiring employees to answer under such circumstances, the Employer representative shall inform the employees that their statements concerning the allegations during the interview cannot and will not be used against them in a subsequent criminal proceeding, except for possible perjury charges for any false answers given during the interview. This information shall be on a form (such as Appendix 5-6) which, unless precluded by law, shall be signed and dated by the employee at the outset of the interview.

H. During investigatory interviews involving criminal conduct, an employee's refusal to respond to questions based on a proper invocation of the privilege against self-incrimination may not be used as the sole basis for disciplinary or adverse action.

I. When a Union representative represents an employee during any investigation, the role of the representative includes, but is not limited to, the following rights:

1. to clarify the questions;

2. to clarify the responses;

3. to assist the employee in providing favorable or extenuating facts;

4. to suggest other employees who may have knowledge of relevant facts;

5. to request a caucus for a reasonable period of time; and

6. to advise the employee during the examination or a caucus.

However, the Union representative may not disrupt the meeting and may not answer for the employee.

J. The Employer recognizes that administrative interviews by officials of the Employer are strictly limited to matters of official interest to the Employer and, accordingly, will not address private matters outside the appropriate scope of the investigation.

SECTION 4

A. The Employer retains the right to hold counseling sessions with employees without the presence of a Union representative. Counseling sessions may include informal discussion between individual employees and their supervisors regarding the employee's performance; work assignments and procedures; application of established office policies and practices; leave practices and requests; and discussions of a personal nature. The Employer may not use these counseling sessions to convey changes to personnel policies, practices or general working conditions that are required to be discussed in formal meetings.

B. When a counseling session includes (either in person or via telephone) a representative from Employee or Labor Relations, the employee will be given an opportunity to have Union representation present prior to the start of the session. For all other counseling sessions where there is more than one management official or representative present (either in person or via telephone), the employee may request Union representation. If Union representation is requested, the meeting will not be delayed more than one (1) workday.

SECTION 5

A. The Employer recognizes and respects the dignity of employees in its formulation and implementation of personnel policies and practices and conditions of work. It is the responsibility of all employees and supervisors to control their behavior at all times and abide by the Standards of Conduct of the Department. The Employer, employees, and the Union will treat each other in a professional, businesslike and courteous manner. The Parties recognize the need for supervisors, management officials, Union representatives and employees to treat each other and members of the public with courtesy, consideration and respect. However, nothing in this section shall be construed to waive the right of the Union to engage in robust debate.

B. The Parties agree that meetings between supervisors, employees, and/or the Union should be as non-confrontational as possible. It is the responsibility of all employees and supervisors to control their behavior at all times. In a meeting with their supervisor or management official, if any participant reasonably believes that a physical confrontation or verbal abuse is imminent, they may suggest a reasonable break in the meeting for "cooling off." Under such circumstances, the Parties recognize that such a break may be conducive to effective employee/supervisor relationships, and the supervisor will not

arbitrarily deny a request for such a break. If the supervisor approves a break, the meeting will be resumed as soon as practicable following the "cooling off" period.

SECTION 6

Employees are required to carry out the lawful instructions of a supervisor or any other HHS management official with real or apparent authority. If there is a disagreement between the employee and the supervisor or other management official, the employee will comply with the instructions and, if desired, challenge the matter later. An employee will not be disciplined or retaliated against solely for carrying out such an instruction. The Employer is not precluded from imposing discipline on the employee if it is determined that the manner in which the instruction was carried out was inappropriate under the circumstances. Nothing in this section absolves the employee from criminal or civil liability for her/his actions.

SECTION 7

The rights and protections established in 5 U.S.C. § 2301(b), Merit System Principles, and 5 U.S.C. § 2302(b), Prohibited Personnel Practices, are hereby incorporated into this Article. Appendix 5-7 and Appendix 5-8 enumerate these statutory rights.

SECTION 8

Employee participation in the Combined Federal Campaign, blood drives, and other solicitations will be voluntary, and employees will not be coerced to contribute. Supervisor will not solicit pledges or contributions from an individual employee under their supervision. If the Employer conducts pep rallies, informational meetings, or other activities, e.g., auctions, they will in no case lessen an employee's right to take lunch apart from attending the rallies or meetings. The Employer will seek employee-volunteers prior to assigning employees to perform functions (e.g., CFC key worker or coordinator).

SECTION 9

An employee cannot be required to tell a supervisor the specific circumstances surrounding the employee's need to contact a Union representative. When an employee wishes to request permission to leave the work site to contact a Union representative, they must inform their supervisor only of the general nature of the visit and the estimated time of return as mutually agreed. The employee must receive prior approval from the supervisor to leave the work site and, where possible, the employee must give the supervisor a telephone number at which they may be reached while absent in case of urgent work-related need. The amount of time spent will be reasonable. The employee's request will be granted and may be delayed if the employee's absence would hinder the accomplishment of essential workload requirements. Examples of hinder include an inability to complete specific or previously assigned projects timely or when the employee's absence would adversely affect needed physical office coverage and cannot be otherwise accommodated. If permission is not granted, the supervisor will identify the time

period when the employee may meet a Union representative. Only under compelling circumstances will the supervisor require the delay to exceed one (1) workday.

SECTION 10

A. If an employee does not receive a salary check (including direct deposit) on the designated date, the employee may contact the local administrative office for the appropriate forms necessary to request a replacement check. The Employer will process fully completed and signed forms expeditiously and in accordance with government-wide regulations. The Employer will urge the payroll office to process the information within two (2) workdays of receipt.

B. When an employee does not receive a salary check (including direct deposit) the employee may request an emergency payment to avoid financial hardship. In these instances, the Employer will provide written information on these procedures.

C. To prevent over/underpayments of pay and to assure timely correction of payroll errors, employees are urged to review their bi-weekly Earnings and Leave Statements and notify their timekeeper and/or supervisor as soon as practicable of any discrepancy thereon.

SECTION 11

A. It is recognized that all employees are expected to pay promptly all just financial obligations.

B. The Employer agrees that it will not otherwise disclose or discuss the employee's financial information without the explicit signed, written consent of that employee or either a court order or other mandatory operation of law. Nothing in this section may be construed to: prevent the Employer from verifying that an individual is an employee, or providing her/his grade and/or the gross amount of her/his pay, or both;

C. Nothing in this section may be construed to: preclude the Employer from complying with an order from a court of competent jurisdiction instructing the Employer to comply with legal process brought for the enforcement of an employee's legal obligations to provide child support and/or alimony payments and other garnishments, in compliance with government- wide laws, including 5 U.S.C. § 5520a, 42 U.S.C. § 659, and such rules, regulations, and executive orders as may from time to time be promulgated there under.

D. Nothing in this section may be construed to inhibit the Employer from enforcing rules, regulations, or policies governing use of Government-issued travel or purchase charge cards, phone cards or equipment.

SECTION 12

The Employer will generally not require an employee to submit to a polygraph examination. On rare occasions, such a test may be requested by law enforcement/special agents of the Department or the Federal Government. Employees who refuse to submit to a polygraph examination will not be disciplined or subjected to adverse action based on that declination.

SECTION 13

Employees are accountable to the Employer for performance of their officially assigned duties and responsibilities. In the performance of those duties and responsibilities, employees will be in their conduct by government-wide, HHS-wide standards of ethical conduct.

SECTION 14

Employees may decorate their offices and individual work areas, but decorations may not interfere with or violate the following:

A. the Employer's method of conducting business;

B. the rights of other employees and the public;

C. federal property, health and safety requirements and facility maintenance needs for government owned and leased space;

D. nothing can be posted in public spaces unless sanctioned by facility management;

E. commonly accepted standards of good taste; and

F. employees are expected to maintain an orderly office environment.

All employees that are certified to perform CPR may display symbols for CPR in their offices and individual work areas.

SECTION 15

All employees will be given three (3) hours of duty time during the thirty days after implementation of this Agreement to read its provisions. This time must be used to read the Agreement at the employee's workstation and is subject to supervisory approval. At the Union's sole option, it can substitute these three (3) hours with a two (2) hour contract training session within the first thirty (30) days of implementation.

A. All new employees to the bargaining unit who have not otherwise participated in an NEO will also be provided three (3) hours of duty time to read the Agreement, within the first two weeks of their start date as a bargaining unit employee, subject to

supervisory approval. At the Union's sole option, it can substitute these three (3) hours with an Article 13 two (2) hour contract training.

SECTION 16

The Employer has a legitimate work-related basis for monitoring employees' use of Government property and equipment, and employees have no right to privacy when using such property and equipment.

This section applies to such things as: employees' calls, messages, and other communications, whether by telephone, facsimile, e-mail, or any other media; and employees' desks, computers, files, furniture, and workspaces.

The Employer has the right to look in and through an employee's work area for official business purposes, such as looking for needed files or assignments when an employee is not in the office.

When the Employer has an official business need to look through an employee's work area for files or other information related to official business, the employee will be allowed to be present if the employee is otherwise present at the work site. The employee shall, upon request, be given an opportunity to be represented by the Union during the search, provided that the supplying of such representation by the Union shall not unduly delay the search or impede the purpose for which the search is conducted. If advance notification is not possible, the Employer will timely send a follow-up email to the employee notifying them that the Employer went through their non-electronic material and identify any files or materials that were removed.

SECTION 17

A. This section applies to every significant FDA decision on any matter under the laws administered by the Commissioner, whether it is raised formally, for example, by a petition or informally, for example, by correspondence. Under 21 CFR § 10.70 FDA employees responsible for handling a matter are responsible for insuring the completeness of the administrative file relating to it. The file must contain:

    1. Appropriate documentation of the basis for the decision, including relevant evaluations, reviews, memoranda, letters, opinions of consultants, minutes of meetings, and other pertinent written documents; and

    2. The recommendations and decisions of individual employees, including supervisory personnel, responsible for handling the matter.

        a. The recommendations and decisions are to reveal significant controversies or differences of opinion and their resolution.

        b. An agency employee working on a matter and, consistent with the prompt completion of other assignments, an agency employee who has worked on

a matter may record individual views on that matter in a written memorandum, which is to be placed in the file.

3. A written document placed in an administrative file must:

   a. Relate to the factual, scientific, legal or related issues under consideration;

   b. Be dated and signed by the author;

   c. Be directed to the file, to appropriate supervisory personnel, and to other appropriate employees, and show all persons to whom copies were sent;

   d. Avoid defamatory language, intemperate remarks, undocumented charges, or irrelevant matters (e.g., personnel complaints);

   e. If it records the views, analyses, recommendations, or decisions of an agency employee in addition to the author, be given to the other employees; and

   f. Once completed (i.e., typed in final form, dated, and signed) not be altered or removed. Later additions to or revisions of the document must be made in a new document.

B. FDA employees working on a matter have access to the administrative file on that matter, as appropriate for the conduct of their work. FDA employees who have worked on a matter have access to the administrative file on that matter so long as attention to their assignments is not impeded. Reasonable restrictions may be placed upon access to assure proper cataloging and storage of documents, the availability of the file to others, and the completeness of the file for review.

C. Employees will be notified in writing of their right to record their own individual views on the matter in a written memorandum, which shall be placed in the file. Where the employees are in a concurrence chain (including situations where the employees would be the originator of the document), they will not be required to concur on any approval document with which they professionally disagree.

D. In accordance with 21 CFR § 10.75, an employee may request a review of any decision made by any FDA employee, other than the Commissioner. The review will be made by consultation between the employee and the supervisor or by review of the administrative file on the matter, or by both. The review will ordinarily follow the established Agency channels of supervision or review on that matter.

E. In accordance with 21 CFR § 10.75, when an interested party outside the FDA requests internal Agency review of an employee's decision, including any complaint made orally or in writing, the employee will be notified of the request and will be directed to the appropriate administrative file on the matter.

F. When another FDA employee requests internal agency review of an employee's decision, including any complaint made orally or in writing, the employee will be notified in writing of the request and will be directed to the appropriate administrative file on the matter.

G. No employee will be penalized by the Employer for exercising his or her rights under this Section.

SECTION 18

Upon request by the Employer, an employee must provide her/his home telephone, pager or cell phone number. This information will be safeguarded by the Employer and used for official business purposes only. Employees may provide an additional contact number.

SECTION 19

A. Nothing in this Agreement may be construed to preclude an employee from exercising grievance or appellate rights established by law, rule, or regulation, except in the case of grievance or appeal procedures negotiated under this Agreement.
B. A grievance filed in good faith by any employee will not cause any adverse reflection in her/his standing with her/his supervisor or her/his loyalty or desirability to the organization. The Employer will not impose any restraint, interference, coercion, discrimination, or reprisal against any employee or Union representative for:
    1. designating the Union for the purpose of presenting to the Employer or any government agency or official any matter of dissatisfaction, or
    2. presenting any relevant information concerning any matter for which remedial relief is available under this Agreement. Nothing in this section may be construed to absolve an employee from responsibility for disclosing information which is not permitted by law, rule, or regulation to be disclosed.

SECTION 20

The Parties agree that:

A. It is important for supervisors and employees to understand clearly their rights and responsibilities about the use of Union representatives; and
B. In addition to meetings which the Union has a statutory right to attend and meetings for which an employee has a right to request Union representation, an employee may request if a Union representative can participate in other types of Employer-initiated meetings. The Employer will seriously consider the employee's request, as a Union representative's presence may be useful in conducting a calm and objective discussion. However, a decision to permit Union presence at these meetings rests solely with the Employer.

SECTION 21

In addition to salary direct deposit and allotments for Union dues, charity, and savings bonds, each employee may elect to have up to the maximum number of discretionary allotments (savings-type and/or for purposes other than savings) permitted by the capacity of the payroll system in use by the Employer at the time any allotment request is made.

ARTICLE 6: EMPLOYEE SPACE AND FACILITIES

This Article applies to all HHS-occupied buildings, lease acquisitions, new construction, renovations, and improvement projects.

SECTION 1: General

This Article establishes guidelines for alternate workspace assignment solutions (e.g., hoteling, hot desking, workspace sharing, and workstation sharing) and space changes which may apply to space bargaining. NTEU retains the right to bargain, as required by law and the parties' collective bargaining agreement, over space changes and impacts that flow therefrom, including moves, common areas, equipment, workstations, the number and size of offices/workstations, workspace assignment, floorplans, workspace sharing, and other amenities.

SECTION 2: Definitions

The following are relevant definitions:

A. **Free-Address aka Hot Desking**: An alternate workspace assignment solution where workspaces are available for temporary use on a first-come first-serve basis and not managed by a reservation system.

B. **Hoteling**: An alternate workspace solution where workspaces are available for use on an as needed basis through a reservation system.

C. **Office**: Individual and shared workspaces that are fully enclosed.

D. **Shared-Assigned Accommodation:** An alternate workspace assignment solution where a limited number of employees use a single location at alternate times.

E. **Workspace:** The location where an employee primarily performs their work at their duty station. This could be a workstation, cubicle, office, laboratory, or other location. Each workspace shall have the equipment and provisions to enable employees to perform their duties. This may include a desk, chair, IT connectivity, or scientific equipment.

F. **Workspace Sharing**: An alternate workspace solution where two or more employees share a workspace. This may include different strategies such as free address, hoteling and shared-assigned accommodations.

G. **Workstation**: Individual and shared workspaces that are not fully enclosed, such as cubicles and desk worksurfaces in open work areas.

SECTION 3: Workspace Assignment Solutions

A. More than one alternate workspace assignment solution may occur within an area or unit. For example, workstation sharing and workspace sharing may occur concurrently.

B. As a general rule, employees, who are required to report to their assigned agency worksite 6 or more days, per pay period, will be assigned a dedicated workspace.

C. On a case-by-case basis, a manager may exempt an employee from participating in an alternate workspace assignment solution based on the nature of the work performed and the mission of the organization, and for other reasons including a reasonable accommodation.

D. Desk sharing arrangements will allow employees to have sole access to their assigned workspace on the days and times they are in the office and assigned to that workspace. Multiple employees will not share the same workspace on the same days and times.

E. Unless other voluntary arrangements are approved, the following formula will be used for the selection of workspace in connection with space moves and workspace sharing solutions in FDA:

   Employee Grade + SCD (federal service computation) x percent of time reporting to the traditional office based on 80 hours per pay period in office.

   Examples of the implementation of the formula are attached (Appendix 6-1).

SECTION 4: Pre-decisional Input

For new occupancy agreements, management-initiated bargaining unit employee relocations to a different building, space reconfigurations and/or real estate changes impacting bargaining unit employees, the Employer will provide pre-decisional involvement to the local impacted NTEU chapters (and NTEU National if more than 1 chapter is impacted) before proposed space requirements or relevant pre-design documents are finalized. This will include briefing the impacted NTEU chapters on the general scope of the project, the anticipated impact on bargaining unit employees, and the projected completion date. The Union may submit written recommendations to the projected completion date. The Union may submit written recommendations to the Employer within fourteen (14) calendar days of the meeting. The Employer will consider the Union's recommendations. After the Employer has made its recommendations or decisions, (including, where applicable, to GSA and GSA has responded with a decision and details), the Employer will brief the Union as to the plan. While NTEU has a right to communicate with bargaining unit employees concerning its pre-decisional input under this section, it is recognized that at this stage the plans are tentative and might not be implemented if circumstances change. If a decision is made to implement the plans, notice will be provided in accordance with Article 3 of this agreement and Section 5 below.

Where the Employer plans to 1. relocate bargaining unit employees to another space within the same building for under 50 bargaining unit which does not involve space reconfiguration, new furniture, or lease changes, or 2. initiate space configurations or furniture purchases for under 10 bargaining unit employees, the pre-decisional involvement process, above, does not apply.

SECTION 5: Notices when affecting office moves and workspace sharing

A. Consistent with Article 3, the Employer will provide advance notice to the union of any employee moves and/or the need to implement alternate workspace assignment solutions, including any need for office sharing, in any duty station prior to notifying the impacted employees.

B. The Employer will notify impacted employees of the move schedule at least fourteen (14) calendar days in advance of the scheduled move date, absent unforeseen circumstances that necessitate a shorter timeframe. A copy of all notices issued to employees will be provided to the Union concurrently. That notice will include:

    1. the reason for the move;

    2. names of impacted employees;

    3. location moving to and from;

    4. the scheduled date of the move;

    5. whether or if any alternate workspace assignment solutions will need to be implemented;

    6. the workstation selection process, including, the schedule by which employees must make selections; and

    7. a floorplan of the available designated workstations, including any designated workspace sharing locations, as applicable.

ARTICLE 7: UNION RIGHTS

SECTION 1

A. It is agreed that the Union shall be given the opportunity to be represented at all formal discussions between the Employer and employee(s) concerning any grievance, or any personnel policy or practices or matters affecting the general working conditions of employees in the unit. Additionally, NTEU Chapters will be invited and notified pursuant to this Article to attend formal discussions where the results of the Federal Employees Viewpoint Surveys (FEVS), or any successor to the FEVS are scheduled to be discussed. Where the Employer plans to implement any changes identified during the meetings, notice and opportunity to bargain will be provided to NTEU pursuant to Article 3 and to the extent required by law.

B. Factors that indicate whether a meeting is "formal" include, but are not limited to:

   1. the status of the individual who held the discussion(s);

   2. whether any other management representatives attended;

   3. the location of the discussion;

   4. how the meeting was announced;

   5. the length of the discussion;

   6. whether an agenda was established; and

   7. the manner in which the discussion(s) was conducted.

C. The Employer will notify the Chapter President(s) of all local impacted NTEU chapter(s) in writing of any scheduled formal meeting. For regularly scheduled formal discussions, the notice and a meeting agenda, where available, will normally be provided no less than five (5) workdays in advance of the meeting. For non-recurring formal meetings, the Union will be provided with reasonable notice (i.e., generally not less than two (2) workdays notice) unless emergency circumstances preclude such notice. Where a shorter notice period is necessary, the Employer will notify the Union as soon as practicable that a formal meeting will be conducted. The local Chapter may designate a union mailbox to receive such notifications. Nothing precludes the Employer from providing notice earlier than five (5) workdays in advance of the meeting. If available, the notice shall include an agenda and a copy of any written materials that will be distributed at the meeting. The Union will respond to the Employer's formal meeting notification with the name and contact information of the Union's designated representative who will attend the formal meeting generally at least one (1) hour in advance of the meeting.

D. The Employer will acknowledge the attendance of the designated Union representative at the start of the formal meeting. The Union representative will be given the opportunity to ask relevant questions on behalf of the employees and may make a brief statement of the Union's position on the matter under discussion. At any formal meeting, the Union representative may inform employees that if any of them wishes to discuss the meeting topics further after the meeting, the employee upon supervisory approval, may come to the Union office or other area to meet with the Union representative. Where formal meetings are held virtually, the Employer will ensure that the virtual platform permits NTEU to fully exercise its rights under this Section.

E. All settlement agreements relating to complaints and grievances affecting working conditions of bargaining unit employees will be forwarded to the appropriate NTEU chapter president or the NTEU National President, with a copy to the appropriate servicing personnel office, for a seven (7) day period of consideration. NTEU will notify the Agency if it alleges that the settlement conflicts with any negotiated agreements between the HHS and NTEU or other non-discretionary requirements. Failure of the Union to allege within the seven-day consideration period that a conflict exists shall be deemed acceptance of the settlement agreement.

   Pursuant to Section 1E, settlement agreements will contain the following statement:

   This settlement agreement is subject to approval for compliance with negotiated agreements between HHS and NTEU. Accordingly, it will be forwarded to the appropriate NTEU chapter president or the NTEU National President, with a copy to the appropriate servicing personnel office, for a seven (7) day period of consideration. If NTEU alleges the settlement conflicts with any negotiated agreements between the HHS and NTEU, or other non-discretionary requirements, you will be notified.

SECTION 2

All requests for data made by the Union under 5 U.S.C. § 7114(b)(4) will be so identified and will be processed in accordance with all applicable laws, including case law, regulations, and contractual obligations. When the Union has demonstrated a particularized need and the requested information cannot be provided within fourteen (14) workdays, the Union will have the option of either postponing or amending any filing and/or other deadlines relating to the request. Information requests concerning grievance will be processed in accordance with Article 45, Section 11.

SECTION 3

The Union may refuse to represent any bargaining unit employee in any proposed disciplinary actions, any statutory appeals, or any matter outside this Agreement, which includes the following:

1. Adverse actions such as removals, demotions, etc.

2. EEO complaints
3. Unacceptable performance actions such as removal or demotion
4. Workers' compensation cases
5. Allegations of prohibited personnel practices

SECTION 4

All NTEU field representatives and NTEU National Negotiators who handle HHS matters will be provided with access identification cards for the buildings that contain bargaining unit employees and will be required to complete background investigations consistent with law and generally applicable Agency internal security policy and follow the appropriate local sign in procedures, as appropriate. If the NTEU representative has not undergone the background investigation, they will have the same access as other members of the general public.

SECTION 5

If the local chapter requests, the Employer will include with its commitment letters a brochure, agreed to by the National parties, which outlines the benefits of membership in the Union.

SECTION 6

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

SECTION 7

One (1) week of each year, to be agreed upon between the parties annually at the national or local level, will be recognized by the Employer as Labor Recognition Week. During that week, local chapters may use the Employer's cafeterias and break rooms to set-up exhibits publicizing the contributions of organized labor, particularly NTEU, to society. Meeting rooms may also be made available. All employees may request up to one (1) hour of duty time to participate in Labor Recognition Week activities. Local chapters shall be provided with official time consistent with Article 10.

SECTION 8

A. The Employer agrees to authorize leave to any Union representative for attendance at Union meetings, or portions of meetings, which constitute internal Union business, unless the employee's absence would substantially hinder the accomplishment of essential workload requirements. Union Chapters will notify the Employer as to which representatives will be attending such meetings as early as possible, normally at least ten (10) workdays preceding scheduled departure. Late notice shall not be the

sole ground for denying leave requests.

B. Additionally, the Employer will grant the Union officers and Union representatives leave to perform other internal Union business, unless the employee's absence would substantially hinder the accomplishment of essential workload requirements.

C. For the purpose of this Section, subject to supervisory approval, employees may use annual leave, leave without pay, earned credit hours, earned compensatory time, time off awards, or any combination thereof.

SECTION 9

When a bargaining unit employee submits an application for retirement to the Agency, the employee will be supplied with the following:

A. Letter from NTEU

B. NTEU Retiree Flyer

C. OPM Dues Withholding Authorization Form

D. NTEU Cash Dues Application

E. Other NTEU Information

NTEU will provide the above information to HHS electronically, including any updates. At the end of each quarter, the Employer will provide the Union with the number of employees to whom these packages were distributed.

SECTION 10

The Employer will permit NTEU to establish a NTEU page on the Employer's intranet where NTEU can post Union content, including contact information and other resources, and hyperlinks to the NTEU website.

NTEU National will provide the content for its page on the HHS intranet to the NLRO. The Employer will post the information provided by NTEU National, including any updates, on the NTEU page on the HHS intranet within seven (7) calendar days of receipt of the information from NTEU.

SECTION 11: Surveys

At the national level, surveys that impact bargaining unit employees in more than one NTEU chapter will be provided to the NTEU National President as soon as practicable, normally at least thirty (30) days, in advance of distribution to bargaining unit employees. NTEU will inform the Agency within ten (10) days of receipt of the survey whether feedback will be

provided. If NTEU does not notify the Agency within ten (10) days that feedback will be provided, the Agency may release the survey.

Copies of local surveys impacting only one (1) chapter will be provided to the local Chapter as soon as practicable.

All survey notices under this section will include identification of the purpose of the survey, the group of employees to whom the survey will be issued, the anticipated issuance date, the anticipated closure date, whether the survey will be voluntary, and whether responses will be anonymous or confidential.

ARTICLE 8: DUES WITHHOLDING

SECTION 1

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

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

B. Be an employee of the bargaining unit covered by this Agreement;

C. Have voluntarily completed Standard Form 1187 (SF- 1187), "Request and Authorization for a Voluntary Allotment of Compensation for Payment of Employee Organization Dues"; and

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

SECTION 2

The Union and Employer agree that the provisions of this Article are subject to and will be governed by applicable Federal laws, rules, and regulations.

SECTION 3

The Union agrees to do the following:

A. Inform and educate members of voluntary nature of the system for the allotment of labor organization dues, including the conditions under which the allotment may be revoked;

B. Assist as necessary in making SF-1187 forms available to all employees who need them, all forms are found at Standard Forms (opm.gov).

C. Complete Section A of SF-1187 and keep the official designated by the Employer informed of any changes in this information. The Union will assure that the employee's Social Security number, job title, and work location are properly annotated in the appropriate blocks on the SF-1187. The Union will promptly submit the completed SF-1187 to the Employer's designated official (EDO) after the signing by both the authorized official and the employee;

D. Inform the EDO of the name of any particular employee who has been expelled or ceases to be a member in good standing in the Union;

E. Inform the EDO of any changes in the dues amounts or the formula for membership dues. Changes in the dues amounts will begin the first full pay period designated by the Union's National Office. Changes in the dues amount will be made as soon as possible, but no later than sixty (60) days after notification. NTEU will make no more than one (1) such change in a twelve (12) month period; and

F. Promptly advise the EDO of the names of and complete mailing addresses and changes thereto of officials who are responsible for certifying SF-1187s and to whom remittances, printouts, and other dues withholding data should be submitted.

SECTION 4

The Employer agrees to do the following:

A. Deduct and process voluntary allotments of dues and changes in dues upon certification from the NTEU National President in accordance with this Agreement;

B. Withhold authorized dues on a bi-weekly basis at no cost to the Union or the employee;

C. Prepare the Department of Health and Human Services Form 610 for transmission within one pay period of receipt of a properly certified SF-1187;

D. Notify the Union when an employee, who has submitted a SF-1187, is not eligible or no longer eligible for an allotment, along with the reasons for the decision, including promotion actions;

E. Prepare biweekly remittances and reports as follows:

1. Transmit to the Union the total amount deducted for all employees and total amount remitted to the Union;

2. Remittance will be made directly to the Administrative Controller, National Treasury Employees Union, 800 K Street, NW, Suite 1000, Washington, DC 20001-8022, along with a printout showing the following:

    a. Pay roll period number, pay period ending date, dues account number, and date the report was prepared;

    b. Identification of duty station;

c. Identification of the labor organization, including the Union Chapter number;

d. Name and address of Remittance Official and Employer's designated official;

e. Names of employees for whom payroll deductions are made in alphabetical order by last name and the amount of the deduction;

f. Number of records, number of deductions, total amount deducted, total fees, and net due to Union;

g. Social security numbers of employees for whom payroll deductions are made;

h. Whether an employee retired or was separated;

i. Whether an employee is continuing to be carried in a non-duty status;

j. Whether an employee is full-time, part-time, seasonal, intermittent, term, temporary, or permanent;

k. The bi-weekly base pay of the employee, grade and step, pay plan (General Schedule or Wage Grade);

l. National and local chapter portion of dues withheld;

m. New allotments;

n. Revocation of an employee's dues withholding;

o. No deduction because the employee's compensation was insufficient to permit a deduction; and

p. Automatic pay adjustments.

3. The Employer will send to the Union an electronic copy of the Employer's dues withholding data via electronic file transfer. The Employer will provide such data in ASCII delimited (preferably comma or tab delimited).

F. Assign the appropriate Union dues withholding account number for the current level of dues;

G. Withhold new amounts of dues upon certification from the NTEU National President so long as the amount has not been changed during the last twelve (12) months; and

H. Inform local chapters of the individuals responsible for receiving and processing 1187s and their contact information (address, email, phone number) for each Operating Division within the Chapter on a semi-annual basis and whenever there is a change in responsible HHS staff.

SECTION 5

It is agreed that allotments will be terminated:

A. When an employee ceases to be a member in good standing of the Union

B. If the Union loses exclusive recognition for the covered unit

C. If the employee is reassigned or promoted from the unit for which the Union has been accorded exclusive recognition

D. When an employee timely revokes her/his allotment pursuant to the provisions of this Article,

E. When the employee is separated from the Federal Service.

SECTION 6

The effective dates for actions under this Agreement are as follows:

A. Starting dues withholding: No later than one full pay period following receipt of the SF- 1187 by the EDO.

B. Change in amounts of dues: Beginning the first full pay period designated by the Union's National Office. This dues change will be made as soon as possible, but not later than sixty (60) days after notification. Such changes in dues amounts will be limited to one (1) change each twelve (12) months.

C. Termination due to loss of membership in good standing: Beginning of first full pay period after the date of notification into the Employer's automated personnel and pay system.

D. Termination due to loss of recognition: Beginning of the first full pay period following the loss of exclusive recognition upon which the allotment was based.

E. Termination due to separation or movement out of the exclusive unit: Beginning of first full pay period after the date of receipt of notification into the Employer's automated personnel and pay system.

F. Termination due to revocation by the employee: Revocation notices for employees who have had dues allotments in effect for more than one (1)

year must be submitted to the EDO during pay period 15. Revocations will become effective during pay period 19. Revocation notices for employees who have not had dues withholding in effect for at least one (1) year must submit the revocation notice to the EDO on or before the one-year anniversary date of their dues allotment. These revocations will become effective on the first full pay period following the one-year anniversary date if the revocation is received by the EDO prior to the anniversary date.

In all cases of revocation, revocations will only be effected by submission of a completed SF- 1188 that has been initialed by the Chapter President or the Chapter President's designee(s). If the SF- 1188 is not initialed, the Employer will return the SF-1188 to the employee and direct the employee to contact the proper Union official for initialing. All SF- 1188s must be signed by the Chapter President (or designee) in a timely manner.

SECTION 7

The Union will promptly remit any erroneous payments it receives for which it has not provided an employee reasonable services, e.g., the payment due another union.

SECTION 8

Each January, May and September, the Employer will provide the Union a data file that will contain the following data on all employees in the bargaining unit:

A. Names

B. Grade and Step

C. Position Title

D. OPDIV

E. Branch

F. Group or Division

G. Unit

H. Post of Duty City

I. Post of Duty State

J. Employees Work Status (such as permanent, intermittent, seasonal, etc.)

K. Years of Service

L. Service Computation Date

M. CSRS or FERS, FERS FRAE and FERS RAE

N. Agency Email Address

ARTICLE 9: UNION ACCESS TO EMPLOYER SERVICES

SECTION 1

The Employer will permit reasonable use of copying equipment to reproduce material related to labor-management relations program. The Employer reserves the right to ensure that all materials being reproduced relate to the labor management relations.

SECTION 2

The Union may use the Employer's mailing system including e-mail and, where necessary, the external postage-paid mail system, to transmit or receive representational correspondence concerning labor relations, and other Union matters. The Employer accepts no responsibility for lost, damaged, opened, or misrouted mail. In no case will the costs be more than nominal. The Union retains the right to challenge the Agency’s mishandling of Union correspondence.

SECTION 3

The Employer agrees to provide the Union access to all current written issuances of covered operating divisions, as well as new issuances, updates, and amendments on personnel policies, practices, and working conditions and, upon request, to furnish the Union one (1) copy of the above, which may be in electronic form. The Employer will timely respond to such requests.

SECTION 4

A. The Employer will distribute an electronic copy of this Agreement to each current bargaining unit employee represented by NTEU and to all new bargaining unit employees as part of the onboarding process, and will maintain an electronic copy on the HHS intranet accessible by all bargaining unit employees. The electronic copy will be in a searchable PDF format, with a separate table of contents identifying each article with hyperlinks to the article, and which may be downloaded and saved.

   Employees may print copies of the Agreement for their use on duty time using HHS equipment; remote employees can print it on their home printer (if they have one) or in a HHS facility when they are otherwise in a facility. The Employer will provide one hundred (100) to each of the Washington, D.C. headquarters chapters, except Chapter 282, to which the Employer shall provide two hundred (200) copies and Chapter 286, to which the Employer shall provide fifty (50) copies; one hundred (100) copies to NTEU's National Office; and fifty (50) copies to each all-other chapters. The Agreement will contain an alphabetized index and a table of contents, as well as a footer with the Article and page number.

B. The Employer will also provide to NTEU National a copy of the most current Microsoft Word version and a searchable PDF version of the Agreement once finalized, ratified if applicable, and approved on Agency Head Review.

C. The Employer will be responsible for providing copies of this Agreement in alternative formats, e.g., Braille, dictation software, etc. if requested by a disabled employee.

D. The Employer will reissue electronic copies of the Agreement which will include any revisions to those articles that change as a result of any midterm reopener bargaining. The Employer will maintain the reissued Agreement on the HHS intranet consistent with subsection 4A above.

SECTION 5

A. All Union communications will clearly identify the Union as the source of the communication.

B. The Union's usage of Employer services not addressed in this Article is limited to those matters for which official time is authorized in accordance with Article 10, Union Representatives/Official Time, of this Agreement.

SECTION 6

A. The Union shall be permitted to maintain all offices and space it currently possesses. This space is provided for the exclusive use of the Union. Furthermore, the Union shall have the right to have the same number of computers, printers, and other equipment as it currently has. The Unions shall also have the right to retain all existing computer/internet access rights, telephone lines, and voicemail boxes. In the event of a physical relocation of bargaining unit employees due to the closing or consolidation of posts of duty or other physical relocation of office facilities that affects an existing Union office, the local Union will be entitled to a Union office in the new space that is consistent with this Section.

B. At a minimum, each union office shall be furnished with a desk, desk chair, three (3) regular chairs, a four/five (4/5) drawer lockable cabinet, a telephone, a minimum of two (2) telephone lines, a computer or laptop (subject to the requirements of Section D below), a laser printer, the Employer's network and internet access, voicemail, and connections for the operation of the above-mentioned equipment. Upon request, the Employer will provide local NTEU chapters with reasonable additional secured (e.g., lockable) storage (e.g., file cabinet(s)) for the exclusive use of the Union.

C. The local chapter may negotiate, however, at its sole option, for additional space if the local chapter does not have an office at every location and building where there are more than sixty (60) bargaining unit employees represented by the chapter. Additionally,

Section 6A above notwithstanding, if there is a relocation, the Union may, among all other negotiable issues, bargain for additional office space.

D. The Employer shall ensure that the Union's government-issued computer or laptop functions properly. Computers that do not function properly will be serviced or replaced as appropriate by the Employer. Subject to the availability of funds, whenever hardware and/or software upgrades are made by the Employer in a post of duty, the Employer will also upgrade Government–owned equipment provided to the Union.

E. Union representatives will be given access to copy equipment, computers and printers in their local working areas for representational purposes.

F. Because of the need to conduct some business in private, the Employer will give the Union access to private space/conference rooms on an "as needed" basis. The Union may use the Employer's conference rooms for discussions between employees and Union officials provided the conference space is available and provided the Operating Division occupying that space determines the conference room is not needed for Employer work at the time requested. The Union will adhere to the conference room reservation process in place where the conference space is located.

G. The Employer will establish separate e-mail accounts for Union representatives for labor-management representational purposes upon request.

H. If Employer laptops are available, Union representatives may take them on travel to conduct labor-management business.

I. Any use of conference space shall be at no cost to the Union, where there would be otherwise no cost to the Employer.

SECTION 7

A. The Employer will also ensure that internet access allows the Union access to the NTEU website (www.nteu.org). The Employer will maintain a clearly titled and appropriately positioned link from its Intranet site as of the date of execution of this contract to the NTEU and NTEU chapters' home pages for ease and convenience of access by employees. The Union will maintain a link from the NTEU web site to the HHS Internet site as of the date of execution of this contract.

B. The Union may use broadcast e-mail (e.g., e-mails to broad groups of employees as distinguished from e-mails to one or a few addresses about specific representational matters) to communicate with bargaining unit employees for any purpose deemed appropriate by the union.

C. The Union agrees broadcast emails will not contain material that libels or slanders any individuals or Government agencies.

SECTION 8

A. The Employer will provide the Union with one-third (1/3) of the bulletin board (to include electronic bulletin boards) space on all covered operating division bulletin boards, including bulletin boards in the HR offices, except where current practices permit a different arrangement. Existing local practice will continue with respect to what constitutes the Employer's official bulletin boards.

B. The Union agrees to maintain its bulletin board in a timely, neat, and orderly condition. The posting of material on the bulletin board will be accomplished at the Union's expense, and the Union will ensure that no posting will violate the law or security of the Employer or contain libelous material. All postings will clearly identify the Union as the source of the material. For electronic bulletin board postings, the Union agrees to furnish a copy of any material to be posted to the Employer or designee, normally at least one (1) week in advance.

C. Where permitted by the facilities or building management, the Union may also locate one (1) bulletin board per floor occupied by employees. The Union will pay for the boards and cost of installation. The board(s) will be for the exclusive use of the Union.

D. The Employer will permit the Union to distribute Union literature in work areas during the non-duty time of the employees distributing the literature, where such distribution does not cause a disruption of the workflow of the Employer. Employees are advised not to read the material during work time.

SECTION 9

A designated Union official in each chapter may request annually a schedule of authorized bargaining unit positions. Such schedule will be furnished and shall include a breakdown by classification series, grade and step levels, post-of-duty, and number of positions occupied.

SECTION 10

Union offices and Employer-provided services, equipment, and facilities under this Article will be furnished at no cost to the Union.

ARTICLE 10: UNION REPRESENTATIVES OFFICIAL TIME

SECTION 1

This Article governs the use of official time for bargaining unit representational functions performed by employees. The Employer and the Union recognize that the use of official time to conduct authorized representational activities is in the public interest. The Parties share the responsibility to ensure that such time is used effectively and appropriately accounted for. During the term of this Agreement, NTEU Chapter officers and stewards will be granted official time to conduct activities pursuant to 5 U.S.C. § 7131. For purposes of this Article the term "steward" and "representative" are synonymous.

SECTION 2

A. Each NTEU Chapter may designate one (1) Union steward for every forty (40) bargaining unit employees or major fraction (51%) thereof, up to the first 200 bargaining unit employees; thereafter the ratio is one steward for every seventy-five (75) bargaining unit employees or major fraction (51%) thereof. This calculation notwithstanding, each NTEU chapter will be entitled to a minimum of two (2) stewards, and each chapter may retain the stewards they have as of the effective date of this Agreement. Chapter Presidents are in addition to the ratio and minimum of two stewards.

B. The Union has the right to appoint any bargaining unit employee to act as an ad hoc steward solely for the purpose of covering a formal meeting in any location. The ad hoc steward's role will be strictly limited to attendance at the formal meeting. The Union will notify the Employer as soon as practicable of the ad hoc steward's assignment to the formal meeting, but no advance notice shall be required since the assistant steward will not be performing any additional representational functions. Ad hoc stewards are not included in the ratio in section 2A.

C. The Union has the right to appoint stewards from any Operating Division. Stewards are authorized to perform any representational functions on behalf of the Union or any bargaining unit employee. Subject to Section 3 below, the Union has the right to make changes to its appointments of stewards at its sole discretion.

    1. However, in order to receive reimbursement under Section 10 of this Article:

        a. In HHS Regions with 1,000 or more bargaining unit employees, the representative must be from the same region as the issue or employee involved;

        b. In HHS Regions with less than 1,000 bargaining unit employees, the representative may be from a contiguous region;

c. For the purposes of this section, Region 3 includes HHS employees in the District of Columbia;

d. As exceptions to a. and b. above, the representative may come from any location if that will involve a lesser cost to the Agency.

D. Retired employees serving as officers and as stewards will be granted access to Agency facilities and services in accordance with the following terms:

1. The Agency will recognize HHS retirees as Union representatives when fulfilling their responsibilities as representatives pursuant to the parties' collective bargaining agreement and the Federal Service Labor-Management Relations Statute.

2. Non-employee Union representatives will be granted access to HHS facilities in accordance with the security procedures for visitors of the facility and consistent with the access granted to other non-employee visitors. It is agreed that non-employee representatives will conduct themselves in accordance with the Rules and Regulations Governing Conduct on Federal Property (GSA 11/2005) and other applicable conduct rules and/or rules of behavior at the respective HHS facilities. Upon request, non-employee representatives will promptly be given a copy of those rules. It is the responsibility of NTEU to ensure that non-employee representatives are aware of HHS facility codes of conduct and rules of behavior.

3. Non-employee Union representatives will adhere to and be bound by the provisions of the NTEU/HHS National Agreement when acting in their roles as union representatives. In the event that the Agency believes that non-employee Union representatives are violating the NTEU/HHS National Agreement, the Agency may exercise its right to address such alleged actions under the parties' National Agreement or the Federal Service Labor-Management Relations Statute.

   In cases where the Union requests additional access outside of normal business hours, the Agency will grant the additional access when needed for a valid representational function and it can be reasonably accommodated.

4. Access to agency e-mail and other services provided to the Union under Article 9 may only occur if, on an individual basis, the representative has successfully completed the required background investigation and other applicable security procedures which will be conducted by HHS at no cost to the representative and have been found suitable for such access in accordance with Agency security procedures.

5. The Agency may revoke the above grants for abuse or other valid business reasons and will promptly provide written notice to the NTEU representative with the reasons for any such revocation.

SECTION 3

A. The Union agrees to provide the Servicing Human Resources Center and National Labor Relations Officer with a written listing of its Union representative(s) along with their individual Union titles (e.g., Chapter President, Vice President, Chief Steward), no later than thirty (30) days after the effective date of this Agreement, provided the Agency has submitted the contact information for each Servicing Human Resources Center and the National Labor Relations Office within twenty (20) days of the effective date of this Agreement to the NTEU National President and the local NTEU Chapters. Changes to Union representatives will be submitted to the Servicing Human Resources Center and National Labor Relations Officer generally not less than two (2) workdays prior to the assumption of representational responsibilities by any new representative. Similarly, the Employer will promptly submit any changes to Servicing Human Resources points of contact and National Labor Relations Office personnel identified in this section to NTEU National and the local NTEU chapters. The Employer will not approve official time for newly assigned union representatives covered by this section until those written notices are received by the National Labor Relations Office and applicable Servicing Human Resources Center Labor Relations Officer. The Employer will not unduly delay approval.

B. No Union representatives will be disadvantaged in the assessment of their performance based in their use of documented official time when conducting labor-management business authorized by this Article. However, it is understood that performance problems unrelated to the use of official time may be addressed in accordance with other relevant provisions of this Agreement. The performance of employees serving as Union representatives will be rated on the basis of Employer-assigned work consistent with the elements identified in the respective employee's performance plan. However, the time spent on Union duties will be considered by the supervisor during productivity considerations. That is, the employee union representative's performance of Employer-assigned work will be rated on the basis of pro-rated work time, i.e., the work performed in available work time after approved official time has been subtracted. Consistent with the terms of Article 30 (PMAP), an employee union representative must be under a performance evaluation plan a minimum of ninety (90) calendar days during a rating period to receive a rating.

C. When the Union representative is initially appointed, the supervisor and the Union representative will meet to discuss workload and performance expectations. As determined necessary by the supervisor, the supervisor will make appropriate adjustments to workload relative to the representative's representational responsibilities and needs. When a representative believes that the work assigned cannot be timely performed due to the representatives' representational duties, the representative may request, and explain why, the Employer should consider reassignment of work. The representative will provide a list of the work that the representative believes should be reassigned. If the Employer refuses to reassign work, and if the Union so requests, the Employer will provide its reasons in writing. This procedure described herein must be

followed in the case where the Union representative accepts a new assignment (detail or reassigned).

SECTION 4

A. All Union representatives are authorized the official time granted by Statute (e.g., 5 U.S.C. § 7131(a) and (c)). All Section 7131(d) official time that is negotiated in this agreement will be approved for use, subject only to the requirements or limitations specified in this Article. The federal sector labor statute does not give the agency any separate preapproval rights for the use of Section 7131(d) official time.

B. Official time requests for representatives on less than 100% official time allocation that comply with the CBA will be granted unless they substantially hinder the accomplishment of essential workload requirements. Examples of "hinder" include the inability to complete specific and/or previously assigned projects timely, or when the employee's absence will adversely affect office coverage. Upon request, the reasons for any denials will be provided to the representative in writing normally by the next workday or before the period for which official time is requested. If the union representative cannot be released when requested, the representative may request that the work preventing their release be reassigned or postponed, and the representative and their manager will attempt to resolve the conflict and identify alternative date(s)/time(s) when the employee may be released. Ad hoc stewards must request official time per official time request procedures in this Article.

C. Union representatives shall, unless on 100% or 50% official time in Section 5 below, request authorization to use official time from their supervisors. Representatives on fifty percent (50%) official time do not have to request the use of that time in advance each time it is needed, but will discuss with their manager how to structure the use of their percentage time allocation (e.g., one week on official time, one week performing agency work) to enable the parties to plan for performance of agency work. Where possible, this request will be submitted at least twenty-four (24) hours in advance of the activity for which official time is requested. Exceptions are allowed for good cause (e. g., Agency controlled investigations/meeting, emergent situations). In such circumstances, the official time request shall be submitted as soon as practicable after the official time is used. The Union representative will indicate the general nature of the representational activity they wish to carry out, the location where the official time will be conducted, the name(s) of Employer representative(s) the union is meeting with for each activity (if applicable) and the approximate length of time they/them believes is required. Requests and their approval may be made on a day-to-day basis or for specific activities, as appropriate. For timekeeping purposes, all dates included in a single request for use of official time must fall within the same pay period. Representatives may submit multiple requests, however, within a single pay period. The Employer will promptly respond to official time requests, within two (2) workdays of receipt or prior to the scheduled usage, if shorter. When the Union representative needs to leave the work site and the supervisor

is temporarily absent from the site, the representative will request release from another supervisor or manager in the chain of command prior to leaving the work site.

D. All advance requests for official time are understood to be estimates. If the estimate exceeds thirty (30) minutes, Union representative must notify their supervisor of the additional time, as soon as practicable. The Union representative will provide an after-the fact accounting/certification of their use of official time. Normally, reasonable extensions of official time estimates will be granted unless doing so would substantially hinder accomplishment of essential workload requirements. Approval may be oral (with subsequent written confirmation) or in writing. All Union representatives are subject to all leave administration and time keeping procedures affecting employees generally.

E. NTEU representatives may request and certify their official time in quarter hour (:15) increments.

F. When Union representatives are approved for use of official time for a partial day or days, it is understood that the remainder of their tour of duty on that day or those days will be either work hours and/or appropriate leave. For the purpose of this Section, employees may use any appropriate leave (e.g., annual leave, leave without pay, earned credit hours, earned compensatory time, time off awards, or any combination thereof) subject to supervisory approval.

SECTION 5

A. The Union will be granted up to 100% official time for six (6) positions, as follows: Chapters 210, 212, 229, 230, and 254 will each receive one (1) slot; NTEU National will allocate the sixth (6^{th}) slot. The Union will identify any changes to those occupying the 100% official time slots on an annual basis. These positions will not require approval for official time, however, accounting for official time used must be submitted consistent with this Article.

B. In addition, chapter 282 may have up to three (3) 100% official time positions, one of which will be for the Chapter President, unless that person declines the allocation. At the election of the Chapter President, one of the 100% slots may be divided into two (2) slots of 50% official time (per the provisions in 4C). The chapter will notify the NLRO at least ten (10) workdays in advance of making any such allocation and identify the representatives who will receive those allocations.

C. Any changes to the aforementioned official time allocations in subsections 5A and 5B must be communicated as soon as practicable to the NLRO.

D. Other chapter presidents, vice presidents, (not identified above) and chief stewards will not exceed, on an annual basis, official time in excess of fifty percent (50%) of their available duty time, subject to supervisory approval. All other representatives will be granted official time up to thirty-three (33%) of their available duty time on an annual basis. The Agency may grant exceptions based on demonstrated need.

E. By mutual agreement of the national parties, the parties may change these percentages.

F. When an employee resumes normal job duties after serving in a full-time union position, the Agency will determine and provide the training needed for successful performance of their position. Such employees will be given a reasonable period of time to re-acclimate themselves to their former duties.

SECTION 6: Official Time Reporting Categories

A. Time spent attending Agency established teams or workgroups, such as Performance Work Statement (PWS), Most Efficient Organizations (MEO), labor-management committees/councils, and other Agency established teams or workgroups will not be counted toward the representative's annual percentage.

B. Pursuant to the procedures outlined in Sections 4 and 5 above, representatives shall be granted official time for participation in the meetings with the Employer and any other representational functions described below (including official time to travel to and from such meetings). Internal Union business may not be conducted on official time. 5 USC § 7131(b). Representational functions include any statutory proceeding or other forum in which the Union is representing an employee or the Union is acting pursuant to its obligations under relevant contract provisions, regulations or law. Statutory official time falls into three categories: 5 USC § 7131(a) - negotiation and impasse proceedings (e.g., term contract negotiations, mid-term negotiations, mediation, Federal Service Impasses Panel/interest arbitration proceedings); 5 USC § 7131(c) – proceedings before the Federal Labor Relations Authority (e.g., unfair labor practice proceedings, unit clarification petitions, negotiability appeals); and 5 USC § 7131(d) – other representational activities not included in § 7131(a) or (c).

Examples of representational functions which may be performed on official time include:

1. Formal discussions between Employer representatives and employees concerning personnel policies, practices, matters affecting working conditions or any other matter covered by 5 U.S.C. § 7114(a)(2)(A). Category 7131(d).

2. meetings to discuss or present unfair labor practice charges or unit clarification petitions. Category 7131(d).

3. meetings to present appeals in connection with statutory or regulatory appeal procedures in which the Union is designated as the representative; Category 7131(d)/Category 7131(c) if it is before the Federal Labor Relations Authority.

4. oral reply meetings if the Union is representing the employee. Category 7131(d).

5. any meeting for the purpose of presenting reconsideration replies in connection with the denial of within-grade increases. Category 7131(d).

6. meetings with the Employer for the purpose of presenting an employee's request for review and/or reconsideration (grievance) of that employee's performance appraisal. Category 7131(d).

7. attendance at an examination of an employee who reasonably believes the employee may be the subject of a disciplinary or adverse action and the employee has requested representation pursuant to 5 U.S.C. § 7114(a)(2)(B). Category 7131(d).

8. grievance meetings and arbitration hearings. Category 7131(d).

9. meetings of committees on which Union representatives are authorized membership pursuant to this Agreement. Category 7131(d).

10. EEO complaint settlements, administrative and/or court hearings if a complaint is processed under the negotiated grievance procedure; Category 7131(d).

11. all negotiations with the Employer occurring during the term of the CBA (including briefings); Category 7131(a).

12. attendance and participation at any new employee orientation session outlined in Article 13. Category 7131(d).

13. to attend OSHA meetings consistent with regulation. Category 7131(d).

14. to conduct training or activities on labor relations issues for employees not to exceed four hours quarterly (non-cumulative). Category 7131(d).

15. to conduct contract training for employees as outlined in Article 13. Category 7131(d).

16. to meet with members of Congress and their staffs on matters relating to bargaining unit conditions of employment (e.g., NTEU Legislative Conference), including training for employees related to contacting legislators. Category 7131(d).

17. attendance at Employer-recognized activities to which the Union has been invited. Category 7131(d).

18. to participate in jointly sponsored training primarily to further the interest of the government by improving labor-management relationships. Category 7131(d).

19. discussions of possible grievances with an employee. Category 7131(d).

20. conferring with affected employees about matters for which remedial relief is available under the terms of this Agreement. Category 7131(d).

21. informal consultations between the Employer and the Union. Category 7131(d).

22. preparation of reports, forms, and documents required by law or regulation concerning the proper operation and administration of a labor organization. Category 7131(d).

23. to prepare for, if necessary, and travel to any of the activities listed above. Category 7131(d).

SECTION 7

Attendance at and participation in labor-relations training provided by the union or other professional agencies, (e.g., NTEU training and conventions, or training from the FLRA, FMCS, DOL, SFLRP, etc.) where the agenda has been reviewed in advance by the Employer and the amount of time has been approved will not be counted toward a representative's maximum official time "cap." Reasonable official time pursuant to 5 U.S.C. § 7131(d) shall be granted by the Employer for stewards to attend and participate in these activities. However, the time authorized for this purpose shall not exceed 60 hours per representative in the first year of the agreement and 48 hours per representative per year thereafter. The Employer shall not pay any costs, including travel or training costs, for training provided by other professional agencies.

A. The parties agree that Section 7131(d) official time may be used for communications to employees represented by the union on topics related to working conditions or conditions of employment.

SECTION 8

A. All employees (e.g., grievant, representatives, witnesses, and appellants) whose presence is necessary at relevant proceedings such as hearings, meetings, arbitrations, oral replies, etc., will be authorized official and/or duty time to participate in the proceeding. Such employees will also receive reimbursement and/or per diem for travel, except that reimbursement and/or per diem for travel for necessary Union witnesses shall be limited to up to two (2) Union witnesses, not counting the grievant, who are employees. In addition, the Agency will pay 50% of all reasonable travel and per diem expenses for additional necessary Union witnesses. The parties shall notify one another of the witnesses they plan to call, and representatives they wish to have participate no later than ten calendar days in advance of the scheduled proceeding.

B. Employees will receive official/duty time, as appropriate, when being interviewed by:

1. a steward who is using time pursuant to subsections 6B above; or

2. by a national representative of the Union, in connection with a matter for which remedial relief may be sought pursuant to this Agreement. Employees who are witnesses in arbitrations will receive official time as follows:

a. when being interviewed by national representatives of the Union

in connection with an arbitration; and

b. when testifying during the arbitration

3. to prepare responses to actions proposed by the Employer.

SECTION 9: Credit Hours

Union representatives working on credit hour programs may earn credit hours for representational activities in the following circumstances:

A. They must have the approval of their supervisors, consistent with the credit hour provisions in Article 25, Alternative Work Schedules; and

B. The time earning credit hours must be:

1. to participate as a Union representative in Employer-initiated meetings for which official time is otherwise appropriate; and/or

2. the Union representative is working approved credit time, i.e., duty status.

C. The Union representative must record these credit hours as official time within OTTS.

SECTION 10

A. The Employer will reimburse Union representatives who are employees of the Employer for all reasonable and necessary local travel expenses incurred in performing representational activities pursuant to this Article.

B. For all other representation matters not otherwise covered by this Agreement, the Employer will pay all reasonable travel and per diem expenses for one employee representative per chapter.

C. The Agency will issue up to twenty-five (25) government issued cell phones to NTEU to distribute to current HHS employee representatives within forty-five (45) days of the effective date of this Agreement.

SECTION 11: Official Time Tracking System

A. NTEU representatives will use the Official Time Tracking System (OTTS) to request and certify the usage of official time, except as provided below, to comply with OPM official time reporting requirements. OTTS will only be used for this purpose.

1. Exceptions to the use of OTTS will be made if the employee does not have access to OTTS at the time they are making a request (e.g., lack of internet

connection or access to a computer) or when the OTTS system is down or not fully functioning, or the employee is experiencing other technical difficulties; and for other reasons agreed to by the supervisor and the employee on a case-by-case basis.

2. If an employee is unable to request official time in OTTS, they may submit their request on paper (Appendix 10-1 – a copy of the OTTS electronic form) or by email or verbal request to their manager. Once the official time is used, it will be certified in OTTS pursuant to this Article once the employee has access to OTTS.

3. NTEU representatives on 100% and 50% official time allocations are not required to request the use of official time, but must certify official time usage consistent with this Article.

4. All NTEU representatives will certify their usage of official time by close of business on their first workday in the pay period, for official time used in the preceding pay period. Reasonable extensions of time will be granted.

5. The exclusive official time reporting categories in OTTS for requesting and reporting official time hours will be as follows:

   a. 7131(a) Time. Pursuant to 5 U.S.C. § 7131(a), NTEU representatives shall be authorized official time for negotiations of collective bargaining agreements, including attendance at impasse proceedings (e.g., mediation, interest arbitration), but does not include time spent in preparation for these activities. OTTS will identify, and employees will request and report this time, under the categories of (I) "mid-term bargaining", (ii) "term bargaining", and (iii) "impasse proceedings", as applicable.

   b. 7131(c) Time. Pursuant to 5 U.S.C. § 7131(c), NTEU representatives shall be authorized official time for any phase of proceedings before the Federal Labor Relations Authority (e.g., unfair labor practice proceedings, negotiability appeals), but does not include time spent in preparation for these activities. OTTS will identify, and employees will request and report this time, under the category of "impasse proceedings".

   c. 7131(d) Time. Pursuant to 5 U.S.C. § 7131(d), and consistent with Section 6 of this Article, NTEU representatives shall be granted official time for all other representational activities which are reasonable, necessary, and in the public interest. OTTS will identify, and employees will request and report this time, under the categories of (a) "arbitration/preparation for arbitration", (ii) "formal meetings/meetings with management", (iii) MSPB/EEOC proceedings/preparation for MSPB/EEOC proceedings, (iv) "grievances/preparation for grievances", and (v) "Other".

d. Preparation time in the above categories includes, but is not limited to, drafting documents, research, and meeting/conferring with witnesses or other non-management persons.

e. The "Other" reporting category will enable employees to identify the representational activity for which they are requesting official time if it is not already identified in another category under 7131(d) above. Activities that are included in 7131(d) time are identified in Section 6B.

B. The Employer will maintain OTTS in working condition with current information to enable employees to submit and certify their official time requests as required (e.g., identifying the supervisors to whom requests are to be directed, permitting time to be entered/used in quarter hour increments).

C. Access to OTTS data shall be limited to the requesting NTEU representative, their local Chapter President (or designee), the manager/supervisor of the requesting NTEU representative (or designee), National Labor Relations Office personnel, the servicing Labor Relations personnel for each respective Operating Division and/or Staff Division, and the OTTS Program Administrator.

D. The OTTS home page will include the following language:

Labor and Management have a shared responsibility to ensure that official time is authorized and used appropriately. "Official Time" means time granted to an employee to perform representational functions under 5 U.S.C. Chapter 71 and the collective bargaining agreement when the employee would otherwise be in a duty status.

OTTS was developed as an electronic method to record official time, ensure accurate and timely electronic accounting of official time requests, and assist with the Agency's official time reporting requirements.

OTTS allows direct access for the requester and the supervisor. The requester can submit official time requests electronically, receive notifications on the status of their request, and certify their official time once used. Supervisors are alerted when official time requests have been entered so they can review and evaluate official time requests in a timely manner. Both the requester and the supervisor can view requests made, along with the status of each request, for ease of communication and recordkeeping.

E. Training on OTTS will be made available to all current and newly appointed NTEU representatives upon request.

F. Local NTEU chapters will be given access to the same official time reports in OTTS as management, to enable them to run official time reports for their local NTEU representatives. Aggregate data collected on annual official time usage of NTEU representatives will be shared with NTEU National annually, within thirty (30) days of the end of each fiscal year for each OpDiv/StaffDiv.

ARTICLE 11: PAY AND BENEFITS

SECTION 1

The Employer will exercise any discretion it has to maximize the payment of Physicians Comparability Allowance (PCA) to qualified unit employees as of the date the Office of Management and Budget approves the PCA plan. Payments will be distributed consistent with HHS policy and guidelines.

SECTION 2

OPDIVs that currently make Physicians Special Pay (PSP) available to qualified bargaining unit physician employees as an alternative to PCA will continue to do so under this agreement. PSP will be made available at the option of the qualified employee at the end of the fourth (4th) year of the OPDIV service.

SECTION 3

Any Cooperation Council that was authorized as of the effective date of this Agreement to develop a business case for categorical retention bonuses for certain series of employees continues to be so authorized, based on:

A. Difficulty of hiring employees in a series;

B. Attrition/retention rates;

C. Reasons such employees leave the Agency;

D. Priority level of the work performed; and

E. The number of employees within the series at the specific Center/ORA or HQ/Regional level.

SECTION 4

Recruitment Referral Award programs in effect as of the date of this agreement shall continue to remain in effect. The Employer will provide on an annual basis the NTEU National Office with the following information:

A. the number of awards requested by eligible employees;

B. the number of awards granted;

C. the awards (in both number and dollar amount) granted by Center, Region, and District; and

D. the total amount, in dollars, of awards granted to bargaining unit employees.

SECTION 5: Student Loan Repayment Program

A. The Employer established the HHS Student Loan Repayment Program (SLRP) in March 2007, and will maintain that program in accordance with 5 CFR § 537, other applicable rules and regulations, and this Article. Funding of the SLRP in each OpDiv/StaffDiv is subject to the availability of funds. The Program serves as an incentive to attract and/or retain highly qualified candidates and employees by assisting them in repaying their outstanding federally insured student loans. Repayment of student loans is subject to budgetary considerations.

1. For purposes of this program, the term student loan refers to below loans which are also described in the HHS Student Loan Repayment Policy:

    a. A loan made, insured, or guaranteed under parts B, D or E of title IV of the Higher Education Act of 1965; and/or

    b. A health education assistance loan made or insured under part A of title VII of the Public Health Service Act or under part E of title VII of that Act.

    c. Loans covered under the Higher Education Act of 1965 include such loans as:

        1. Federal Stafford Loans – including Federal subsidized, Federal unsubsidized, direct subsidized, and direct unsubsidized loans;

        2. Federal Supplemental Loans for Students;

        3. Federal Plus Loans – Federal and Direct Plus Loans;

        4. Federal Consolidation Loans – direct subsidized, direct unsubsidized, and Federal Consolidation Loans;

        5. Defense Loans – made before July 1, 1972;

        6. National Direct Student Loans – made between July 1, 1972 and July 1, 1987;

        7. Federal Perkins Loans;

        8. Loans covered under the Public Health Service Act include loans made under:

            a. The Nursing Student Loan Program;

b. The Health Profession Student Loan Program; and

c. The Health Education Assistance Loan Program.

B. The Department of Health and Human Services' Student Loan Repayment Program (SLRP) authorizes the repayment of all or part of an outstanding federally-insured student loan obligation incurred by a current employee or a candidate to whom an offer of employment has been made. The decision to offer student loan repayment is an individual compensation determination that is made on a case-by-case basis based on organizational need, specific case justification, and budgetary limitations without regard to political affiliation, race, color, religion, national origin, sex, sexual orientation, marital status, parental status, labor affiliation or non-affiliation, age or disabilities, or any other non-merit based factor, unless specifically designated by statute as a factor that must be taken into consideration when awarding such benefits, or retaliation for exercising any of these rights. Decisions will not be made arbitrarily or based on personal favoritism. The following criteria for recruitment and retention may be found in the HHS Student Loan Repayment program policy and will be shared with eligible employees at the time the incentive program is published or requested.

1. Criteria for Recruitment – Decisions to authorize loan repayment for recruitment purposes will be based on whether the OpDiv would have difficulty filling a position with a highly qualified candidate. Evidence to meet this criteria may include:

    a. The success of recent recruitment efforts for the same or similar positions; and/or

    b. Turnover in the same or similar positions; and/or

    c. Labor market factors that affect the ability to recruit for the same or similar positions; and/or

    d. The need to fill positions requiring highly specialized skills or qualifications.

2. Criteria for Retention – Decisions to authorize loan repayment for retention purposes will be based on whether the OpDiv would have difficulty retaining a highly qualified employee. Evidence to meet this criteria may include:

    a. The unique or high qualifications of the employee or the special need for the employee's skills that makes it necessary or desirable to retain the employee; and/or

b. The extent to which the employee's departure would affect the OpDiv's ability to carry out an activity or perform a function that is deemed essential to the Agency's mission.

C. If employees believe the above criteria qualifies their position, employees may request consideration for SLRP benefits by completing the "Request for Student Loan Repayment Benefit Under the Student Loan Repayment Program" form, including a description of why participation in the program would serve to retain them as a highly qualified employee, and submitting the form to their supervisor. Supervisors may also nominate employees for consideration for SLRP benefits. If an OpDiv identifies specific positions that will qualify for the SLRP for retention purposes and/or any timeframes for employees to apply for SLRP consideration in each program year, it will notify all impacted bargaining unit employees as soon as practicable.

D. Labor-management relations committees in each OpDiv/StaffDiv will be a forum for the Agency and Union to discuss the use of the SLRP in those OpDivs/StaffDivs to retain employees. The labor-management relations committees may also make recommendations to the Employer, either jointly or separately by the management and union membership, regarding how the program might be improved. Any recommendations made will be considered by the Agency, and the Agency will respond to the LMRC members in writing to explain any decision on the recommendations submitted within sixty (60) days of receipt.

E. To be eligible to receive the Student Loan Repayment as an incentive, an employee must have maintained an acceptable level of performance, and signed a service agreement in which they agree to:

1. complete three years of service with the Employer which will commence on the date of the first repayment;

2. if additional payments are made after the initial three-year agreement has been completed, the service agreement will be extended by one year for each payment made beyond the 3rd year. The extended service agreement period begins when the first payment beyond the 3rd year is made to the holder of the loan; and

3. reimburse the Employer for loan repayments under such circumstances as set forth in Section 5F below, 5 C.F.R. § 537.109, and other applicable laws, rules and regulations.

F. An employee who receives loan repayments and fails to complete the required service as set forth in Section 5E above because they separated involuntarily for misconduct, a negative suitability determination under 5 CFR Part 731, or unacceptable performance or leaves the Employer voluntarily, will be indebted to the Federal Government and must reimburse the Employer for the total amount of any student

loan repayments they received, unless the applicable Division grants a waiver. Further:

1. An employee who fails to complete the period of employment established under a service agreement because the employee leaves the Employer voluntarily to enter into the service of another federal agency will not be required to reimburse the Employer for the amount of any student loan repayment benefits, they received unless repayment is expressly required in the signed service agreement.

2. A right of recovery of an employee's debt may be waived, in whole or in part, if an employee demonstrates to the Employer that recovery would be against equity and good conscience or against the public interest. The procedures in Article 23 will apply to such waivers. In making this determination, consistency, fairness, and the cost to the taxpayer of recovering the debt must be considered.

G. Maximum Repayment Amount. Subject to budgetary considerations, eligible employees may be considered for loan repayment assistance up to $10,000 per calendar year, with a $60,000 lifetime maximum for any individual. Individual loans payments are made on an annual basis and more than one loan may be repaid so long as the combined repayments do not exceed the annual and lifetime limits. Within these limits, the Employer may repay more than one eligible loan for a recipient.

H. The Employer will publicize the availability of the SLRP at least annually, including information on whether the SLRP is funded for the fiscal year in each OpDiv/StaffDiv, and any positions the Employer has identified as necessary for retention during that fiscal year.

I. An employee participating in the Program will be responsible for making loan repayments on the portion of the loan(s) that continues to be the employee's responsibility. Loan repayments by the Employer will not exempt employees from responsibility or liability for any of their loans. Student loan repayments made on behalf of an employee are taxable.

J. The Employer will strive to honor any request made by an employee regarding the form and timing of any tax withholdings, however, the Employer does not have the discretion to make tax payments outside IRS regulations.

K. The Employer will make loan repayments under the Program by direct payment to the holder of the loan on behalf of the employee.

L. The Employer will provide the following information to NTEU National by January 30 of each calendar year on the SLRP for each OpDiv that offered the SLRP incentive:

1. The total SLRP funding for the prior fiscal year;
2. The total number of applications for SLRP for the prior fiscal year;
3. The total number of bargaining unit employee SLRP applications for the prior fiscal year;
4. The total number of SLRP applications approved for the prior fiscal year;
5. The total number of bargaining unit employee SLRP applications approved for the prior fiscal year;
6. The SLRP payments made in the prior fiscal year, including:
    a. Name of NTEU bargaining unit employee;
    b. Identification of other employees using a unique identifier;
    c. Job title;
    d. Series/grade;
    e. Staff/Div (if applicable);
    f. Total amount of payments to each employee; and
    g. Bargaining unit status (e.g., AFGE, non-bargaining unit)
    h. The SLRP budget for the current fiscal year, if known.

M. The HHS and FDA forms for the Student Loan Repayment Program are contained in Appendix 11-1 through 11-4. Any forms used for the SLRP must comply with the terms of this Article.

ARTICLE 12: NOTICES TO EMPLOYEES

SECTION 1

When the Employer presents an employee with any of the written notices listed below, that notice shall state at the top in capital letters: "AT YOUR OWN OPTION, YOU MAY FURNISH THIS NOTICE TO NTEU":

A. letters proposing disciplinary or adverse action;

B. final decision letters on any disciplinary or adverse action;

C. letters of advance notice and of final decision to withhold a within-grade increase;

D. letters of advance notice and of final decision to impose a reduction-in-force;

E. letters of advance notice and of final decision to downgrade an employee's position classification;

F. notices of involuntary reassignment;

G. leave restriction letters;

H. notice to terminate during probationary or trial period;

I. notices of proposal and final decision to remove or demote an employee for unacceptable performance;

J. letters denying waiver of an overpayment; and

K. letters denying outside employment activity requests.

SECTION 2

When applicable, the decision notices referenced above will advise employees of their grievance and/or appeal rights established by law, rule, regulation, and/or this Agreement.

ARTICLE 13: New Employee Orientation

SECTION 1

A. The Employer agrees to conduct a New Employee Orientation (NEO) for all new employees. The New Employee Orientation will include at a minimum, a brief overview of the Agency, basic information on employee responsibilities and benefits, distribution and discussion of the ethical rules and standards of conduct applicable to employees, distribution of information on the Union's exclusive representational right and the right of employees to join or not to join the Union, and the name and location (including telephone number) of the Union representative having responsibility for the representation in the new employee's area.

Whenever a group orientation is conducted by the Employer for new employees each Chapter having jurisdiction over any employees in the NEO will be notified (with a copy to the NTEU National Field Representative for that Chapter, if known) and at least one representative per Chapter will be authorized to be present and attend on official time. The Union will be provided a reasonable amount of advanced written notice, normally at least three (3) calendar days, of the scheduled orientation. The notice will generally include (1) the date(s) and time(s) of the NEO, (2) employee name, organizational assignment (OpDiv/StaffDiv), post of duty, job title, series, grade, agency email address where available, and projected start date; and (3) the agenda for the NEO which will identify a Union point of contact. The presentation material with contact information will be provided electronically or the link to the location of the information on the intranet will be given to participants after the orientation. The Union will be afforded an opportunity to make a presentation to the bargaining unit employees during their orientation for no more than forty (40) minutes. If more than one chapter is entitled to attend the NEO, the Union is still only entitled to no more than forty (40) minutes total. The representatives will determine how to allocate the time allotted between the representatives. This time will normally be just before a break period. The Union agrees that no internal Union business will be discussed during this meeting, nor will its presentation violate the law or the Employer's security. In addition, the content of any material or statement will not be libelous or slanderous. All material will clearly identify the Union as its source and will be provided to the Employer two (2) workdays in advance. If the Employer provided fewer than two (2) workdays' notice of the orientation meeting, the Union will provide the materials as soon as reasonably possible.

The Union shall be entitled to request to reserve a meeting room using normal room requesting procedures for its use at new employee orientations during its presentation, and to meet with employees under section 4 below, in posts of duty where new employees are located and there is no Union office. The Employer will also provide a virtual breakout room for the Union during the new employee orientation, if requested.

B. If an employee is not scheduled to attend an NEO or a contract training during the first two weeks of employment, the appropriate chapter will be afforded no more than 40 minutes to meet with the employee(s) during these first two weeks.

C. NEOs may be conducted in person or virtually as determined by the Employer.

SECTION 2

The Employer will provide access to an electronic version of this Agreement and information on how to secure a SF-1187 in the NEO package given to each bargaining unit employee at orientation. All new employees, including those employees new to the bargaining unit, will be provided three (3) hours of duty time to read this Agreement within the first week, subject to workload considerations. This time must be used to read the Agreement at the work site or to attend Union sponsored CBA training. At the Union's option, it may conduct a one-hour contract training once per month. The training will be delivered on an OPDIV basis, unless mutually agreed otherwise. The Employer will organize the logistics of the training session. This time is in lieu of the three (3) hours of duty time to review the agreement as designated above.

SECTION 3

If the Union is not present at the NEO, the Employer agrees, simultaneous with presenting an employee with an NEO package, to provide the employee the material provided by the Union. The Union material may include:

A. an introductory letter from the Union

B. the NTEU Insurance Plan Brochures, if any

C. an SF-1187, Dues Withholding Form

D. a list of local Chapter representatives (including telephone numbers and location) and

E. any informational brochures clearly identified as being prepared by the Union.

The Union agrees that the above material will not violate the law or the security of the Employer, nor will it contain libelous material.

SECTION 4

The Union will be given up to fifteen (15) minutes to orient an employee to the site and the Union chapter when the employee is newly assigned to a different bargaining unit. This will take place during the employee's first full pay period at the site.

SECTION 5

By close of business the Wednesday preceding the orientation session, the Employer will provide to the appropriate chapter(s) a then-current list of all those bargaining unit employees attending the session. The list will also include the position, title, grade, and post-of-duty.

SECTION 6

The Union may use the Employer's video equipment, virtual platforms, and other technologies for presentation in orientation sessions when such equipment is available and there is no additional cost to the Employer. The Union may also use such equipment for Union-sponsored local training (excluding internal Union business) and meetings with employees, at no cost to the Union. Upon request, the Employer will provide the Union with training on the use of its equipment and virtual platforms.

SECTION 7

Within two (2) pay periods after the scheduled reporting date of new employees, NTEU National will be provided information electronically regarding those employees. The information will contain, at a minimum, the employees' names, position titles, OpDiv and StaffDiv, reporting dates, posts of duty (POD) and grades, but will be sanitized to conform to the requirements of the Privacy Act.

ARTICLE 14: PERSONNEL RECORDS

SECTION 1

A. Each employee, and/or a representative designated by a written authorization, will upon written request be granted access to any record(s) in a system of records pertaining to that employee with the exception of records to which access is restricted by law or government-wide regulation. Such access will take place electronically whenever possible. If access must be granted to a hard copy file, the employee's/representative's review of the file must occur in the presence of the individual(s) having official custody of the record or her/his designee(s). If the employee is located in a different geographic area than where the record is officially maintained, the record will be sent to a temporary custodian, who will be present when the employee reviews it.

B. Access to hard copy records, when necessary, will normally be granted within seven (7) workdays of the employee's request. If the records are not co-located with the employee, the Employer will utilize an expedient and secure means of transfer to employee's location.

C. If the Employer is unable to provide access to the records within seven (7) workdays due to unforeseen circumstances, an explanation of the delay and projected time for providing access will be given to the employee and/or the designated representative.

D. Employees should read and retain copies of personnel documents routinely furnished to them. In the event that an employee fails to retain her/his copy and the document is not accessible electronically, one additional copy of any such document will be furnished free of charge to the employee or her/his representative designated by a written authorization, upon request.

SECTION 2

Records, such as medical records, which are not normally available for inspection and review by the employee or her/his representative (designated in writing), will be made available to authorized persons only for official use as provided for in the Privacy Act of 1974, as amended, and other appropriate legal authorities. Records will not be made available to any unauthorized person(s). Further, medical documentation will be maintained in accordance with applicable provisions of 5 CFR § 293 and 5 CFR § 297, unless otherwise required by law.

SECTION 3

It is agreed that the Employer will maintain Official Personnel Folders (OPFs) and other personnel records in accordance with the applicable laws regulations, including

the Privacy Act of 1974. The Employer will purge the records in accordance with the General Records Schedule I standard and ensure that any adverse records remain in the employee's folder no longer than the minimum period required.

SECTION 4

Any system of records containing personal information about employees will meet the notice requirements of the Privacy Act.

SECTION 5

Personal notes maintained by an employee's supervisor and seen only by that supervisor are exempt from the disclosure requirements of the Privacy Act and will not be given to a succeeding supervisor.

ARTICLE 15: ANNUAL LEAVE

SECTION 1

Employees will earn annual leave in accordance with applicable statutes and regulations.

SECTION 2

A. Annual leave will be charged in increments of one-quarter hour and requested in increments of not less than one-quarter hour.

B. The use of annual leave is a right of the employee subject to the approval of the Employer. Leave approving officials (LAO) may, consistent with operational demands, workload and with consideration of optimal staffing levels, determine when annual leave may be taken, refuse to grant annual leave, or revoke annual leave that has been granted, which may require recalling an employee to duty.

C. Requested leave must not be considered officially authorized until approved by the LAO.

D. The Employer shall not deny the use of annual leave as a disciplinary measure. Leave will not be denied for arbitrary or capricious reasons.

E. Annual leave requests for employees in travel status are subject to the same provisions of this Article and Article 42, Travel.

F. If leave is denied, upon the employee's request, the Employer will provide reasons for the denial in writing to the employee, which may be by email.

G. It is the responsibility of the employee to request annual leave in advance. However, when an employee is unable to make the request in advance due to unforeseen circumstances, the use of leave may be approved.

H. Employees must report to work or have leave approved, every day, no later than the beginning of their fixed tour of duty or, for employees working a flexible tour of duty, no later than the normal starting time or the start of core hours if they do not have a normal starting time. Supervisors may waive this requirement and approve annual leave after-the-fact for unexpected delays of an urgent nature which cause a later arrival. This provision does not alter the right to have other leave approved consistent with the terms of other leave articles in this contract.

I. When employee have not received advance approval for leave but are not able to report to work for personal reasons, the employees must, by no later than their normal starting time or the start of core hours, whichever is earlier, speak directly to their leave-approving official (superior or designee) or leave a voicemail and/or e-mail message, with a return

number, for that official, requesting leave and giving the reason for not having secured advance approval. The leave-approving official will approve or deny the leave requested.

SECTION 3

A. Employees are encouraged to submit requests for annual leave as far in advance as possible. Extended leave requests (any request for annual leave for periods of five (5) or more consecutive workdays and/or days off immediately preceding or following a holiday) should be submitted in advance. Such requests for annual leave will be approved or denied prior to the date the leave is needed, but, unless the workload can be properly assessed for the requested period, no later than ten (10) workdays after receipt of the request. During period of high leave use or operational needs, the Employer may require that extended leave requests be submitted by a specific date.

B. When an employee's request for extended annual leave conflicts with the request(s) of other employee(s) for the same date(s), the employees affected who are equally-qualified and capable of performing the needed work during that period will first try to resolve the conflict in requests informally. If resolution is not possible, the determination will be made by the supervisor, based on the dates on which the conflicting requests were submitted, seniority (based upon service computation date), prior leave approved for that period if close to a holiday and operational demands.

SECTION 4

A. An employee may be permitted to change scheduled leave requested to another time. Such changes will be considered and approved in accordance with Section 2 above.

B. Employees will be provided with the opportunity, where practical, to use any annual leave earned that will be in excess of the maximum allowable carry-over (so-called "use-or-lose") at some time during the course of the leave year so as to avoid losing annual leave. Each employee will monitor her/his annual leave account in order to make appropriate advance requests to the Employer for leave for vacation and other purposes which will contribute toward avoiding loss of annual leave.

C. Not later than September 15th of each year, the Employer will remind employees of a need to request annual leave to avoid forfeiture of "use-or-lose" leave.

SECTION 5

Employees, upon request, may change previously authorized annual leave to sick leave, where sick leave is appropriate.

SECTION 6

A. Consistent with the applicable HHS Instruction at the time of the request and the provisions of this Article, the Employer will consider and may in its discretion grant requests for advance annual leave upon proper application, when:

1. non-repetitive, non-routine circumstances exist;

2. the employee is eligible to earn annual leave;

3. the request does not exceed the amount of annual leave that the employee would earn during the remainder of the leave year or the remainder of her/his appointment, whichever is shorter; and

4. The Employer has reasonable assurance that the employee will return to duty and is not contemplating retirement or resignation.

B. Annual leave earned on a current basis may not be used except in extenuating circumstances, until the amount of annual leave advanced to the employee has been repaid.

C. Employees must repay any leave advanced and not earned at the time of separation except no repayment is necessary if the separation is due to the employee's death or disability retirement.

ARTICLE 16: SICK LEAVE

SECTION 1

A. Employees may use sick leave accrued and acquired in accordance with law and regulations in the following situations:

1. Incapacity for the performance of duties due to illness or injury;
2. Emergency medical, dental, optical or surgical examination or treatment;
3. Prescheduled medical, dental, optical or surgical examination or treatment;
4. Incapacity for the performance of duties due to pregnancy or birth of a child;
5. When presence at the worksite would, as determined by health authorities having jurisdiction or by a health care provider, jeopardize the health of others because of exposure to a communicable disease; and
6. The employee must be absent from duty for purposes relating to the adoption of a child, including appointments with adoption agencies, court proceedings, required travel, and other activities necessary to allow the adoption to proceed.

B. In accordance with the requirements and limitations set forth in 5 U.S.C. § 6307 and 5 CFR Part 630, Subpart D, (Family Friendly Leave Act), employees may also use accrued sick leave:

1. To give care or otherwise attend to a family member having an illness, injury, or other condition which, if the employee had such condition, would justify the use of sick leave by that employee; and
2. To make arrangements for or attend the funeral of such family member,
3. For purposes of this section, "family member" is defined as 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, e.g., grandparents, grandchildren, godparents, godchildren or very close friend.

Employees may obtain information relating to the Family Friendly Leave Act on OPM's website at http://www.opm.gov/oca/leave/INDEX.asp.

C. In accordance with the requirements and limitations of 5 U.S.C. § 6381-6387 (FMLA), 5 C.F.R. Part 630, Subpart L, and Article 18 of this Agreement, employees may use accrued sick leave for the following reasons:

1. Because of the birth of a son or daughter of the employee and in order to care for such son or daughter;

2. Because of the placement of a son or daughter with the employee for adoption or foster care;

3. In order to care for the spouse, or a son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition; or

Because of a serious health condition that makes the employee unable to perform the functions of the employee's position.

SECTION 2

A. If the use of sick leave cannot be anticipated, all requests for approval shall go to the immediate supervisor or designee at least one (1) hour prior to but no later than one (1) hour after the start of core hours for any employee working an AWS. For all other employees including those employees on a compressed work schedule, e.g., (5/4/9 and 4/10) shall request leave at least one (1) hour prior to but no later than one (1) hour after her/his official start time. Should the employee be unable to reach the immediate supervisor or designee, the employee may leave the immediate supervisor or designee a voicemail or email requesting the leave. The Employer may request contact information for employees on sick leave.

B. An employee will inform her/his supervisor or designee of the anticipated duration of the absence. If the absence extends beyond the anticipated period, the employee will inform the employee's supervisor of the situation promptly for approval.

SECTION 3

Generally, an employee shall request advance approval for sick leave for the purposes of receiving non-emergency medical, dental or optical examination, operation or treatment.

Such requests shall be normally approved within three (3) days of receiving the request, unless the employee's absence would create a workload problem. Examples of workload problems may include, but not limited to the following:

1. an inability to complete a specific or previously assigned work project in a timely manner; or

2. inadequate office coverage where physical presence is necessary.

SECTION 4

In this section, reference to sick leave includes any of the reasons listed in Section 1 of this Article regardless of the type of leave charged.

A. An employee may be required to furnish a medical certificate (i.e., reasonably acceptable evidence to substantiate a request for approval of sick leave) if the sick leave exceeds three (3) consecutive workdays. In accordance with 5 C.F.R. § 630.201, medical certificate means a written statement signed by a registered practicing physician or other practitioner certifying to the incapacitation, examination or treatment, or to the period of disability while the patient was receiving professional treatment.

B. Employees will not be required to furnish a doctor's certificate to substantiate a request for approval of sick leave for periods of three (3) consecutive workdays or fewer except as provided for in subsection 4C below.

C. Leave Restriction

1. Where the Employer has reasonable grounds to suspect abuse of sick leave based on a pattern of usage, the Employer may inquire further into the matter and ask the employee to explain. Absent a reasonable acceptable explanation, the employee will be orally counseled that continued frequent use of sick leave, or use in unusual patterns or circumstances, may result in a written requirement to furnish acceptable documentation for each subsequent absence due to illness or incapacitation for duty, regardless of duration.

2. If the Employer continues to suspect abuse of sick leave based on a pattern of usage, the Employer may advise the employee in writing that acceptable medical documentation as defined by 5 CFR § 339 may be required for each subsequent absence resulting from sick leave-related reasons.

3. If reasonable grounds continue to exist to question an employee's use of sick leave, the Employer may issue a sick leave restriction letter to the employee. This sick leave restriction letter will explain the basis for the action. The leave usage of all employees under sick leave restriction will be reviewed no more than six (6)

months after the effective date of the restriction. At that time, a written decision to either continue or lift the restriction will be provided to the employee. If the restriction is continued, another review will be conducted after no more than six (6) months has passed. If a meeting is held to discuss the results of the supervisor's decision, the employee shall have the right to have a Union representative at the meeting provided the employee reasonably believes the discussion may result in disciplinary action and the employee requests representation.

4. An employee on sick leave restriction must provide medical documentation in accordance with the terms of the restriction letter.

D. Employees who, because of illness, are released from duty, and are not subject to the restrictions of subsection 4C above, will not be required to furnish a medical certificate to substantiate sick leave for the day released from duty. Subsequent days of absence will be subject to the provisions of subsections 4A, 4B, and 4C above.

E. Employees who are not subject to the restrictions of subsection 4C above will not be required to furnish a doctor's certificate on a continuing basis if the employee suffers from a chronic condition that does not necessarily require medical treatment although absence from work may be necessary and the employee has previously furnished medical certification of the chronic condition. The Employer may periodically require further medical certification to substantiate an employee's continued use of this provision.

SECTION 5

Except for an emergency, employees may not leave the work site to seek health unit services unless they have received the prior approval of the Employer. The employee who is returned to duty will not be charged with leave. Should the health unit recommend that the employee be sent home and/or to receive further medical treatment and the employee leaves the work site, sick leave will be charged beginning at the time the employee leaves the work site. Furthermore, no employee will be required to furnish a medical certificate to substantiate use of sick leave for that one day only provided that the employee is not subject to the restrictions of 4C above.

SECTION 6

A. Absences qualifying for the use of sick leave may be charged to annual, earned credit hours, earned compensatory time or LWOP if so requested by the employee and approved by the supervisor.

B. An employee who becomes ill while on annual leave may have the time of illness changed to sick leave provided that the employee notifies the supervisor on the

first day of the illness and otherwise complies with the requirements of this article.

SECTION 7

Sick leave will be charged in quarter hour increments.

SECTION 8

A. Employees may request advanced sick leave if they have a serious health condition. Advanced sick leave will be approved or disapproved for periods of no more than thirty (30) days under the following circumstances:

   1. A written request with acceptable medical documentation as defined in 5 CFR § 339 has been properly submitted;

   2. There is a reasonable assurance that the employee will return to duty and is not contemplating a resignation or retirement; and

   3. The employee has enough in a retirement account to reimburse the Employer for the advance should the employee not return.

B. Transferred annual leave may be substituted retroactively for any period of leave without pay or used to liquidate an indebtedness for any period of advanced leave that began on or after the date fixed by the Employer as the beginning of the medical emergency pursuant to the Volunteer Leave Transfer Program.

SECTION 9

The Employer will treat as confidential any medical information given by an employee in support of a request for sick leave. The Employer may disclose such information subject to its Privacy Act obligations, for work related reasons on a need to know basis only.

ARTICLE 17: LEAVE WITHOUT PAY

SECTION 1

Leave without pay (LWOP) is a temporary, non-pay status and absence from duty. All employees are eligible for LWOP regardless of length of service or whether they have annual leave to their credit. Employees will not be required to exhaust their annual leave prior to use of LWOP. Requests to use LWOP are made in the same manner as are requests for annual leave and sick leave. The Employer will examine each request closely to ensure that the value to the government or the serious need of the employee is sufficient to offset the costs and administrative inconvenience.

SECTION 2

A. An employee may request a period of leave without pay not to exceed one (1) year to engage in full-time, job-related study. A program of study will be found to be job related if, on balance, it will significantly benefit the Employer and improve the employees' ability to perform their current job or to achieve and perform another job with the Employer to which the employees can reasonably aspire. Examples of some of the factors that are to be considered when reviewing employees' request are:

   1. Significant staffing requirements and workload;

   2. The amount of advance notice;

   3. The costs of any temporary backfill during employee absence that would exceed the costs of otherwise employing the employee on leave;

   4. The likelihood of the employee remaining with the Employer;

   5. The likelihood of potential employee development with and without training;

   6. Any reasonable alternate sources and means of attaining training.

These will be balanced against the value to the Employer of the additional training the employee will acquire in determining whether the leave is to be granted.

B. If the study is one which combines work and study, the work portion is subject to the outside employment requirements of the Employer.

C. Employees may take LWOP upon supervisory approval for up to thirty (30) calendar days for political activities permitted under the Hatch Act Reform Amendments of 1993.

SECTION 3

Employees may request leave without pay for reasons other than those specified above. However, before approving leave without pay, the Employer should expect the employee to return to duty and at least one (1) of the following benefits will result:

A. increased job ability;

B. protection or improvement of employee's health;

C. retention of a desirable employee; or

D. furtherance of a program of interest to the Government.

SECTION 4

A. The Employer agrees to approve leave without pay for any employee elected to a position of national officer of the National Treasury Employees Union for the purpose of serving full time in the elected position of National President, National Executive Vice President and National District Vice President. The period of leave without pay will be for a period concurrent with the term of office. Because the term of office for the National District Vice president is for two (2) years, as opposed to four (4) years for the two (2) other national elected officers named above, the Employer agrees to extend the period of leave without pay for the National District Vice President for an additional two (2) year term upon notification in writing of re-election. The parties recognize that such employees are subject to all limitations upon benefits that apply to periods of extended leave without pay. This includes the election to discontinue life and health benefits or to continue coverage at the employee's cost.

B. The Employer will normally approve a request for leave without pay for an employee to serve in an appointed full-time position with the National Treasury Employees Union for a period of not less than one (1) full pay period nor more than one (1) year provided that:

   1. If a request is for fewer than six (6) months, an employee may receive leave without pay for this purpose no more than twice in a six (6) month period. However, such leave must be for at least one (1) full pay period.

   2. Based upon the employee's particular duties and current assignments, the absence would not present a significant loss of ability to carry out a particular function. In such a case, another employee may be designated by the Union and the request will then be considered.

   3. The request for such leave without pay shall be made at least one (1) full pay period in advance of the proposed effective date.

4. When the request is not made earlier than one (1) full pay period prior to the proposed effective date, the Employer may postpone the effective date for one (1) full pay period if it deems it necessary.

5. No more than two (2) employees from a Chapter shall be on leave without pay for this same period of time.

6. When a request for extended leave without pay under this Section is granted, the period may subsequently be extended for an additional period of one (1) full pay period to one (1) year if the foregoing conditions of this subsection are met. Employees will notify the Employer as soon as possible in advance if they desires an extension.

SECTION 5

LWOP may never be granted in the following circumstances:

A. to engage in private or commercial work where experience in such work is judged to be of no value to HHS;

B. to engage in political activity prohibited by law;

C. to hold a civilian position with any other federal department or agency; or

D. to create a part time situation for a full time employee.

SECTION 6

The Employer will not abuse its discretion when considering LWOP requests or arbitrarily deny such requests.

SECTION 7

Employees have a responsibility to become aware of the impact that periods of LWOP may have on their benefits and credible service. Employees who are requesting or are on periods of LWOP should contact the appropriate Human Resources Office for information specific to their situation.

ARTICLE 18: FAMILY LEAVE

SECTION 1: Family Medical Leave Act

A. Employees who have completed at least twelve (12) months of service and are not employed on an intermittent basis or a temporary appointment with a time limitation of one (1) year or less have the right, as established by the Family and Medical Leave Act (FMLA) and implementing regulations (5 CFR Part 630, Subpart L), to twelve (12) work-weeks of leave without pay during any twelve (12) month period for one or more of the following:

1. Because of the birth of a child of the employee and in order to care for such child;

2. Because of the placement of a child with the employee for adoption or foster care;

3. In order to care for the spouse, a child, or parent of the employee, if such spouse, child, or parent has a serious health condition;

4. Because of a serious health condition that makes the employee unable to perform the functions of the employee's position.

   Employees may obtain information about their entitlements under the FMLA on the Office of Personnel Management website: https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/family-and-medical-leave/and from the servicing Human Resources Center, https://intranet.hhs.gov/hr/contact-your-hr-center.

B. An employee may elect to substitute accrued or accumulated annual and/or sick leave for any part of the 12-week period of leave without pay described in Paragraph A above. However, this does not require the Employer to provide paid sick leave in any situation in which it would not normally provide such paid sick leave.

C. An employee seeking leave under this section shall provide the Employer with not fewer than thirty (30) calendar days' notice before the date the leave is to begin of the employee's intention to take such leave, unless the date of such leave is not reasonably foreseeable, in which case the employee shall provide such notice as is practicable.

D. Under 5 CFR § 630.1208, the Employer may require that a request for leave under subsections A3 or A4 above be supported by written medical certification written by a health care provider. The information on the medical certification shall relate only to the serious health condition for which the current need for family and medical leave exists.

   The agency may not require any personal or confidential information in the written medical certification other than that required by 5 CFR § 630.1208(b). The following procedure will be followed:

   1. As provided in 5 CFR § 630.1208(b), the employee will provide the following written documentation:

a. The date the serious health condition commenced;

b. The probable duration of the serious health condition or specify that the serious health condition is a chronic or continuing condition with an unknown duration and whether the patient is presently incapacitated and the likely duration and frequency of episodes of incapacity;

c. The appropriate medical facts within the knowledge of the health care provider regarding the serious health condition, including a general statement as to the incapacitation, examination, or treatment that may be required by a health care provider;

d. For the purpose of leave taken under § 630.1203(a)(3) of this part –

   i. A statement from the health care provider that the spouse, son, daughter, or parent of the employee requires psychological comfort and/or physical care; needs assistance for basic medical, hygienic, nutritional, safety, or transportation needs or in making arrangements to meet such needs; and would benefit from the employee's care or presence; and

   ii. A statement from the employees on the care they will provide and an estimate of the amount of time needed to care for their spouse, son, daughter, or parent.

e. For the purpose of leave taken under § 630.1203(a)(4), a statement that the employee is unable to perform one or more of the essential functions of the position or requires medical treatment for a serious health condition, based on written information provided by the agency on the essential functions of the employee's position or, if not provided, discussion with the employee about the essential functions of the position; and

f. In the case of certification for intermittent leave or leave on a reduced leave schedule under § 630.1203(a) (3) or (4) for planned medical treatment, the dates (actual or estimates) on which such treatment is expected to be given, the duration of such treatment, and the period of recovery, if any, or specify that the serious health condition is a chronic or continuing condition with an unknown duration and whether the patient is presently incapacitated and the likely duration and frequency of episodes of incapacity.

2. An employee may elect to submit the required medical certification either directly to their supervisor (or a higher-level supervisor) or directly to the designated HHS health services provider/designated medical professional. The Employer can request but may not require an employee to authorize it or its medical professional to discuss the employee's medical condition with the employee's physician, or to sign a narrowly tailored release permitting the Employer or its medical professional to receive the employee's medical information, limited to that information required by 5 CFR § 630.1208(b), as a condition to granting FMLA leave. However, the failure to provide

sufficient medical documentation as required by law, may result in delay or disapproval of the leave requested.

3. An employee must provide the written medical certification no later than fifteen (15) calendar days after the Employer requests such medical certification. The Employer's request may be in writing. If it is not practicable under the particular circumstances to provide the requested medical certification no later than fifteen (15) calendar days after the date requested by the agency despite the employee's, diligent, good faith efforts, the employee must provide the medical certification within a reasonable period of time under the circumstances involved, but not later than thirty (30) days after the date the agency requested the medical certification. A FMLA coordinator may facilitate the adjudication of FMLA requests throughout the process.

4. HHS uses the Department of Labor (DOL) FMLA medical certification forms WH-380 E (Appendix 18-1) for employees and WH-380F (Appendix 18-2) for families, but there is no requirement to use a specific form for this purpose. Alternatively, any medical certification submission, regardless of the format used, need only contain the information required by 5 CFR § 630.1208(b) identified in Section 1D1 above. The parties may utilize the most current version of the DOL forms, so long as the forms comply with 5 CFR § 630.1208(b). The links to the current DOL forms (Appendix 18-1) and (Appendix 18-2) are below.

   https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/WH-380-E.pdf

   https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/WH-380-F.pdf

5. If an employee submits a completed medical certification signed by a health care provider, the Employer may not request new information. However, the Employer's medical consultant may, with the employee's permission, contact the health care provider who completed the medical certification for the purposes of clarifying the medical certification.

6. If the employee presents the medical certification in a sealed envelope marked "MEDICAL CONFIDENTIAL" and addresses it to the consulting physician in care of the Human Resources Specialist assisting the supervisor or employee, it will be reviewed only by the Employer's consulting physician, not the manager or supervisor. The Human Resources Specialist/FMLA Coordinator, who has a need to know, will have access to the medical certification, as needed, to inform decision makers on the leave requested.

    a. The employee may also submit the medical certification electronically. The Employer will transmit the medical certification to the Employer's consulting physician. Email submissions must be properly protected by the parties. As the custodian of record, the Employer will maintain confidentiality of the medical certification. Each Operations Division/Staff Division will identify and maintain FMLA coordinator(s) and their contact information on their intranet site.

7. If the Employer doubts the validity of the medical certification, the Employer may require at the Employer's expense that the employee obtain the opinion of a second health care provider designated or approved by the Employer concerning information certified in the medical certification. Any health care provider approved by the Employer shall not be employed by the Employer or be under the administrative oversight of the Employer on a regular basis.

8. If the opinion of the second health care provider differs from the original certification provided under subsection D2 above, the Employer may require, at the Employer's expense, that the employee obtain the opinion of a third health care provider designated or approved jointly by the Employer and the employee concerning the information certified in subsection D2 above. The opinion of the third health care provider shall be binding on the Employer and the employee.

E. All other conditions/requirements in 5 CFR § 630.1207 are applicable to leave used under the FMLA.

F. The employee is responsible for notifying the supervisor of the intention to use FMLA leave.

G. The use of FMLA leave cannot be invoked retroactively.

H. If the employee is unable to provide the requested medical certification before leave begins, or if the agency questions the validity of the original certification provided by the employee and the medical treatment requires the leave to begin, the agency shall grant provisional FMLA leave pending final written medical certification. Provisional FMLA leave should be granted while the FMLA request is being processed up until a conclusive determination has been made and the supervisor provides the appropriate FMLA memo to the employee. Any provisional FMLA hours used while the employee's request is being processed must be deducted from the final approved hours and will be indicated in the FMLA memo.

I. If after the leave has commenced and the employee fails to provide the requested medical certification within the specified timeframe, the Employer may charge the employee as absent without leave (AWOL) or allow the employee to request that the provisional leave be charged as leave without pay or charged to the employee's annual and/or sick leave account, as appropriate.

SECTION 2: FMLA for Maternity or Paternity Purposes

A. Employees are entitled to twelve (12) weeks of FMLA leave for maternity or paternity purposes due to the birth of a child or placement of a child with the employee for adoption or foster care or for maternity sick leave purposes. Employees are also entitled to FMLA leave to engage in activities related to the placement of a child with the employee for adoption or foster care. Approval of leave for these reasons will be consistent with the provisions of this Agreement and applicable statutes and regulations.

B. Periods of incapacity due to pregnancy are considered a "serious health condition" under FMLA. Charges to sick leave are appropriate for the period of incapacitation due to pregnancy and confinement, consistent with medical requirements and applicable laws

and regulations. The employee also may request and be granted annual leave, LWOP, earned credit hours and/or compensatory time instead of sick leave for the period of incapacitation. A female employee may also substitute sick leave, annual leave, earned compensatory time, credit hours, donated leave, or any combination thereof, for any remaining time of the twelve-week FMLA LWOP entitlement, as appropriate.

C. Pregnant employees' requests for modification of work duties or a temporary assignment will be considered in accordance with Article 38, Employees with Temporary Disabling Conditions.

D. A parent shall be permitted to be absent on partial or full days of annual leave, sick leave, LWOP, earned compensatory time, credit hours, or any combination thereof, to aid or assist in the care of minor children or the mother of the children due to her confinement for maternity reasons. Approval of leave for these reasons will be consistent with the provisions of this Agreement and applicable law and regulation.

SECTION 3

For purposes associated with adoption of a child, an employee may request annual leave, sick leave, LWOP, and/or earned compensatory time and/or credit hours. (See Article 16 for information about use of sick leave for adoptions.) The Parties recognize that it is in the interests of both the employee and the Employer that such requests shall be made as early as possible. The employee should submit the leave request for adoption purposes as early as possible, no less than thirty (30) calendar days, in advance of the prospective starting date; if the date of leave is not foreseeable (e.g., foreign adoptions), the employee shall provide such notice as is practicable. The individual circumstances must be considered in each instance by the leave approving official; reasonable requests shall be granted unless a workload or staffing problem prevents approval. Approval will be consistent with the provisions of the Agreement and applicable statutes and regulations.

SECTION 4

Whenever a leave request under this Article is denied, upon request the Employer shall state the specific reasons in writing.

SECTION 5

The provisions of this Article apply to married and unmarried employees alike, except to the extent such application would conflict with law or government-wide regulations.

SECTION 6

No medical documentation required under this article shall be shared with a management official. All medical documentation shall be sent directly to the physician identified by the Employer.

SECTION 7: Paid Parental Leave

A. Paid Parental Leave (PPL) is a substitute for unpaid leave under the Family Medical Leave Act (FMLA). Employees, who meet qualifying criteria are entitled to twelve (12) administrative workweeks (up to 480 hours) of PPL for the birth or adoption of a child or new foster care placements that occurred on or after October 1, 2020. PPL is not an addition to FMLA.

B. A full-time employee is entitled to a maximum of twelve administrative work weeks (480 hours) of PPL during the 12-month period beginning on the date of birth, adoption, or placement of a child in foster care (or children, in the instance of multiple children in a single birth, adoption, or foster care placement).

C. Eligibility. To be eligible for PPL an employee must:

1. Have experienced the birth, adoption, or foster care placement of a child on or after October 1, 2020 and assumed the parental role;

2. Have been employed by the federal government for at least twelve (12) months prior to using paid parental leave (does not require twelve (12) recent or consecutive months of federal employment);

3. Be engaged in activities directly connected to the care of the child;

4. Be located inside the local geographic area where the child is located; and

5. Be a full or part-time employee. (Employees with an intermittent work schedule, and employees serving under a temporary appointment with a time limitation of 1 year or less are ineligible.)

D.

1. To invoke their right to PPL, employees must complete and submit to the Employer Form PPLR-2020 (Paid Parental Leave Request Appendix 18-3) and Form PPLA-2020 (Agreement to Complete 12-Week Work Obligation Appendix 18-4). Employees should submit their anticipated PPL package to their supervisor at least 30 days in advance when practicable. Using the PPL Supporting Documentation List, the employee must also provide a statement to their supervisor, advising that the employee is invoking their right to participate under the FMLA/Federal Employees' Paid Leave Act (FEPLA).

2. Where not practicable for an employee to submit the PPL package as required above, at the request of the Agency, employees must provide the appropriate documentation that substantiates the use of PPL is directly connected to a childbirth or placement within 15 days following such request by the Agency. If it is not practicable under the particular circumstances for an employee to respond within the 15-day timeframe, despite the employee's diligent, good faith efforts, the employee must provide the documentation or certification within a reasonable period of time under the circumstances involved, but no later than 30 calendar days after the date of the Agency's original request.

3. The Agency is responsible for determining what documentation is sufficient proof of entitlement. Such documentation shall include, but is not limited to, a birth certificate for childbirth or documentation confirming the placement and the effective date of the placement. If an employee submits documentation that the Agency determines is insufficient, the Agency will promptly notify the employee and advise them of what documentation will satisfy this requirement. The Agency may grant paid parental leave prior to receiving any requested documentation or certification based on an employee's communications with a supervisor or management. Under these circumstances, the granting of paid parental leave is provisional, pending receipt of the requested documentation or certification required by this subsection. If the employee fails to provide the Agency with the required documentation or certification within the specified time period, the Agency may determine that the employee is not entitled to paid parental leave and may:

    a. Allow the employee to request that the absence be charged to leave without pay, sick leave, annual leave, or other forms of paid time off, as appropriate; or

    b. If the employee acted fraudulently, charge the employee as absent without leave (AWOL) and pursue any other appropriate action. When the Agency determines that it will place an employee in AWOL status, it will notify the employee of the AWOL in writing as soon as practicable, but no later than 2 workdays of the AWOL determination.

E. Using the PPL Service Agreement form (Appendix 18-4), employees who invoke their right to PPL must agree in writing before the PPL begins to remain at the Employer for a period of twelve (12) weeks after the day on which PPL concludes. In the case of the employee's incapacitation, the rules in 5 CFR § 630.1706 will apply.

F. The Agency may require a reimbursement from employees who fail to return to work and fully complete the required 12-week work obligation in an amount equal to the total amount of any Government contributions paid by the Agency on behalf of the employee to maintain the employee's health insurance coverage under the Federal Employees Health Benefits Program during the period(s) when paid parental leave was used.

   Where the agency determines that reimbursement must be made pursuant to subsection 7F, it is understood that the Agency must seek collection of the full amount pursuant to 5 CFR § 630.1705 (f).

   If an employee separates from the agency before completing the 12-week obligation, such separation is a failure to meet that obligation and the employees will not be allowed to complete the work obligation later. (Note: An intra-agency reassignment without a break in service will not be considered a separation.). If the agency determines that the reimbursement requirement applies, the Agency will notify the employee and follow the applicable procedures in Article 23 to recover the required reimbursement. Employees reserve the right to challenge the Agency decision to collect through any applicable administrative or judicial process and to seek return of any amounts erroneously collected.

G. PPL benefits expire twelve (12) months from the date of birth, adoption, or foster care placement. For employees who experience multiple births or placements in a 12-month period, a new 12-

month period and entitlement for PPL will begin with each birth or placement. However, the maximum PPL an employee can take during a 12-month period remains 480 hours (or appropriate prorated amount for part-time employees). However, any use of paid parental leave during an overlap period (i.e., period containing more than one 12-month period following birth/placement) will count toward the 12-week limit for each birth/placement involved. At the end of the 12-month period, any unused balance of paid parental leave granted in connection with the given birth or placement expires and is not available for future use (i.e., there are no carryover provisions for unused paid parental leave). No payment may be made for unused paid parental leave or paid parental leave that has expired.

H. For additional information on the criteria for leave and compliance of all requirements and obligations for PPL, and PPL form and resources, see Appendix 18-3 and Appendix 18-4.

SECTION 8: Substituting Paid Leave for Unpaid FMLA Leave

A. An employee who has been approved for FMLA may elect to substitute the following paid leave for any or all of the period of unpaid leave:

1. Accrued or accumulated annual or sick leave consistent with laws and Government-wide regulations governing the granting and use of annual and sick leave;

2. Advanced annual or sick leave granted under Articles 15 and 16;

3. Leave made available to employees under the leave bank and leave transfer provisions of Article 21**;** and

4. PPL pursuant to Section 7, above.

B. An employee must notify their supervisor of the intent to substitute paid leave for any period of unpaid leave prior to the date the paid leave commences. An employee normally may not retroactively substitute paid leave for unpaid leave already taken. Paid leave and/or donated leave, however, will be authorized for periods of unpaid leave where the employee and their representative could not provide advance notice due to incapacitation.

C. The Employer will not deny an employee's request to substitute paid leave described above for any or all of the period of leave without pay to which the employee is entitled under the FMLA. Additionally, the Employer will not require an employee to substitute paid leave for any or all of the period of leave without pay to which the employee is entitled under FMLA.

D. Although employees cannot substitute compensatory time or credit hours for approved FMLA leave, employees may use approved compensatory time or approved credit hours prior, or subsequent to, FMLA leave.

E. If an employee has been approved for FMLA and requests advanced sick leave for the same illness and for the same period of time covered by the FMLA leave, the employee will not be required to provide the medical documentation required by Article 16, subsection 8A1 to obtain approval for the advanced sick leave.

ARTICLE 19: OTHER LEAVE PROVISIONS

SECTION 1: Religious Compensatory Time

A. An employee normally will be granted annual leave or LWOP for a workday which occurs on a religious holiday, so long as the employee requests such leave at least three (3) workdays in advance.

B. An employee whose personal religious beliefs require the abstention from work during certain periods of time may elect to earn and use religious compensatory time (RCT) for the purpose of taking off without charge to leave.

C. To the extent that such modifications in work schedule do not interfere with the efficient accomplishment of the Employer's mission, the Employer will in each instance: (1) afford the employee the opportunity to earn RCT; and (2) approve use of earned RCT to an employee requesting such time off for religious observances when the employee's personal religious beliefs require that the employee abstain from work during certain periods of the workday or workweek.

D. The employee may earn such RCT before or after its use. A grant of advanced RCT must be repaid by the appropriate amount of RCT earned within four (4) pay periods of the date the RCT time was used. RCT will be earned and used in one-quarter (1/4) hour increments.

E. The Employer will make RCT procedures available for timekeeping-purposes and will make a concerted effort to ensure that RCT is accurately and timely processed.

SECTION 2: MILITARY LEAVE

A. Any employee who is a member of the National Guard or a Reserve component of the Armed Forces shall be entitled to fifteen (15) calendar days of regular military leave in a fiscal year for active duty or active duty training as provided for in 5 USC § 6323, as amended, and implementing regulations. For part-time employees, military leave is calculated according to 5 USC § 6323. Employees who do not use the entire fifteen (15) days can carry over the time in accordance with appropriate laws and regulations. Military leave is charged in increments of one hour.

B. Approval of the military leave provided in the foregoing will be based upon the copy of the orders directing the employee to active duty and the copy of the certification of attendance and completion of such duty by an appropriate authority.

C. Any employee contemplating the use of military leave will advise the Employer as soon as possible of the anticipated dates of such leave.

SECTION 3: Court Leave

An employee with a regular scheduled tour of duty is entitled to court leave in accordance with law and regulations. Court leave is appropriate for:

A. jury duty with a federal, District of Columbia, state, or local court; and

B. an employee who is summoned as a witness in a judicial proceeding in which the Federal, State, or local government is a party.

Employees who are called for court service should present the court order, subpoena, or summons to their supervisor. Any documentation provided by the court confirming the employee's presence must be provided to the supervisor upon the employee's return to duty. Fees, except for travel and parking, received by an employee granted court leave must be submitted to the appropriate HHS finance office.

SECTION 4

All other absences other than that outline in Section 2A above will be charged in one-quarter (1/4) hour increments. Absence pursuant to 2A above (military leave) is currently charged in one- hour increments.

SECTION 5

A request for leave under this Article will be approved or denied as soon as practicable after it is submitted to an appropriate leave-approving official.

ARTICLE 20: EXCUSED ABSENCE/ADMINISTRATIVE LEAVE

SECTION 1

A. Excused absence (sometimes called "administrative leave") is an absence from duty without loss of or reduction in: (1) pay, (2) leave to which an employee is otherwise entitled under law, or (3) credit for time or service; and that is not authorized under any other provision of law.

B. This Article is implemented in accordance with Title 5 United States Code (USC) § 6329a, Administrative Leave, and Title 5 USC § 6329c, Weather and Safety Leave, enacted as part of the Administrative Leave Act of 2016. The parties recognize that there are limitations on administrative leave contained in Section 6329a, including a limit of 80 hours per calendar year for full time employees and prorated equivalent limitations for part-time employees.

SECTION 2: Voting

Polling places throughout the United States are open for extended periods of time on election days. Employees should generally, therefore, not need excused absence to vote. When voting polls are not open, however, for at least three (3) hours before or after an employee's regular hours of work (i.e., not including time earning credit time), the Employer will normally approve an employee's written request for enough time off without charge to leave to report for work three hours after the polls first open and then report for work expeditiously, or leave work three hours early to vote shortly before the polls close, whichever requires the lesser amount of time off. Employees on alternative work schedules will attempt to arrange their schedules to work the maximum number of hours while still being able to vote. The employee's mode of transportation to work and related schedule flexibility will be considered in granting excused absence for voting. If an employee's voting place is beyond normal commuting distances and voting by absentee ballot is not permitted, the employee will normally be granted sufficient time off to make the trip to the voting place to cast a ballot but not to exceed 3 hours.

SECTION 3: Blood Donation

A. With advance supervisory approval, employees will normally be granted excused absence of up to four (4) hours on the day of donating blood during an official Bloodmobile visit to the worksite or other blood donation sites away from the worksite. Additional time may be allowed, if necessary, because of the location of the donation site, the type of donation process, the effects of donation on the physical condition of the donor or other factors as determined by the leave approving official. If the employee is requested by a hospital to provide blood as a special donor, the employee will be given excused absence at a time that the supervisor and the employee mutually agree. In unusual cases, such as electrophoresis, the Employer will grant excused absence up to eight (8) hours, if needed, in the view of appropriate health officials. The employee will notify the Employer as soon as practical that an appointment for any type of blood donation is scheduled.

B. If the Employer is unable to grant the excused absence under 3A, the Employer will grant the excused absence as soon as practicable but no later than within the next five (5) workdays.

SECTION 4: Weather & Safety Leave for Employees Who Are Not Eligible for Telework

A. Provisions concerning weather and safety leave applicable to Telework employees are contained in Article 26.

B. Consistent with 5 CFR Part 630, Subpart P, the Employer may grant weather and safety leave to employees only if they are prevented from safely traveling to or safely performing work at a location approved by the agency due to:

1. An act of God (e.g., heavy snow or severe icing conditions, floods, earthquakes, avalanches, hurricanes wildfires or other natural disasters, and pandemics);

2. A terrorist attack; or

3. Another condition that prevents an employee or group of employees from safely traveling to or safely performing work at an approved location (e.g., power failures and other events beyond the control of the employee).

C. Bargaining unit employees are not eligible to receive weather and safety leave unless approved by the Employer. Nothing contained in this Article will restrict the Employer's ability to require the presence of an employee, pursuant to its right to assign work under 5 USC 7106(a)(2)(B), should the Employer determine that the employee's services in an office are necessary. If an employee is ordered to report to the office, the Employer has determined that the employee will not be adversely impacted if the employee is delayed or prevented from getting to the office because of safety reasons that caused the closure. In such cases, the employee will attempt notify their supervisor of the conditions preventing them from reporting as soon as practicable.

D. Whenever it becomes necessary to close an office because of inclement weather or other safety-related condition and to grant weather and safety leave, reasonable efforts will be made to inform all employees by private or public media, including email, and other methods as appropriate and available.

E. Office Open

1. If a weather or other safety-related conditions described above exists and prevents an employee from safely traveling to work and the office is not closed, the employee may be granted weather and safety leave for all or part of the day where the Employer determines the employee is prevented from safely traveling to the office.

2. Factors which shall be considered by the Employer when determining if an employee will be granted weather and safety leave and uniformly applied to all employees within the area affected by the weather or other safety-related condition include the following:

a. the employee resides within or travels through an area affected by the weather or other safety-related condition;

b. efforts taken by the employee to come to work; and

c. any local travel restrictions or evacuation orders.

Documentation may be required for employees who are away from their office for personal reasons and are prevented from returning to work due to weather or other safety-related conditions.

3. Employees who are scheduled to report to the office, but are prevented or delayed from arrival, are obligated to contact their supervisors as early as practicable to explain the circumstances and provide an estimated time of arrival at work. In cases where weather and safety leave is granted for consecutive days, the employee must be reachable by the Employer via telephone or email, provided such services are available. If so, the employee must respond to attempts to communicate as soon as possible but no later than twenty-four (24) hours.

4. Employees on official travel who are prevented from safely traveling to or safely performing work at the temporary duty location may be eligible for weather and safety leave. In such circumstances, the employee must contact the manager as soon as practicable to receive further instructions.

F. Office Open with Early Closure/Departure

1. In the event of an "open with early departure" operating announcement, all employees working in the office (i.e., the official duty station) up to the early departure time will be granted weather and safety leave for the period from the early departure time to the end of their Tour of Duty (TOD).

2. Employees working in the office who have leave (paid or unpaid) or paid time off (e.g. compensatory time off, credit hours) scheduled to begin at the start of the early departure time or thereafter, but who no longer require it because its intended purpose is frustrated (e.g., a cancelled medical appointment or a cancelled flight to a vacation destination), may rescind the time off and receive weather and safety leave that is granted to other employees in the office. The manager may request information or documentation to show that granting weather and safety leave is appropriate.

3. When an early departure time is announced and the employee anticipates circumstances that could prevent them from safely traveling home at the early departure time, consistent with workload and staffing needs, the manager may grant annual or other appropriate leave requests to permit the employee to receive additional time off to allow the employee to leave prior to the early departure time, provided that the employee provides the manager with reasonably acceptable documentation.

G. Delayed Opening of Office

Following the announcement of a delayed arrival, an employee, who is on scheduled leave or paid time off for the entire day but the intended purpose is frustrated (e.g., a cancelled medical appointment or a cancelled flight to a vacation destination), may choose to come in at the start of

their TOD. The employee will contact their manager via telephone or will follow any other mutually agreed upon process to advise the manager of their intent to come into the office, and may be granted weather and safety leave up until the time of the delayed arrival, and will have the remainder of the scheduled leave or paid time off cancelled. However, weather and safety leave will not be granted if the primary purpose of cancelling the preapproved leave is to obtain weather and safety leave.

H. Closures when Employees are Scheduled for an Approved Absence

Employees may cancel pre-approved leave or paid time off and be granted weather and safety leave as other employees when its intended purpose is frustrated by the same weather and safety-related condition forcing the office closure. The manager may request information or documentation to show that granting weather and safety leave is appropriate.

SECTION 5: Bone Marrow/Organ Donations

A. Pursuant to 5 U.S.C. § 6327, each employee is entitled to a maximum of seven (7) days of absence per calendar year, without charge to leave to which the employee is otherwise entitled and without any reduction in pay, to serve as a bone-marrow donor, or a maximum of thirty (30) days per year to serve as an organ donor.

B. Additional leave for this purpose may be authorized in accordance with other leave provisions and charged accordingly.

SECTION 6: Volunteer Work

If workload permits, employees who are rated fully successful and above may be granted up to eight (8) hours of excused absence (administrative leave) per year to volunteer their time to legitimate public service organizations. Time spent in such activities outside an employee's regular working hours is not hours of work. Excused absence for volunteer activities will be limited to those situations in which the employee's absence, as determined by the Employer, is not specifically prohibited by law and meets at least one (1) of the following criteria:

A. The absence is directly related to the HHS or Agency mission;

B. The absence is officially sponsored or sanctioned by the Secretary of HHS or the Agency Commissioner;

C. The absence will clearly enhance the professional development or skills of the employee in their current position; or

D. The absence is brief and is determined to be in the interest of the Employer. In all cases, the employee must provide acceptable evidence that the time was used for volunteer activities.

SECTION 7: Absence of Less than One Hour

Employees have the responsibility to arrive at work on time. However, infrequent tardiness of less than one (1) hour beyond the employee's start time or the start of core hours may be excused without charge to leave, when the employee provides a reasonable explanation acceptable to the Employer as to why the employee is tardy. The Employer's decision will be fair and equitable.

SECTION 8: Union Benefits Counseling

Subject to workload considerations the Employer may grant an employee up to one (1) hour administrative leave per calendar year for the purposes of attending a health benefits fair, reviewing health benefits information and materials, receiving financial counseling, and seeking supplemental retirement counseling. These activities must be sponsored or made available by the Union.

When the Employer provides benefits counseling for employees (including sponsoring external presentations), attendance will be on duty time.

SECTION 9: Return from Military Duty

Employees who return from active military service in support of Overseas Contingency Operations (OCO) are entitled to five (5) days of excused absence each time they return from active military duty. In order to receive the five (5) days of excused absence, employees must spend at least forty-two (42) consecutive days on active duty in support of OCO. A returning employee is authorized to use this excused absence only once during a twelve (12) month period beginning after the first use of the excused absence. This provision must be applied consistent with published OPM guidance at the time the request is made.

ARTICLE 21: LEAVE SHARING

SECTION 1

This Article addresses assistance to employees who are facing or have faced personal/family medical emergencies. Agency Operating Divisions offer the Voluntary Leave Transfer Program (VLTP). No membership is necessary to receive donated leave under the VLTP. In addition, the FDA also has a Voluntary Leave Bank Program (VLBP). To receive donated leave from the VLBP, an employee must be a member of the Leave Bank. An employee who is a member of the Leave Bank may apply for leave through both the VLBP and VLTP.

SECTION 2: Voluntary Leave Transfer Program

A. An employee without available paid leave may request to become a donated leave recipient for a specific medical emergency involving themself or a family member (as defined in Article 16, which is expected to result in an absence from duty for at least twenty-four (24) consecutive or intermittent hours during the leave year, if the medical emergency would otherwise result in a loss of pay.

B. Part-time employees or employees with uncommon tours of duty qualify for leave donations based on a reduced formula pursuant to OPM regulations.

C. The employee must use up all accrued annual and sick leave, if appropriate, before being donated leave.

D. The employee(s) must submit a written request for donations of leave to their immediate supervisor. If the employee is unable to submit an application a family member or coworker may submit the application on the employee's behalf. An application to become a donated leave recipient must include a brief description of the nature, severity, and anticipated duration of the personal or family medical emergency affecting the employee. The applicant must also include a statement from a physician or other qualified medical practitioner showing the nature, severity, and duration of the medical emergency. Additional information may be submitted, as appropriate, to supplement the application.

E. Leave recipients are eligible to retroactively substitute transferred annual leave. The employee must apply for transferred leave within thirty (30) workdays after the end of the medical emergency to be eligible for retroactive coverage to the beginning of the medical emergency.

F. Transferred annual leave may be substituted retroactively for periods of leave without pay (LWOP) or to liquidate advanced annual or sick leave granted to an approved recipient to cover absences during a medical or family emergency. It is up to the employee to decide how transferred leave is used.

G. An employee's completed application will be reviewed and either approved or disapproved by the management official authorized to render decisions on requests to participate in the Voluntary Leave Transfer Program (VLTP) as soon as possible but no later than ten (10) workdays from the date it is received by the management official authorized to render a decision.

If an application does not provide all required information when initially submitted, or if additional supporting documentation is necessary in order to act upon the application, it will not be considered complete. The employee (or person acting on their behalf) will be notified promptly by the Employer of what else is needed to complete the application.

H. The Employer shall ensure that all approved donated leave is processed by the respective timekeeper within one pay period after submission of the approved request.

I. Before the designated official approves an application to become a leave recipient, the potential leave recipient's employing agency shall determine that the absence from duty without available paid leave because of the medical emergency is (or is expected to be) at least 24 hours and the medical documentation supports the request for leave.

J. In making a determination as to whether a medical emergency is likely to result in a substantial loss of income, an agency shall not consider factors other than whether the absence from duty without available paid leave is (or expected to be) at least 24 hours and the medical documentation supports the request for leave.

K. If an employee's application is disapproved, the written notice of disapproval will specify the reason(s) why the designated official has determined that the employee or the stated medical emergency does not satisfy the requirements for participation in the VLTP. Any disapproval of a request to become a donated leave recipient may be grieved by the employee.

L. At the approved donated leave recipient's request, or with the employee's consent, the Employer will arrange to inform other employees of the medical emergency situation and provide them with details on the procedure for donating some of their accrued annual leave to the employee through the VLTP. The donated leave recipient will determine the amount and extent to which medical information details will be provided to other employees.

M. The Employer will accept an employee's request for leave transfer from leave donors employed by one or more other agencies if:

1. a family member of a leave recipient is employed by another agency and requests the transfer of annual leave to the leave recipient;

2. in the judgment of the leave recipient's employing agency, the amount of annual leave transferred from leave donors employed by the leave recipient's employing agency may not be sufficient to meet the needs of the leave recipient; or

3. in the judgment of the leave recipient's employing agency, acceptance of leave transferred from another agency would further the purpose of the voluntary leave transfer program.

At the employee's request, the Employer will communicate donated leave requests throughout all HHS OpDivs represented by NTEU via electronic mail (i.e., via broadcast email) and central websites accessible to all OpDivs represented by NTEU.

SECTION 3: Voluntary Leave Bank Program

A. The FDA Voluntary Leave Bank Program (VLBP) Memorandum of Understanding dated March 11, 2022 is incorporated by reference into this Article. (Appendix 21-1).

1. The FDA VLBP permit FDA employees to voluntarily join and contribute annual leave for use of other Leave Bank members who need such leave because of a medical emergency as provided by 5 U.S.C. 63 subchapter IV and 5 CFR 630, subpart J. An FDA employee without available paid leave may request to become a donated leave recipient for a specific medical emergency involving themself or a family member (as defined in 5 CFR § 630.902), which is expected to result in a substantial loss of income because of the employee's lack of available paid leave. The threshold for "a substantial loss of income" is absence (or expected absence) from duty without available paid leave for at least twenty-four (24) work hours.

2. To join the Leave Bank, an FDA employee must complete the FDA Form established for the program and return it to the Leave Bank Coordinator during a Leave Bank open season. Contact information for the Coordinators will be available on the FDA website.

B. Within sixty (60) days of the effective date of this Agreement, the Employer agrees to conduct a feasibility study on the expansion of a Voluntary Leave Bank Program across HHS, to include any necessary computer system changes, staffing, and cost. The study will conclude no later than one-hundred eighty (180) days after it is initiated unless the parties mutually agree to extend the timeframe. NTEU will be briefed on the results of the study, and may have up to four (4) NTEU bargaining unit representatives participate in the briefing on official time.

SECTION 4

Once employees are using transferred leave under this Article, they continue to accrue annual and sick leave up to a maximum of forty (40) hours in each category (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours or work in the employee's weekly scheduled tour of duty), regardless of whether it is a family medical or personal medical emergency. Once forty (40) hours are accumulated, the accumulated stops, even if the medical emergency still exists.

SECTION 5

Upon termination of a medical emergency, unused annual leave donated to a recipient under this Article shall be restored to the donor, or the Leave Bank, as appropriate.

SECTION 6

A. Pursuant to 5 U.S.C. § 6391, in the event of a major disaster or emergency declared by the President that results in severe adverse effects for a substantial number of Federal employees, OPM may be directed to establish an emergency leave transfer program (ELTP). Under an ELTP,

any Federal employee may donate unused annual leave for transfer to employees of her/his own or another Federal agency who are adversely affected by the disaster or emergency.

B. If an ELTP is established by Presidential directive, employees may follow the procedures specified at such time by OPM and/or the Employer in order to donate annual leave under this program.

SECTION 7

The parties recognize that a Leave Bank may be a valuable resource for employees. The negotiated agreements between NTEU Chapters and HHS Operating Divisions remain in effect during the term of this agreement. If the Employer or Operating Division decides to establish a Leave Bank, it will notify the Union and bargain in accordance with this Agreement, law, rule, and regulation.

ARTICLE 22: OVERTIME, COMPENSATORY TIME, HOLIDAYS

SECTION 1

Fair Labor Standards Act (FLSA)-exempt and non-exempt employees will be compensated for overtime or holiday work, as appropriate to their status, in accordance with all applicable laws, rules and regulations at the time the work is performed and with this Agreement to the extent it is not inconsistent therewith.

SECTION 2

In order to ensure that employees completely understand their rights for overtime compensation, the Employer will, each time employees undergo a personnel action, notify the employees on the SF50 as to whether they are exempt or non-exempt for the purposes of the Fair Labor Standards Act.

SECTION 3

A. Consistent with the procedures set forth below, overtime will be distributed equitably and fairly among all employees determined by management to be qualified to perform the work necessary to be completed. When overtime work becomes available, the Agency will notify the local chapter.

B. The Employer will determine qualified employees considering the following:

- Knowledge, skills and ability of the bargaining unit employees (e.g., specific knowledge or experience needed to adequately perform the overtime work);
- The nature of the work to be performed on an overtime basis (e.g., whether the work is a standard project that could be shifted to different employees; whether a particular employee is heavily involved in the work to be done or has specific knowledge necessary for the work to be completed); and
- The cost-effectiveness and timeliness related to selecting bargaining unit employees for overtime work.

C. Subject to Paragraph D below, the Employer will staff overtime assignments as follows:

First, the Employer will solicit volunteers from a pool of appropriately qualified employees. If there are more qualified volunteers than work available, the employees will be asked to attempt to decide amongst themselves who gets the work.

D. If the employees cannot reach agreement, the work will be assigned on a rotational basis to the most senior qualified employee using federal service computation date. Employees who are selected under this Section for voluntary overtime assignments will not be included among the candidates in subsequent voluntary overtime situations until all qualified volunteers have had the same opportunity.

E. If the number of qualified volunteers is equal to the number of employees needed to accomplish the work, all volunteers will work the overtime.

F. If there are an insufficient number of qualified volunteers, the work will be assigned to the least senior qualified employee on a rotational basis, using federal service computation date.

G. Employee who are ordered to work overtime will be relieved of the assignment if they finds qualified and willing replacements acceptable to, and approved in advance by, the supervisor. Employees who find replacements will be treated on the rotation as if they performed the overtime assignment.

H. Nothing in this Article precludes the Employer from seeking volunteers to work on compensatory time. The Employer will follow the procedures outlined in this Article for soliciting and selecting volunteers for compensatory time. However, the Employer may not require that an FLSA-covered (non-exempt) employee work compensatory time.

The Employer will, when circumstances permit, notify an employee at least three (3) days in advance of scheduling an overtime assignment.

SECTION 4

The Employer will maintain appropriate overtime records to show who worked overtime and when.

SECTION 5

Employees will be compensated for overtime work performed under Title V of the United States Code or the Fair Labor Standards Act as may be applicable. Employees shall be compensated for all fifteen (15) minute increments of overtime work approved by the Employer and worked by the employee.

SECTION 6

A. Except when an employee earns credit hours as provided for in the Article 25, Alternative Work Schedules, and consistent with applicable laws and regulations, an employee will be granted compensatory time in lieu of payment for overtime work if requested, for irregularly or occasionally scheduled overtime work (as defined in Section 1 above), provided the employee has obtained the prior written or verbal approval from an authorized official. Verbal approval should be memorialized in and email communication to the requesting employee as soon as possible after it is given.

B. Employees not entitled to time and one-half overtime under the law, e.g., FLSA exempt employees above grade 10 step 10, will normally receive compensatory time in lieu of overtime pay for occasional and irregular overtime worked except when management determines that the employee is unlikely to have the opportunity to use the compensatory time at the end of the twenty-sixty (26th) pay period of the year in which the leave is earned.

C. Employees who have earned approved compensatory time and who do not use it at the end of the twenty-sixth (26th) pay period of the year in which the leave is earned, shall have that time

converted at the appropriate pay, except where inconsistent with regulation (i.e., when the compensatory time was earned for travel).

D. Employees with compensatory time balances when they separate from the Service shall have those balances converted.

SECTION 7

A. When the Employer requires the services of employees on an established holiday, the Employer will seek to fill its needs through volunteers from the qualified group. When the Employer is unable to fill its needs through these qualified volunteers, it will assign the work to qualified employees on a rotational basis, beginning with the employee with inverse SCD.

B. Employees involuntarily assigned to work on a holiday may be relieved if they find qualified and willing replacements acceptable to, and approved in advance by, the supervisor.

C. To minimize the adverse repercussions of assigning employees to work on holidays, the employer will provide as much notice as possible to the affected employees.

SECTION 8

A. Irregular or occasional overtime work performed by employees on a day when work was not scheduled for them, or for which they are required to return to their place of employment, is deemed at least two (2) hours in duration for the purposes of premium pay, either in salary or compensatory time off.

B. The Employer will not compel any employee to provide their home telephone number to an answering service or similar organization, as a condition of employment when on call back rotation. If the Employer requests that an employee provides their home telephone number for the purpose of a call back rotation procedure, the employee may request that the Employer provide them with a beeper in lieu of their home telephone number. The Employer will not penalize employees for deciding not to provide their home phone number.

SECTION 9

Employees may request to work irregular or occasional overtime or compensatory time to complete assigned tasks. The Employer will respond to these requests within five workdays of the request, but not later than one workday before the requested overtime or compensatory time has been requested to begin.

SECTION 10

A. Compensatory time for travel will be authorized only for "hours of employment" as defined in 5 U.S.C. § 5542 and under standards established by applicable decisions of adjudicatory bodies.

B. For purposes of compensatory time for travel, the official duty station is defined as the forty-five (45) mile radius around the post-of-duty.

C. Employees requesting compensatory time off for travel must complete the required form in advance of the official travel with compensatory time for travel estimates. Any amendments to said request must be completed and submitted within fourteen (14) days of their return from travel, for supervisory approval.

D. An employee's request for compensatory time earned shall be reviewed, and approved or denied by the authorizing supervisor. Authorized compensatory time will normally be credited within the first pay period following completion of the travel. The authorizing supervisor will notify the employee as to the approval or denial of the request. Upon request, the Employer will provide the employee with the reasons for denial in writing.

E. An employee's entitlement to receive Compensatory Time Off for Travel is limited to:

1. An employee in a travel status;

2. The time actually spent traveling between their official duty station and a temporary duty station, or between two temporary duty stations, and;

3. Any usual waiting time that precedes or interrupts such travel. It is understood that usual waiting time before scheduled departures will be 1 to 2 hours before the scheduled departure, depending on whether the flight is domestic or international, respectively. In addition, time spent at an intervening airport waiting for a connecting flight, generally not exceeding two hours, shall be creditable time in travel status. Employees may provide documentation or other evidence of a longer waiting time, which the supervisor will consider crediting.

F. Consistent with 5 C.F.R. § 550.1407(a)(1), employees must use accrued compensatory time off by the end of the 26th pay period after the pay period during which it was credited. If employees fail to use the compensatory time, they must forfeit such compensatory time off. Management will allow, to the extent practicable, employees to use earned time as requested. If this is not practicable, the employee may request alternative time(s), which will be granted, workload and mission permitting. If it is determined that an employee cannot use the accrued time when initially requested, the Employer will provide the employee with the reason(s) for disapproving the time. Upon request, the Employer will provide the employee with the reasons for denial in writing. The decision to disapprove use of accrued time may be grieved under the parties' negotiated grievance procedures.

ARTICLE 23: WAIVER OF OVERPAYMENT

SECTION 1

The Employer will approve, or where approval authority is outside the Department, recommend approval of a request for waiver of a claim and the refund of any money repaid when the facts show that the conditions set forth in the government-wide regulations or decisions of the Comptroller General are met in accordance with the following Department guidelines:

A. A basic presumption in the Federal Government is that an employee who receives an overpayment of pay or allowances should refund the overpayment. 5 USC § 5584 permits the waiver of the Government's claim under certain limited conditions, generally when there is no reason to believe that the overpayment is the result of misrepresentation, fraud, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim; or the payment is not the subject of any other exception by the Comptroller General. Fault means that an employee knew, or should have known, that an error was made. However, the existence of this law should not lead to an assumption that employees are entitled to a waiver merely because an overpayment was due to administrative error. Rather, the ultimate decision will be based on a careful analysis of the facts and the merits of the case.

B. An overpayment because of a failure to make a deduction for a statutory benefit program may be considered for a waiver under the provisions of 5 USC § 5584. Statutory benefit programs include retirement, health benefits, and life insurance.

C. Each employee has access to a bi-weekly Leave and Earnings Statement (LES). Employees are responsible for reviewing their LES and notifying their supervisors, payroll liaison, or servicing human resources office of any unexplained changes in their pay. Once the employee has notified the Employer, the Employer will take action in a timely manner to rectify the situation.

SECTION 2

A. Employees who become indebted to the Department due to a salary overpayment will be notified in writing of the overpayment amount, the date by which the overpayment must be repaid in full and that if the overpayment is not repaid in full by the due date, it may be collected by salary offset.

B. Employees will be notified of their right to dispute the underlying debt in accordance with the Department’s procedures and 45 CFR, Part 30 and/or to request a waiver of the salary overpayment under 5 USC § 5584.

C. The Employer agrees to respond to requests for hearings or waivers in a timely manner, generally within thirty (30) workdays.

D. The current payroll system does not assess administrative costs or charge interest.

E. Waivers will not be considered for twenty-five ($25) dollars or less.

SECTION 3

A. Collection will begin no earlier than thirty (30) days after the employee is notified of the amount of overpayment.

B. There are two methods for repaying a debt voluntarily:

1. A payment can be made by check or money order. The payments can be paid in one lump sum or at regularly established intervals to the servicing payroll office.

2. The debt can be collected through payroll deductions using one of the following methods:

    a. A one-time deduction.

    b. Payment may be spread over more than one pay period for other than minor indebtedness amounts. The debt should be equal to at least 15% of the disposable pay in order to qualify for installment liquidation, although the employee may seek a different payment plan and DFAS will consider that request. DFAS determinations are outside the control of the Employer and as such are not grievable under this Agreement. Installment payments must be at least twenty- five ($25) per pay period and must be sufficient to liquidate the debt within three (3) years.

C. Recovery of the indebtedness by involuntary salary offset is for instances in which the employee has failed to either make a payment, authorize a voluntary one-time payroll deduction, or enter into an agreement with the servicing payroll office for installment deductions

SECTION 4

The employee, the representative (upon request) and a representative from the servicing human resources office will meet to discuss a repayment plan for any overpayment that is not waived and is not repaid in full by the employee. The repayment schedule will be consistent with the current payroll system capabilities and will account for the employee's ability to repay the debt.

SECTION 5

If an employee terminates employment with the Employer prior to the liquidation of any overpayment, the Employer retains the right to satisfy any outstanding balance from funds due and owing the employee and /or directly from the employee.

ARTICLE 24: CHILD CARE SUBSIDY

SECTION 1

A. In accordance with 40 U.S.C. § 590(g) and the Office of Personnel Management's Regulations at 5 C.F.R. § 792.201-206, and subject to this Article, the Employer will maintain all "Childcare Subsidy Programs" in the OpDivs/Staff Divs that have established programs (FDA, HRSA, SAMHSA, CDC, OS, OMHA, ACL) during this Agreement, subject to budgetary limitations. Either party may propose the establishment of Childcare Subsidy Programs in any OpDiv/Staff Div without an existing program, which will be subject to bargaining consistent with law and this Agreement.

B. Each participating OPDIV/StaffDiv will determine an appropriate budget annually for this program including administrative costs and vendor's fees. At the Employer's discretion, additional funds can be allocated to the program in a given year. The available budget for each participating OPDIV will be communicated to the Union annually, within ten (10) workdays of its establishment.

C. The Employer will provide all employees with information regarding the Child Care Subsidy Program on an annual basis, including Application Forms and Child Care Subsidy Agreement Forms.

D. Each participating OpDiv/Staff Div will post all relevant information concerning the Child Care Subsidy Program on its intranet, including the application period for each program year, necessary forms and application process.

SECTION 2

A. The following employees may apply for this program:

1. Any permanent full or part-time employee;

2. With one or more qualifying children;

3. Who meets the annual total family income (TFI) threshold. Each division determines the total annual family income threshold for their Program. The lowest TFI threshold is $75,000. A division may have a higher annual TFI threshold than $75,000. Each year in the second quarter, the National Labor Management Forum will discuss the current annual TFI threshold levels across the divisions and whether it would be possible to increase it based on cost of living and inflation, and make recommendations to the Employer. If the National Labor Management Forum is not in effect, this will take place in the Operating Division Labor Management Relations Committees.

B. Childcare may be full or part-time care that is center or home-based and includes daytime summer programs and before and after school programs so long as it is licensed or regulated by state and/or local authorities in the state or locality in which the provider operates.

C. The program covers children from birth to age 12 (under the age of 13) and disabled children through age 17 (under the age of 18). For purposes of this Article, "child" is defined in 5 C.F.R. § 792.202.

D. Benefits provided will be reduced by the amount of other state or local childcare subsides received.

E. Participating employees will be granted a monthly childcare subsidy up to the maximum annual benefit, not to exceed $5,000 in each year, unless the OpDiv and NTEU National agree to increase the maximum annual employee benefit.

F. Part-time employees are eligible for a subsidy of expenses prorated as a proportion of a full-time schedule. For example, part-time employees who works 20 hours per week will be eligible for a maximum of 50% of the monthly benefit they would have received if they were full-time employees.

SECTION 3

A. Child-care subsidy payments will cease to be made if:

1. The employee who was certified to receive the benefit is no longer employed by the Employer;

2. The child (or children) on whose behalf the childcare subsidy was being paid is no longer enrolled in a licensed childcare facility or with a licensed childcare provider that was certified to receive the payment, whichever occurs first; or

3. The child or children no longer qualify (i.e., they have aged out).

Each employee who receives a childcare subsidy under this Article must notify the Employer if any of the aforementioned changes occur.

B. The subsidy amount is not dependent on the marital status of the parent(s). If both parents are HHS employees, only one childcare subsidy amount will be paid.

C. The Employer will pay the subsidy directly to the childcare providers.

D. The Employer will notify employees of the existence of this program through new employee orientation and OpDiv level all employee emails semi-annually.

SECTION 4: Application

A. The application period for each participating OpDiv/Staff Div will be on a rolling basis, subject to the availability of program funds for that program year. Applications will be reviewed and approved/denied on a first come, first served basis for each program year.

B. New applications must be submitted for each program year. Participating OpDivs/StaffDivs will notify employees when they may begin submitting applications for each program year.

C. To apply for the child care subsidy, employees must complete and submit the application form(s) for their OpDiv/StaffDiv, and any required supporting documentation (e.g., proof of income, child care provider information).

D. Employees will receive written notice regarding whether their application has been approved or denied within ten (10) workdays of submission. If denied, the written denial will include the reason(s) for the denial.

SECTION 5

Annually, the Parties will meet during the second quarter of the calendar year to discuss funding and participation rates for the childcare subsidy program in each participating OpDiv/StaffDiv, and whether the program should be established in non-participating OpDivs/StaffDivs. This may be accomplished through the labor-management relations committees in Article 58.

ARTICLE 25: AWS HOURS OF WORK

SECTION 1: General Provisions

A. The HHS Alternate Work Schedules Program is designed to enable bargaining unit employees to adopt individualized work schedules that both meet employee needs and enable the Employer to carry out its mission effectively.

B. The Employer is committed to fair and equitable employee participation in AWS consistent with the law and the Federal Employees Flexible and Compressed Work Schedules Act, 5 U.S.C. § 6120, et seq.

C. The parties recognize that specific job requirements vary among employees and may not allow for the same degree of personal choice of work schedules.

SECTION 2: Definitions

A. **Alternative Work Schedules (AWS) -** Schedules other than the standard fixed eight and one-half hour tour of duty, Monday through Friday AWS include Flexible Work Schedules (FWS) and Compressed Work Schedules (CWS).

B. **Arrival Band -** The time band during which an employee must start the workday, unless otherwise approved by the supervisor.

C. **Departure Band** – The time band during which an employee must complete the workday unless the employee is scheduled to work less than (8) hours and has been excused from core hours pursuant to Section 2H below.

D. **Basic Work Requirement -** The number of hours, excluding overtime hours, an employee is required to work or otherwise account for by using leave, credit hours, holiday hours, excused absence, compensatory time off, LWOP, or time off earned as an award. The basic work requirement for full time employees is eighty (80) hours per biweekly pay period. The work requirement for part- time employees is the number of hours the employee must be present in a biweekly pay period.

E. **Basic Workweek.** The basic workweek normally consists of five (5) eight (8)-hour days, Monday through Friday, or a permanent part-time schedule established by the Employer within its established administrative week.

F. **Flexible Work Schedule (FWS).** Variations of the traditional fixed work schedule that permit employees to vary their arrival and departure times within the parameters set forth in this Article. FWS consist of workdays with core and flexible hours. Flexible Work Schedules include Flexitime, Flexitour and Maxiflex.

G. **Flexible Hours or Flexible Time Bands.** The specific hours of the workday within the tour of duty during which employees covered by a FWS may choose to vary their arrival and departure times within the parameters established in this Article.

H. **Core Time or Core Hours.** The time periods during the workday, work week or pay period that are within the tour of duty during which an employee covered by a FWS is required by the Agency to be present for work. Core hours do not apply on an employee's regular day(s) off under an approved FWS or CWS, or for workdays fewer than eight (8) hours in duration as part of a flexible or compressed schedule.

I. **Credit Hours.** For employees on a FWS, those hours within the flexible time bands of a FWS that, with advance supervisory approval, employees may elect to work in excess of their basic work requirement so as to vary the length of a workweek or workday.

J. **Compressed Work Schedule (CWS).** Fixed schedules that allow employees to complete the basic work requirement in fewer than ten (10) days in a pay period. Employees on approved CWS are not permitted to earn credit hours.

K. **Tour of Duty.** The limits within which employees must complete their basic work requirement.

L. **Lunch Schedule.** The time during which employees must take a lunch period. Employees must take a lunch period and may not "save" any part of the lunch period to leave early or to extend subsequent lunch periods. Employees may extend this period within the lunch time band, provided that they receive prior supervisory approval. The additional time taken for lunch must be worked at the beginning or the end of the same workday. If the additional time would extend the employees' workday beyond the time in which they may earn credit hours, the extra time will be charged to annual leave, sick leave (if appropriate), leave without pay, credit hours, or accrued compensatory time.

M. **Mid-day Flex.** This is not a type of work schedule, but a flexibility within existing flexible work schedules. Mid-Day Flex is only available to employees on a flexible work schedule. Employees on compressed work schedules are not eligible to Mid-Day Flex. Mid-Day Flex provides for flexible hours at mid-day (generally during the lunch break) that allows an employee to leave work during the workday to attend to personal matters without being charged leave, and to return to work to complete the workday within the flexible time bands established by this Article. Mid-Day Flex is an exception to the requirement to work core hours. The Mid-Day Flex is generally to be taken in conjunction with the employee's meal break. However, the manager can grant additional periods of time. Employees who wish to adjust their schedules to participate in the "Mid- Day Flex" must request and receive approval from their supervisor, subject to existing workload demands, at least 24 hours in advance of their desire to "mid-day flex" on a particular day, unless there is an emergency. All adjustments to their schedule must be accounted for on the same day.

SECTION 3: Participation

A. Employee participation in AWS is voluntary and subject to management approval. Specific individual participation in AWS must be considered on a case-by-case basis. The Employer will administer AWS in a fair and equitable manner.

B. All bargaining unit employees that meet the following requirements are eligible for participation in the AWS program

1. The employee is not on a leave restriction.

2. The employee is not on a Performance Improvement Plan (i.e., an Opportunity to Demonstrate Acceptable Performance (ODAP)).

3. The employee has not received a disciplinary or adverse action that has a nexus to the integrity of the AWS program within the last six months.

C. Each Employee is expected to fulfill the commitment to account for a full 80-hour biweekly period (full-time employees), or a pre-arranged schedule (part-time employees).

D. The starting time for a workday may be fixed on the quarter hour.

E. AWS allows employees to select their individual arrival and departure times from within the established flexible bands, as outlined in section 4 below.

F. No employee whose work schedule has been approved will be required to change their established tour of duty to accommodate the establishment of a new tour of duty for another employee.

SECTION 4: Program Criteria

HHS OpDivs

Workdays:	**Monday-Friday**
Flexible Bands:	6AM – 9:30AM (arrival band) Monday – Friday 3PM – 7 PM (departure band) Monday-Thursday 2:30PM – 7PM (departure band) Friday
Flexible band for **Credit hours only:**	5 AM – 9PM Monday - Sunday
Lunch Band:	11AM – 2PM
Core hours:	9:30 AM – 3 PM (Monday – Thursday) 9:30AM – 2:30PM (Friday)
Credit hours:	3 per day; 8 on Saturdays and Sundays

FDA

Workdays:	**Monday-Saturday**
Flexible Bands:	5AM – 10 AM (arrival band) Tuesday – Thursday 3PM – 9 PM (departure band) Tuesday-Thursday 5AM – 10:30 (arrival band) Monday, Friday, Saturday 2:30PM- 9PM (departure band) Monday, Friday, Saturday
Flexible band for **Credit hours only:**	5 AM – 9PM Monday - Sunday
Lunch Band:	11AM – 2PM
Core hours:	10 AM – 3 PM (Tuesday – Thursday) 10:30AM – 2:30 PM (Monday, Friday, Saturday)
Credit hours:	8 per day

SECTION 5: Authorized Flexible Schedules

A. **Flexitour Schedule.** FWS containing core hours on each workday in the biweekly pay period and in which a full-time employee has a basic work requirement of 8 hours a day (plus one-half hour official lunch), 40 hours a week, and 80 hours a biweekly pay period. The employee selects arrival and departure times within the flexible time bands. Once approved, this becomes the employee's fixed tour of duty. Prior supervisory approval is required to change this tour of duty. Employees must be at work or on approved leave during core hours. With prior supervisory approval, credit hours may be earned and used.

B. **Gliding Schedule (Formally Flexitime).** This schedule allows employees to vary their daily arrival and departure times within the established flexible band. The basic work week requirement is eight hours per day, forty hours per week, and eighty hours in a biweekly pay period. The employee may change starting and stopping times daily within the established flexible hours.

C. **Maxiflex Schedule.** A type of flexible work schedule that contains core hours on fewer than 10 workdays in 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 this article.

1. This schedule allows employees to earn credit hours.

2. The schedule also allows employees to vary their daily arrival times within the established flexible bands.

3. A maxiflex schedule may contain core hours on fewer than 10 workdays in the biweekly period.

4. The basic work requirement is eighty hours per biweekly pay period. Employees may vary the number of hours worked on a given workday or the number of hours each week within the designated flexible bands.

5. Employees specify, with supervisory approval, which day(s) they will work and the number of hours per workday. Supervisors may approve schedules that include fewer than ten (10) workdays in a pay period.

6. Core hours do not apply on a day on which the employee is not scheduled to work, or is scheduled to work fewer than eight hours.

7. Employees on Maxiflex will count all federal holidays as eight (8) hours towards the 80- hour pay period. An employee may use leave or compensatory time to meet any additional work hour requirements for the holiday. An employee will also be allowed to earn and use credit hours for this purpose, provided the work is available. Alternatively, employees will be allowed to schedule the holiday as an eight (8) hour day.

8. Once an employee's Maxiflex schedule is approved by the Employer, it shall become the employee's approved schedule unless altered by the supervisor or an employee's request to alter it is approved pursuant to Section 9.

9. "Any 80" schedules do not exist under this agreement. Maxiflex schedules differ from "Any 80" schedules in many ways. For example, an employee with an approved Maxiflex agreement must work the days and hours that they specified in their AWS request and must repeat the same schedule from pay period to pay period unless approved to make a change pursuant to Article 25, Section 9.

D. **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 vary the number of hours worked on a given workday or the number of hours each week within the limits established by this Article. The Employer will advise employees on how to provide a work schedule in advance that identifies the number of hours scheduled to work each day.

E. In order to address a specific workload or staffing need (including, but not limited to scheduling a meeting, a supervisor may require an employee working a FWS (Gliding or Maxiflex) to indicate their intended arrival and/or departure time.

SECTION 6: Compressed Work Schedule (CWS)

A. Employees working a compressed schedule are not eligible to earn credit hours.

B. All employees will have the option of applying for a fixed 5/4/9 or 4/10.

C. A compressed work schedule is a fixed schedules that allow employees to complete the basic work requirement in fewer than ten (10) days in a pay period. The following CWS are available to employees.

1. **Five day/four day compressed plan 5-4/9 Plan.** A compressed schedule in which an employee fulfills the basic work requirement of eighty (80) hours in a bi-weekly period over a span of nine (9) workdays: five (5) days one (1) week, four (4) days the other week, with a designated starting time within the time bands established in this Article. Under this Plan, employees work eight 9-hour days (plus one-half hour official lunch) and one 8-hour day (plus one-half hour official lunch) in a biweekly pay period. The employee must have a fixed tour of duty within the time bands established in this Article and shall not work under a schedule that results in the payment of night pay.

2. **Four workdays per week 4/10 Plan.** A compressed schedule in which an employee fulfills their basic work requirement of eighty (80) hours during the biweekly pay period in four (4) ten (10) hour days (plus one-half hour official lunch) each week with one (1) scheduled day off per week. The employee must have a fixed tour of duty within the time bands established in this Article and shall not work under a schedule which results in the payment of night pay.

D. With supervisory approval, employees on CWS may switch their day off to another day within the same pay period.

E. Employees on a CWS are entitled to basic pay for the number of hours of the CWS that fall on a holiday.

F. In accordance with OPM guidelines regarding holidays for employees working CWS, if the employee's regularly scheduled day off is Friday or Monday and a holiday falls on one of those days, the employee's day off remains unchanged. Instead, the holiday for the employee changes as follows:

1. If the "actual" holiday falls on, Sunday, the "in lieu of" holiday is the following workday (Monday for most employees). However, if Monday is an employee's day off under CWS, then Tuesday becomes the "in lieu of" holiday.

2. If the actual holiday falls on Monday, the "in lieu of" holiday is the previous workday. Thus, for an employee whose day off under CWS is Monday, the "in lieu of" holiday would be the previous Friday, or Thursday for those employees on 4/ 10 who take the first Friday and second Monday off.

3. If the actual holiday falls on Friday or Saturday, employees whose day off under CWS is Friday would have an "in lieu of" holiday on Thursday.

SECTION 7: Credit Hours

A. An employee must obtain advance supervisory approval to earn credit hours. The earning of credit hours will be approved retroactively where the circumstances warrant (e.g., where it is not possible for the employee to obtain advance approval). Blanket approval may be provided to earn up to a designated limit per day, week, or pay period so long as work is available.

B. Supervisors should respond to an employee's request to earn and/or use credit hours as soon as practicable and in advance. Where the employee's immediate supervisor is not available to provide a response in advance of the time period requested, the employee may direct the request to the supervisor's designee or second level supervisor where no designee is identified.

C. Approval to earn/use credit hours may be granted orally (followed up in writing) and may be granted the same days as requested.

D. Credit hours may be earned when management determines that work is available that can be effectively performed at the time the employee is requesting to work credit hours. The earning of credit hours must be voluntary on the employee's part. An employee's request to earn credit hours will not be arbitrarily or unreasonably denied.

E. Credit hours may only be used after they are earned and may be earned and used in increments of 1/4 hour.

F. Credit hours may be used in conjunction with lunch.

G. Credit hours may be used to account for authorized absences during core hours.

H. Credit hours can only be earned within the flexible time bands specified in Section 4 of this Article.

I. Eligible full-time employees on a flexible work schedule may accumulate more than 24 credit hours during a pay period, but may not carry over more than twenty-four (24) credit hours from one pay period to the next. The maximum allowed carry-over hours may be carried over indefinitely.

J. Eligible part-time employees may accumulate more than one-fourth of their biweekly work hours, but the maximum carryover for part-time employees may not exceed one-fourth of their scheduled biweekly tour of duty. Part-time employees may only earn credit hours immediately before or after their tour of duty.

K. An employee in travel status may earn credit hours for work performed at the temporary duty location if the time requested meets the definition of hours of work, and it is requested and approved in advance.

L. Credit hours may be earned at the employee's worksite, whether it is on the Employer's premises, at a temporary duty location, or at an alternate worksite. The same procedures for requesting and approving credit hours in the office will apply when the employee is at the temporary duty location or alternate worksite.

M. Approval to use earned credit hours will follow the same procedures as approval for annual leave in Article 15 of this Agreement. Credit hours can be used in lieu of or together with approved leave and/or compensatory time to take partial or full days off.

N. Credit hours may be earned non-contiguously.

O. Employees may earn and use credit hours within the same pay period. A credit hour may not be used on the same day that it is earned. However, employees with an existing credit hour balance may use credit hours on the same day that other credit hours are earned.

P. Credit hours may not be earned or used by employees working under a compressed schedule.

SECTION 8: Submitting and Processing AWS Request

A. Employees must receive advance supervisory approval to start working an alternative work schedule or to change from one alternative work schedule to another. The alternative work schedule application, Appendix 26-1 will be used for these purposes and must be submitted to the employee's supervisor at least one pay period prior to the proposed effective date. The form will specify the start and stop time or the anticipated start and stop time for the selected schedule. Alternatively, employees may submit AWS requests in the time and attendance system at least one pay period prior to the proposed effective date. Approved requests will be implemented as soon as possible, but not later than the beginning of the first full pay period following approval.

B. An employee's alternate work schedule request normally will be approved unless the employee is ineligible for AWS under Section 3 of this Article, or the requested schedule would have an adverse Agency impact or causes any of the following at the level where the AWS is approved (e.g., OPDIV or StaffDiv level): (a) diminished level of services, (b) insufficient coverage, or (c) increased cost.

C. Normally, such requests will be approved or denied within seven (7) calendar days of receipt. A request is deemed denied if the Employer has not responded within 21 calendar days of the request and an employee may then grieve the denial.

D. If an employee's requested work schedule is denied, the supervisor will explain the specific reason(s) for the denial to the employee, in writing on the AWS application. Employee participation in AWS will not be limited, denied, or withdrawn as a form of discipline or retaliation. However, participation may be limited or withdrawn for failure to comply with AWS rules and regulations.

SECTION 9: Request for Changes to AWS Schedule

A. **Request for Permanent Change to AWS:** Individual employees desiring to change their existing AWS will submit an application (Appendix 26-1) prior to the requested change to their immediate supervisor. Changes will be approved and implemented or disapproved, in accordance with the standard set forth in Section 8B of this Article as soon as practical, but not later than fifteen (15) calendar days from the date of the request.

B. **Request for Temporary Changes to AWS:** An employee may request to make a temporary change to their existing AWS by submitting a written request to their immediate supervisor. For example, employees on a compressed or Maxiflex schedule may request to vary their off-day. The request will be approved or disapproved as soon as practical, normally within two (2) workdays. Employees must adhere to their existing AWS unless and until their request is approved. Denials of requests will be provided to the employee in writing and identify the reason for the decision.

C. Either the Employer or the employee may initiate a discussion to vary an off day or duty hours.

D. In the event of an emergency or workload problem, which interferes with an organization's ability to meet its workload or programmatic objectives or physical office coverage, the Employer may temporarily or permanently change an employee's AWS (e.g., require an employee to come off a compressed schedule, change starting and ending times of workdays for an employee, etc.).

    1. If a temporary modification is necessary, the Employer will provide the employee with reasonable advance written notice (normally at least 1 full pay period) which shall explain the specific reasons necessitating the modifications, the duration of the temporary modification, and identify the modifications that would be acceptable. However, the Employer should generally use this option only where other, less disruptive, options are unavailable. The Employee may submit a new temporary work schedule, which the Employer will approve or deny pursuant to Section 8 above. Once the reason for the temporary change to the employee's AWS has abated, the employee will be permitted to resume the employee's previous schedule consistent with this article.

    2. If a permanent modification is necessary, the Employer will provide the employee with reasonable advance written notice (normally at least 1 full pay period) which shall explain the specific reasons necessitating the modifications, and identify the modifications that would be acceptable. The Employee may submit a new modified work schedule, which the Employer will approve or deny pursuant to Section 8 above.

    3. If more than one (1) bargaining unit employee's AWS must be temporarily or permanently changed to accommodate workload, programmatic objectives or office coverage, the Employer will solicit for volunteers from equally qualified employees generally at least 2 full pay periods in advance. Selection from among volunteers will be made by earliest Service Computation Date (SCD). If there are

insufficient volunteers, selection will be made by most recent Service Computation Date (SCD) at least 1 full pay period in advance of implementing the change. Ties will be broken by comparison of the last four (4) digits of the tied employees' Personal Identifier Number (PIN) on the Personal Identity Verification (PIV) card, with the lowest number being selected.

SECTION 10: Scheduling Conflicts

Should two (2) or more similarly situated and qualified employees request the same AWS, and the Employer cannot accommodate all the requests, the employees will be asked to resolve the scheduling problem between themselves. This may include establishing a fair and equitable rotation schedule for disputed hours or days off to which the Employer and affected employees mutually agree. If no other mutually agreed resolution can be found, approval shall be based on employee seniority determined by the service computation date (SCD). Ties between SCD will be resolved by comparison of the last four (4) digits of the tied employees' Personal Identifier Number (PIN) on the Personal Identity Verification (PIV) card, with the lowest number being selected.

SECTION 11: Termination/Suspension of AWS

A. Termination

Employees may be terminated from the AWS program for the following reasons:

1. Failure to meet eligibility requirements outlined in Section 3B above.

2. Falsification of time and attendance records (which may also be grounds for other disciplinary or adverse action).

3. For performance-related reasons as follows:

    a. For those employees that entered the program with an overall rating of fully successful or higher, failure to receive an overall rating of fully successful may result in termination of participation in AWS. Termination is not automatic. Before the employee's AWS is terminated, the employee and manager will meet to discuss the appropriateness of continuing on the program.

    b. For those employees that entered the program with an overall rating of minimally successful, failure to achieve an overall rating of fully successful may result in termination of participation in AWS, provided the employee had a minimum of ninety (90) days on AWS prior to receipt of the next rating of record. Termination is not automatic. Before the employee's AWS is terminated, the employee and manager will meet to discuss the appropriateness of continuing on the program.

4. Employees who are terminated from AWS may reapply for consideration to resume participation in AWS no earlier than three (3) months from the date of termination.

B. Suspension

1. Employees who fail to comply with the requirements and provisions of their AWS agreement and this Article may be suspended from participation in an AWS in the following manner:

    a. If an employee fails to comply with the AWS requirements of this Article, a supervisor shall notify and counsel the employee on the need to comply with all of the provisions of the program. The supervisor will document this counseling and give the employee a copy of the documentation that includes a notice that future failure to comply by the employee will result in suspension of the employee's participation in the program.

    b. If the employee continues not to comply with the AWS program requirements after such written notification, the supervisor may suspend the employee from participating in the program for up to three (3) months. Following completion of the suspension period, the employee shall be allowed to resume participation in the program, unless the employee has continued to present time and attendance problems during the suspension period.

SECTION 12: Additional AWS Requirements

A. Employees will not be required to sign in or sign out, or punch in or out, to record their arrival or departure times. However; employees will be required to do so if they abuse time and attendance rules and/or the time reporting method established at the local site.

B. Employees vacating their current position either by reassignment or reorganization for which an SF-50 issues may be required to reapply for consideration of AWS. This provision is not intended to apply to reorganizations or reassignments that do not result in staffing changes or for reorganizations or reassignments that result only in a supervisory change.

C. To the extent possible, the Employer will generally schedule meetings during core hours and on days other than Mondays and Fridays, and give employees as much advance notice of these meetings as feasible. The Employer will generally not schedule mandatory meetings that prevent employees from taking their thirty (30) minute lunch breach within the established lunch band (11 am – 2 pm). However, if it is necessary to do so, the affected employees will be compensated consistent with law (e.g., overtime, compensatory time).

D. An employee working a Gliding, Maxiflex, or Variable work schedule is not considered tardy at the earliest until the beginning of the core hours unless:

    1. The supervisor has asked the employee to arrive at a certain time to attend a regularly scheduled or special staff meeting or other special activity, e.g., training courses or conferences, and the employee arrives after that time; or

    2. The employee has been designated to cover a particular time and arrives after that time.

E. Employees in travel or training status or on detail will adjust their tour of duty, only as necessary to adhere to the work schedule of the detail organization or to a schedule that will fulfill the purposes of the official travel.

F. This Article does not prohibit an employee from applying for an uncommon tour of duty for specific personal reasons (for example, because of transportation arrangements, day care arrangements, education or training schedules, or health reasons). The Employer will respond to such requests consistent with Section 8C of this Article.

G. As soon as employees are transferred into or otherwise becomes part of the bargaining unit they may apply and be considered for an AWS or other uncommon tour of duty.

H. Upon an employee's request, the Employer may, subject to workload requirements, establish a special tour of duty (e.g., a split shift) for educational purposes in accordance with applicable laws, rules and regulations.

I. Employees on a CWS shall not work a schedule which results in the payment of night differential pay (NDP).

J. Employees on a FWS are entitled to NDP for night hours that are required as a part of their regularly scheduled tour of duty. However, they are not entitled to NDP solely because they elect to work at a time when NDP is authorized. Employees who work regularly scheduled overtime at night are entitled to NDP.

K. Employees may not work on Sundays as part of their regularly scheduled tour of duty.

L. Employees on a FWS are not entitled to NDP when they earn credit hours. Employees who elect and are approved to work credit hours on a Sunday are not entitled to Sunday premium pay (under 5 USC § 5546) or other premium pay such as compensatory time or overtime pay. In earning credit hours on a Sunday, an employee does not make Sunday a part of their regularly scheduled tour of duty, even if the employee frequently elects and is approved to earn credit hours on Sunday.

SECTION 13: Alternative Option to Standard AWS

Nothing in this Article precludes the Employer from establishing a special tour of duty for educational purposes pursuant to 5 C.F.R. § 610.122. Within thirty (30) days of the implementation of this Agreement, HHS will notify NTEU National of any bargaining unit employees who are on a special tour of duty/schedule, including their name, tour of duty/schedule, occupation, Operating Division, and duty station (city/state).

ARTICLE 26: TELEWORK AND REMOTE WORK

SECTION 1: General

A. This article addresses telework and remote work as flexible work arrangements. HHS and NTEU jointly recognize the mutual benefits of a flexible workplace program to the Agency and its employees. Balancing work and family responsibilities and meeting environmental, financial, and commuting concerns are among its advantages. This article controls over any conflicting terms of the HHS Workplace Flexibilities Policy.

B. Telework is a voluntary program that permits employees to work at home or at other approved alternative location(s) to the conventional office site. For purposes of this Agreement, the terms telework, teleworking, "telecommuting" are synonymous and include working at home or at an approved alternative work site.

C. Remote work is an alternative work arrangement that involves an employee performing their official duties at an approved alternative worksite away from an agency worksite without returning to the agency worksite twice a pay period on a regular and recurring basis to perform work. The Parties recognize that the use of remote work has the potential to improve and increase productivity and morale, improve employee engagement, maintain talent, and to provide the public with greater service.

D. Participation in telework and remote work is voluntary. Participation in telework and remote work is not an entitlement nor is it a substitute for dependent/family care.

E. Management may utilize flexible work arrangements incorporating telework and remote work for employees with dependent care responsibilities as part of an overall strategy to meet the agency's mission, enhance employee work/life balance and facilitate an employee's ability to manage both work and dependent care.

F. While telework and remote work are not substitutes for dependent care, these programs can be a very valuable flexibility to employees with caregiving responsibilities, by eliminating time required to commute and expanding employees' choices as to dependent care. There is no bar on telework or remote work while there are dependents in the home. However, employees may not telework or remote work with the intent of or for the sole purpose of meeting their dependent care responsibilities while performing official duties. Employees must use approved leave or other non-duty time to attend to dependent care responsibilities. While performing official duties, teleworkers and remote workers are expected to arrange for dependent care just as they would if they were working at an agency worksite; however, telework or remote work may be used as part of a more flexible work arrangement.

G. The Parties anticipate that the telework and remote work programs will result in increased productivity, improvements in employee morale, talent recruitment, development and retention, job satisfaction, and reduced absenteeism. The Employer will identify barriers to implementing telework and remote work and take action to increase the opportunities for employees in suitable positions to participate in the program.

H. Employees will be treated equitably with respect to appraisals of job performance, training, awards, reassignments, promotions, changes in grade, work requirements, approval for overtime work, and alternate work schedules, without regard to their participation in telework and remote work. The employee's performance will be evaluated against performance elements and standards contained in the employee's performance plan. Management and the employee understand there will be no distinction in the performance standards for remote workers, teleworkers, non-teleworkers, and non-remote workers.

SECTION 2: Telework and Remote Work Options

Situations appropriate for telework and remote work depend on the specific nature and content of the job, rather than just the job series and title. Participants may be permitted to telework for full days or a portion of a day. The following types of telework and remote work options are available:

A. **Routine Telework.** This type of telework arrangement may be used when there is a regular and recurring opportunity to perform work at an alternate site. For example, the work does not require face-to-face interaction and collaboration with customers or peers on a daily basis, it does not require specialized equipment, systems, or reference materials unavailable except at the conventional office, and the employee's work habits are such that once an assignment is given, it can be accomplished without further oversight or supervisory consultation at the official duty station. Regular and recurring telework may be performed for up to eight (8) days per pay period (e.g., Monday-Thursday of each week), unless the employee is approved for remote work. Employees on routine telework must normally report to the official duty station (ODS) at least twice per pay period, pursuant to Section 6E below.

B. **Episodic or Ad hoc Telework**. Telework arrangements may also be used on an occasional or episodic basis, for individual days or hours within a pay period, or for a special assignment or project on a short-term basis (as determined by the Employer). For example, such work tasks may include: data analysis, reviewing grants/cases, writing decisions or reports; telephone intensive tasks such as obtaining or collecting information, following up on participants in a study or setting up a conference; and some computer oriented tasks such as programming, data entry and word processing. Typically, appropriate assignments include, but are not limited to, activities that require uninterrupted concentration and result in measurable work outputs or products.

C. **Remote Work.** Remote work allows an employee the flexibility to work from an approved alternative worksite within or outside the local commuting area of the agency worksite (i.e., a 45-mile radius) with no expectation to report to the agency worksite on a regular bi-weekly pay period basis.

1. A position may be eligible for remote work (within or outside of the local commuting area) if the duties require less than 16 hours per bi-weekly pay period at the agency worksite.

    a. Positions should be designated as "remote within the local commuting area of the agency worksite," if there is some regular and recurring frequency with which the position requires work to be performed at an agency worksite each month, but less

than 2 days per bi-weekly pay period. For these positions, employees should have an official worksite/alternative worksite within the local commuting area.

b. Positions should be designated as "remote outside the local commuting area of the agency worksite," if the position requires little to no onsite presence (e.g., once annually**,** quarterly). For these positions, employees are not required to have an official worksite/ within the local commuting area.

c. The designation of a position as "remote outside the local commuting area" will not preclude an employee from requesting a remote work location within the local commuting area.

2. Commuting Area and Locality

a. Employees under a WFA for remote work will be eligible for travel reimbursement subject to supervisory approval on days they are required to report to work. Employees who are required to report to the employer's worksite within the local commuting area (i.e., within 45 miles of the employee's official worksite), will be reimbursed for Employer authorized reasonable travel expenses (e.g., mileage in accordance with the GSA mileage reimbursement rate).

b. Although remote workers are not required to routinely report to the traditional worksite on a pay period basis, the Agency may require a remote employee to travel to an agency worksite for a circumstance requiring the employee's physical presence where the specific duties cannot be performed at the remote worksite (e.g., mandatory in-person training/meetings). The Employer will provide reasonable advance written notice to the remote worker of any requirement to travel to an HHS worksite, normally at least 24 hours in advance for remote employees in the local commuting area and five (5) workdays in advance for remote employees outside of the local commuting area and shall include the reason(s) why the employee's physical presence is required. Employees under a WFA for remote work will be reimbursed for authorized travel expenses and may be entitled to per diem in accordance with the FTR for expenses resulting from the employee's travel to the agency worksite outside the local commuting area (i.e., more than 45 miles outside the employee's official worksite). All travel costs for required travel to the official worksite will be reimbursed by the Agency, consistent with this Article, the Federal Travel Regulations (FTR) and Article 42 (Travel) of this Agreement.

3. An approved WFA for remote work will result in a change in the employee's official duty station. The Agency will provide the employee with proper notice of the change in duty station.

D. Reasonable Accommodation. When a temporary disability that formed the basis for a telework or remote work reasonable accommodation no longer exists, the telework reasonable accommodation must be reviewed and may be modified or terminated as appropriate, consistent with this Article. Telework and remote work arrangements may be appropriate to reasonably

accommodate an employee with a temporary or permanent illness or disability, when the employee's medical condition meets the Reasonable Accommodation requirements under applicable law and regulation, including the Rehabilitation Act of 1973 (29 U.S.C. § 791), as amended, if the job can be accomplished at an alternate worksite. Such requests should be handled in accordance with the applicable laws and regulations, and the HHS Reasonable Accommodation Policy.

E. Temporary Workplace Flexibility. Employees with a temporary illness or physical incapacitation or assisting with the care of a family member recovering from an illness or physical incapacitation, may be granted temporary WFA with appropriate supporting documentation (e.g., telework, or an exception to reporting to an agency worksite) for up to six (6) months, unless extended. The procedures in Articles 38 and 51 will apply. The authorization to work at an alternate worksite under this subsection is intended to be temporary while the employee or the family member recovers from the illness or incapacitation. Examples of temporary illness or physical incapacitation include, but are not limited to, temporary infectious illnesses, recovery from surgery, temporary but recurring medical treatments such as chemotherapy, and other medical conditions which impair the mobility of the employee.

F. While particular positions may be designated as presumptively eligible for telework or remote work, there is no presumption against eligibility as long as the employee's position meets the eligibility criteria set forth in this Article. Decisions on an individual employee's eligibility for telework and remote work will be made on a case-by-case basis consistent with this Article. Either party may initiate bargaining consistent with Article 3 of this Agreement over designating positions as presumptively eligible for telework or remote work.

SECTION 3: Telework and Remote Work Eligibility and Approval

A. To participate in telework and remote work an employee must demonstrate that they meet the eligibility requirements set forth in this Article, and must continue to meet them throughout the eligible period. In addition, the employee's duties must be portable, and the assignments must be appropriate for telework. A determination that a position is eligible for telework and/or remote work is made based on the specific nature and content of the job, and the employee's actual duties, rather than just the job series and/or title. The positions are comprised of job duties that can be effectively performed outside the agency worksite without diminishing performance or agency operations.

B. Telework arrangements must be consistent with maintaining adequate office coverage. Adequate office coverage varies from location to location and is not necessarily a specific percentage of employees. It is determined by the specific needs of a location.

C. The Parties agree that specific individual participation in telework and remote work must be considered on a case by case basis and applied in a manner consistent with this Article, and applicable laws. In making telework decisions, supervisors must take into account the work unit as a whole when considering whether or not a specific telework request will impact the ability of the unit to accomplish its mission and goals. The decision will not be made in an arbitrary and capricious manner. The Employer will administer the telework and remote work program in a

fair and equitable manner. Consistent with the provisions of this Article, the supervisor retains the authority to review, determine, and approve participation in this program.

D. For an employee to be eligible for telework or remote work, the employee must have adequate internet access if the work being performed at the telework/remote work site requires HHS network connectivity, and the resources required for the employee to complete the work are available/accessible at the telework/remote work location including, but not limited to, a computer (if necessary) to connect to the virtual private network (VPN), and the Voice over Internet Protocol (VoIP) or other capability to make and receive calls (e.g., cell phone or other technology).

E. Telework Eligibility Criteria. Each employee must meet and maintain the following criteria to be considered eligible to participate in the telework program.

1. The employee's latest rating of record is "fully successful" (currently Achieved Expected Results) or better, and there is no reasonable cause to believe this level of performance will drop; If the employee does not have a rating of record, they may be presumed to be "fully successful" for the purpose of telework eligibility;

2. The employee is not on a leave restriction;

3. The employee is not on a Performance Improvement Plan;

4. The employee has not been officially disciplined for being absent without permission for more than 5 days in any single calendar year or for viewing, downloading, or exchanging pornography, including child pornography, on a Federal Government computer or while performing official Federal Government duties.

5. The employee has not received any disciplinary or adverse action which has a nexus to the integrity of the telework program within the last six (6) months;

6. The employee has demonstrated the ability to initiate their own work, work without direct supervisory oversight and recognizes when supervisory or other assistance/guidance is needed on a project;

7. The employee has completed the Employer's required telework training, or will complete training prior to starting telework;

8. For an employee applying for telework for the first time in an OPDIV/STAFFDIV, the employee must have held her/his current position for at least three (3) months, unless otherwise agreed to by the supervisor; and

9. The employee's fully successful (currently Achieved Expected Results or its equivalent) performance of the work does not require:

    a. Daily and frequent use of specialized equipment or technology that is available only at the official duty station;

b. Daily and frequent face to face contacts with co-workers, managers and/or customers (except where such contact can be otherwise accommodated); and

c. Daily and frequent access to confidential or sensitive data and/or information (not attainable from home) such as personnel and/or payroll records or proprietary information protected from unauthorized disclosure by the Privacy Act of 1974 and its implementing regulations.

F. In some circumstances, the need to maintain adequate staffing levels in the traditional office worksite for such purposes as telephone coverage that cannot be accommodated on telework or immediate face-to-face customer service may result in conflicts among telework participants regarding scheduling of days to be worked on a telework arrangement. If such conflicts occur, the supervisor(s) and the affected employees will attempt to resolve the conflict in a manner which is satisfactory to the supervisor(s) and affected employees. If such discussions do not result in a satisfactory resolution, the following tiebreaker formula 3G will apply.

G. The telework preferences of employee(s) that are already participating in the program shall take precedence over the preferences of new applicants. If the conflict is between employees who are already participating, or between two or more new applicants, the tiebreaker shall be by seniority (high seniority). Seniority shall be determined by employees' federal Service Computation Dates (SCDs).

H. Remote Work Eligibility Criteria.

1. Employees are eligible for remote work when:

a. The employee's duties require less than 16 hours per bi-weekly pay period at the agency worksite;

b. The employee has a performance plan in place and is performing at least at the fully successful level or its equivalent and participation is not expected to cause an adverse impact on organizational productivity; and

c. The employee has not been officially disciplined for being absent without permission for more than 5 days in any single calendar year or for viewing, downloading, or exchanging pornography, including child pornography, on a Federal Government computer or while performing official Federal Government duties.

2. Examples where remote work would be appropriate include (but are not limited to) the following:

a. The employee's position does not require regular face-to-face interaction with other employees or stakeholders at a specific HHS office location; or

b. The employee is impacted by an office closure and there is still an identified business need to perform work in that geographic pay area.

3. An employee is considered ineligible if:

    a. The employee has been officially disciplined for being absent without permission for more than 5 days in any single calendar year; or

    b. An employee has been officially disciplined for violations of the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR § 2635, Subpart G) for viewing, downloading, or exchanging pornography, including child pornography on a Federal Government computer or while performing Federal Government duties; or

    c. The employee's performance during the performance year falls below the fully successful level.

4. Employees hired in positions that were advertised as remote have no additional eligibility requirements beyond those identified in Section 3H3(a) and (b) above.

5. In determining whether to grant requests for remote work by individual employees, if the requesting employee has been working full-time from an alternate worksite in their current position per Article 26, currently or at any time in the past, there will be a presumption that the request should be granted if the eligibility criteria in this Article are met. This presumption does not apply to full-time telework that was the result of (1) a formal reasonable accommodation, or (2) the pandemic emergency, or (3) a temporary accommodation for health or personal reasons.

6. The Employer has determined it will consider budget, including travel, when considering remote work requests, particularly requests in which the employee would be required to be approved for TDY when traveling into a facility.

    a. Before denying a remote work request based on budget, the Employer will notify the requesting employee of the specific impact on budget, and attempt to find a resolution (e.g., the parties could agree to limit any required travel to a TDY).

    b. If the Employer denies a remote work request for budgetary reasons, it will provide the specific budgetary reasons for its decision to the requesting employee. Denials may be grieved.

SECTION 4: Telework and Remote Work Application Process

A. Eligible employees may submit a completed Workplace Flexibilities Agreement (WFA) for telework or remote work through their Office or OpDiv system to their immediate supervisor or management official designated by their Office or OpDiv. The WFA for telework or remote work serves as the employee's application/request form that may be accessed through the HHS Office or OpDiv Intranet. A copy of the WFA is attached as Appendix 26-1.

B. Within ten (10) calendar days of submission, the employee's supervisor will approve or disapprove the employee's request in writing. If the request is disapproved or modified, the employee will be notified in writing stating the reasons for that action.

C. If an employee's request for a remote work arrangement is approved, the Agency will complete an SF-52 and notify the employee if a change in duty station may impact the employee's locality pay. The employee will be given five (5) workdays from the date of notification to advance or withdraw the WFA for remote work. If the Agency provides notice to an employee under this section while the employee is on leave, the employee will be given five (5) workdays from their return from leave to advance or withdraw their WFA for remote work.

D. If the employee decides to advance their approved WFA for remote work, the employee's WFA for remote work becomes effective and implemented on the date mutually agreed upon between the employee and supervisor. An employee's official duty station will be updated on the SF-50 as soon as administratively feasible but no later than two full pay periods from the WFA effective date. The SF-50 effective date will be the date the WFA is signed and dated by the employee and the employer.

E. If a WFA for telework is approved, the employee may begin teleworking on the first day of the pay period after approval, unless an earlier start date has been approved.

F. If an employee's request for telework or remote work (i.e., initial request, modification request, or termination request) is disapproved or modified, within five (5) workdays of disapproval, the employee will be advised in writing with the reason(s) for disapproval. Managers shall not unreasonably or arbitrarily deny an employee's request. The Union may file a grievance in accordance with Article 45 of the parties' National Agreement.

G. Employees may submit a written request to their immediate supervisor to modify or terminate their WFA for telework or remote work. Requests to modify a WFA for remote work must be made at least 60 workdays prior to the intended relocation and shall include the proposed alternative worksite. The Agency will provide a written response to the requesting employee within ten (10) workdays of the request submission. In instances where employees request to terminate their remote work agreement, the employee may assume moving cost expenses.

SECTION 5: Equipment and Technology

A. Teleworking and remote working employees must use HHS approved technologies and methods to access all HHS networks and systems. Employees will be provided with government furnished equipment necessary to perform their assigned duties at the alternate or remote worksite, and they will be required to use that equipment. This will include a government issued laptop equipped with a camera and technology for remote network access. The use and availability of technology, equipment, and data will be governed by Agency policy where not in conflict with this Agreement. Agency equipment issued to remote workers and teleworkers is for official use, and the Employer is responsible for its repair and maintenance. Employees are responsible for maintaining and repairing personally owned equipment. The Employer will make available necessary office supplies.

B. Employees who telework less than fifty percent (50%) of their bi-weekly work requirement may, subject to the availability of funds, be provided with the following equipment:

1. a computer monitor;

2. a keyboard and mouse;

3. a docking station or similar device, as necessary;

4. the capability to print, scan, fax and/or copy if the Employer determines it is needed for the employee to perform their job duties while teleworking; and

In addition, for communications, employees will be provided with the capability to make outgoing and receive incoming calls via software on the employer-provided technology.

C. Remote workers and routine teleworkers who telework fifty percent (50%) or more of their bi-weekly work requirement will, subject to the availability of funds, be provided with equipment similar to non-teleworkers, which will include the following:

1. a computer monitor, if necessary to perform their job duties;

2. a keyboard and mouse;

3. a surge protector, if required by the division;

4. a docking station or similar device, as necessary;

5. lockable storage, if necessary;

6. the capability to print, scan, fax and/or copy if the Employer determines it is needed for the employee to perform their job duties while teleworking; and

7. for communications, employees will be provided with the capability to make outgoing and receive incoming calls via software on employer-provided technology.

The Employer is responsible for the repair and maintenance of any equipment it provides. Nothing in this section precludes employees from requesting additional equipment, subject to the availably of funds.

SECTION 6: Work Schedules, Official Duty Station, Reporting and Recall to the Office

A. Participants in the telework program shall be permitted as part of a telework arrangement to continue to work any AWS schedule they may already be working or for which they are approved under Article 25. Employees who work approved flexible work schedules and vary their start times will accurately record all hours worked. An employee's scheduled day off on an approved AWS schedule is not considered a teleworkday.

B. The official duty station means the official worksite of an employee for purposes of locality pay.

1. The official worksite of an employee participating in the telework program is the conventional work site for purposes of travel reimbursement.

2. The official duty station for an employee with an approved WFA for remote work, whether it is in the local commuting area or outside of the local commuting area, is the approved alternative worksite (e.g., the employee's home).

C. Changes to the Official Worksite/Alternative Worksite.

1. Employees must request to change the location of their official worksite/alternative worksite in advance. Supervisors are encouraged to be flexible with a remote employee's official worksite/alternative worksite, provided it continues to meet the agency's needs and does not negatively impact the mission including, increase expenses for the agency. Employees may not begin working at a new official worksite/alternative worksite until it has been approved.

2. Upon approval of a new official worksite/alternative worksite for a remote employee, the employee must submit a new WFA for remote work with the new location.

3. Employees, whose WFA for remote work is modified at the request of the employee, are responsible for all expenses that may be incurred associated with the relocation.

D. Employees who work approved flexible work schedules and vary their start times may be required to inform their supervisors, of their start and end times for those days they work at an alternate site, consistent with Article 25.

E. Employees on a routine **(**regular and recurring) telework arrangement are required to report to the official duty station (ODS) as listed in their approved schedule that must include at least two (2) days each pay period (full or partial days) for, and may be removed from Telework if they fail to do so. Employees can take non-duty time or leave to return to their telework location. Managers have discretion to waive the reporting requirement for Teleworkers in accordance with 5 CFR § 531.605(d)(2). Such a waiver will be in writing. Mobile workers (e.g., FDA Inspectors) who regularly perform work within the locality pay area meet the reporting requirement. If an employee is on an approved absence for all of the day on which they would otherwise have to report to the ODS, the requirement to report is satisfied. An employee who has reported to their ODS for less than their full TOD to the extent they are on approved leave has met the requirement.

F. The Employer has the right to direct Telework employees to report to the office on their scheduled telework day due to special circumstances, including, but not limited to, office assignments, meetings, absence of other employees, emergency situations, or training classes. These should be planned to give the employee notice in time to travel to the official duty station during their regular commute time. Time spent traveling will not be considered hours of work if it is commuting. When the employee is scheduled for a full day tour of duty (TOD) at the Telework site and receives notification to report to the official duty station after the start of the

workday or too late to travel during the employee's normal commute time, the reasonable time needed to travel to the office will be during duty hours.

G. The Employer will make reasonable efforts to provide alternative methods, such as virtual meetings teleconferencing, use of fax and e-mail, and/or other methods to avoid unplanned situations requiring the telework or remote work employee to report to the conventional work site. However, when situations occur that require a teleworking employee to return to the conventional worksite, travel to and from the office is normal commuting time and as such is not considered hours of duty, except as provided in subsection 6F above. For remote workers with an alternative worksite outside of the commuting area of the conventional work site, the Employer will generally provide at least five (5) workdays advance notice of the need for the employee to report to the agency worksite.

H. Compensatory Time Off for Travel. Remote employees required to travel away from their official worksite/alternative worksite may be afforded compensatory time off for official travel, if the approved itinerary requires the employee to be in a travel status, when such time is not otherwise compensable.

I. As a minimum level of accessibility, the employees in the telework and remote work program are expected to be as available to managers, co-workers and customers by telephone, E-mail, voice mail, virtual platforms (e.g., Microsoft Teams, Microsoft Lync or Skype, if available) or other communications media during their scheduled daily tours of duty as when working at the official duty station. An individual's availability as indicated by this technology is not a reliable record for purposes of employee tracking or determining if an employee is engaged in official Agency business. These tools merely indicate user availability as interpreted by the tool. More specifically, monitoring an employee's availability utilizing technology cannot be used as evidence of the employee's time worked or used as proof to demonstrate an employee's failure to work. Accordingly, this information should not be used as a basis or justification for any adverse employment action.

   Teleworking and remote work employees will make their telework contact information readily available.

   Where face-to-face meetings are warranted but impractical, employees will be notified in advance (normally at the time the meeting is scheduled) of the requirement when there is a particular need for the employee be visually seen (e.g., including but not limited to, the employee is presenting to the meeting, for purposes of introducing the employee to others). In those situations, the employee may be directed to turn their camera on for the meeting or relevant portion thereof, provided the employee has the necessary working equipment. Employees who are directed to use the camera feature may discuss the requirement with their supervisor and may be exempted from the requirement for good cause (e.g., reasonable accommodation, recovering from an injury). Employees may blur background or use another appropriate backgrounds when using virtual platforms.

   If there is a business need for management to record a meeting (e.g., for training purposes), management will notify the participants in advance and identify whether use of the camera is optional. No other recordings (video and/or audio) are permitted. Nothing in this provision

waives the Union's right to bargain over new technology when required by law, rule, or regulation.

J. Overtime and credit hours worked must be consistent with Articles 22 (Overtime) and 25 (AWS/Hours of Work) of this Agreement. Compensatory time may be substituted for overtime pay in accordance with law, regulation, and Article 22, Overtime, Compensatory Time, and Holidays, of this Agreement. Nothing in this Article diminishes an employee's FLSA rights as provided for by law and regulation.

K. Policies and practices for requesting and using leave remain unchanged, except as provided in the applicable articles of this Agreement.

L. For purposes of timekeeping, participants will certify each pay period indicating hours worked or any exceptions to the scheduled tours of duty specified in their telework agreements. Falsifying time reports is cause to terminate participation in the telework program and could be grounds for other adverse or disciplinary action.

M. The Employer has the right to be provided with reasonable assurance that employees are working at alternate sites when scheduled. Supervisors may also require that employees update work calendars to show their availability to schedule meetings. Employees are required to respond to Supervisors' messages to them.

N. Employees may switch their scheduled teleworkday(s) with prior supervisory approval. If an employee's request is denied, the reason(s) for the denial shall be provided to the employee in writing if requested. Managers shall not unreasonably or arbitrarily deny an employee's request.

O. Employees who participate in the Telework Program may be required to share office space with their co-workers or via hoteling, hot desking, desk sharing, or other means. When the Employer determines that there is a need for sharing of office space in any post of duty, it will provide advance notice to NTEU consistent with Article 3 of this Agreement, and bargain to the extent required by law and this Agreement.

SECTION 7: Alternative Worksite Requirements

A. Employees are only authorized to telework from their approved location and need supervisory approval to change locations.

B. A telework arrangement may not be feasible where there is a prohibitive cost to duplicate the same level of confidentiality or security as exists in the employee's official duty station.

C. Telework home sites must have adequate workspace, lighting, residential telephone service, power, smoke alarms and adequate security.

D. The Employer has the right to inspect the home work site at any time to ensure its suitability. The Employer will provide not less than three (3) workday's notice in advance of the inspection and the Union shall have a right to be present.

E. Employees must comply with all security measures and disclosure provisions, including password protection and data encryption so that the Privacy Act or other security standards are not compromised.

F. Employees who telework from home must keep Government property and information safe, secure, and separated from their personal property and information. Employees must protect all government records and data against unauthorized disclosure, access, mutilation, obliteration and destruction. Employees must comply with all required information technology security measures, including password protection and data encryption, and disclosure provisions so that the Employer's security or Privacy Act requirements are not compromised.

G. Employees must ensure that government provided equipment and property is used only for authorized purposes. Reasonable care should be used in operating all equipment. The servicing and maintenance of government owned equipment is the responsibility of the Employer.

SECTION 8: Termination and Suspension of Telework and Remote Work

A. Telework.

1. The Employer may terminate, suspend, or modify, an employee's participation in the telework program for cause, such as:

    a. Failure to meet or continue to meet the eligibility criteria for telework in this Article;

    b. Failure to adhere to the provisions of the telework agreement in the Workplace Flexibilities Agreement (WFA) and/or of this Article;

    c. Failure to accurately and truthfully report time worked;

    d. Organizational exigencies that impact on the mission of the Employer, and require the employee to perform work at the official duty station;

    e. For misconduct in connection with the employee's obligations under the Workplace Flexibilities telework or remote work programs as set forth in this Article/Workplace Flexibilities Agreement (WFA).

2. Prior to terminating, temporarily suspending or modifying an employee's Workplace Flexibilities Agreement (WFA) for telework, the supervisor will notify the employee in writing at least seven (7) calendar days in advance of the change. All such notices will identify the reason(s) for the change and the duration of any temporary suspension or modification. A temporary suspension or modification will end once the need for it has abated. Decisions on termination, suspension or modification of workplace flexibility arrangements for telework are grievable.

3. If a telework agreement is cancelled or terminated, within the first sixty (60) days of the employee's return to the traditional workplace the Employer will make reasonable efforts to return the employee to the same or a comparable work situation that they had prior to

beginning the telework arrangement. After sixty (60) days, the Employer will restore the employee to the same or comparable work situation of other similarly situated employees.

B. Remote Work.

1. The Agency may terminate or modify an employee's remote work arrangement (unless the employee was hired as a remote worker) for cause, for the reasons described Section 3H3 of this Article. When deciding to terminate a remote work agreement, the Employer will document and be able to demonstrate the reasons for the termination. Notice to terminate or modify an employee's remote work arrangement will be provided to the employee in writing at least thirty (30) days in advance of the effective date. The Union or employee may file a grievance over termination or modification of remote work in accordance with Article 45 of this Agreement.

2. For cause termination or modification will be based on one of the following:

   a. the employee is no longer eligible for the reasons cited in subsections 3H3 above;

   b. the employee does not comply with the terms of the written WFA for remote work (5 U.S.C. § 6502(b)(3)); or

   c. circumstances in which work is no longer portable.

3. An employee whose WFA for remote work is terminated will be assigned to an Agency worksite. An "Agency worksite" shall be defined as a work location within the budgetary control of the division within which the employee is assigned. Subject to workload considerations, the Agency will make every reasonable effort to reassign the employee to a duty station within the employee's Office's workspace located within the employee's local commuting area. Where the Agency offers the employee a choice of several official worksites, the employee may select a post of duty closest to the employee's remote work duty station. Upon completion of a change in duty location, the employee's SF-50 will be updated accordingly.

4. If remote work is terminated because the work is no longer portable pursuant to subsection 8B2(c) above, the employee is entitled to relocation reimbursement. If remote work is terminated for cause pursuant to subsection 8B2(a) or (b) above, or if the employee voluntarily terminates the remote work arrangement, the employee is not entitled to relocation reimbursement.

SECTION 9: Employee General Responsibilities and Liabilities

A. The Employer will not be responsible for operating costs, home maintenance, or any other incidental costs (e.g., utilities) associated with the use of the telework work site. The employee does not relinquish any entitlement to reimbursement for appropriately authorized expenses incurred while conducting business for the Employer as provided for by law and regulations.

B. When a teleworking or remote employee experiences a condition that prevents them from working at the telework/remote work site and which is not otherwise covered under the weather and safety leave provisions in Section 11 of this article (e.g., power outage, loss of internet), the employee must contact their supervisor as soon as practicable. The employee may be directed to travel to their assigned duty station (teleworkers) or an agency worksite within their local commuting area (voluntary remote workers) provided they may safely travel under the circumstances to complete their workday. If directed to travel during regular duty hours, the employee will receive duty time to do so. If the employee is not directed to report to an agency worksite, the employee may be asked to perform other duties or granted administrative leave.

C. The employee is covered under the Federal Employees Compensation Act if injured in the course of performing official duties during their official tour of duty at the alternate work site.

D. The Employer will not be held liable for damages to the employee's personal or real property during the performance of official duties or while using Employer equipment in the alternative work site, except to the extent the Employer is held liable under the Federal Tort Claims Act claims or claims arising under the Military Personnel and Civilian Employees Claim Act.

E. WFAs for telework and remote work are between the employee and their supervisor. When employees are detailed or permanently assigned to another organizational unit of the Employer and under another supervisor, the employee and supervisor will discuss the continuation and/or necessary modifications to the existing agreement, consistent with this Article.

F. Workplace flexibility agreements do not expire; however, managers and employees may review workplace flexibility agreements on an annual basis; this process is not a re-application process. Updates to an agreement may be made at the request of an employee and/or must be consistent with the provisions of this Article.

SECTION 10: Reports to OPM

The Employer will provide the Union with copies of any reports on telework usage provided to OPM within fifteen (15) days of submission of the report to OPM. If not provided in the report to OPM, the Employer will provide the Union with the following information, broken down by OpDiv: (1) the number of employees eligible to participate in the telework program; and (2) the number of employees participating in the telework program (including name, location, series, grade, and the type of telework arrangement.

SECTION 11: Leave, Early Dismissals, Closures and Weather and Safety

A. Whenever it becomes necessary to close an office because of a weather or other safety-related condition, reasonable efforts will be made to inform all employees by private or public media, including email, and other methods as appropriate and available.

   Consistent with 5 CFR Part 630, Subpart P, a "weather or other safety-related condition" is:

   1. An act of God (e.g., heavy snow or severe icing conditions, floods, earthquakes, avalanches, hurricanes wildfires or other natural disasters, and pandemics);

2. A terrorist attack; or

3. Another condition that prevents an employee or group of employees from safely traveling to or safely performing work at an approved location (e.g., power failures and other events beyond the control of the employee).

B. For the purpose of this Section, Telework-ready employees are employees with an approved WFA Agreement for telework who have the necessary equipment (e.g., laptop) and necessary work files (paper or electronic) at their Telework location (or transportable to the Telework location) to perform required duties at the Telework location at the time of an office closure or at other times as discussed below.

C. When an employee with an approved WFA for telework may reasonably anticipate that a weather or other safety-related condition may force the closure of their HHS facility (e.g., forecasted snow storm), the employee must take reasonable steps (within an employee's control) to become Telework-ready – i.e., take necessary work equipment and necessary work files to their Telework location – for the anticipated day(s) the facility may be closed. In such circumstances before the weather or other safety-related condition occurs, managers may authorize employees who are not in their agency worksite/official duty station to travel on duty time (i.e., excluding overtime) to their agency worksite to obtain necessary work equipment or files to become Telework-ready.

D. The Employer reserves the right to direct employees to report to an alternate work location, which could be their home, in emergency or catastrophic situations that disrupt agency operations, and results in the invocation of an agency's Continuity of Operations Plan pursuant to 5 U.S.C. § 6504(d)(2).

E. When an employee is Telework-ready and a weather or other safety-related condition forces the closure of their HHS facility, the employee is expected to perform work at their approved Telework location for their entire TOD, unless they take approved leave. Where the employee's telework site is also impacted by the same weather or safety-related condition (e.g. hurricane, wildfire, flood, evacuation) as the agency worksite/official duty station and the condition prevents the employee from safely working (e.g., power outage, evacuation order), the employee may be granted weather and safety leave that is granted to other employees in the office. If the employee is not Telework ready for all or part of the tour of duty when a weather or safety-related condition forces the closure of the HHS facility, the employee may be granted an appropriate amount of weather and safety leave.

F. When a teleworking employee experiences a weather or other safety-related condition that prevents them from safely working at their Telework site, the employee must contact their supervisor as soon as practicable. The employee may be directed to travel to the employee's regular worksite – provided they may safely travel under the circumstances – to complete their workday. If directed to travel during regular duty hours, the employee will receive duty time to do so. If the employee is not directed to report to their regular worksite, the employee will be granted weather and safety leave that is granted to other employees in the office.

G. In the event the office has an early departure, employees who have a Telework agreement and who are working in the office are required to take their equipment and work files to their Telework location to finish their TOD. Employees required to travel to their approved telework location during regular duty hours will be granted weather and safety leave for the time required to travel home. However, if the employee's telework site is also impacted by the emergency condition (e.g., hurricane, wildfire, flood, evacuation) and the condition prevents the employee from safely working (e.g., power outage, evacuation order), the employee may be granted an appropriate amount of weather and safety leave. Where an early departure has been authorized, teleworkers on a flexible work schedule may request and may be authorized to depart prior to the scheduled early departure time to complete their TOD from the telework location.

H. In the event the office has a delayed opening, telework ready employees who were scheduled to report to the office may request to use unscheduled telework for their entire tour of duty or arrive at the delayed opening time to complete their tour of duty in the office.

I. Unscheduled Telework hours worked due to a weather or safety-related office closure or unscheduled Telework announcement will not count against the employee's maximum number of hours permitted under the Telework Agreement.

J. Employees who are required to work unscheduled Telework will not have their previously scheduled Telework days changed or cancelled.

K. Employees on a Telework agreement may cancel pre-approved leave or paid time off and be granted weather and safety leave as other employees when its intended purpose is frustrated by the same weather and safety-related condition forcing the office closure, and the employee is not Telework-ready. The manager may request information or documentation to show that granting weather and safety leave is appropriate.

L. In cases where weather and safety leave is granted for consecutive days, the employee must be reachable by the Employer via telephone or email, provided such services are available. If so, the employee must respond to attempts to communicate within twenty-four (24) hours.

ARTICLE: 27 AWARDS

SECTION 1: General Provisions

A. All awards programs of the Employer shall be administered in a fair and equitable manner, and in accordance with applicable law, regulation, policy, and this Agreement. Awards will be based on merit.

B. The Union will be given timely advance notification, an invitation to attend and an opportunity to participate at any OPDIV\STAFFDIV-wide, Region-wide award and other organizational level award ceremonies involving bargaining unit employees. In accordance with Article 7, Subsection 1C, when the ceremony involves more than one NTEU Chapter, notification will be provided to all impacted NTEU Chapters. The Union will be recognized/introduced at all award ceremonies involving awards covered by this Article.

C. The parties acknowledge that monetary awards are contingent upon the availability of funds.

D. Awards and recognition should be given as close in time as possible to the achievement being recognized.

E. All employees who meet eligibility requirements may receive awards, including QSIs.

F. The Employer shall establish awards pools at the appropriate levels of the organizations (e.g., OPDIV, STAFFDIV, or at a lower level based on organizational structure etc.); for FDA, pools (Appendix 27-1) will be established at the centers level (i.e., NCTR, OO, ODT, ORA, CDER, CBER, CDRH, CFSAN, CVM, and CTP) except for FDA/OC which shall have pools established at the office level (e.g., OC-IO, OES, OCC, OCE, OCPP, OEA, OFPR, OPPLIA, OCS, OMHHE, and OWH). Once these awards pools are established, the Employer will notify the impacted NTEU Chapters, and provide sufficient data to demonstrate the proper calculation and allocation of the awards budget to these awards pools. Award pools will be established by January 15 of each year. In the event of a reorganization of any of the FDA Centers/Offices in this section, the parties may bargain over the level at which the awards pool will be established for that successor organization.

G. The awards unit pools will be based upon a percentage of total annual bargaining unit salaries (base + locality pay) as of the end of the fiscal year. The percentage of salary for the bargaining unit awards pool will be the same percentage as used for the non-bargaining unit awards pool. The bargaining unit pools will be separate from the non-bargaining unit pools.

H. The award pool will be divided between performance awards and incentive/suggestion awards. Normally, 15 to 20% of the funds from the established awards pool will be reserved for incentive/suggestion awards. However, the National parties may mutually agree to a different percentage.

SECTION 2: Performance Awards Program

A. Performance awards will be based upon the employee's overall final rating of record.

1. Employees whose performance earns them the highest summary rating, (e.g., Achieved Outstanding Results) will receive a performance award payment up to 5% of salary, including locality payment or special rate supplement (as of the last day of the rating period). The specific percentage of salary will be determined on an award pool basis. Additionally, employees who receive the highest summary rating level may be eligible for a Quality Step Increase (QSI). Employees will not receive both a QSI and a performance award for the same performance. QSIs are not automatic and are awarded at the Employer's discretion. The Employer will exercise its discretion to award QSIs fairly and equitably and consistent with 5 CFR § 531, Subpart E.

2. Employees whose performance results in a summary rating level above the fully successful (e.g., Achieved More than Expected Results) will receive a performance award up to 4% of salary, including locality payment or special rate supplement (as of the last day of the rating period). The specific percentage of salary will be determined on a pool-by-pool basis.

3. Employees whose performance results in a successful summary rating (e.g., Achieved Expected Results) may be eligible for a performance award, at the discretion of the Employer, of up to 3.0% of salary, including locality payment or special rate supplement (as of the last day of the rating period) The specific percentage of salary will be determined on a pool-by-pool basis.

B. Where authorized by the Employer, and subject to budgetary constraints, employees may request their award payment preference of a cash award, time-off award, or combination. The selection of "combination" will result in the award being split between time-off and cash based on their hourly salary, including locality pay (as of the last day of the calendar year).

   Time-off performance awards in lieu of cash may not exceed 80 hours time off. Any remaining balance will be paid out in cash. Where authorized, an employee preference of a cash award, time-off award, or combination will normally be granted. Scheduling the use of time off awards is subject to the same approval process as annual leave in Article 15 of this Agreement. While time off awards do not expire, employees may not receive cash for any unused time off because regulations preclude time off awards from being converted to cash.

SECTION 3: Incentive Awards Programs

A. The Incentive Awards program covers superior accomplishment awards for special acts or services, length of service recognitions, and a variety of non-cash honor awards for accomplishments that occur at any point during the fiscal year.

B. The individual or group contribution must have been a one-time occurrence. It may be a single action or series of actions, performed either within or outside normal responsibilities. The determining factor in distinguishing what constitutes a special act or service is the one-time nature of the contribution itself. An aspect of the job can be recurring, but a special act or service award may be appropriate for a one-time special effort in performing that aspect of the job that would not otherwise be appropriately recognized through a performance award.

C. Incentive awards (including Special Act, TOA, etc.) are appropriate to recognize contributions to the quality, efficiency or economy of government operations Examples include, but are not limited to:

1. non-recurring contribution either within or outside of job responsibilities;
2. scientific achievement;
3. act of heroism;
4. high quality contribution involving a difficult or important project or assignment;
5. special initiative and skill in completing an assignment or project before the deadline;
6. initiative and creativity in making improvements in a product, activity, program, service; or current practice;
7. ensuring the mission of the unit is accomplished during a difficult period by successfully completing additional work or a project assignment while maintaining the employee's own workload;
8. contribution to the well-being of the community (non-monetary);
9. performance that contributes to protecting and promoting the health of the American people;
10. influencing/guiding others toward achieving organizational goals;
11. advancement of team goals toward HHS mission; supporting team and individual team members; supporting organizational units; and
12. recognition of an employee or group's disclosure of fraud, waste or abuse resulting in tangible or intangible benefits to the government.

D. Incentive Award Nominations. The Employer will notify and remind all employees via email and other appropriate methods, of the opportunity to submit nominations for incentive awards at least fourteen (14) days in advance of award committee meetings. Nominations will be submitted to a dedicated email box for each awards committee, and that information will be provided in the notice to employees. All nominations submitted will be provided to the appropriate awards committee for review. Such notification will contain a brief explanation of the incentive awards criteria and a description of the procedures for submitting nominations for incentive awards, and any deadlines for submitting nominations. Peers and supervisors may nominate employees or groups for incentive awards. Employees may also nominate themselves for incentive awards. Nominators may inform nominees that they have been nominated for an award. Nominators and/or individuals participating in the approval decision may not release or publicize any information about unapproved nominations to anyone other than the nominee.

E. The Employer agrees it will establish no quotas or predetermined distribution rates for the size and number of incentive awards.

SECTION 4: Time Off Awards

A. Determinations to grant a time off award in excess of one (1) workday, shall be reviewed and approved by an official who is at a higher level than the official who made the initial decision. If the time off award was at the recommendation of an awards committee**,** a determination to grant a time off award in excess of one (1) workday shall be reviewed and approved by the appropriate official, consistent with 4B below. Approval will be based on reasonable and relevant criteria applied uniformly to all similarly situated employees. Time-off awards will not impact the cash budget allocated towards the performance award pools.

B.

1. In accordance with applicable regulations, a time off award may not be converted to a cash payment.

2. Full-time employees may not be granted more than 100 hours of time off during a single leave year.

3. The maximum amount of time off during a single leave year for part-time employees or employees with an uncommon tour of duty is the average number of hours of work in the employee's biweekly scheduled tour of duty.

4. For full-time employees, time off awards are limited to a maximum of 80 hours for a single contribution.

5. The maximum time off award for a single contribution for part-time employees or employees with an uncommon tour of duty is the maximum amount of time that could be granted under Section 4B3 above.

SECTION 5

A. Labor Management Award Committees

1. The Employer shall continue local labor-management incentive awards committees (or establish additional ones as necessary). However, at FDA, incentive award committees will be established at the Centers level (e.g., OC, ORA, CDER, CBER, CDRH, CFSAN, CVM, and CTP), except for ORA which will be established as follows:

    a. There will be six (6) ORA incentive award committees as reflected on the attached chart, Appendix 27-2 (Small Office Committee, Office of Regulatory Management Operations, Office of Import Operations, Office of Regulatory Science, Office of Human and Animal Food Operations, and Office of Medical Products and Tobacco Operations.) The ORA incentive award committees will each be divided into two (2) subcommittees to review and make recommendations on incentive award nominations. Labor and management representatives from the ORA incentive award committees will meet jointly to determine the procedures that will be followed by all of the committees for performing their

responsibilities. The ORA incentive award committees may collectively decide to follow the same procedures in future years.

b. In the event of a reorganization of any of the FDA Centers/Offices in this section, the committees will be established at the level of the new awards pool for that successor organization, if any.

2. There will be an equal number of bargaining unit members and management representatives on each incentive awards committee, but not less than six (6) total members, except that for the ORA incentive awards committees which shall have not less than eight (8) total members. The local chapters will appoint the BU members of these Committees. The Committees shall continue to operate under existing procedures, if any. Any committee may modify their procedures at any time.

3. Within sixty (60) calendar days of the effective date of this Agreement, the Employer will notify NTEU National of all established incentive and performance awards committees in each OpDiv/StaffDiv, the number of management representatives for each committee, the contact information for the official who will make decisions on the recommendations of each committee, the awards budget (or projected budget if there is no final budget), and the dates by which incentive and performance award recommendations must be received for each award cycle (e.g., incentive awards, annual performance awards) in the calendar year. In no event will the deadline for submission of recommendations be less than forty-five (45) days from the date of this notice. Unless committee membership has been previously established, within thirty (30) days after the notification required by this subsection, the local NTEU chapters and the Employer will notify one another of the appointed members for each awards committee and their contact information.

4. For each subsequent calendar year, the Employer will notify the members of each awards committee, on or before January 15, of the awards budget (subject to budget availability), and the dates by which incentive and performance award recommendations must be received for each award cycle (e.g., incentive awards, annual performance awards) in the calendar year.

5. Either party may replace its committee members by giving advance written notice to the other party identifying their change(s) in membership and the contact information for any new members.

6. If not already provided, final awards budget information will be provided to committee members as soon as practicable once a final budget is determined.

7. Bargaining unit employees on the committees will be released from duty, absent a workload disruption.

B. Incentive Awards Committee Authority and Responsibilities

1. Incentive Award Committees shall meet quarterly or more**,** on mutually agreed dates, to make recommendations, unless the parties agree that a quarterly meeting is not necessary.

The meetings will be scheduled in advance within thirty (30) days of the notice required by Section 5A1(a) above for the first year in which this Agreement is effective. Thereafter, incentive award committee meetings for the entire year will be scheduled for mutually agreed dates by January 30 of each year. The parties may mutually agree to change the meeting dates. Meetings may also be rescheduled if determined necessary by the official authorized to make awards decisions on the recommendations of each committee, taking into consideration the date by which committee recommendations are due.

2. Awards handled by the committees will be time off awards and special act awards, as described in Section 3A above.

3. Management will submit incentive award data and its proposed amounts within the awards budget and share it with the Union at least five (5) days prior to a committee meeting. The award committee will discuss this information as part of its meeting and responsibilities.

4. With respect to incentive awards, the Committees will:

    a. Make recommendations of the use or non-use of informal recognition items, type used, if appropriate, for this purpose;

    b. Develop a process for submitting nominations for awards and recognition;

    c. Develop a process for recommending which nominees receive awards and recognition (guidelines, criteria, forms, information, etc.);

    d. Review nominations and recommend approval/disapproval of awards (with or without modification); and

    e. Recommend time off awards in lieu of cash if budget shortfall restricts use of monetary awards or any other legitimate, performance-based reason**.**

5. The parties will develop a process that ensures that awards are granted as close in time as possible to the achievements being recognized and that all grantees receive a fair share of the awards funds.

6. The Committees will reach recommendations by consensus. If no consensus is reached regarding an award nomination, the final decision will be made by the individual with the award approving authority.

7. The official with award approval authority will consider the Committee's recommendations and accept, modify or reject them. If the recommendations are rejected or modified, the approving official will provide the Committee with her/his written rationale in order to guide its future deliberations. The mere fact that the Deciding Official does not accept the committee's recommendation is not grievable unless it violates law, rule, regulation, or a matter covered in the CBA.

8. No Committee members may participate in the review and discussion of any nomination for which they are the nominator or nominee, or for which they have a familial or blood relationship or any other relationship that gives rise to a conflict of interest.

9. Strict confidentiality concerning nominations and deliberations must be maintained by all Committee members and any other individuals who are privy to information on the nomination forms. This provision notwithstanding, nominators may, consistent with above, inform nominees that they have been nominated for an award.

10. Existing Committees with the current practice of signing off on incentive awards shall continue to have the authority to do so under this agreement.

C. Performance Awards Committees

1. Labor-management performance awards committees shall be established at the OpDiv level (i.e., ACF, ACL, AHRQ, ASTDR, FDA, HRSA, OS, SAMHSA, OMHA), however, for the Office of the Secretary (OS) performance awards committees may be established at the OpDiv or Staff/Div level, and HRSA may establish performance award committees at the Office level. Each OPDIV/ STAFFDIV shall have at least one performance awards committee.

   The Agency shall inform the NTEU National President of the appropriate level for the performance award committees for each OPDIV/STAFFDIV and their management representatives on each committee before December 31 of each year.

   The NTEU National President shall inform the Agency of who the Union representatives will be for each committee by January 15 of each year.

2. These committees shall:

   a. be comprised of equal numbers of bargaining unit members and management representatives. Committees at the awards pool level shall not exceed three (3) members from each, the Union and Management. Higher level committees shall not exceed five (5) members from each, the Union and Management.

   b. receive the aggregate performance rating scores and the final awards budget (if not already provided) for each awards pool no later than February 15 of each year.

   c. meet at reasonable times to ensure recommendation are made in a timely manner.

   d. The Employer will provide the relevant awards data to all team members by February 15. Each party may exchange written recommendations in advance of the award committee meeting. The written recommendations will be discussed at the award committee meeting.

   e. make final recommendations to the Deciding Official no later than March 15 of each year.

3. With respect to performance awards, the Committees shall:

    a. base their recommendation on the aggregate final ratings for those employees within the Committee's jurisdiction and funds availability.

    b. recommend the percent payouts for each rating level on an annual basis for which an employee may be eligible an award, i.e., Achieved Outstanding Results, Achieved More than Expected Results and Achieved Expected Results.

    c. limit their recommendation to a rating level or a numerical score. For example, depending upon the specific circumstances, a committee may recommend that all employees receiving an overall rating of record of Achieved Outstanding Results be awarded 5% of salary and Achieved More than Expected Results be awarded up to 4% and Achieved Expected Results be awarded up to 3.0%; or may recommend that employees receive a gradation of amounts based on their actual composite rating, e g employees with 5.0 receive 5% of salary, 4.9 receive 4.9% of salary and so forth.

4. The Deciding Official shall:

    a. consider the committee's recommendation and make a decision on award payout by March 31 of each year. If the recommendations are rejected or modified, the deciding official will provide the Committee with her/his written rationale in order to guide its future deliberations.

    b. make a decision on awards payout by March 31 regardless of whether a timely recommendation was made by the committee. Failure of a committee to meet and/or make a timely recommendation shall not affect the Deciding Official's responsibility to make a decision by this date**.**

    Performance awards will be paid out as soon as practicable.

5. The Committee's recommendation must award all Achieved Outstanding Results employees prior to awarding Achieved More than Expected Results and Achieved Expected Results employees.

SECTION 6: Exceptions to Procedures

Centers for Disease Control and Prevention (CDC) and Indian Health Services/Engineering Services.

As an exception to the above process, for those CDC bargaining unit employees located at the National Center for Health Statistics and for those IHS employees of the Engineering Service unit represented by NTEU, will continue to follow all existing policies and the recommendations set forth by those OPDIVs to include Performance Awards Committee. The NCHS Committees shall continue to operate under existing procedures and policies.

SECTION 7: Reporting

A. The Employer agrees to furnish to NTEU National an electronic data file, to the extent that it is available, containing each bargaining unit employee represented by NTEU: an employee's summary rating score, location, grade/series, any Race, Nationality, Origin, Gender, Age and Disability (RNOGAD) data, and any awards/QSIs. The Employer agrees to provide this data no later than August 31 of each calendar year.

B. The Employer agrees to provide to the local Chapter with a semi-annual listing of all employees who have received incentive awards, the kind of awards they received, and the amount of the award.

ARTICLE 28: A-76 STUDIES

SECTION 1

The Employer will notify the Union prior to review of an activity pursuant to OMB Circular A-76. This notification will be as much in advance as reasonably possible, but in no event will it be fewer than three workdays prior to notification to the employees.

The notification will, at a minimum, identify the function to be studied, the corresponding positions, impacted employees, location of impacted employees, and projected timeframes for the conduct of the study.

SECTION 2

The Union will be afforded the opportunity to appoint a bargaining unit employee subject matter expert to serve on teams regarding Performance Work Statement (PWS) and Most Efficient Organizations (MEO). In order to qualify and serve on Performance Work Statement (PWS) and Most Efficient Organizations (MEO) teams, the appointed employee must meet the technical or functional qualifications established by the Agency.

SECTION 3

At no time can employees serving on one team, PWS or MEO, serve on the other.

SECTION 4

Pursuant to OMB Circular A-76, any bargaining unit employee has the right to elect not to participate in the study as a team member at any time, regardless of whether appointed by NTEU or assigned by the Agency. This should not be interpreted to mean that employees may decline to furnish information concerning their duties and responsibilities or other factual matters related to their employment to the A-76 study contractor in connection with the studies.

SECTION 5

To the maximum extent possible, the Agency agrees to hold “town hall” meetings concerning the A-76 studies for affected personnel, including bargaining unit employees. These meetings may be held by video teleconference or teleconference when necessary. NTEU will be provided thirty (30) minutes at the end of each meeting to meet separately with bargaining unit employees. In addition, the Agency may provide a website on which employee questions about the studies and the agency's answers to those questions could be posted.

SECTION 6

NTEU reserves the right to negotiate unresolved issues that may arise at a later date. Furthermore, NTEU reserves any appeal or protest rights it may have under law, rule, or regulation in connection with the results of any Agency A-76 studies.

SECTION 7

This Article only covers the information to be provided to the Union prior to the study, the Union's participation in the MEO/PWS process, and town hall meetings. It does not cover any other impact or implementation issues that may arise when the Agency conducts a study (including but not limited to, use of official time, how interviews may be conducted, administrative time for impacted employees, etc.). This Article does not address any matters not expressly covered herein. It similarly does not cover any changes after a study is completed and the Union reserves all bargaining rights related to those changes.

ARTICLE 29: WITHIN GRADE INCREASES

SECTION 1

A. In accordance with 5 CFR and applicable law, a within grade increase (WIGI) will be granted by the Employer when the Employer determines that the employee's performance is at an acceptable level of competence. The level of competence determination will be based on the employee's latest rating of record and any performance that has occurred since the latest Rating of Record. Acceptable level of competence means an employee's last performance rating was "fully successful" or higher, as defined in Article 30, Performance Management.

B. The employee must also have completed the required waiting period for a within grade increase. The waiting period is defined as:

   1. For steps two (2), three (3), and four (4) - fifty-two (52) calendar weeks of creditable service;

   2. For steps five (5), six (6), and seven (7) - one hundred four (104) calendar weeks of creditable service; and

   3. For steps eight (8), nine (9), and ten (10) - one hundred fifty six (156) calendar weeks of creditable service.

SECTION 2

A. The performance management process, including any counseling, progress reviews and the latest performance rating, will be mechanisms for warning employees that their performance is not at an acceptable level of competence. The sole basis for an acceptable level of competence determination for purposes of this Article will be either the employee's most recent rating of record or a new rating of record prepared to reflect the employee's performance since the last rating of record.

B. When the Employer has determined that an employee's performance is below the acceptable level of competence, the employee will be provided with the following in writing within a reasonable period of time (normally not less than sixty (60) days) before the employee will have completed the required waiting period:

   1. notice of the critical job element(s) in which the employee's work is less than fully successful;

   2. examples of less than fully successful performance on which the action is based;

   3. advice as to what the employee must do to bring performance up to the acceptable level;

   4. a statement that the employee's performance may be determined as being less than successful unless improvement to a fully successful level is shown; and

5. a statement that the within-grade increase will be withheld unless the employee's work is at an acceptable level of competence by the end of the waiting period.

C. When the level of competency determination is negative and the discussion was held fewer than sixty (60) days prior to the WIGI due date, the WIGI will be denied. The reconsideration period will begin on the date the discussion referenced in Paragraph 2B above is held. At the end of sixty (60) days following the reconsideration period, a reconsideration determination will be made according to Section 5. The procedure in this section applies only to those situations where the discussion did not occur at least sixty (60) days prior to the WIGI due date. Nothing in this section precludes the supervisor from beginning a performance improvement plan at the same time the level of competency determination is made.

D. Whenever a within-grade increase is withheld, the Employer will thereafter prepare a new rating of record for the employee and grant the WIGI when the employee has demonstrated performance at an acceptable level of competence for at least the minimum appraisal period of ninety (90) days. At a minimum, this requires a determination of whether the employee's performance is at an acceptable level of competence after each fifty two (52) weeks following the original due date for the WIGI.

E. Violation of the terms of this Article, as determined by competent authority, that result in a changed acceptable level of competence determination will provide for retroactivity of any pay increase only to the extent authorized by applicable law and regulation.

SECTION 3

The Employer will give employees, written notification of unacceptable level of performance determinations no later than ten (10) workdays after the end of the waiting period for the WIGI. The notice will:

A. Inform the employee that their performance has become unacceptable since the last rating of record and a new rating of record has been prepared and is included with the notification;

B. Inform the employee about the negative determination and withholding of the WIGI, including specific instances of performance that support the determination;

C. State how the employee must improve their performance in order to receive a WIGI;

D. Inform the employee about the right to request reconsideration and identify the reconsideration official; and

E. State the employee’s right to Union representation while preparing for and presenting any request for reconsideration.

SECTION 4

Where an employee chooses to make an oral presentation in connection with a request for reconsideration, this oral presentation will be held at a particular site, video conference or

telephonically, as determined by the reconsideration official Upon request by either party, the Employer will arrange for a reporting service to transcribe the employee's oral presentation and a copy of the official transcript will be provided to the employee, if requested. The requesting party will pay for the cost. The employee and the Union will be given at least five (5) workdays to comment. The Employer will consider the Union's comments before reaching its final determination. The reconsideration official will issue the decision as soon as possible, but in no case later than ten (10) workdays following receipt of Union comments.

SECTION 5

A. When employees receive a negative determination, they shall be granted a reasonable amount of duty time to review the material relied upon to make the determination (if otherwise on pay status), prepare a request for reconsideration, and present the request.

B. If, based on the reconsideration, a negative determination is reversed by the Employer, the effective date of the increase will be the original due date.

C. Where an employee is denied a WIGI by the reconsideration official, the letter transmitting the official's decision shall include a statement that informs the employee about the right to appeal the decision to binding arbitration (with Union concurrence), as provided in Article 46, Arbitration, of this Agreement, and the number of days in which the employee must request such an appeal through the Union.

ARTICLE 30: PERFORMANCE MANAGEMENT APPRAISAL PROGRAM

SECTION 1

A. The purpose of the Performance Management Appraisal Program (PMAP) is to improve employee and organizational performance. It encourages continuous communication between employees and supervisors, provides a mechanism to evaluate employee performance and identify strengths and weaknesses, and provides a mechanism to address deficient performance effectively through such activities as increased communication, coaching, training, and if necessary, through appropriate personnel actions. Feedback and ratings under the PMAP system will be provided in a fair, consistent, constructive and equitable manner. This Article is intended to be used in conjunction with the Department of Health and Human Services PMAP policy, to the extent the policy does not conflict with this Agreement (Appendix 30-1). To the extent that there is a conflict in this article or contract with the PMAP policy or other management-issued performance documents, the parties' collective bargaining agreement governs.

B. Should the Employer make change to the Performance Management Appraisal Program that are more than *de minimis*, including but not limited to a policy change and a new enterprise critical element, notice will be provided to the Union in accordance with Article 3 and the parties will bargain the changes consistent with law and this Agreement. Nothing in this Article waives NTEU's right to grieve changes to working conditions, as required by law, regarding any aspect of the Performance Management Appraisal Program or an individual employee's performance plan.

C. Outside the process described in Subsection 5B2, where no bargaining obligation exists, and a supervisor modifies an existing critical element (e.g., taking a critical element and making it more specific), NTEU National will be given notice of the change and the opportunity to make recommendations and present supporting evidence pertaining thereto. This provision is not triggered by changes to performance standards. The Union will be given fourteen (14) calendar days from the date of the notice to submit such recommendations. The Employer will consider the Union's recommendations and advise the Union, in writing, of the results of its review no later than three (3) workdays prior to implementation.

SECTION 2

A. The objectives of the PMAP are to:

1. Improve employee and organizational performance by defining critical aspects of employee performance and assessing results achieved;

2. Communicate and clarify organizational goals and objectives to employees;

3. Facilitate evaluation of employee performance;

4. Encourage communication between supervisors and employees;

5. Identify good employee performance for recognition;

6. Address deficient performance effectively through such things as increased communication, coaching, training and if necessary, through appropriate personnel actions; and

7. Provide uniform and consistent evaluation of performance for all covered employees.

SECTION 3

The PMAP covers all NTEU bargaining unit employees covered by this National Agreement.

SECTION 4

All bargaining unit employees will receive a performance appraisal that will be based on a comparison of the employee's performance with the standards and elements established for the appraisal period. Terms used in this Article are defined as follows:

A. Appraisal (Rating) means the process under which performance is reviewed and evaluated.

B. Appraisal period means the time period that a performance plan is in effect for purposes of reviewing and evaluating employees. The appraisal period normally covers the Calendar Year (January 1 through December 31). An employee must be under a performance evaluation plan a minimum of ninety (90) calendar days during a rating period to receive a rating.

C. Critical Element means work assignments or responsibilities of such importance that unacceptable performance on the element would result in a determination that an employee's overall performance is unacceptable. Such elements are used to measure performance only at the individual level.

D. Performance means an employee's accomplishment of assigned work or responsibilities.

E. Performance Plan means all written, or otherwise recorded, performance elements that set forth expected performance. A performance plan must include all critical and non-critical elements as determined by the Employer and their performance standards (measures).

F. Performance standard means a statement of the performance threshold, requirement, or expectation that must be met to be appraised at a particular level of performance. A Performance Standard (Measure) may include, but is not limited to, quality, quantity, timeliness and manner of performance.

G. Progress review means communicating with employees about their performance to date compared to the performance standards for each element. Progress reviews are important for providing consistent performance feedback to employees and can be conducted at any time during the appraisal period. One formal progress review is required.

H. Rating Official means the official responsible for informing the employees of the critical elements of their position, establishing performance requirements, providing feedback,

appraising performance, and assigning the summary rating. The rating official is normally the employee's immediate supervisor.

I. Rating of Record (Final Rating) means the performance rating prepared at the end of an appraisal period for performance of Agency-assigned duties over the entire period and the assignment of a summary level within a pattern. A final rating summarizes and measures an employee's performance on each element for which there has been an opportunity to perform for the minimum rating period. In most cases a summary rating (see definition below) will become the rating of record.

J. Summary rating means combining the written appraisal of each critical element (on which there has been an opportunity to perform for the minimum period, i.e., 90 calendar days) to assign a summary rating level. The rating official derives the summary rating from appraising the employee's performance during the appraisal period on each element.

SECTION 5

A. The supervisor and employee should discuss goals and work expectations for the rating period. Discussions may cover the employee's official duties and responsibilities; organizational goals and objectives; the type of performance necessary to achieve each rating level; and, the employee's goal for the future. Additionally, these discussions will include an identification of cascading goals for which the employee is also responsible. The Agency agrees that it is important for supervisors to communicate with employees to set relevant, achievable goals that support the organization's mission. Each employee should actively participate in developing their performance plan for the appraisal period. Supervisors shall clearly communicate expectations and metrics. The following is a list of actions that supervisors shall follow:

1. Communicate to employees their strengths and encourage the development of necessary skills to overcome weaknesses;

2. Active partnering in performance management to reinforce positive manager-employee relationship;

3. Provide equitable performance expectations;

4. Provide constructive feedback and improvement strategies;

5. Discuss and identify, where appropriate, supervisor support of employees' development and professional growth;

6. Development of objective performance measures that reflect job requirements;

7. Provide an atmosphere that allows for two-way communication;

8. Encourage constructive feedback;

9. When applicable, discuss individual goals or an Individual Development Plan.

B. In developing performance plans for a given position, the Employer agrees to consider the views of the employees who occupy the position. Consistent with Section 5C below, prior to implementing a new or revised performance plan, the Employer will provide employees whose performance will be assessed under it with a draft of the new or revised plan, identifying all new or revised portions of that plan and informing the employees that they should read the new or revised plan and submit any comments they wish to make to their supervisors. The supervisor will consider the views of the employee, when such views are presented, before implementing the performance plan.

C. The performance plan is provided to the employee within thirty (30) days after the beginning of the rating period. Employees will be given five (5) workdays to submit written or oral comments on any proposed performance plan applicable to them. Reasonable requests for extensions will normally be granted. Before comments are due, an employee may request to meet on duty time with a Union representative to discuss the proposed changes in the performance plan. The Employer agrees to consider the written comment(s) of an employee before finalizing a new or revised performance plan. If the employee declines to sign, the effective date of the plan is the date the rating official attempted to obtain the employee's signature. The supervisor will note this on the plan, citing the date the employee was given a copy of the established plan.

D. The employee's signature means that the supervisor has communicated the performance plan to the employee. It does not mean that the employee agrees with the plan.

E. The supervisor is responsible for providing information about the performance plan and their expectations to help the employee understand the requirements of the plan. The employee is responsible for ensuring that they have a clear understanding of the supervisor's expectations and the standards against which performance will be measured. The employee should request clarification from the supervisor when needed.

F. Employees will not be evaluated on any aspect of their performance plan until the employees receive the new performance plan that incorporates these changes.

G. Ratings will be based on the application of established performance standards to the employee's observable or measurable performance.

H. The Employer will consider extenuating circumstances outside the control of the employee, when applying performance standards against employee performance.

I. The Employer will consider such factors as availability of resources, lack of training, or frequent authorized interruptions of normal work duties.

J. The Employer shall not establish any quota system for appraisals.

K. Annual ratings of record when used will reflect the employee's performance for the full annual appraisal period unless the information necessary to make such an appraisal is not available. Ratings for periods of time which are less than the full annual appraisal period will be so noted.

L. An employee's signature on a performance appraisal indicates only that the performance appraisal has been received, not an employee's agreement with the performance appraisal.

M. Collateral Duties

1. Authorized time spent performing collateral duties and/or Union representational functions will not be considered as a negative factor when evaluating any critical job elements. However, employees may be rated on collateral duties that involve the critical job elements in the employee's performance plan.

2. No Union representatives will be disadvantaged in the assessment of their performance based in their use of documented official time when conducting labor-management business authorized by this Article. However, it is understood that performance problems unrelated to the use of official time may be addressed in accordance with other relevant provisions of this Agreement. The performance of employees serving as Union representatives will be rated on the basis of Employer-assigned work consistent with the elements identified in the respective employee's performance plan. However, the time spent on Union duties will be considered by the supervisor during productivity considerations. That is, the employee union representative's performance of Employer-assigned work will be rated on the basis of pro-rated work time, i.e., the work performed in available work time after approved official time has been subtracted. For example, if a Union representative has spent 30% of a work period on official time, annual leave, LWOP or performing Union duties, this fact will be considered in the application of expected performance standards. Consistent with the terms of this article, an employee union representative must be under a performance evaluation plan a minimum of ninety (90) calendar days during a rating period to receive a rating.

N. When evaluating performance, it is important to communicate to employees all changes in working procedures before they can be charged with errors or held accountable for not following the new procedures.

O. The fact that an employee assumes new tasks, receives new critical job elements, changes positions, is a trainee, and/or gets promoted to a new position does not create a presumption that the employee's performance is only "Achieved Expected Results".

SECTION 6

As a part of the PMAP policy, each employee will receive a Performance Management Appraisal Plan (Performance Plan).

A. Elements

1. A performance evaluation plan shall contain two (2), and generally no more than six (6) elements. The Employer has determined that all elements are critical and define what is important in the job.

2. If team elements are used, employees shall be rated for their individual contributions to the success of the team.

3. If deletions are made for any reason to an individual employee's critical job elements, performance standards, or the elements or areas that comprise the critical job elements, the affected employee(s) will be promptly notified.

4. Each critical element must have standards to describe how to achieve organizational objectives. Performance elements and standards should be SMART – specific, measurable, attainable, relevant, and timely.

B. Performance Standards

1. Performance standards define what is successful performance on the element. The PMAP performance plan identifies performance measures at the Achieved Expected Results level. The description portion of the PMAP describe the levels of Achievement for More than Expected Results or Outstanding Results. The Performance Standards section of the PMAP describes what is meant by each of the 5 rating levels in Section 8 below. (See example PMAP performance plan attached as Appendix 30-2 of this agreement).

2. To the extent possible standards should be:

   i. Objective. Free from personal feelings or opinions that might bias the rating of actual performance;

   ii. Explicit. Clearly written and free from ambiguities;

   iii. Observable or measurable. Specify discernable conditions, characteristics, and allow for differentiating between levels of performance; and

   iv. Attainable. Goals or results/outcomes must be achievable and realistic for each level of performance. Measures shall be neither too easy nor too difficult but instead state what is normally expected in order for the job element to be successfully met. All objectives must be attainable by the end of the rating period. If numeric information on performance will not be available by the end of the rating period, it must be clear how success will be measured.

SECTION 7

A. Progress Reviews

1. The rating official shall provide communication regarding the employee's achievement of goals and objectives throughout the rating period. Formal conversations are one way this communication can occur. Communication may include such things as comments on written products the employee has submitted, e-mail comments regarding assignments, suggestions concerning better ways of conducting business, etc. Such feedback coupled with the regular progress review discussion will be sufficient for most employees to understand expectations and measure progress toward meeting these expectations. However, if performance is below the Achieved Expected Results level, additional steps, including written documentation and meetings, should be taken to provide feedback.

2. The process of monitoring performance is ongoing. However, when the supervisor notices performance at lower than an Achieved Expected Results level, the Employer will counsel employees in relation to their overall performance rating on an as needed basis. Such counseling will normally take place when a supervisor notices a decrease in performance and include advice or recommendations on better communicating job requirements, identifying and providing supplemental training, and providing additional coaching, monitoring, mentoring, and other developmental activities, as appropriate, to help improve employee performance until the employee shows improvement.

3. The supervisor of the employee may initiate discussions to provide feedback concerning performance. Each discussion should be candid and forthright and aimed at identifying performance strengths and weakness; barriers to success; methods for improving performance; training needed; etc.

4. The rating official shall conduct at least one (1) documented progress review discussion (in person or virtually) between the establishment of the performance and the end of the rating period (generally mid-year). During any progress review, the rating official and employee may discuss the:

    a. Employee's accomplishments;

    b. Performance standards remaining to be accomplished and any barriers that may impede their accomplishment;

    c. Revisions to the plan which may reflect changes in work assignments or program initiatives, deficiencies in performance and required improvements; and

    d. Training and developmental needs.

5. During the progress review discussion, the supervisor may identify aspects or factors within each element or performance measures that the employee should focus improvements efforts on during the remaining time in the rating period. These aspects may be marked on the form for emphasis or identification purposes.

6. A written narrative is not required in connection with the progress review unless performance is less than Achieved Expected Results. However, where performance has declined, the supervisor will provide written feedback when requested. If a written narrative is prepared, a copy will be furnished to the employee via email and retained by the Agency consistent with Agency policy.

B. Modifying Performance Plans

1. Subject to Section 1B, performance elements and measures may be changed as necessary during the rating period. Changes to the original performance plan shall be initialed and dated or electronically signed, or logged electronically into the system (as a substitute for the rating official's signature), by the rating official and the employee, and a copy provided to the employee.

2. If a plan is revised to include new performance elements and/or measures, changes shall become effective at the time they are given to the employee and, if requested, discussed with the employee. An employee may not be rated on a new element or performance standard or any major revisions to an existing element or performance standard that has been in effect less than ninety (90) days.

SECTION 8

A. Element Ratings

1. There are five (5) levels for rating performance on each element:

    a. Level 5: Achieved Outstanding Results (AO): 5 points

    b. Level 4: Achieved More than Expected Results (AM): 4 points

    c. Level 3: Achieved Expected Results (AE): 3 points

    d. Level 2: Partially Achieved Expected Results: 2 points

    e. Level 1: Achieved Unsatisfactory Results (UR): 1 point

NR (Not Rate-able): performance of the duties/responsibilities reflected by the critical job elements and standards cannot be evaluated (e.g., the minimum performance period has not been met or the performance standard has been in effect for less than 90 days) or has not been observed.

B. Final Ratings

1. The Employer has determined that the following method shall be used to translate the composite element rating into a final rating:

    a. Level 5: Achieved Outstanding Results (AO): 4.5 – 5 points

    b. Level 4: Achieved More than Expected Results (AM): 3.6 – 4.49 points

    c. Level 3: Achieved Expected Results (AE): 3.0 – 3.59

    d. Level 2: Partially Achieved Expected Results (PA): 2.0 -2.99 points

    e. Level 1: Achieved Unsatisfactory Results (UR): 1 to 1.99 point

2. Final ratings shall be derived after rating and assigning a score to each critical element. The rating official will explain the basis for the score assigned to each critical element. The rating official will total the points and divide by the number of critical elements assigned a numeric score, to arrive at an average score (up to two decimal places). This score will be converted to a summary rating Employer-determined exceptions to the mathematical formula are outlined in the PMAP document. Critical elements rated NR will not affect the average score used to determine the summary rating.

3. When the employee's final rating is below "Achieved Expected Results", the rating official shall prepare a written explanation describing the specific areas where improvement is needed. Upon request, when an employee's final rating has declined, the supervisor will prepare a written explanation describing the specific areas in which the employee's performance has declined, and how it can be improved.

4. The rating official may submit the employee's evaluation to a reviewing official for concurrence prior to providing the rating to the employee. Any changes to the evaluation or rating by the reviewing official will be provided in writing.

5. When an employee's supervisor has determined that a rating of Achieved Unsatisfactory Results may be issued to an employee, the supervisor shall first discuss the proposed rating with the employee. The employee will be given ten (10) calendar days to provide written comments to the proposed rating in writing. Reasonable requests for additional time will be granted. The supervisor shall provide the appraisal, the appropriate documentation and any written response prepared by the employee for review. If the review establishes that a rating of Achieved Unsatisfactory Results is appropriate, the final rating of Achieved Unsatisfactory Results will be prepared.

6. The final rating shall be discussed with the employee. The final rating shall be in writing, or otherwise recorded, and given to the employee as soon as possible after the end of the appraisal period (normally within thirty (30) days).

7. Employees who wish to comment on their final rating may record their comments on the appraisal form or as an attachment to it. Such comments will be attached to and become part of the appraisal.

8. Employees will be provided with a reasonable amount of duty time, not to exceed four (4) hours, to prepare written comments concerning any performance appraisal that becomes the employee's annual rating of record. Such comments will be attached to and become part of the appraisal. Failure to rebut does not indicate employee agreement with the appraisal. Similarly, failure by the supervisor to comment on the employee's rebuttal does not indicate agreement with the employee's comments. It is not necessary or appropriate for a supervisor to prepare additional remarks regarding the employee's comments in that the appraisal constitutes management's stated position.

9. Employees, who disagrees with their rating of record may request reconsideration within five (5) calendar days of receipt of the rating. The Agency will respond to requests for reconsideration within five (5) calendar days of receipt. An employee who disagrees with the rating of record and wishes to file a grievance, may do so in accordance with the procedure in Article, 45 Grievance Procedure.

10. If an employee who receives an Achieved Unsatisfactory Results rating subsequently successfully completes a Performance Improvement Plan (PIP), the employee will be provided a written statement of the successful completion of the PIP and the level of performance reached.

SECTION 9

A. Employee Not Under a Plan for at Least 90 days. An employee is considered to be ratable if they have performed under a plan for at least ninety (90) days during the rating period. If a final rating cannot be prepared at the end of the annual rating period because the employee has not been under a plan for at least ninety (90) days, the rating period shall be extended until the ninety (90) day period is reached. A final rating shall be prepared as soon as possible after ninety (90) days is reached, normally within thirty (30) days.

B. Permanent Position Changes. If an employee permanently changes positions during the rating period, and has performed under a plan for the minimum rating period in the previous position, the employee's rating official must prepare a rating appraising the employee's performance to date in the previous position. This rating will be provided to the new rating official who will take the rating into consideration in deriving the final rating for the annual rating period.

C. Details/Temporary Promotions. When an employee is temporarily detailed or receives a temporary promotion to a position with the Employer for ninety (90) days or more, the gaining supervisor shall prepare a performance plan describing the critical elements of the temporary job and prepare a rating of the employee's performance during the temporary work assignment. This rating will be provided to the supervisor of record upon the employee's return to the original position, and will be considered by the rating official when developing the employee's final rating for the annual rating period.

D. Temporary Assignments Outside the Agency. The rating official will make a reasonable attempt to obtain a performance assessment for any temporary work assignment by an employee performed outside the Agency. At a minimum, the rating official will contact the temporary duty supervisor and request a memorandum describing the assignments performed by the employee and an assessment of how well the employee performed the assignments. If definitive information is obtained, the rating official will consider it in developing the final rating for the annual rating period.

E. Supervisory Changes. Whenever a supervisor leaves their position, they shall provide a written assessment about their employees' performance, up to the time of the change, so that the gaining supervisor will have information to consider when preparing a final rating at the end of the annual rating period, and so that the employee will be properly credited for work accomplished during the entire rating period

SECTION 10

When an employee moves to a different organization within the Employer or to a Federal agency outside the Employer at any time during the Employer's rating period, the most recent performance ratings of record must be transferred as required in 5 CFR Part 293, including the rating that must be prepared at the time of the position change if the performance plan was in effect for at least ninety Days.

SECTION 11

After a rating of record is issued, any form which identifies job elements, the performance standards for those elements, along with any changes, including appraisal information on those elements, shall be retained for four (4) years in the Employee Performance File (EPF) system established for employees covered by this program.

SECTION 12

A. During the final thirty (30) days of an employee's annual appraisal period (or as otherwise agreed upon), the employee may prepare a written self-assessment.

B. Employees who prepare such assessment shall be granted a reasonable amount of administrative time, not to exceed four (4) hours to do so, and shall submit that self-assessment to their immediate supervisor by no later than the last workday of their annual appraisal cycle.

SECTION 13

The annual performance appraisal provides invaluable information to supervisors regarding an employees' need for additional training or coaching, and provides the employees with realistic feedback on how well they have performed during the rating cycle, as compared to the critical job elements for their position. Because of the importance of the annual appraisal, any disagreement between the supervisor and the employee over its content should be resolved in an expedited manner that encourages open and constructive dialogue regarding the supervisor's performance expectations, the employee's performance, and the appraisal itself.

SECTION 14

The Employer agrees to furnish NTEU National an electronic data file, to the extent that it is available, containing bargaining unit employees represented by NTEU subject to the PMAP: an employee's summary rating (when available), location, grade/series, and any awards/QSIs. The information for the previous calendar year will generally be provided no later than September 30 each year. Reasonable requests for additional time may be granted for good cause.

SECTION 15

The Union and the Agency may jointly develop a training program through a joint labor management team to train employees on Articles 30 and 27. The team shall have an equal number of labor/management individuals.

ARTICLE 31: ACTIONS BASED ON UNACEPTABLE PERFORMANCE

SECTION 1

This Article applies to all members of the bargaining unit who have completed a probationary or trial period. No employees will have an action, under 5 CFR § 432, proposed against them that relies on a performance plan under which they have not been working for at least the minimum rating period or where performance expectations have not been communicated to the employee consistent with the requirements of law and the terms of this Agreement.

SECTION 2

Unacceptable performance is defined as performance by an employee that fails to meet one or more critical job elements of their performance plan. Unacceptable performance is synonymous with unsatisfactory performance.

SECTION 3

To the maximum extent feasible, the Employer will act in a fair and objective manner, giving particular attention to avoiding disparate treatment of employees, when taking actions based on unacceptable performance.

SECTION 4

When employees request a change to lower grade due to their inability to perform the duties of the current position, the Employer will consider placing the employee in a lower-grade position identified by the Employer which the Employer believes the employee can successfully perform provided there is such a vacancy, and the vacancy is available to be filled.

SECTION 5

A. No bargaining unit employee will be the subject of an action based on unacceptable performance unless that employee's performance fails to meet established performance standards in one or more critical job elements of the employee's position, after having been afforded an adequate opportunity to demonstrate acceptable performance.

    1. If at any time during the performance appraisal cycle that an employee's performance is determined to be unacceptable in one or more critical job elements, the Employer will:

        a. notify the employee of the critical job elements(s) for which performance is unacceptable; and

        b. issue a written plan to the employee, including but not limited to suggestions as to how the employee can improve their performance, the type of assistance the Employer will provide, and instructions on ways the employee can be expected to raise their performance to an acceptable level.

2. To avoid a reduction in grade or removal, the employee must meet and sustain at an acceptable level, the performance standard(s) for which the critical job element(s) at issue.

B. The Employer will provide more extensive assistance and feedback to an employee undergoing a PIP in an effort to secure the attainment of the requisite level of improved performance during the time period designated for the reasonable opportunity to improve. As necessary, the Employer will provide counseling at regular and reasonable intervals and times, written and/or oral feedback, and other reasonable efforts to assist the employee to bring performance up to an acceptable level prior to initiating any removal or demotion action under this Article.

SECTION 6

A. Prior to issuing a notice of proposed action based on unacceptable performance, the Employer will issue a letter to the employee which contains the following:

1. an identification of the critical job elements and performance standards for which performance is unacceptable;

2. provide specific examples of how the employee's performance does not meet the requisite standards;

3. specify ways in which the employee must improve performance to meet the requisite standards;

4. a statement that the employee has a reasonable period of time (specified in calendar days) but not fewer than sixty (60) days, unless the employee demonstrates acceptable performance prior to sixty (60) days, and not more than ninety (90) days in which to bring performance up to an acceptable level;

5. a description of what the Employer will do to assist the employee to improve the unacceptable performance during the opportunity period; and

6. inform the employee that failure to improve performance to a level above unacceptable and sustain it at that level in the time period specified may result in the employee being reduced in a grade or removed.

B. A grievance may not be filed on either the substance or procedural aspects of this notice until a final decision is issued.

SECTION 7

A. An employee whose reduction in grade or removal is proposed under this Article is entitled to at least thirty (30) calendar days' advance written notice of the proposed action. The written notice will contain the following:

1. The action being proposed;

2. The critical elements of the employee's position on which the performance is considered unacceptable;

3. The specific instances of unacceptable performance on which the present action is based;

4. The employee's right to be represented;

5. Information stating that the employee is entitled to respond, orally and/or in writing, within fifteen (15) work calendar days;

6. The name of the individual to whom the response shall be made; and

7. Information stating that a decision as to the retention, reduction in grade or removal will be made no sooner than thirty (30) calendar days after the receipt of the notice and no later than thirty (30) calendar days from the expiration of the notice period.

B. The Employer will not make a decision until after the oral or written reply is heard/submitted and considered, unless such restriction would violate the Employer's statutory obligation to make a decision within thirty (30) calendar days after expiration of the notice period.

SECTION 8

A. An employee must inform the deciding official, in writing, if the employee is represented by the Union. The Union will notify the deciding official of the representative's name once the Union determines whom the representative will be.

B. The Employer will provide a written summary of the employee's oral reply. The Employer may elect to hire a transcription service to provide a verbatim transcript of the oral reply. A copy of the summary or transcript will be included in the material relied upon, and it will also be provided to the employee's representative (or to the employee if unrepresented). Within five (5) workdays after receiving the written summary, the employee or representative may submit comments to it. The comments will be added to the official record and will be considered by the Employer before a final decision on the matter is rendered.

C. If an employee chooses to make an oral reply, it may be held via audio or videoconference when the employee, the employee's representative, and the oral reply official do not work in the same commuting area. However, if the employee or the employee's representative requests a face-to-face meeting, management will determine where the face-to-face reply will be heard and the employee and one representative will be reimbursed for travel and per diem that is reasonable under GSA regulations.

SECTION 9

Reasonable requests for extensions of time for submitting or delivering a reply will be granted.

SECTION 10

In reaching a final decision, the Employer may not rely on any employee performance that the employee has not been given the opportunity to reply to either orally or in writing.

SECTION 11

A written decision to retain, reduce in grade, or remove an employee will be issued to the employee and will:

A. Specify directly or by reference the instances of unacceptable performance by the employee on which the reduction in grade or removal is based;

B. Unless proposed by the Head of the Agency, be concurred on by a management official who is in a higher position than the official who proposed the action; and

C. Specify the effective date, the action to be taken and the employee's right of appeal.

SECTION 12

If, due to performance improvement by the employee during the PIP period, the employee's reduction in grade or removal is not proposed, and the employee's performance continues to be acceptable for one (1) year from the date of the notice of the PIP, any entry or other notation of the PIP shall be removed from the files of the Employer.

SECTION 13

A. The Employer will make available for review a copy of the material relied upon for the proposed action, subsequent to the advance notice being delivered to the employee. If requested by the employee or her/his representative, the Employer will furnish a copy of such material.

B. Nothing in this section is to be construed as a waiver of the employee's or Union's right to request additional information under other authorities such as the Freedom of Information Act, Privacy Act, or Civil Service Reform Act.

SECTION 14

Within thirty (30) calendar days of the effective date of the action, final Employer decisions may be challenged by the employee in only one of the following ways:

A. By filing an appeal with the MSPB in accordance with applicable law and regulations (currently within thirty (30) calendar days);

B. Under this Agreement and with the Union's concurrence, by appealing directly to binding arbitration (which may include an allegation of discrimination), within the time frame set forth in Article 46, Arbitration, of this Agreement; or

C. By filing a formal complaint of discrimination filed under the administrative EEO process.

The final decision letter that is issued to the employee will contain a statement of the right to challenge the action in one of these three (3) ways. Once an employee has elected one of these procedures, the employee may not change thereafter to a different procedure.

SECTION 15

To the extent not prohibited by law, the Employer will provide the Union with unsanitized copies of all unacceptable performance action proposal and decision letters, no later than the next workday. The Employer will provide this notice to the designated representative, if one is known, or to the local chapter president.

SECTION 16

If at any time before a removal action is effected, employees raise as a defense that they are suffering from disability, the employees must submit acceptable medical documentation simultaneously with any request for reasonable accommodation. The Employer will accommodate the employee to the extent that the employee is a "qualified handicapped individual" under the law based on the medically documented disability. A request for accommodation does not preclude the Employer from proceeding with a performance-based action. Simply, the Employer will design to the maximum extent possible, an accommodation to address the employee's physical or mental limitations so that the employee has as much of a chance to achieve acceptable performance as a non-disabled person.

SECTION 17

A. If the employee is the subject of removal for unacceptable performance, the Employer will consider the employee's request to stay the action for a reasonable period of time to allow a determination to be made concerning any pending application for disability retirement filed prior to the effective date of the action. If the Employer agrees to stay the removal action but at any subsequent time determines that a continuation of the stay poses an undue hardship on the Employer or the application for disability retirement has no reasonable probability of being approved, the Employer may process the adverse action.

B. If the Office of Personnel Management approves the application for disability retirement of employees covered by Subsection A, above, the employees may elect to use their available sick leave prior to retiring, to the extent allowed by law, rule or regulation.

ARTICLE 32: POSITION CLASSIFICATION

SECTION 1

A. Employees in the unit normally will be provided with a description of their duties and responsibilities in the form of a current official position description (or comparable description of responsibilities) within thirty (30) days of entrance on duty. Position descriptions normally will contain only a listing of duties necessary to determine proper classification of work. The position description may also be used to identify training, qualifications, and performance requirements of the position. Employees are encouraged to discuss the contents of the official position description with their supervisors. When significant changes in the duties and responsibilities warrant, the position description may be amended or rewritten to provide a current description of the work performed.

B. Supervisors may revise position descriptions to ensure that they accurately reflect current duties of the position. Determination of the content of position descriptions remains in the discretion of the employer.

C. The Employer retains the right to determine technology, including the use of automated classification systems. If a change in automated classification systems, however, affects working conditions, the Employer will notify NTEU prior to effecting the change and bargain, as requested, in accordance with this Agreement, law, rule and regulation.

SECTION 2

Employees who believe that their position description is inaccurate or incomplete or that the official title, series, or grade of the position is incorrect should discuss this concern with the immediate supervisor. If, after the discussion, the employee desires that their title, series, or grade be reconsidered, they may take the following action:

A. Request reconsideration of the title, series, or grade, by submitting a written reconsideration request to the appropriate operating personnel office, with a copy to their supervisor. If the employees are not satisfied with this reconsideration, they may appeal according to Paragraph 2B or 2C below;

B. Formally appeal the title, series or grade to the Office of Human Resources, Classification Services Staff (CSS). The appeal should discuss the specific aspects of the position that the employee thinks were either misunderstood or not considered adequately. It should also include copies of the current classified Position Description, the Evaluation Report, and a current staffing chart. The Position Description submitted should be the one on which the evaluation is based. A classification decision from the Classification Services Staff will constitute the final classification decision within the Department of Health and Human Services. If the employees do not agree with this decision, they may appeal directly to the Office of

Personnel Management (OPM) as described in Paragraph C below;

C. Appeal the title, series, or grade directly to OPM following the procedures in 5 CFR § 511. If the employees are not satisfied with OPM's decision, they have no subsequent appeal rights within the Federal Government. The OPM classification decision constitutes the final decision within the Federal Government and is binding on the Agency regardless of the favorableness of the determination.

SECTION 3

When the Department or OPM affords the Employer the opportunity to review and comment on proposed position classification standards, the Union will be provided a copy and given the opportunity to comment. The Union's comments will be identified separately and forwarded with those of the Employer. If the Union's comments are not received in the time frames identified by the Employer, its comments will be forwarded separately.

SECTION 4

The Employer agrees to provide to NTEU National copies of newly created position descriptions and position descriptions where changes are effected, that significantly alter employee's current duties. The Employer agrees to provide these copies within thirty (30) days of the final classification of the position description(s). The Union may submit comments and make recommendations on the position description(s). The Employer will consider the Union's comments and/or recommendations, and, upon request, provide the results of the review. Nothing in this Article shall affect the Employer's right to assign work and set deadlines for the accomplishment of work.

SECTION 5

The phrase "duties as assigned" in position descriptions is meant to include tasks of an incidental or infrequent nature that are impractical to include in the narrative portion of the position description.

SECTION 6

Upon request for an internal HHS position review (desk audit) the servicing human resources center will commence the process within fifteen (15) workdays of receiving the employee's request and complete the process (including the issuance of a written evaluation statement) within ninety (90) days from the date of the employees request. During any desk audit the employee shall have the right to be accompanied by a Union representative as a silent observer. Any written evaluation statement prepared by the Employer as a result of a desk audit shall be furnished to the employee prior to the adjudication of the classification appeal. The employee shall have the right to make written comments within five (5) workdays after receipt of the evaluation statement, which shall be attached and forwarded with the written evaluation statement. The employer's determination may, depending upon the issue, be subject to an optional appeal process provided by OPM and outlined in Section 2 above.

SECTION 7

The Employer, upon request, agrees to provide the Union access to and copies of written classification standards and qualification standards that the Employer maintains, if they are not otherwise available on the OPM website or other publicly accessible web sites that display Federal personnel material.

SECTION 8

The Employer agrees to inform the Union as soon as possible when significant changes will be made in the duties and responsibilities of positions held by employees due to reorganization or when changes in position classification standards result in changes in title, series or grade.

ARTICLE 33: ASSIGNMENT OF WORK

SECTION 1

The Employer will assign work in accordance with applicable laws, rules and regulations.

SECTION 2

A. Assignment of work or denial of work assignments will not be made as a reward or penalty to an employee, but in accordance with Employer needs and operational goals. All work will be assigned in a fair and equitable manner.

B. In assigning work, the Employer will consider such factors as employee workload, employee qualifications and experience, relationship of assignment to existing work assignments, personnel ceilings, office workload, time limits, emergencies, priority programs, type and grade of cases or work, and any unique factors related to the task to be accomplished.

SECTION 3

A. The Employer agrees that, to the extent practicable, employees will be assigned manageable workloads. In determining what is manageable, the Employer will consider factors outlined in section 2B above and the employee's position description. Nothing will prevent the Employer from assigning new work to employees.

B. Employees may request a meeting with the Employer to discuss workload adjustments. If the Employer agrees that the work cannot be accomplished within assigned criteria, i.e., quality, quantity, timeliness, or cost, they will make a reasonable effort to adjust work assignments, prioritize work assignments, and/or adjust time frames. Upon the employee's request, the Employer will document the results of the discussion and provide a copy to the employee and maintain a copy with the employee's performance plan as appropriate.

SECTION 4

The Employer will, to the maximum extent possible, seek to assign work that is related to the employee's position, taking into account the interests accomplishing the office's mission in an efficient and effective manner.

SECTION 5

Nothing herein limits the Employer's statutory right to assign work.

ARTICLE 34: DETAILS AND TEMPORARY PROMOTIONS

SECTION 1

A. The term "detail" as used in this Article means a temporary assignment of an employee to a different classified position within the bargaining unit, or to a different set of unclassified duties, for a specified period of time, with the employee returning to her/his position of record at the end of the detail. The employees continue to encumber the bargaining unit position from which they were detailed during the term of the detail.

B. The term "temporary promotion" as used in this Article means a temporary assignment for a specified period of time to a position at a higher grade than the one the employee currently holds where the employee is expected to return to the regular duties and grade at the end of the assignment. Employees must meet the qualification standards and other legal and regulatory requirements, such as time in grade for the higher-grade level before they can be temporarily promoted.

C. The provisions of this Article apply to details to bargaining unit positions at the same or higher grade. Details may also be used to provide opportunities for interchange programs or developmental assignments. Selections for details will be made on a fair and equitable basis.

SECTION 2

A. The Employer agrees that where it is expected that an employee will be detailed to a higher- graded bargaining unit position for a period in excess of thirty-one (31) and fewer than one hundred twenty (120) consecutive days, the employee will be temporarily promoted to that position effective at the beginning of the first full pay period following the beginning of the detail, provided that the employee meets the appropriate qualification standards and other legal and regulatory requirements, such as time in grade.

B. Areas of consideration for details will be based on legitimate work-related reasons. To the extent feasible, information about detail opportunities will be disseminated to all eligible employees within the defined areas of consideration.

C. Employees detailed or temporarily promoted to classified positions will be provided with a copy of the position description. Employees detailed to unclassified duties will be provided with written "Statement of Duties." The temporary assignment supervisor will generally meet with the employee to discuss what is expected from the employee. This meeting/discussion will normally be held within the first two workdays of the detail or earlier, if appropriate.

D. For details or temporary assignments of less than one hundred twenty (120) calendar days, the temporary assignment supervisor upon request from the employee, will

provide a written report on the employee's performance to the employee's supervisor of record and provide a copy of that report to the employee. The Employer agrees to consider the appraisal or feedback in preparing the employee's rating of record for the current appraisal year.

E. When an employee is detailed to a higher graded position for more than 120 days, and performs at an acceptable level of competence in that position, but is not eligible for a temporary promotion, the Employer will consider granting a special act award or other form of recognition to the employee.

SECTION 3

A. Selection for details will be accomplished in compliance with Article 36 (Merit Promotion/Other Actions) when the Employer reasonably expects the detail to the higher graded position to last longer than one hundred twenty (120) consecutive days. However, the Employer may elect to use competitive procedures for details of lesser time.

B. Details of more than thirty (30) consecutive calendar days will be formally documented in the employee's OPF, which may be done electronically. Confirmation of the detail will be provided to or, if electronically-filed, may be printed by the employee.

SECTION 4

In order to ensure a smooth transition between positions:

A. the Employer will provide necessary orientation to the employee at the beginning of any detail;

B. the Employer will provide to employees who have been on detail to a different work area, the time reasonably necessary to re-familiarize themselves with the position to which they are returning; and

C. the Employer will inform the employee of any changes in operating procedures which affect the manner in which the duties of the position of record are performed.

D. Employees who are detailed or temporarily promoted will normally be relieved of work required in the previous position when the detail or temporary promotion is in effect.

E. When possible, employees returning from detail will be returned to their same workstation occupied prior to the detail.

SECTION 5

Employees rating while on detail or temporary promotion will conform to Article 30 Performance Management Appraisal Program.

SECTION 6

The Employer retains the right to terminate a detail or temporary promotion at any time.

SECTION 7

The experience that employees obtain while on a detail or temporary promotion will be credited as experience either in the employees' current position or the position to which they are detailed, whichever is more advantageous to the employees, subject to qualification rules and principles.

ARTICLE 35: REASSIGNMENTS

SECTION 1

A reassignment is a permanent assignment of an employee from one bargaining unit position to another bargaining unit position without promotion, demotion or a break in service. Reassignments will be carried out in accordance with applicable law, government-wide rule or regulations and this Article. Involuntary reassignments and/or reorganizations that have a more than *de minimis* impact on working conditions (for example, involuntary reassignments involving a change in duty station within or outside of the local commuting area) require the Employer to comply with Article 3 procedures to bargain with the Union to the extent required by law. Notwithstanding this definition, the procedures set forth in this Article apply only to substantive Reassignments; they do not apply to personnel actions that are denominated "reassignments" but are only technical in nature (e.g., those that change a position description number, etc.) or to changes to an employee's official duty station as a result of remote work.

Where reassignments impact classification matters, such as changes to job series, grade, or position descriptions, the parties shall provide notice as required by Articles 3 (to the extent required by law) and 32 of this Agreement.

SECTION 2: Management Directed Reassignments

A. The Employer has the right to reassign employees. In doing so, the Employer will make reassignments to appropriately classified jobs at the appropriate grade levels. The Employer's decision to reassign will be a bona fide determination based upon legitimate management considerations. The Employer will give reasonable consideration to assertions by the employee that the reassignment will cause undue personal hardship. Reassignment will not be used as punishment, in lieu of disciplinary action, or based on personal favoritism or retaliation.

B. The Employer will make efforts to minimize the adverse impact on employees involuntarily reassigned under this article.

C. The Employer will provide notice to the appropriate local NTEU Chapter, or to NTEU National if employees in more than one chapter are impacted, of Employer-directed reassignments concurrent with notice to employees.

D. The Parties agree that decisions concerning reassignments will take into account the goals of increasing career-related flexibility and mobility and minimizing the need for involuntary reassignments.

SECTION 3: Voluntary Reassignments

A. When the Employer decides to fill a position through voluntary reassignment, the Employer will make the reassignment opportunity known to qualified employees via a ten (10) calendar-day notice on the Agency's e- mail system, unless it has otherwise announced the vacancy through a merit promotion announcement. This is understood by the parties to allow other qualified employees to submit for consideration for the reassignment opportunity and expresses that the

employer shall consider their submissions prior to affecting the reassignment. The Employer will make its selection known to employees who expressed an interest.

B. Employees in identical positions, e.g., same title, series, grade, and qualifying experience may request to exchange positions with one another so long as they do not request payment of moving expenses from the Employer. Approval or denial of any such request will be in the Employer's sole discretion, but will not be done arbitrarily, capriciously, or for discriminatory reasons.

SECTION 4: Employee Suggestions

Employees are encouraged to make recommendations to their supervisors on improvements in the structure of positions in the unit and to express their interest in being considered for the positions they are suggesting, if such positions are established in the future. The supervisor will give reasonable consideration to such suggestions.

SECTION 5: Abolishment of Incumbent's Position

The Employer agrees that when employees have been reassigned due to the abolishment of their position, they will be given priority consideration if that position is reestablished within one (1) year. To receive priority consideration, the employees must timely apply for the position and clearly indicate that they held the position when it was abolished. Priority consideration means that the employee alone must be given bona fide consideration by the selecting official, based on legitimate job-related criteria for the position to be filled, before any other candidates are referred for consideration.

SECTION 6: Involuntary Reassignment: Change in Duty Station

When an involuntary reassignment (Management Directed Reassignment) involves a change in duty station outside of the local commuting area, the Employer agrees to give the employee forty-five (45) days' advance notice. When an involuntary reassignment involves a change in duty station within the commuting area, the Employer agrees to give the employee at least fourteen (14) calendar days' advance notice. Also, the Employer agrees to give the employee a form SF-50, a copy of the position description of the reassigned position, and a summary of the duties. The Employer will further identify the employee's supervisor and post-of-duty.

SECTION 7: Procedures for Involuntary Reassignments

A. Involuntary Reassignments

1. The Employer will identify position, as opposed to employees, from which the reassignment will come;

2. the employee(s) will be given choice of position if more than one position exists; and

3. the Employer shall give employees all necessary information at the time of notification, i.e., relocation expenses information, pay, position description, retirement information, and separation information.

B. The Employer will then identify within the group of positions those employees who are best suited to fill the position. In determining who is best suited, the Employer will apply factors such as, but not limited to:

   1. The Employer's need to develop a balance of experienced and trained employees and obtain the most effective distribution of needed skills and other necessary characteristics.

   2. Qualifications and skills needed for an employee to adequately perform in the position.

   3. Cost effectiveness, workload considerations, and staffing balance; and

   4. Whether a candidate for involuntary reassignment has previously experienced other involuntary reassignments.

SECTION 8: Training

The Employer will timely provide adequate and appropriate training for the reassigned employee, if necessary. In addition, a reasonable amount of time will be allowed the employee in which to become proficient in new duties.

ARTICLE 36: MERIT PROMOTION/ OTHER ACTIONS

SECTION 1: Scope

A. This Article applies to bargaining unit positions. It is agreed that all merit system principles apply to bargaining unit positions, and all other personnel actions set forth in Section 2 below, will be made using systematic and equitable procedures on the basis of merit and from among properly ranked and certified candidates or from other appropriate sources without regard to race, color, sex, national origin, marital status, age, religion, sexual orientation, labor organization affiliation or non-affiliation, or non-disqualifying physical handicap. This Agreement takes precedence in promotions to bargaining unit positions over any conflicting document, policy, or plan.

B. For the purpose of this Article, "internal positions" are defined as HHS bargaining unit positions as described in Article 1.

C. Consistent with 5 CFR Part § 335, this Article applies to all placement actions within the bargaining unit except those specifically excluded by Section 2B below.

SECTION 2: Applicability and Exclusions

A. When merit promotion procedures are to be used, it is understood that this Article applies to all merit promotion actions to bargaining unit positions not specifically excluded in Section 2B. below. In accordance with 5 CFR § 335.103(c)(1), competitive personnel actions include:

1. Filling a position by promotion;

2. Temporary promotions in excess of 120 days to higher graded positions (prior service during the preceding 12 months under noncompetitive time-limited promotions and noncompetitive details to higher graded positions counts toward the 120-day total);

3. Reassignment or demotion to a position with more promotion potential than a position previously held on a permanent basis in the competitive service;

4. Transfer to a higher-graded position or a position with more promotion potential than a position previously held on a permanent basis in the competitive service;

5. Reinstatement to a permanent or temporary position at a higher grade or with more promotion potential than a position previously held on a permanent basis in the competitive service when the individual did not wait 1 year or more after separating from Federal employment before applying for reinstatement, or did not receive a rating of record for the most recent career or career-conditional position of at least Fully Successful (or equivalent);

6. Selection for training which is part of an authorized training agreement, part of a promotion program, or required before an employee may be considered for a promotion as specified in 5 CFR § 410.302;

7. Selection for details for more than 120 days to a higher-grade position or to a position with higher promotion potential (prior service during the preceding 12 months under noncompetitive details to higher graded positions and noncompetitive time-limited promotions counts toward the 120-day total); and

8. For excepted service positions: competitive promotions and temporary promotions of more than 120 days in an excepted service position if the promotion is to an above journey level grade.

B. The competitive procedures set forth in this Article will not apply to the following:

1. A temporary promotion for 120 days or less;

2. A detail to a higher-graded position or one with known promotion potential for 120 days or

3. Promotion resulting from upgrading of a position without significant change in duties and responsibilities due to issuance of a new classification or the correction of a classification error;

4. A position change permitted by reduction-in-force regulations;

5. Promotion within a career ladder or from a trainee position for which competition was held at an earlier date;

6. Promotion of the incumbent of a position that is reclassified at a higher grade due to the accretion of additional duties and responsibilities;

7. A career ladder promotion following the non-competitive conversion of an employee who successfully completed the Pathways Programs, when the career ladder/full performance level was included in the initial job opportunity announcement and the employee meets time in grade and the established qualification requirements for the proposed position;

8. Selection, through exercise of priority consideration right, of a candidate who was not given proper consideration in a prior competitive promotion action;

9. Reassignment, demotion, reinstatement, or transfer to a position having no higher promotion potential than the potential of the position the employee currently holds or previously held on a non-temporary basis;

10. Promotion of an employee to a grade previously held on a permanent basis, provided that the employee was not demoted or removed for personal cause; and

11. Selection from the HHS re-employment priority list.

SECTION 3: Area of Consideration

A. In the initial search for qualified applicants the minimum area for consideration will be sufficiently broad enough to ensure the availability of at least three high quality candidates, taking into account the nature and level of the position being announced.

B. The area of consideration may be restricted where circumstances necessitate the selection from a particular organizational element within the unit due to budgetary, staffing, or other constraints

SECTION 4: Bargaining Unit Employee Merit Promotion Vacancy Announcements

A. All positions which are filled through the competitive procedures of this Article will be publicized through vacancy announcements issued under the authority of the servicing Human Resources Center (HRC). All vacancy announcements, depending upon the area of consideration, will be posted on the Internet at https://www.usajobs.gov via mandatory posting of vacancies through the Office of Personnel Management (OPM). A copy of any announcement may be obtained by contacting the servicing HRC. FDA/ORA will continue to include information on available vacancies in FDA News and ORA News. Employees may voluntarily sign up for email alerts, if offered, when future vacancies are posted through the USAJOBS website. It is understood that HHS does not own or operate the USAJOBS network and is not responsible for any errors or other issues/concerns that arise from an employee's choice to receive email alerts. Vacancy announcements under this article allow current or former federal employees to apply for a vacancy without having to compete with the general public. These positions may be posted internal to the Agency (e.g., Center-wide, Division-wide, or Department-wide) or open both internally and externally to all eligible federal employees.

B. Vacancy announcements for bargaining unit positions under this Article will be open for a minimum of ten (10) workdays unless the Agency anticipates a large volume of applicants to exceed 100-150 during the announcement period, based on the prior volume of applicants for the same position using USA Staffing or comparable applicant tracking data. Where the Agency anticipates a large volume of applicants for a particularly popular internal position, they may use a 100 or higher applicant limit maximum as long as the limit is identified in the job announcement; the cut-off date will be 11:59PM on the date in which the applications reach the 100 or higher applicant threshold. All applications received on the cut-off date will be accepted and considered. HHS will share a list of the occupational series previously determined popular (i.e., those positions in which applications have exceeded 100) with NTEU National on an annual basis no later than January 15.

C. At a minimum, every vacancy announcement will comply with the requirements of 5 C.F.R. § 330.104 and include the following:

1. An estimate of the amount of travel, if applicable;

2. Bargaining unit status;

3. Organizational and geographic location;

4. Announcement Number

5. Opening and closing dates;

6. Position title, series, grade, and the number of positions to be filled;

7. Any known promotion/career ladder potential;

8. Applicable area of consideration;

9. Summary of major duties;

10. Summary of minimum qualification standards to be applied, along with any selective placement factors;

11. Evaluation methods and criteria to the extent appropriate;

12. Procedures for applying;

13. Statement of equal employment opportunity; and

14. Agency point of contact.

D. Vacancy announcements limited to Interagency Career Transition Assistance Plan (ICTAP) and Career Transition Assistance Plan (CTAP) only eligible employees may be opened for no less than 5 business days.

SECTION 5: Bargaining Unit Employee Excepted Service Vacancy Announcements

A. HR Centers must use recruitment methods that notify applicants of excepted service vacancies within their Division so that interested applicants have a reasonable opportunity to apply per 5 U.S.C. § 2301 and 5 CFR § 302.301. Notification options, include but are not limited to, notice on the HHS or OpDiv/StaffDivs website or LinkedIn of existing or future excepted service vacancies; notices provided at job fairs; or a traditional job opportunity announcements posted on USA JOBS.

B. Where the Agency elects to advertise on USA jobs, the following will apply:

1. Excepted service vacancy announcements for bargaining unit positions under this Article will be open for a minimum of ten (10) workdays unless the Agency anticipates a large volume of applicants to exceed 100-150 during the announcement period, based on the prior volume of applicants for the same position using USA Staffing or comparable applicant tracking data. Where the Agency anticipates a large volume of applicants for a particularly popular internal position, they may use a 100 or higher applicant limit maximum as long as the limit is identified in the job announcement; the cut-off date will be 11:59PM on the date in which the

applications reach the 100 or higher applicant threshold. All applications received on the cut-off date will be accepted and considered. HHS will share a list of the occupational series previously determined popular (i.e., those positions in which applications have exceeded 100) with NTEU National on an annual basis no later than January 15.

2. At a minimum, every vacancy announcement will include the following:

   a. An estimate of the amount of travel, if applicable;

   b. Bargaining unit status;

   c. Organizational and geographic location;

   d. Announcement number;

   e. Opening and closing dates;

   f. Position title, series, grade, and the number of positions to be filled;

   g. Any known promotion/career ladder potential;

   h. Applicable area of consideration;

   i. Summary of major duties;

   j. Summary of minimum qualification standards to be applied, along with any selective placement factors;

   k. Procedures for applying;

   l. Evaluation methods and criteria to the extent appropriate;

   m. Statement of equal employment opportunity; and

   n. Agency point of contact.

3. OpDivs/StaffDivs must provide reemployment consideration to former HHS excepted service employees registered on HHS Priority Reemployment List (PPL) when filling excepted service positions. Qualified candidates on HHS PRL must be given selection priority before referring the names of other qualified candidates (5 CFR § 302.304(a)).

SECTION 6: Application Process

A. Employees who wish to be considered for a posted vacancy must apply by submitting information and/or documents required in the vacancy announcement. Applicants will be informed in the vacancy announcement that performance appraisals of record will be used as a supporting document to demonstrate ability to perform the KSAs, as required by 5 CFR § 335.103(b)(3). Employees may submit a statement that they are challenging the appraisal, and

may also include a rebuttal statement regarding the most current performance appraisal. The Employer will consider the materials submitted with the application.

B. To be considered for a vacancy, candidates must submit all required application material in such a way that the information provided is complete, accurate, legible, and timely. The automated staffing system will send an email confirming receipt of an employee's application.

C. In order to be considered under the automated staffing system, applicants must transmit an electronic application, and all required supplemental materials via the automated staffing system website before midnight Eastern Standard Time (i.e., by 11:59 P.M. Eastern Standard Time) on the closing date stated in the vacancy announcement. If sending an electronic application poses a hardship, applicants may contact the Agency point of contact listing in the vacancy announcement prior to the closing date for assistance, including reasonable alternate accommodation for submitting the application. HHS is an equal opportunity employer and has an established process in place to accommodate applicants with disabilities. Employees requiring reasonable accommodation for any part of the application process should follow the instructions in the job opportunity announcement. Determinations on reasonable accommodation requests are made on a case -by-case basis. For HHS personnel, such assistance under this paragraph will be on duty time.

SECTION 7: Evaluation Procedures

A. The Employer agrees that selective placement factors will only be used when they are essential to the successful performance of the position. In such cases they will constitute a part of the minimum requirements of the position and must be stated in writing. A copy of any selective placement factors will be retained in the merit promotion file. Candidates will be evaluated against basic eligibility and qualification requirements, selective placement factors (if applicable), and other appropriate criteria established for the position.

B. The servicing HRC will determine which applicants meet the established minimum qualifications requirements for the position at each announced grade.

SECTION 8

A. Rating and ranking of applicants will normally be accomplished by use of the automated staffing system.

The initial screening of candidates to determine eligibility (i.e., "minimally qualified") will be accomplished through the automated self-certification process in which the applicant will respond to a series of ranking questions included in the vacancy announcement. A score based on those responses will determine eligibility for further consideration. Applicant scores are subject to adjustment based on an evaluation by a Human Resources Center representative or designated management official that the applicant's self-rating is not appropriate. Any representative or official that makes adjustments must have knowledge of the position being filled and must not be a supervisor over the position, including selecting and recommending officials. A complete record of any adjustments, including the date of an adjustment, the reasons therefore, and the

name/title of the individual making the adjustment(s), will be maintained in the automated staffing system data base, a copy of which is available for the affected employee's review.

In the event that the automated staffing system is not available or for other business reasons it is not used, all applicants found to be minimally qualified will then be rated and ranked by an HRC representative or a panel that will consist of at least two individuals, one of whom may be designated the chairperson. Insofar as practicable, panel membership will include representation of women, minorities, and/or handicapped employees. A representative of the servicing HRC will be available to provide advice and assistance to the panel. At least one panel member must have knowledge of the position being filled. All panel members will hold positions at or above the full performance level of the vacant position. Supervisors over the position, including selecting and recommending officials, will not serve as panel members.

B. Candidates using the automated staffing system will be evaluated and ranked on the basis of their responses to assessment questions relating to the job analysis and crediting plan that are needed for successful job performance in the position. Automated staffing system questions must be closely related to the principal duties of the position. It is understood that automated staffing system questions will be developed and selected for every position prior to announcing the vacancy.

   In the event that the automated staffing system is not available or for other business reasons, it is not used, candidates will be evaluated based upon the KSAs developed from the job analysis and crediting plan their which are needed for successful job performance in the position. KSAs must be closely related to the principal duties of the position. It is understood that KSAs for every position will be developed prior to announcing the vacancy.

SECTION 9: Rating and Ranking

A. Under the automated staffing system, all applications will be rated by the system and the servicing HRC representative will evaluate all job-related information submitted by the highest ranking candidates (a) to ensure that the applicants meet the minimum qualifications requirements and, (b) support their responses to the automated staffing system questions in their resumes and narrative responses.

B. All candidates for promotion will be rated and ranked consistent with law, rule, regulation and this agreement.

C. Under the automated staffing system, applicants will be tentatively rated and ranked on the basis of their own responses to the ranking questions contained in the vacancy announcement. These initial scores may be subject to adjustment pursuant to the procedures outlined in Section 7A.

D. In the event the automated staffing system is not available or, for other business reasons, is not used, candidates will be ranked according to their rating scores assigned by the panel or HRC representative When a panel is used, the total scores assigned by individual panel members will be averaged to arrive at the final rating for each candidate. Where possible, rating and ranking officials will document the basis for their various assessments, and this documentation will be maintained by the servicing HRC in the merit promotion file for the position.

E. Anyone present during QRB deliberations is prohibited from divulging to any unauthorized person, including the selecting official, any of the following; contents of rating and ranking worksheets, QRB deliberations, and the numerical scores assigned to candidates. If any QRB member violates this provision, the Employer will take appropriate action.

SECTION 10

A. Priority Consideration

1. CTAP/ICTAP/RPL - The HRC will identify any qualified applicants who are entitled to selection priority under the Career Transition Assistance Plan (CTAP), the Interagency Career Transition Assistance Plan (ICTAP) and/or the HHS Reemployment Priority List (RPL), in accordance with 5 CFR § 330 Subparts B, F, and G. These candidates must be given priority selection for vacancies unless the personnel action is one of the exceptions listed in federal regulations (5 CFR §§ 330.211; 330.609; and 330.707), or as indicated in subsection 9A2 below.

2. Priority Consideration due to administrative error. If employees was erroneously omitted from the "best-qualified" list or otherwise was not given proper consideration, they will receive one priority consideration for the next appropriate vacancy. (Selection priority is first given to any CTAP/ICTAP/RPL candidates, unless the action is required by the settlement of a formal complaint, grievance, appeal or other litigation, or an exception listed in 5 CFR § 330.211, 5 CFR § 330.609, or 5 CFR § 330.707.) Priority consideration provides for referral of the employee's name and application to the selecting official before referring other candidates. Further, retained employees are also referred as Priority Consideration candidates, but these employees do not "lose" the entitlement if they are not selected. Priority consideration does not provide a selection entitlement. It means that employees are not required to compete with other employees for promotion; their selection may be processed as an exception to this Article's requirements.

   In the event that two (2) or more employees are entitled to priority consideration for the same vacancy, they shall each receive priority consideration, as follows:

   a. If the employees became entitled to priority consideration as a result of separate promotion actions, the employee first entitled shall receive the first priority consideration,

   b. If the two (2) or more employees entitled to priority consideration became entitled as a result of the same promotion action, the employee with the highest score will receive the first priority consideration. If there is a tie, management will give consideration to each employee.

   c. If two (2) or more employees are referred for priority consideration, and one (1) is selected before the selecting official reviews the application(s) of the other(s), then the employee(s) who was/were not considered will retain the right to a single priority consideration for the next appropriate vacancy. The next appropriate vacancy for purposes of priority consideration is the next vacant position requiring the same or

similar qualifications, at the same grade and with comparable promotion opportunities as the position for which the employee failed to receive proper consideration.

d. Employees who received priority consideration and are not selected will be given, upon request, a written explanation of why they were not selected for the position.

SECTION 11: Selection Process

A. If the vacancy is not filled using priority consideration or CTAP/ICTAP procedures, the HRC will furnish the selecting official with the names of candidates available for selection.

B. If no selection is made pursuant to subsection A1, the full best-qualified list will be referred to the selecting official with applicants' names listed in alphabetical order. Indian Preference (25 U.S.C. § 5117) will be followed for Indian Health Service vacancies.

C. Notwithstanding the above, the employees whose point score would place them in a tie for the final position on the "best qualified list" will also be referred to the selecting official.

D. Other qualified applicants, not rated and ranked, who wish to be considered for either reassignment, voluntary change to lower grade or re-promotion will be referred separately from the best-qualified candidates, as well as other non-competitive candidates eligible under various other appointing authorities.

E. The selecting official will make a selection without personal favoritism, without discrimination, and without consideration of non-merit factors. An employee's balance of annual or sick leave may not be used by a selecting official as a reason for selection or non-selection of that candidate. Any selection technique utilized by the selecting official will be uniformly applied to all BQ applicants referred to the selecting official.

F. The selecting official will make the decision to select or not to select as soon as possible.

G. Alternate or additional selections may be made for an internal bargaining unit position from the properly-issued best-qualified list of candidates as soon as possible, and generally, not later than 120 days, but may be extended for up to 180 days, from the issue date of the promotion certificate where vacancies remain or occur within the 180 days if:

1. The original selectee declined or vacated the position; or

2. Additional positions are established or become vacant with the same title, series, and grade, which are in the same geographic location (commuting area) as the position announced and are to be evaluated under the same rating schedule or credit plan criteria.

Nothing prevents the Employer from readvertising a position prior to the end of the certificate.

By January 31 of each year, the Employer will provide National NTEU with information identifying all selection certificates that have been extended beyond 120 days, including a copy

of the vacancy announcement and the OpDiv in which the certificate was extended, and the number of bargaining unit employees selected during the extended period of time.

SECTION 12

Selected employees within HHS will normally be released for promotion to the new position at the beginning of the first pay period that occurs two (2) full weeks after the releasing official has been notified of the selectee's official offer and acceptance of the position. Compelling reasons may delay the reporting date; in such a situation, the promotion will be effected on the earliest feasible date

SECTION 13

A. To the maximum extent possible, applicants applying for bargaining unit positions through the automated staffing system will be notified via email of the results their application after a selection is made.

B. Unsuccessful applicants may consult and/or obtain advice from their servicing HRC specialists concerning specific qualifications needed for desired positions and/or first-line supervisors concerning ways to enhance one's qualifications for positions under their supervision. This does not bar the use of the HHS Work Life Center where available to employees.

C. Following completion of the selection process and upon written request to the servicing HRC, employee applicants will be provided the following information about a position announced under this Article for which they applied in a timely manner:

   1. Whether or not they met the minimum qualification requirements for consideration;

   2. Whether or not they ranked in the group from which final selection was made (the "best-qualified" list); and

   3. the name(s) of the selectee(s) for the position.

If employees are promoted to a position in the bargaining unit and subsequently, within a year, are demoted for inability to perform at the higher level, the Employer agrees to make reasonable efforts to return the employees to a position equivalent to the one they held before the promotion occurred, whenever practical.

SECTION 14

A. The Employer will maintain required records in merit promotion files for at least two (2) years.

B. Upon completion of the selection process and submission of a written request to the appropriate management official, a Union representative will be allowed to review any necessary and relevant information concerning the promotion, (except crediting plans) including the merit promotion file, in accordance with applicable law, rule, regulation and this agreement.

C. The Union agrees to respect the confidentiality of merit promotion action information and to divulge it only to the extent necessary to fulfill its representational duties properly. If a grievance is filed concerning a merit promotion action, the Employer will provide the Union, upon its written request, with a copy of relevant and necessary documents in the merit promotion file, in accordance with applicable law, rule, regulation, and this Agreement.

D. Crediting plans and rating schedules are considered highly sensitive documents by the Federal government, release of which is likely to give candidates an unfair advantage in, and/ or significantly compromise the purpose and utility of, the competitive selection process. For that reason, they are generally not released to anyone except those individuals who perform a direct role in a specific selection process. Notwithstanding the above, the Employer agrees to make a case-by-case determination as to whether releasing a given crediting plan or rating schedule to the Union, upon its request, would be appropriate, regardless of the basic policy against releasing such documents. If the Employer decides not to provide access to a crediting plan or rating schedule upon the Union's request, that decision will be sent to the union in writing, specifying the reasons for denying access.

SECTION 15

If the Employer decides to release a crediting plan or rating schedule to the Union upon its request, the Union agrees not to disclose the content of the crediting plan or rating schedule to any other bargaining unit employees.

SECTION 16

Although career advancement is the intent and expectation in the career-ladder system. promotions within career ladders are neither automatic nor mandatory. However, career ladder promotions will be made when:

A. an employee's performance demonstrates the potential or ability, as determined by the supervisor, to perform the duties at the next higher grade level;

B. The current performance appraisal rating is at the "fully successful" level or higher.

C. The employee meets minimum time in grade and qualification requirements;

D. there is available work of the higher grade level; and

E. The promotion is not precluded due to budgetary constraints.

Career ladder promotions will be effective at the beginning of the first full pay period following a determination by the Employer that the employee has met the above criteria.

Grade Retention

Employees who are downgraded as the result of a position classification review will be afforded consideration for re-promotion in accordance with 5 CFR § 536.101. Regulations provide that when

employees are placed in a lower graded position as a result of a reclassification, the employees are entitled to grade retention if the position from which they are placed had been classified at a higher grade for a continuous period of at least 52 weeks immediately before the placement.

Grade retention may last for two (2) years.

Pay Retention

1. Pay retention must be granted to an employee whose basic pay would otherwise be reduced as result of reclassification when the employee does not meet the eligibility requirements of grade retention, in accordance with 5 CFR 536 and applicable law.

2. Employees' entitlement to pay retention will not terminate if they do not apply for a vacancy announcement. However, in accordance with 5 CFR § 536.308, if the employees decline a reasonable offer of a position, they will lose pay retention entitlement.

SECTION 17

A. Nothing in this Article precludes an employee from applying for HHS positions announced both internally and externally.

B. The Employer will post internal vacancies on an automated hiring system and will provide information and web links for employees to access that system.

C. For each calendar year, the Employer will provide NTEU National with an accounting of the number of bargaining unit announcements by grade and series, as well as the total number of internal hiring actions of bargaining unit positions filled by bargaining unit or by non-bargaining unit employees by February 15.

ARTICLE 37: PROBATIONARY EMPLOYEES

SECTION 1

A. The probationary period is a final and highly significant step in determining an employee's suitability for Federal service. During the probationary period an employee's conduct and performance will be observed; a background investigation will be conducted; and an employee may be separated from the Federal service without notice for conduct and/or performance failures without undue formality.

B. It is recognized that new employees may require additional assistance and/or counseling during their probationary period. To be retained, employees must be able to demonstrate their ability to perform successfully the duties assigned and to maintain acceptable conduct (as identified in the HHS Standards of Conduct) for a Federal employee. Probationary employees are held to the same standards as other employees.

SECTION 2

Probationary employees' performance reviews and instruction will be consistent with Article 30. Employees are encouraged to discuss and receive updates on their performance with their supervisors.

SECTION 3

A. When the Employer determines that a probationary employee is to be terminated for performance reasons, the Employer will notify the employee of the termination. A written notice will be provided to the employee. Generally, a written notice will be provided to the affected employee fourteen (14) calendar days in an advance of the termination date. The Parties agree that some circumstances would not warrant advance notification. Those situations are but not limited to:

    1. When to do so would extend the period of employment beyond the probationary period; or

    2. It has been determined by the Employer that it is not in the interest of the Agency to maintain the employee on the roles during the advance notice period.

B. Probationary employees may elect to submit a voluntary resignation in lieu of termination at any time prior to the end of the business day on the date of their termination. If the probationary employee voluntarily resigns, the employee's Official Personnel Folder will only reflect the voluntary resignation. The employees will receive a copy of the termination SF-50, Notification of Personnel Action form, if they provide a valid forwarding address.

C. If probationary employees believes that their termination is based on discrimination, the employee may pursue established Equal Employment Opportunity (EEO) complaint procedures.

ARTICLE 38: EMPLOYEES WITH TEMPORARY DISABILING CONDITIONS

SECTION 1

A. Employees recuperating from illness or injury who are temporarily unable to perform the full range of official duties may submit to their immediate supervisor a written request for a temporary assignment (not to exceed thirty (30) calendar days initially, additional time to be considered as appropriate) to duties commensurate with the limitations resulting from the illness or injury. Such request will be accompanied by a medical certificate which will assist in establishing the duty limits for the employee. A medical certificate means a written statement signed by a licensed physician or other practitioner certifying to the incapacitation, examination, or treatment, and to the period of disability. Upon receipt of the employee's written request, accompanied by the medical certificate, the Employer agrees to make a reasonable effort to assign duties to the employee, in accordance with applicable law, rule and regulation.

B. The Employer will respond to an employee's request for a temporary assignment within ten (10) workdays of the receipt of the request with the accompanying medical certificate. If additional time is necessary to respond to the request, the reasons for the delay and the approximate time frame for the response will be provided to the employee in writing, if requested. The Employer may request additional medical documentation in accordance with 5 CFR § 339. The request for additional medical documentation will be made to the employee or their physician. However, in cases where the documentation is requested from the employee's physician, the Employer's medical consultant will make the request.

C. If the request for a temporary assignment is denied, the reason(s) for the denial will be provided to the employee in writing, if requested.

D. All medical documentation acquired under this Article, whether submitted by the employee or obtained through medical examinations, will be treated confidentially and the Employer will observe all requirements of the Privacy Act and other appropriate legal authorities. Medical documentation will be maintained in accordance with applicable provisions of 5 CFR § 293 and 5 CFR § 297.

SECTION 2

After thirty (30) calendar days, if the employee still requests a temporary assignment, the Employer may, in accordance with 5 CFR § 339, require medical documentation to justify the extension of the temporary assignment.

SECTION 3

An employee experiencing health-related problems potentially attributable to working at a computer and/or an associated workstation will promptly inform the Employer (either directly or through the Union) in writing of all pertinent details. The Employer, in conjunction with the Employer's ergonomic consultant(s) (e.g., FOH) or consulting physician(s), as appropriate, will expeditiously undertake to determine whether the ergonomic adjustments might resolve documented problems and will implement

reasonable measures. If those measures do not correct the problem, the employee may submit medical documentation, in accordance with 5 CFR § 339, for the Employer's further consideration. If review of the documentation by the Employer's consulting physician supports a determination that damage to the employee's health will likely result from continued work on the computer and/or on associated workstation, the Employer will attempt either to take further reasonable measures at the employee's workstation or, where reasonably practical to reassign the employee to other appropriate work. The Employer may, at its option, offer a voluntary medical examination in such circumstances. Nothing in this Section is intended to alter either an employee's right to request, or the Employer's duty to respond to a request for reasonable accommodation of a qualified handicapped individual's documented disabling condition.

SECTION 4

The provision of Section 1 above does not preclude an employee from filing an application for disability retirement or workers compensation, if appropriate, at any time.

ARTICLE 39: TEMPORARY AND TERM APPOINTMENT

SECTION 1

The purpose of this Article is to clarify the rights of term employees and temporary employees where those rights may not be clear elsewhere in the Agreement.

SECTION 2

In accordance with 5 CFR § 316, Temporary and Term Employment, for purposes of this Agreement, mean the following:

A. A temporary appointment is one for a period not to exceed one (1) year; the appointment may be extended up to a maximum of one (1) additional year, for a total of no more than twenty- four (24) months of service where the need for an employee's services is not permanent.

B. A term appointment is one for a period of more than one (1) year, when the needs of the service so require and the employment need will last for a limited period of four (4) years of less. The Employer may make either type of time-limited appointment in appropriate circumstances where the need for an employee's services is not permanent.

C. Reasons from making a term appointment include, but are not limited to, project work, extraordinary workload, scheduled abolishment, reorganizations, contracting out of the function, uncertainty of future funding, or the need to maintain permanent positions for placement of employees who would otherwise be displaced from other parts of the organization.

SECTION 3

When employees are given time-limited appointments, they will be advised on the Notice of Personnel Action form (SF-50) of the specific "not to exceed" duration of the appointment (referred to in this Article as the "anticipated expiration date" of the appointment).

SECTION 4

The Employer will provide written notice to persons hired under time-limited appointments that they do not acquire competitive status from the appointment, and that they may not be converted to either career conditional or career status without appropriate examination and competition. However, veterans having a compensable service-connected disability of thirty (30%) percent or more are eligible to be converted to career or career-conditional appointments from the term appointments not limited to sixty (60) days or fewer. Such conversions or appointments are subject to existing laws and regulations in effect at the time the conversion or appointment is made.

SECTION 5

The Employer will give temporary and term employees whatever instruction it deems necessary on the duties assigned to them. Any out-of-office training requests by such an employee are subject to applicable budgetary constraints and workload and optimal staffing considerations.

SECTION 6

Term employees will be accorded all benefits and privileges to which they are entitled under applicable laws and regulations. For example:

A. Term employees serving in positions subject to the General Schedule are eligible for within-grade increases in accordance with government-wide regulations.

B. Term employees are eligible for certain benefits in accordance with government-wide regulations. Term employees should contact the Servicing Human Resources Center to discuss benefits for which they are eligible.

SECTION 7

The employment of a term employee ends automatically on the anticipated expiration date of her/his term appointment (as stated on the SF-50), unless the employee is separated prior to that date. Once they have completed a one (1)-year trial period, term employees in competitive appointments who are involuntarily separated prior to the anticipated expiration date of their appointments, for reasons other than completion of the project or lack of work, are entitled to the adverse action or unacceptable performance action appeal procedures of this Agreement.

SECTION 8

A. A temporary employee's appointment may be terminated before the anticipated expiration date of her/his appointment (as stated on the SF-50) due to reasons including, but not limited to, lack of funds, lack of work, or for cause.

B. Where possible, these temporary employees will be given two (2) weeks advance notice prior to the termination of their appointment. Termination for cause may be effectuated without any advance notice.

C. Any termination will be reflected in a written notice, setting forth the reasons for the action and applicable appeal rights, and notifying the temporary employee of her/his option to resign. A temporary employee may not grieve her/his termination under the negotiated grievance procedure in Article 45 unless a prohibited personnel practice is alleged.

ARTICLE: 40 PART TIME EMPLOYEMENT AND JOB SHARING

SECTION 1

The Employer and the Union recognize the principles of the Public Employees Part-Time Career Employment Act, 5 CFR Part 340, which provides for the expansion of part-time employment opportunities in the Federal Service. Accordingly, the Parties acknowledge that employees may desire to request part-time employment for personal reasons such as family responsibilities, education, retirement transition, handicap, etc. Part-time employees are entitled to the benefits enjoyed by full-time employees to the extent provided by applicable laws and regulations.

SECTION 2

A. To be considered part-time for purposes of this section an employee must have a regularly scheduled tour of duty, set in advance, of at least sixteen (16) hours but not more than thirty-two (32) hours in each administrative workweek except as otherwise provided in this Article.

B.

1. It is the Employer's intention to make part-time and job sharing opportunities available to the maximum extent possible, consistent with the Employer's mission requirements, for positions through GS-15. Accordingly, the Employer will seriously consider an employee's requests for part-time employment and job sharing. The employee's request may be granted consistent with workload, budget, and ceiling requirements.

2. The Employer recognizes that part-time career employment and job sharing may be particularly appropriate for the following classes of employees:

    a. older employees seeking a gradual transition into retirement;

    b. handicapped individuals and others who require a reduced workweek;

    c. parents who must balance family responsibilities with the need for additional income; and

    d. students who must finance their own education and training.

SECTION 3

A. An employee may make a written request to work part-time. When employees request to work part-time, they will submit a written certification to the supervisor indicating that:

1. the request is voluntary;

2. the employees understands that they have no right to return to full-time work;

3. and they have investigated and understand the impact of this change on health benefits, leave, holidays, pay, experience credit, and retirement.

SECTION 4

Denials of requests for any part-time employment or from any employees to share a position will be discussed with the employee and, upon request by the employee, the employee will be provided with a written statement with the specific reasons for the denial.

SECTION 5

Except as otherwise provided in the Federal Employees Part-Time Career Employment Act of 1978 (PTCA), and in this Article:

A. the tour of duty for a PTCA employee will be no fewer than sixteen (16) and no more than thirty- two (32) hours per week;

B. the tour of duty for a PTCA employee on an alternative work schedule may be set on the basis of thirty-two (32) to sixty-four (64) hours per pay period, but must include at least one (1) hour in each administrative workweek; and

C. a PTCA employee's tour of duty will be documented on an SF-50.

SECTION 6

An increase of a PTCA employee's tour of duty above thirty-two (32) hours per week or sixty-four (64) hours per pay period is not permitted for more than two (2) consecutive pay periods.

SECTION 7

A. The Employer will not abolish any position occupied by an employee in order to make the duties of such a position available to be performed on a part-time or job sharing basis.

B. Section 6 above does not preclude the Employer from permitting a full time employee from voluntarily changing to a part-time work schedule.

SECTION 8

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

SECTION 9

Consistent with government-wide rules and regulations, a part-time employee receives a full year of service credit for each year worked (regardless of tour of duty) for the purpose of computing service for purposes of retention, retirement (except for annuity computation), career tenure, completion of probationary period, within-grade increases, changes in leave category, and time-in-grade advancement restrictions. However, credit for experience is pro-rated, based on the actual amount of time worked.

SECTION 10

Part-time employees will receive holiday pay only if they are regularly scheduled to work on that day and only for those hours regularly scheduled as work time. This does not include overtime work.

If a holiday falls on a non-workday, part-time employees are not entitled to an "in lieu of" holiday. If an agency's office or facility is closed due to an "in lieu of" holiday for fulltime employees, the agency may grant paid excused absence to part-time employees who are otherwise scheduled to work on that day.

SECTION 11

Upon request, the employee's servicing HRC will provide information to employees who are assigned to a part-time or job sharing position on the impact of this assignment on the following: retirement, RIF, health and life insurance, promotion, and step increases.

SECTION 12

Employees who accept a part-time position or schedule have no automatic right to change to full-time work, whether or not they formerly worked a full-time schedule. However, employees working part-time may request a full-time schedule in the same position. The Employer will give serious consideration to such requests from employees whose most recent performance rating of record is "fully successful" or better, subject to ceiling and budget constraints, workload needs, and competitive employment considerations. Where a request for change to full-time employment is rejected, the reasons for rejection will be explained upon the employee's request.

SECTION 13

The Employer will consider an employee's request to return to a full-time tour. Generally, the Employer may grant requests to return to the full-time position if the employee submits a written request within thirty (30) days of the conversion to part-time. If a request is denied, the employee will be told the reasons for the denial. The reasons will be given in writing, at the employee's request.

ARTICLE 41: TRAINING

SECTION 1

A. The parties agree that the training and development of employees is a matter of significant importance to fulfilling the mission of the Employer. Training and career development are, however, a shared responsibility between the Employer and each employee. The Employer and the Union recognize that each employee is responsible for applying reasonable effort, time and initiative to increasing her/his potential through self-development and training.

B. The Employer agrees to provide employees with training it deems necessary to assist them in the performance of official duties, subject to budgetary and workload considerations. Opportunities for such training will be provided in a fair and equitable manner, and in accordance with applicable laws and regulations in force at the time it is requested or given, keeping in mind the principles of equal employment opportunity. Employees may raise as a defense in a performance related action, when relevant, the failure by the Employer to make available training which the Employer deemed necessary for the performance of the employee's presently assigned duties.

C. Employees are encouraged to participate in professional activities of their occupation. The Employer will give consideration to requests to use annual leave, leave without pay, accrued compensatory time or credit hours, and/or duty time, as appropriate, to participate in professional meetings, conferences, or continuing education courses. The Employer will make a special effort to grant employee requests, absent workload exigencies, for time to take examinations, training, or continuing education courses directly related to conditions of continued employment.

D. As training opportunities become available, the Employer will provide training announcement information to bargaining unit employees about current training or educational programs provided by the Employer and, to the extent practicable, training available from other sources. This will normally be done via e-mail.

E. The Employer will select employees for training based on such factors as the organization's need for the new skills to meet organizational objectives, the employee's need for the training to acquire new skills to perform the duties associated with meeting the organizational objectives, and the employee's potential for successfully completing the training and applying the new learning to the job.

F. For training courses or conferences that are not specifically related to immediate organizational or employee needs, and when one (1), or some, bargaining unit employees may be allowed to attend, the Employer will solicit volunteers via email and select the most senior qualified volunteer (e.g., longest Federal Service Computation date). The Employer will take into consideration past attendance at similar training and/or conferences, subject to 1G and 1H below.

G. Where they have been permitted to do so in the past, employees will be permitted to hold their seniority entitlement for a period of two years or until each member of the workgroup

has had an opportunity to exercise their seniority, after which time they revert into the overall workgroup seniority roster.

H. Further, employees who were able to use their seniority to claim a training assignment in the past will continue to be permitted to do so. Once employees use their seniority to claim a training assignment, they will drop to the bottom of the list for a period of two (2) years or until all volunteers in the workgroup have had a training opportunity.

SECTION 2

The Employer agrees that where an employee is placed in a new job, the Employer will provide training that it deems necessary for the employee to perform the duties of the new position. When new technology or equipment is introduced in a unit and creates the need for different knowledge, skills, or abilities in that work unit, the Employer agrees, if practicable, to provide training to those employees directly affected.

SECTION 3

Nomination and/or selection of employees to participate in training and career development programs and courses will be in accordance with EEO guidelines, other applicable laws and regulations, and this Agreement.

SECTION 4

A. All training and related expenses must be approved and authorized in advance of the starting date of the training. Additional unanticipated appropriate and necessary costs related to training expenses may be submitted to the Employer for approval (e.g., tuition, books, appropriate fees, etc.).

B. In addition to the criteria utilized elsewhere in this Article, the following criteria shall apply:

1. The training will contribute to an increased ability to perform the current job or a job the employee has been assigned to fill, consistent with the mission of the Employer;

2. Comparable training is not available through HHS developed courses, and it would be too costly for HHS to develop a suitable program;

3. Reasonable inquiry has failed to disclose suitable, adequate, and timely programs being offered without cost by DHHS or other government agencies within the local area;

4. The course meets the needs of the employee and the Employer as well as or better than other courses of its nature which may also be available at that time;

5. The course is not being taken primarily for the purpose of obtaining a degree; and

6. Budgetary considerations permit.

C. Duty time will be granted to take authorized training provided that the employees absence would not create a workload problem and the employee is unable to go to the training during non-duty hours.

D. Employees may earn credit hours for non-mandatory training with advance supervisory approval.

E. Employees who are approved and authorized to attend other types of training are expected to maintain satisfactory attendance records and complete the course requirements.

F. Employees who fail to attend and/or complete training satisfactorily for which the cost has already been approved and authorized by the Employer shall reimburse the Employer for all tuition and related expenses that it incurred for such training. If the reason for non-completion of the training is compelling and/or beyond the employee's control, the Employer may waive this requirement.

G. Employees who are unable to attend training for which they have been authorized will inform their supervisor or applicable training coordinator(s) as soon as possible after becoming aware of the impediment to attendance. The Employer will act on this information in a timely manner to maximize opportunity for the Employer to make other arrangements (e.g., obtain a refund of fees paid, reschedule the training for another date the course is offered, substitute another employee into the course, etc.).

SECTION 5

A. If requested by the employee, the Employer will arrange for discussion of personal career development opportunities and goals. This may be accomplished not only through meeting(s) with the supervisor, but also, or in lieu thereof, using human resources personnel, contractors, etc., who have particular expertise on career development, assessment of skills and abilities, and matching of employees' interests with potential positions and careers.

B. Employees are encouraged to take initiative in their own career development, including the development of individual development plans (IDPs), as desired. Where IDPs are utilized, they should be established jointly between the Employer and the employee. The objectives of such a plan should be to address skills needed by employees in their current positions, to identify skills needed for advancement beyond the current grade level, and to prepare them for new career opportunities (e.g., new positions, re-engineered or reorganized positions, etc.). An IDP should establish a series of milestones and state the responsibilities of each party for their realization.

SECTION 6

When training being offered will lead to the promotion of a bargaining unit employee, selection for the training must be made in accordance with merit promotion procedures outlined in the Article 36, Merit Promotion/Other Actions, in accordance with applicable law and regulations.

SECTION 7

The Employer has determined to provide appropriate training to all employees whose positions are abolished or significantly reengineered as a direct result of organizational restructuring, work elimination, introduction of new duties, transfer of work, or implementation of new technology before expecting employees to perform new or greatly altered duties. Whenever possible, such training will occur or be identified and scheduled as soon as practicable. The need for additional assistance will be determined on a case-by-case basis.

SECTION 8

Upon specific request to the Employer and consistent with law, rule, and regulation, the Union will be provided with Employer-prepared periodic reports on training provided to employees.

ARTICLE 42: TRAVEL

SECTION 1

A. This Article is intended to be read in conjunction with the FTR and the HHS Travel Manual. If there is a conflict between the HHS Travel Manual and this Article, this Article governs.

B. Employees normally travel during their normal duty hours. To this end the Employer and employees will strive to schedule travel during the normal duty hours of traveling employees. Where consistent with official business needs, employees may travel on their own time if they so choose. Employees will incur any additional costs resulting from travel deviations for personal reasons.

C. In accordance with statute and government-wide rule and regulation, time spent in a travel status away from the official duty station of an employee is not hours of work unless:

1. the time spent is within the days and hours of the regularly scheduled administrative work- week of the employee, including regularly scheduled overtime hours; or

2. the travel:

    a. involves the performance of work while traveling,

    b. is incident to travel that involves the performance of work while traveling,

    c. is carried out under arduous conditions,

    d. results from an event which could not be scheduled or controlled administratively, including travel by an employee to such an event and the return of such employee from such event to the official duty station (5 U S C § 5542).

D. If, as determined by the Employer, circumstances require an employee's attendance on any day, at a time too early to permit travel on that day during the duty hours of the employee as approved by their supervisor, the employee may travel during normal duty hours on the preceding day. If the preceding day is a non-workday, an employee may request to travel during the normal duty hours on the first workday preceding the day in question. The request will be granted, unless it presents a substantial operational problem or approval of the request would be fiscally irresponsible due to any increase in costs to the Government. If the employee elects the above, then subsistence reimbursement will be limited to what the employee would be entitled to had the employee traveled on the non-workday preceding the day in question.

E. The Employer may require employees to alter their normal duty hours on the preceding workday in order to take advantage of common carrier departures, which would otherwise require travel outside the employee's normal duty hours at the end of the day.

F. If the Employer determines that travel on a non-workday is the most effective and efficient means for accomplishing the mission of the Agency and the scheduling of the meeting that the employee has to attend is outside the control of the Agency, then the employee may be required to travel on a non-workday. In such cases, the employee is entitled to compensatory time off for travel, consistent with Article 22 of this Agreement. If the meeting is within the control of the Employer, and it is administratively feasible, the HHS has determined that it will reschedule the meeting to avoid required travel on non-workdays.

G. The Employer will make a reasonable effort not to schedule an Employer-initiated event to begin at a time that would require travel outside of normal duty hours.

H. Employees at a Temporary Duty Station (TDS) who are prevented from returning during the normal duty hours may return that evening or the following day during normal duty hours.

I. The Employer will make a reasonable effort not to direct an employee to remain overnight at a TDS and travel the next day, if it is not a workday, unless the stay overnight is required by an event which cannot be scheduled or controlled administratively.

SECTION 2

The Employer participates in the contractor-issued charge card program established and administered on a government-wide basis by GSA. The parties bargained over the implementation of this program and agree to incorporate the MOU into this Agreement and have it apply to all employees. Employees identified by the Employer to participate in this program for official business travel must submit an application for the charge card to the contractor, subject to a credit check and, when approved for participation, must adhere to all rules and procedures of the program, consistent with the agreement.

SECTION 3

A. The Employer agrees to reimburse employees for authorized and approved per diem and transportation expenses incurred by them in official travel status. Employees traveling on official business are expected to exercise the same care in incurring expenses as would a prudent person when traveling on personal business. Allowances for those expenses will be paid in accordance with applicable Federal Travel Regulations (FTR) and this Article. Employees are responsible for all excess costs and additional expenses not subject to reimbursement.

B. The Employer will reimburse the employee for all reasonable personal services related to the official travel and tips given while in a travel status, not to exceed fifteen (15) percent of the service price charged or $2 where service is free. Consistent with the FTR, the Employer

will require receipts for authorized expenses in excess of $75, excluding lodging. Employees must also provide a reason, acceptable to the Employer, for failure to furnish a required receipt.

C. To the extent possible, employees will receive advance authorization for excess baggage fees, excluding personal baggage. Employees may submit, however, for reimbursement for excess baggage fees after the travel is completed if advance authorization was not obtained.

D. The Employer will reimburse employees for the reasonable use of a shuttle service or taxi to and from a carrier terminal.

E. After travel arrangements have been consummated, the Employer will not reduce the per diem or lodging rate for employees on long-term travel assignments (i.e., in excess of 90 days).

F. In the event employees need a temporary credit increase if they are traveling long-term or inter- nationally, the FDA will request a one-time increase for that trip from the travel card provider or provide the employee with a travel advance to cover the difference between the credit limit and estimated expenses.

G. When employees incur a minimum of 4 consecutive nights lodging on official travel, the Employer will reimburse employees for authorized laundry, cleaning, and pressing expenses equal to the number of travel days multiplied by $10. Receipts are required if the employee's total claimed laundry expenses are in excess of $75. Alternatively, employees may submit receipts for actual laundry expenses if they exceed the above amount. For CONUS travel, employees must be on travel for four or more nights. Employees on CONUS travel are not permitted to claim separate laundry expenses.

H. Consistent with Federal Travel Regulation Part 301-11, Subpart C, Reduced Per Diem the Employer may prescribe a reduced per diem rate lower than the prescribed maximum when:

    1. The agency can determine in advance that lodging and/or meal costs will be lower than the per diem rate;and

    2. The lowest authorized per diem rate is stated in the employee's travel authorization in advance of the travel.

I. Reasonable transportation costs to acquire food may be reimbursed when reduced per diem is in place due to availability of cooking facilities.

J. Employees may charge airfare for both domestic and foreign travel to government Corporate Travel Card.

K. Employees may elect to secure lodging that is more expensive, for personal convenience, but they must pay and are personally liable for (i.e., they will not be reimbursed) any and all excess costs over the authorized rate (including any excess taxes and fees. If such lodging is farther from the TDY location than other lodging available at the authorized rate, employee is personally responsible for any and all additional transportation costs incurred.

SECTION 4

Employees who are assigned to training or duty away from their regular duty station and who elect to return home during non-workdays will be reimbursed for travel expenses not to exceed the amount reimbursable had employees remained at the temporary duty station. The employees will notify their supervisor if they return to the regular duty station or home.

SECTION 5

When an employee in travel status becomes incapacitated by illness or injury and is expected to remain so for a significant period of time, the Employer will reimburse the employee for expenses incurred in returning to the employee's regular duty station. Allowances for expenses will be paid in accordance with applicable travel regulations.

SECTION 6

A copy of the FTR will be made available for employees to review upon request. A copy of the FTR is available for employee review on the OPM home page and on the Internet at www.gsa.gov/federaltravelregulation.

SECTION 7

A. When an automobile is to be used for travel, an employee may request authorization to use her/his POV in lieu of a government-owned, leased, or rented vehicle. Reimbursement will be made in accordance with government-wide regulations. If a POV is used solely for the employee's convenience or benefit, reimbursement for POV mileage may not exceed what the cost would have been to use the least expensive of a government-owned, leased, or rented vehicle. However, an employee may not be directed to furnish a POV for the convenience of the government.

B. The use of a POV will be authorized when the Employer determines it to be advantageous to the government. Reimbursement will be in accordance with current policy and practice.

C. Employees may provide estimates of mileage for travel authorizations, and actual odometer readings for voucher and payments for mileage.

D. Common carrier will be used whenever it is reasonably available, unless:

   1. The use of common carrier would interfere with the performance of official business;

   2. Such use imposes an undue hardship on an employee;

   3. The total cost of travel by common carrier would be greater than the total cost of performing the same travel by the other method proposed;

   4. The Federal Travel Regulation provides for some other mode; or

5. The employee requests and is authorized to use a POV.

If the employee elects not to travel by the method of transportation required by regulation, the employee is only entitled to be reimbursed for the lesser of her/his actual cost or constructive cost of the authorized method of travel.

E. The use of a government-owned, leased, or rented vehicle is subject to applicable law, rule, and regulation.

F. When two or more employees with different normal duty hours are traveling together by POV or government-owned, leased, or rented vehicle, the employees may, with prior supervisory approval, reach agreement as to the common duty hours for the day of travel. Absent such agreement, the Employer will determine the duty hours for that day.

SECTION 8

In accordance with the FTR and as soon as practical, the Employer will issue a notice of disallowance to the employee for any travel claim it disallows. Such notification shall be in writing (which includes email), shall clearly identify the basis for denial and shall advise the employee of applicable appeal rights.

SECTION 9

A. Travel vouchers must be submitted within five (5) workdays after completion of the trip or every thirty (30) days if the employee is in a continuous travel status. The Employer will make every effort to approve vouchers as timely as possible in order to assure employees have reimbursed funds available to pay their government credit card bill. If accurately and timely submitted, the Employer must process the claim within 30 calendar days after submission of a proper travel claim. The Employer will pay all late payment fees associated with untimely reimbursement of properly filed and submitted claims.

B. All advances not using the travel charge card must be accounted for on the employee's travel voucher submitted at the conclusion of the trip. Employees are required to repay any excess travel advance funds, normally within thirty (30) calendar days after the completion of the trip.

SECTION 10

The Employer will continue the existing FDA/NTEU travel gain sharing program. The parties will establish a labor-management committee to review the program and recommend the cost effectiveness of said program and expanding the program to the other OPDIVs. The parties may also decide by mutual agreement during the review process to terminate the program after 18 months of the effective date of this agreement should no substantial cost savings be realized.

SECTION 11

Foreign travel is integral to FDA's work obligations and commitment to public health. The FDA Voluntary Foreign Travel MOU of October 13, 2003 and MOU of June 11, 2003 on Mandatory Foreign Inspection Assignments and its successor are hereby extinguished and replaced in their entirety by the following FDA process for employees assigned FDA foreign travel assignments:

A. Foreign inspections will be fairly and equitably assigned to units and among qualified employees.

B. The FDA/ORA Office of Operations (OO), Divisions of Foreign Travel will quarterly generate an updated list of all qualified travelers to participate on international inspections. This list will be the first consideration for identifying employees to conduct foreign inspections.

C. The FDA/ORA Office of Operations (OO), Divisions of Foreign Travel will announce a list of available assignments to all non-cadre qualified employees on a weekly basis, or as otherwise necessary to obtain volunteers and/or to further efficient operations of the foreign travel program. All GS-12 and higher CSOs are considered eligible unless otherwise stipulated by their supervisor. Where there are sufficient volunteers, foreign trip will be assigned using seniority based upon HHS Entry on Duty date (EOD) unless the needs of the Agency require otherwise. These may include assignment needs for particular experiences, knowledge, skills, or abilities, or assuring that the Agency meets its business need to grow its pool of travelers. Once an employee is chosen for (and performs) the inspection, the employee's name then goes to the bottom of the inverse seniority list.

D. If no employees volunteers apply or are selected for the non-cadre foreign inspections, FDA/ORA Office of Operations OO, Divisions of Foreign Travel will issue assignments directly to field units to identify qualified personnel for available foreign trips based on the unit work plan obligations and listed employee expertise in the various product areas. When assignments are not made from among those employees who volunteered, foreign trips will be assigned using inverse seniority based upon HHS Entry on Duty date (EOD) unless the needs of the Agency require otherwise. These may include assignment needs for particular experiences, knowledge, skills, or abilities, or assuring that the Agency meets its business need to grow its pool of travelers. Once an employee is chosen for (and performs) the inspection, the employee's name then goes to the bottom of the seniority list. When the Agency makes an exception to regular or inverse seniority, it shall document the basis for the exception, which it will provide to the Union, on request.

E. Additionally, ORA/OO, Divisions of Foreign Travel will directly issue assignments to designated dedicated international inspectional groups and FDA staff stationed in foreign country per work obligations as necessary and concurrently with the volunteer process described above.

F. All assignments for work will be in accordance with Article 33 in the CBA. All qualified personnel may be expected to conduct a minimum of one (1) foreign inspection trip per year. Members of dedicated international inspectional groups are expected to focus all inspectional work performing foreign trips.

G. Contingent upon management approval, assigned employees may switch their scheduled foreign inspection assignment with an appropriately qualified counterpart within their unit.

H. If an employee assigned for a foreign inspection is unable to travel due to an emergency, unforeseen circumstance or medical condition, both the unit management and ORA/Office of Operations (OO), Divisions of Foreign Travel must be notified immediately. For employees with medical conditions, if accommodations cannot be made through exceptions to travel requirements, they may be considered "medically not qualified" for either a short term or long term basis. Unit management may excuse an employee for foreign travel upon written notification of valid extenuating circumstances that would prevent them from performing the foreign inspection. Notifications should be made within five (5) workdays of receipt of assignment, and any management denial will be made in writing to employee within (5) workdays of the request. Management will evaluate employees on long term 'medically not qualified' every six (6) months to determine status for performing foreign inspections.

I. Employees will be assigned a trip coordinator for all travel assignments and additional contact information will be provided to handle any necessary travel or required inspection changes before or during travel due to emergencies or other circumstances.

J. Employees that are required to take numerous short legs of a trip once they have arrived in the country where the foreign inspection is to occur may advise the travel planner as to their preferred mode of transportation for those legs of the trip.

K. Employees must complete the FDA/ORA International Inspections on-line web course or other available training prior to performing their first foreign inspection.

L. The FDA policies and procedures support the health, personal safety, and security of all travelers. All employees on official business are covered by the Federal Employees Workmen's Compensation Act for any work related injury or illness. To the extent permitted by law, FDA shall provide separate medical insurance or reimbursement for medical treatment while on foreign travel, if not otherwise covered by the employee's health insurance plan. FDA will continue to make every effort to assist in the transportation and providing medical assistance to foreign travelers when necessary.

M. Information regarding any travel warnings or alerts will be provided prior to travel. Travelers in countries with State Department warnings should check with their ORA/OO, Divisions of Foreign Travel trip coordinator regularly and will be provided a driver (where necessary) and/or company contact for employee(s) assigned to inspect the firm. Management will make reasonable efforts to ensure strict security practices are adopted for all employees in these types of countries.

N. The FDA will authorize business class travel in accordance with 41 CFR § 301-10/124(i) of the Federal Travel Regulations, and other applicable laws and regulations then in effect.

O. In accordance with government rules and regulations, employees will be allowed to process ATM transactions on their vouchers in order for them to avoid carrying excessive amounts of traveler checks or cash at any one time. This authorization will be stated on all foreign travel orders.

P. Up to fifteen (15) hours of overtime or compensatory time per week will be authorized in advance for workdays in excess of eight hours for all trips involving transoceanic travel. For all other trips (e.g., Canada and Mexico) employees will be authorized up to ten (10) hours per week for workdays in excess of eight (8) hours. All overtime and compensatory time must be requested and approved in advance.

Q. Cell phones, blackberries with cell phone capability, or calling cards will be available for at least one member of an inspection team.

R. The FDA will support and promote the foreign inspectional program as a viable mechanism for meeting the Agency's obligations through incentives such as:

1. Employees will be given a total of $300 of incentive pay for each standard foreign trip and work products that meet IOM requirements. If during the course of the standard trip, assignments are cancelled that result in a reduction in inspection time due to circumstances out of the employee's control while they are in travel status, the employee will receive the $300 award.

2. Employees will be given the option to use a total of six (6) hours per trip to be used before the foreign inspection trip in order to prepare for the trip.

3. Employees will be allowed to utilize an AWS and/or participate in the telework program for the first week upon return from the foreign inspection trip.

SECTION 12

Employees must use coach class accommodations for travel by airline or train, unless specifically authorized and approved in accordance with Federal Travel Regulations, to use a higher class of service ("premium class," which includes, e.g., first class and business class), consistent with government-wide regulations and the HHS Travel Manual.

SECTION 13

Leave in conjunction with travel must be approved in advance and reflected on the travel order (Emergency situations arising during travel, such as sudden illness, must be raised with an appropriate management official and any extended leave must be approved). An employee may be permitted to take up to two days of annual leave (not to exceed the number of TDY days) in conjunction with domestic trips that are paid for by the Employer. An employee may be permitted to use up to three days of annual leave in conjunction with an international trip paid for by the Employer three times per fiscal year.

SECTION 14

A. The Employer will ensure timely processing of travel authorizations.

B. Employees may be required to report to work or take an appropriate type of leave for a portion of the departure and/or return travel day, depending on such factors as work schedule, time in travel status, available flight schedules, and workload.

C. Charge cards issued by the contractor must only be used for government-authorized travel to pay for expenses reasonably incurred for official business purposes, including approved automated-teller machine (ATM) withdrawals for cash travel advances Employees are subject to discipline for misuse of the travel charge card.

D. The Employer may, at the request of the contractor consistent with the parties' agreement, applicable statute and government-wide regulations, collect from an employee's net pay any undisputed delinquent amounts that are owed to the travel charge card contractor.

E. Employees are required to use the travel management system designated by the Employer for making their travel arrangements (common carrier, rental car and lodging). Nothing in this provision relieves the Employer of its obligation to provide notice to the Union regarding changes to the system and bargain over any resulting change in working conditions.

SECTION 15

A. An employee traveling overnight within CONUS may be reimbursed for one brief telephone call per day to her/his residence in accordance with government-wide rules and regulations and the HHS Travel Manual Reimbursement for such telephone calls is:

1. limited to actual expenses, not to exceed $5.00 times the number of consecutive nights of travel on official business;

2. applicable only when the employee is authorized to be on travel for one or more consecutive nights; and

3. conditioned upon the unavailability of government-provided long distance telephone systems and services (including government-issued telephone calling cards) during each day of travel on which expenses are incurred.

B. An employee on OCONUS travel may be reimbursed only for telephone call(s) home from a foreign country which have been authorized prior to the beginning of travel and are shown on the travel order. Permitted frequency and cost must be stated on the travel order and adhered to by the employee.

SECTION 16

Advances of travel funds are based upon estimated expenses which a traveler is expected to incur on authorized travel and which cannot be paid with a government travel charge card Advances are normally issued in the form of authorized ATM cash withdrawals The Employer will authorize an ATM cash advance equal to eighty (80) percent of the estimated MI&E cash expenses and lodging where the government travel charge is not expected to be accepted. Employees who qualify under a limited exception and are excused from applying for a government travel charge card may obtain a travel advance equal to eighty (80) percent of the estimated cash expenses for the travel.

SECTION 17

Employees are required to use the travel system(s) designated by the Employer to secure travel orders and submit travel vouchers. Nothing in this provision relieves the Employer of its obligation to provide notice to the Union regarding changes to the system and bargain over any resulting change in conditions of employment.

SECTION 18

A rest stop is a stopover of up to 24 hours taken at an intermediary point during travel or at the destination.

SECTION 19

The local travel area is a forty-five (45) mile radius around the employee's post-of-duty.

SECTION 20

Supervisors may approve employee requests to use a non-contract carrier if the fare is available to the general public, is less than the contract fare, and results in a lower total trip cost to the Government (the combined costs of transportation, lodging, meals, and related expenses considered).

ARTICLE 43: ADVERSE ACTIONS

SECTION 1

This Article applies to all bargaining unit employees who have completed the applicable probationary or trial period, as appropriate, in their current positions.

SECTION 2

A. For purposes of this Article, an adverse action is defined under 5 USC § 7512 as a suspension of more than fourteen (14) calendar days, reduction in grade or pay, furlough of thirty (30) calendar days or less, and removal.

B. An adverse action will be taken only for such cause as will promote the efficiency of the service.

C. Adverse actions will not be taken for arbitrary or capricious reasons.

SECTION 3

In effecting adverse actions, the Employer endorses the use of like penalties for like offenses and progressive discipline. The Employer shall give due regard to the existence of any mitigating and/or aggravating circumstances, the nature of the position occupied by the employee at issue, and any other factors bearing upon the incidents or acts underlying the action. The degree of discipline administered will be proportionate to the offense and the employee's disciplinary history, and will be determined on a case-by-case basis.

SECTION 4

A. Decisions of courts and the Merit Systems Protection Board (MSPB), and issuances of OPM, have long recognized that a number of factors (often referred to as the "Douglas factors") as being relevant considerations in determining the appropriateness of a penalty in an adverse action case. Without purporting to be exhaustive, the factors generally recognized at the time of execution of this Agreement as being relevant to the setting of the penalty include the following:

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 fully satisfactory level and its effect upon supervisor's confidence in the employee's ability to perform assigned duties;

6. Consistency of the penalty with those imposed upon other employees for the same or similar offenses;

7. Consistency of the penalty with any applicable Agency table of penalties;

8. The notoriety of the offense or its impact upon the reputation of the Agency;

9. The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;

10. Potential for the employee's rehabilitation;

11. Mitigating circumstances surrounding the offense such as unusual job 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.

B. All of the Douglas Factors may not be relevant in every case. Only those relevant factors should be considered in setting of a penalty. In determining the relevant factors, each case must be reviewed on a case-by-case basis. Factors may or may not weigh in an employee's favor. Selection of an appropriate penalty must involve a responsible balancing of the relevant factors in the individual case.

SECTION 5

A. In all cases of proposed adverse action, except as stated in Section 8 of this Article or when there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, an employee will be given at least thirty (30) calendar days' advance written notice of the proposed action. This notice will state specifically and in detail the reasons for the action. The Employer will also provide a copy of the proposed written notice to the Union no later than the next workday. The Employer will provide this notice to the designated representative, if one is known, or to the local chapter president. It is understood that the proposal notice is not grievable upon receipt. However, disputes regarding the advance notice of proposed action may be merged in a grievance concerning the final decision of the Employer, after that final decision is issued.

B. The employee, or designee, will notify the Employer within seven (7) calendar days of receipt of the notice of proposed action that the employee intends to deliver an oral or written reply.

Employees will be given ten (10) calendar days from the date they receive the notice of proposed action to deliver an oral and/or written reply. Reasonable requests for extension will be granted.

C. The proposal notice will specify who will hear/receive the oral and/or written reply. This official will be the person who will be making the final decision on the matter, or designee.

D. Employees will have the right to be represented in the preparation and presentation of their reply. If the employees elects to have a representative, they must inform the deciding official, in writing, of the representative's name. The employee and their representative will receive reasonable time to prepare the reply in accordance with the terms of Article 10 on use of official time and Article 5 (Employee Rights and Responsibilities).

E. The proposal notice shall inform the employee of the right to review the material which is relied upon to support the proposed adverse action. The term "material relied upon" includes all information contained in the adverse action file that relates directly to the charge(s) and specification(s), whether favorable or unfavorable to either side's position in the matter.

   The Employer will make a copy of such material available for review, concurrent with the delivery of the proposal notice to the employee. If requested by the employee or her/his representative, the Employer will furnish a copy of such material prior to the oral reply. Where management has relied upon witnesses to support the reasons for the proposed action, the Employer will make available, as part of the material relied upon, the identity of those witnesses and any written statements. The Employer reserves the right to sanitize any material which is provided to the employee, when required by law.

F. In making a reply, the employee may set forth mitigating circumstances, refute aggravating circumstances, and give reasons as to why the proposed action should not be effected.

G. If an employee chooses to make an oral reply, it may be held via audio or videoconference when the employee, the employee's representative, and the oral reply official do not work in the same commuting area. However, if the employee or the employee's representative request a face-to-face meeting, management will determine where the face-to-face reply will be held and the employee and one representative will be reimbursed for travel and per diem that is reasonable under GSA regulations.

H. The Employer will provide a written summary of the employee's oral reply. A copy of the summary will be included in the material relied upon, and it will also be provided to the employee's representative (or to the employee if unrepresented). Within five (5) workdays after receiving the written summary, the employee or representative may submit comments on it. The comments will be added to the official record and will be considered by the Employer before a final decision on the matter is rendered.

I. The Employer agrees that the employee may use the same means as the Employer does to take notes during the oral reply.

J. Nothing in this section is to be construed as a waiver of the employee's or Union's right to request additional information under other authorities such as the Freedom of Information Act, Privacy Act, or Civil Service Reform Act.

SECTION 6

The final decision in an adverse action covered by this Article must be made by a higher level official than the one who issued the notice of proposed action, unless the proposing official is the head of an OPDIV/STAFFDIV, in which case the decision will be made by an appropriate official identified by the Employer. The decision letter will state which charge(s) is/are sustained and the reason(s) therefore, and will respond to relevant defenses raised by the employee.

SECTION 7

In any case where the charges are premised upon off-duty misconduct, the proposal and decision will describe the relationship (often referred to as the "nexus") between the misconduct and the employee's position.

SECTION 8

In the event the Employer sustains the charge(s) and effects an adverse action against the employee, the employee may elect to challenge the action through only *one* of the three procedures below:

A. an appeal to the MSPB in accordance with applicable law and regulation;

B. under this Agreement, going directly to Arbitration (which may include an allegation of discrimination), with the Union's concurrence;

C. a formal complaint of discrimination filed under the administrative EEO process.

The final decision letter issued on the adverse action to the employee will contain a statement of her/his right to challenge the action in *one* of the above three procedures. Once an employee has elected one of these procedures, the employee may not change thereafter to a different procedure.

SECTION 9

A. Under ordinary circumstances, an employee whose removal has been proposed shall remain in a duty status in their regular position during the advance notice period. In those circumstances where the Employer determines that the employee's continued presence in the workplace during the notice period may pose a threat to the employee or others, result in loss of or damage to Government property, or otherwise jeopardize legitimate Government interests, the Employer may consider whether any of the following alternatives is preferable:

    1. Assigning the employee to duties where there is no longer a threat to safety, the Agency mission, or to Government property

    2. Placing the employee on leave with consent;

3. Carrying the employee on appropriate leave (annual, sick, leave without pay, or absence without leave) if the employee is absent for reasons not originating with the Employer.

B. If none of these alternatives is selected, the Employer may place the employee in a paid, non-duty status during all or part of the advance notice period, if otherwise consistent with applicable law, rule or regulation. The Employer may also curtail the notice period when it can invoke the provisions of 5 CFR § 752.404(d)(1) (the "crime provision"). This provision may be invoked even in the absence of judicial action if the Employer has reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment may be imposed.

SECTION 10

The documentation supporting an adverse action will be purged/destroyed pursuant to applicable rule(s) for the system(s) of records in which the documentation is maintained. If an adverse action is overturned, appropriate action will be taken with respect to all other records (e.g., SF-50) in accordance with the disposition of the case.

SECTION 11

Records of disciplinary and adverse actions will remain in an employee's OPF no longer than the regulatory minimum period and the Employer will protect the privacy of those records so that no one sees them who does not have authority under the regulations.

ARTICLE 44: DISCIPLINARY ACTIONS

SECTION 1

This Article applies to all employees who have completed the applicable probationary or trial period, as appropriate.

SECTION 2

A. For purposes of this Article, disciplinary actions include suspensions for fourteen (14) calendar days or fewer and reprimands reduced to writing.

B. Disciplinary actions exclude counseling/warnings, whether oral or in writing, and admonishments, whether oral or in writing. When an employee is counseled/warned in writing, the employee may respond in writing and have the response attached to the counseling document.

SECTION 3

A. In effecting disciplinary actions, the Employer shall endorse the use of like penalties for like offenses and progressive discipline. The Employer shall consider the existence of any mitigating and/or aggravating circumstances, the nature of the position occupied by the employee at issue, and any other factors bearing upon the incident(s) or act(s) underlying the action. The degree of discipline administered will be proportionate to the offense and will be determined on a case-by-case basis.

B. In determining the appropriate penalty to propose and/or impose in a disciplinary action, the Parties agree that it is appropriate for supervisors to consider and balance a variety of circumstances as pertinent to the case, which may result in mitigation or aggravation. Examples of such circumstances, may include, but are not necessarily limited to, the employee's past work and disciplinary records, length of service, the potential for her/his rehabilitation, the seriousness of the offense and its relation to the employee's duties and its impact on the agency, the consistency of the penalty with those imposed on others in similar situations, potential alternative sanctions to deter future misconduct, etc.

SECTION 4

A. Disciplinary actions will not be taken for arbitrary and capricious reasons.

B. No employee will be disciplined except for such cause as will promote the efficiency of the service.

C. An employee will not be disciplined for off-duty conduct unless a relationship (commonly referred to as nexus) is established between the charged conduct and the efficiency of the service. In cases of off-duty misconduct, the proposal and decision

letters will describe the relationship (often referred to as nexus) between the misconduct and the employee's position.

SECTION 5

When the Employer takes a suspension action against an employee, the following procedures will apply:

A. The written proposal will be delivered no fewer than fifteen (15) days prior to taking the disciplinary action and will contain the specific reasons for the proposed action, stated in detail. It is understood that the proposal notice is not grievable upon receipt. However, disputes regarding the proposal may be merged into a grievance concerning the final decision of the Employer, after that final decision is issued.

B. The employee will be given fourteen (14) calendar days from the date the employee receives the notice of proposed disciplinary action in which to deliver an oral and/or written reply. Reasonable requests for extensions of time will be granted. The proposal notice will specify who will hear/receive the oral and/or written reply. This official will be the person who will be making the final decision on the matter, or designee.

C. The employee and their representative will be given reasonable time to prepare the reply, in accordance with the terms of Article 10, Official Time, and Article 5, Employee Rights, of this Agreement.

D. The proposal notice will inform the employee of the right to review the material relied upon to support the proposed action, and the Employer will make a copy of such material available for review, concurrent with the delivery of the proposal notice to the employee. If requested by the employee or representative, the Employer will furnish a copy of such material prior to the oral reply. The Employer reserves the right to sanitize any material that is provided to the employee, when required by law.

E. Where management has relied upon witnesses to support the reason for the proposed action, the Employer will make available as part of the material relied upon any written statements taken from them. The term "materials relied upon" includes all documents relied upon to formulate the charges and specifications contained in the disciplinary action case file.

F. In making a reply, the employee may set forth mitigating circumstances, refute aggravating circumstances, and/or give reasons why the proposed action should not be effected.

G. If an employee chooses to make an oral reply, such reply will be made at the worksite of the employee if both the employees and the deciding official work in the same location. When the employee and deciding official are not in the same location, an oral reply will be delivered by audio- or video-conference, as circumstances permit, unless otherwise determined by the Employer for purposes of that case only.

H. The Employer will make a written summary of the employee's oral reply. A copy of the summary will be included in the material relied upon, and it will also be provided to the employee's representative (or to the employee if unrepresented). Within five (5) workdays after receiving the written summary, the employee or representative may submit a response. The response will be added to the official record and will be considered by the Employer before a final decision on the matter is rendered.

I. The final decision in a disciplinary action covered by this Article must be made by a higher- level official than the official who issued the notice of proposed action, unless the official is the head of an OPDIV/STAFFDIV, in which case the decision will be made by an appropriate official identified by the Employer. The decision letter will state which charges is/are sustained and the reason(s) therefore, and will respond to relevant defenses raised by the employee.

SECTION 6

In the event the Employer sustains the charge(s) and effects a disciplinary action against the employee, the employee may elect to challenge the action in only *one* of the following ways:

A. Through the negotiated grievance procedures of this Agreement;

B. A formal complaint of discrimination filed under the administrative EEO process; or

C. An appealable action involving a prohibited personnel practice filed with the MSPB, to the extent allowable by law.

The final decision letter that is issued on the disciplinary action to the employee will contain a statement of her/his right to challenge the action in one of these three ways. Once an employee has elected one of these procedures, the employee may not change thereafter to the other procedure. Grievances over suspensions will start at the final step of the grievance procedure; grievances over all other disciplinary actions will start at the first step of the grievance procedure. After completion of the grievance procedure, the Union has the option to appeal a disciplinary decision to binding arbitration.

SECTION 7

A. Letters of reprimand will be retained in the employee's Official Personnel Folder (OPF) for the period of time specified in the letter, which may not exceed two (2) years from the date of the incident.

B. After no more than two years, a letter of reprimand will be timely purged from the employee's OPF. After no more than four years, the Employer will purge these records from all ER/LR files.

C. Oral admonishments or oral reprimands that are reduced to writing will be retained by the employee's supervisor for the period of time specified in the admonishment, which may not exceed one (1) year from the date of issuance of the document. After no more than two years, a

letter of reprimand will be timely purged from the employee's OPF. After no more than four years, the Employer will purge these records from all ER/LR files.

SECTION 8

To the extent not prohibited by law, the Employer will provide the Union with copies of all admonishments, written reprimands, and proposal and decision letters for suspensions of fourteen (14) days within one (1) workday of issuance to employee. One (1) copy shall be provided to the chapter office that represents the affected employee.

SECTION 9

Alternative discipline is an optional, non-traditional approach to employee discipline, which provides for a variety of both punitive and non-punitive remedial correction. The Employer and the Union encourage the use of alternative approaches to traditional disciplinary actions. The goal of such an approach is to positively change an employee's conduct by offering an alternative means of correcting such conduct. The Employer will publicize to supervisors the benefits of alternative discipline and will include such information on alternative discipline in its penalty guide policy. The Employer will recommend that traditional discipline and alternative discipline should not normally be combined. Alternative discipline is offered solely by agreement of the parties. Under no circumstances is alternative discipline required to be used.

ARTICLE 45: GRIEVANCE PROCEDURES

SECTION 1: INTRODUCTION

A. The purpose of this Article is to provide a fair and simple process for the expeditious processing of grievances filed by the Parties, pursuant to 5 U.S.C. § 7121. The procedures outlined herein constitute the exclusive administrative procedures for grievances.

B. The Employer and the Union agree that every effort will be made to resolve grievances at the lowest possible level. The filing of a grievance shall not be construed as reflecting unfavorably on an employee's good standing, performance, loyalty or desirability to the organization. Employees dissatisfied with the orders properly grounded in supervisory authority must follow the order first and then grieve the matter if they believe relief should be granted. However, the employee has a right to decline to perform assigned tasks due to a reasonable belief that, under the circumstances, the task poses an imminent risk of death or serious bodily harm coupled with a reasonable belief that there is insufficient time to effectively seek corrective action through normal hazard reporting and abatement procedures.

SECTION 2: DEFINITIONS

A. A grievance is defined as any complaint:

1. By any employee in the bargaining unit concerning any matter relating to the employment of the employee;

2. By the Union concerning any matter relating to the employment of any employee in the bargaining unit;

3. By an employee in the bargaining unit, the Union, or the Employer concerning;

    a. The effect or interpretation, or a claim of breach, of a collective bargaining agreement; or

    b. Any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.

B. Where the parties mutually agree, grievances that involve the same issue and arise from the same or similar facts and actions, initiated by one or more than one employee, may be joined and processed as one.

C. If the last day of any timeframe established by this Article is a legal Federal holiday, Saturday, or Sunday, that day shall not be counted, and the last day will be the next regular business day.

SECTION 3: EXCLUSIONS

A. The negotiated grievance procedures contained in this Article do not cover the following:

1. Complaints concerning individual rights related to a reduction-in-force (RIF) unless the RIF is issued in violation of the National Agreement;

2. Any complaint concerning retirement, life insurance, or health insurance;

3. Any suspension or removal for national security reasons;

4. Any examination, certification, or appointment;

5. The classification of any position that does not result in the reduction in grade or pay of an employee;

6. A notice of proposed action or warning. However, disputes regarding a proposal may be merged into a grievance concerning the final decision of the Employer after that final decision is issued;

7. The substance of performance standards and elements/measures, and/or the determination as to whether an element/measure is critical or non-critical. However, if such substance is alleged to have been created for discriminatory reasons prohibited by statute, that issue may be grieved pursuant to Section 4B of this Article;

8. Progress reviews and counseling sessions except as grieved pursuant to a final action or as a separate violation of a provision of this Agreement;

9. All other matters made non-grievable by any provision of this Agreement;

10. Any claimed violation of Subchapter III of Chapter 73 of Title 5 (relating to prohibited political activities);

11. Order to divest, to the extent they are consistent with law, rule or regulation; except in a grievance over a discipline or adverse action resulting from failure to comply with an order to divest;

12. Non-selection from among a group of properly ranked and certified candidates consistent with 5 C.F.R. § 335.103(d);

13. Any specific matter raised in an on-going unfair labor practice charge; or

14. An action terminating a temporary promotion.

SECTION 4: ELECTION OF PROCEDURE

A. A complaint concerning actions deemed in 5 USC § 4303 (removal or reduction in grade based upon unacceptable performance) and 7512 (removal, suspension for more than fourteen (14) days, reduction in grade or pay, or furlough for thirty (30) days or less for such cause as will promote the efficiency of the service) may be raised under-only one of the following procedures:

1. By invoking the arbitration procedure provided in this Agreement, with the concurrence of the Union; or

2. By filing a timely appeal with the Federal Merit Systems Protection Board (MSPB) under the applicable regulatory procedure; or

3. By filing a formal complaint of discrimination under the applicable EEO process

An employee's election of one of these procedures is irrevocable and precludes the employee from subsequently electing either of the other procedures.

B. A complaint concerning discrimination on the basis of race, color, religion, sex (including sexual orientation and gender identity), national origin, age, handicapping condition, marital status, or political affiliation may be raised under this negotiated procedure or the appropriate statutory procedure enunciated at 29 CFR, but not both. Employees shall be deemed to have exercised their option to raise the matter under either the regulatory procedure or this procedure at such time as the employee timely files a formal complaint or timely files a grievance, in writing, under this procedure, (or the Union invokes arbitration, if applicable, as the initiating step), whichever occurs first.

C. An employee alleging a prohibited personnel practice other than those that may be presented through the EEO complaint process, may raise the matter through one of the following procedures:

1. by filing a timely appeal to the Merit Systems Protection Board (MSPB), if the underlying issue falls within its jurisdiction;

2. by filing a complaint seeking corrective action with the Office of Special Counsel; or

3. by filing a timely grievance under this Agreement.

An employee's election of one of these procedures is irrevocable and precludes the employee from subsequently electing either of the other procedures.

SECTION 5: FILING A GRIEVANCE

A. Employees must use the grievance procedures set forth in this Article for filing and processing grievances concerning issues relating to this Agreement, except as identified in Section 4 above.

B. During any of the steps indicated in this Article, the Parties may by mutual agreement hold a meeting to resolve the grievance. Such meetings will occur during the regularly scheduled workday of the Parties involved. In unusual circumstances and by mutual agreement, a meeting may take place outside of the regularly scheduled workday of the grievant.

C. Failure on the part of the Employer to observe the time limits for any step in the grievance procedure will have the effect of the grievance being denied at that step, at which point, the grievant or the Union may appeal to the next step. Failure on the part of the grievant or the Union to observe time limits for any step will have the effect of the grievance being untimely at that

step in the grievance process. By mutual written consent of the Parties, the time limits in this Article may be extended and/or any step of the grievance procedure may be waived.

D. It is understood that an employee processing a grievance under this Article is limited to Union representation or self-representation. If an employee presents a grievance without Union representation, the Union will be given the opportunity to be present to present its institutional concerns during grievance discussions and/or discussions of resolution of the grievance.

E. The Parties agree that any resolution must be consistent with the terms and conditions of this Agreement. The parties agree to respect and maintain the confidentiality of all information involving performance or conduct of individuals. This will not preclude the use of such information if it is redacted to protect the identity of the employee and will not operate to restrict the Union's right as the exclusive bargaining representative to communicate with the bargaining unit.

F. Grievances may be initiated by an employee, by the Union for itself or on behalf of an employee or group of employees, or by the Employer.

G. If the Employer alleges that a grievance is not grievable and/or not arbitrable, the Employer shall notify the grievant in writing stating the reason(s) for such determination(s). If a question of grievability and/or arbitrability is raised, the grievance will continue to be processed. The issue of timeliness or other procedural issues will be joined to the grievance through the grievance procedure and decided at arbitration if not resolved prior to that time.

H. When the Employer notifies the grievant or the Union that a grievance does not comply with the requirements of Section 6 of this article the Employer will identify the specific defect in writing and notify the grievant, or the Union accordingly. The grievant or the Union may, within seven (7) calendar days from the date of the Employer's notice, revise the grievance to attempt to cure the problem. This 7 calendar day period will toll the Agency's response time. Upon revision, the grievance will be resubmitted at the level at which the issue was raised and proceed as a normal grievance. The grievant will be allowed only one (1) revision attempt. The Employer reserves the right to challenge grievability, arbitrability, or the validity of the revised grievance, and the grievance will be handled in accordance with this Section.

I. Management agrees to provide a copy of all written decisions rendered on a grievance filed under this Article to both the grievant and the Union representative.

SECTION 6: GRIEVANCE SUBMISSION

A. A grievance shall be submitted in writing and must include the following:

1. Date submitted;

2. Identification of the employee(s) covered by the grievance if known, and the union representative if any;

3. Work organization and location of the employee(s) covered by the grievance, if known;

4. Sufficient detail to identify the basis of the grievance (e.g., a statement of how the violation occurred), including reference to the Article(s) of the Agreement that was violated, and/or general reference to any practice, law, rule or regulation alleged to be violated, misinterpreted or misapplied;

5. The date, if known, when the issue or incident out of which the grievance arose occurred;

6. The date when the grievant(s) became aware of the matter, issue or incident giving rise to the grievance occurred;

7. The management official(s) if known, responsible for the issue or action; and

8. The specific relief sought by the employee(s) and the Union, or by the Employer.

B. Grievances may be filed via email. The optional grievance form under Appendix 45 may be used for this purpose. A grievance filed via email is deemed to have been filed upon email transmission to the appropriate recipient party.

C. Grievances that do not include the information required by this section shall be treated in accordance with Section 5H of this Article.

D. Before it will release information protected by the Privacy Act concerning employee(s) on whose behalf the Union is grieving, the Employer must be provided with a written statement, signed by the employee(s) in question, authorizing release of such information.

E. It is agreed that grievances should normally be resolved at the lowest level possible. Where the first step management responding official has a conflict (e.g., alleged harassment or violence in the workplace) or lacks the authority to resolve a grievance, the Union may file with a next-level supervisor (starting at step 2 level supervisor). The parties recognize the benefits of an open dialogue by both parties during the grievance meetings to promote a clear understanding of the issues. In an effort to resolve grievances at the lowest level possible, the parties will engage in discussions of the issues and attempt to resolve them during the grievance meeting and throughout the grievance procedure.

F. New issues may not be raised by either party if they were not identified during the grievance procedure.

G. Where practicable, for local grievances, each party will provide advance notice to the other party identifying who will attend the grievance meeting on behalf of that party.

SECTION 7: GRIEVANCE PROCEDURE

A. STEP 1 OF THE GRIEVANCE PROCESS:

1. A grievance must be submitted in writing to the immediate supervisor within thirty (30) calendar days after the date of the issue or incident giving rise to the grievance, or the date when the aggrieved became aware or should have been aware of the issue or incident giving rise to the grievance, whichever is later.

Should management determine there is a conflict of interest with the immediate supervisor, the Union will be notified of the designated management official for that grievance.

2. The Step 1/Deciding Official will make every effort to timely resolve the grievance and will hold a grievance meeting with the aggrieved and union representative within fourteen (14) calendar days of the date the Step 1 grievance is filed; unless the grievant and/or the Union agrees to waive the meeting. The Step 1/Deciding Official will provide a written response within fourteen (14) calendar days of the grievance meeting.

3. If no grievance meeting is held because the union waived the meeting, the grievance response will be due fourteen (14) calendar days after the date the Step 1 grievance is filed or the date the waiver is received by the agency, whichever is later. If the step 1 grievance meeting is not convened due to absence by the union/grievant, then the response is due fourteen (14) calendar days after the date the step 1 grievance meeting was scheduled to be held.

4. If the grievance is denied at Step 1, the written response will provide the name of the Step 2 Deciding Official with whom the Step 2 grievance should be filed.

5. The timeframes for holding a grievance meeting and providing a response may be extended by mutual agreement of the parties.

B. STEP 2 OF THE GRIEVANCE PROCESS:

1. Within fourteen (14) calendar days of receiving the Step 1 decision, the aggrieved may appeal the decision to the Step 2 Deciding Official. The Step 2/Deciding Official, must be at least one least one level of management higher than the Step 1/Deciding Official. The Step 2 official will make every effort to timely resolve the grievance and will hold a grievance meeting with the aggrieved and representative within fourteen (14) calendar days of the date the Step 2 grievance is filed, unless the grievant and/or the Union agrees to waive the meeting. The Deciding Official will provide a written response within fourteen (14) calendar days of the grievance meeting. If no grievance meeting is held, because the union waived the meeting, the grievance response will be due fourteen (14) calendar days after the date the Step 2 grievance is filed or the date the waiver is received by the agency, whichever is later. If the step 2 grievance meeting is not convened due to absence by the union/grievant, then the response is due fourteen (14) calendar days after the date the step 2 grievance meeting was scheduled to be held.

2. If the grievance is denied at Step 2, the written response will provide the name of the Step 3/Deciding Official with whom the Step 3 grievance should be filed.

3. The timeframes for holding a grievance meeting and providing a response may be mutually extended by the parties.

C. **STEP 3 OF THE GRIEVANCE PROCESS:**

1. Within fourteen (14) calendar days of receiving the Step 2 decision, the aggrieved may appeal the decision to the Step 3 Deciding Official. The Step 3/Deciding Official, must be at least one

level of management higher than the Step 2/Deciding Official, or outside the chain of command of the Step 2 Official. The Step 3 official will make every effort to timely resolve the grievance and will hold a grievance meeting with the aggrieved and representative within fourteen (14) calendar days of the date the Step 3 grievance is filed, unless the grievant and/or the Union agrees to waive the meeting. The Deciding Official will provide a written response within fourteen (14) calendar days of the grievance meeting. If no grievance meeting is held because the union waived the meeting, the grievance response will be due fourteen (14) calendar days after the date the Step 3 grievance is filed or the date the waiver is received by the agency, whichever is later. If the step 3 grievance meeting is not convened due to absence by the union/grievant, then the response is due fourteen (14) calendar days after the date the step 3 grievance meeting was scheduled to be held.

2. The timeframes for holding a grievance meeting and providing a response may be mutually extended by the parties.

3. This will be the final grievance decision, subject to arbitration at the election of the Union. Arbitration must be invoked within forty-five (45) calendar days after the receipt of the final decision in the grievance procedure by the designated NTEU representative. If a final decision is not issued with the required time limits, the Union may treat this as a denial of the grievance and invoke arbitration no later than forty-five (45) days from the date the decision should have been issued.

4. A challenge to the timeliness/arbitrability of a grievance, if not already asserted in the grievance response, must be made in writing and submitted to the grieving party prior to arbitration, and no later than thirty (30) days after invocation of arbitration, or else it is waived. A. Grievances filed by the Employer against the Union will be filed with the National President of NTEU within thirty (30) calendar days after the matter, issue or incident out of which the grievance arose, or within thirty (30) calendar days after the date the Employer became aware or should have become aware of the matter, issue or incident giving rise to the grievance, if later. Either party may request within fourteen (14) calendar days of the submission of the grievance, that a grievance meeting be held. If requested, a meeting will be held within fourteen (14) calendar days of the request. The Union may have the same number of representatives from the bargaining unit present on official time as management representatives.

SECTION 8: EMPLOYER GRIEVANCES

A. Grievances filed by the Employer against the Union will be filed with the National President of NTEU within thirty (30) calendar days after the matter, issue or incident out of which the grievance arose, or within thirty (30) calendar days after the date the Employer became aware or should have become aware of the matter, issue or incident giving rise to the grievance, if later. Either party may request within fourteen (14) calendar days of the submission of the grievance, that a grievance meeting be held. If requested, a meeting will be held within fourteen (14) calendar days of the request. The Union may have the same number of representatives from the bargaining unit present on official time as management representatives.

B. The Union will provide the Employer with a written decision within thirty (30) calendar days of the meeting, or if no meeting was requested, within thirty (30) calendar days of the submission of the grievance. This will be a final grievance decision, subject to arbitration at the election of the Employer. The Employer must invoke arbitration within twenty-one calendar days of receipt of the Union's decision. Failure on the part of the Union to issue a decision within thirty (30) calendar days will be deemed a denial of the grievance, and the Employer may invoke no later than fifteen (15) calendar days from the latest date on which the Union's decision was due.

SECTION 9: NATIONAL AND INSTITUTIONAL GRIEVANCES

A. DEFINITIONS:

1. **National Grievances:** The Union may file a national grievance over issues affecting bargaining unit employees covered by this Agreement from more than one chapter.

2. **Institutional Grievances:** Grievances against the Employer concerning the Union's institutional rights, not presented by or on behalf of a particular employee or group of employees. In other words, the term "institutional grievance" means any complaint by the Union concerning the effect or interpretation, or a claim of breach of the provisions of this Agreement or the law relating to the rights and benefits that accrue to the Union as the exclusive representative of bargaining unit employees.

3. Grievances filed by NTEU chapters which present allegations of violations of individual employee rights, as opposed to the Union's institutional rights only, will follow the procedure in Section 7 above.

4. Grievances filed by local chapters that are solely institutional grievances will be processed according to Sections 9B and 9C below. Local employee grievances and mixed local employee/institutional grievances will follow the procedures in Section 7.

5. NTEU National may file grievances that include both national and institutional matters, as defined above.

B. **NATIONAL and INSTITUTIONAL GRIEVANCE PROCEDURE**:

1. National grievances and institutional grievances filed by NTEU National, and grievances filed by local NTEU chapters which involve only institutional violations must be filed within thirty (30) calendar days of the date the Union became aware or should have become aware of the matter grieved and must be filed with the National Labor Relations Office (NLRO). The applicable labor relations office in the Operating or Staff Division should be copied on local institutional grievances, if known, but failure to do so will not render the grievance invalid. The NLRO will notify NTEU National or the local NTEU chapter, as appropriate, of the name and contact information for the Agency's representative for the purpose of these procedures.

2. Either party may request, within fourteen (14) calendar days of the submission of the grievance, that a grievance meeting be held. If requested, a meeting will be held within fourteen (14) calendar days. If the grievance is filed by a local NTEU chapter, the meeting will be held telephonically/virtually unless mutually agreed to be held at the local office of the Employer. Meetings for national and institutional grievances filed by NTEU National will be held telephonically or virtually, unless agreed otherwise.

3. The Employer will provide a written decision within thirty (30) calendar days of the meeting, or, if no meeting was requested, within thirty (30) calendar days of the submission of the grievance. This will be a final grievance decision, subject to arbitration at the election of the Union. The parties may mutually agree, in writing, to extend the timeframes for the meeting and response.

4. A challenge to the timeliness of a grievance filed under this Section must be made in writing and submitted to the grieving party prior to arbitration, and no later than thirty (30) days after invocation of arbitration, or else it is waived.

C. ARBITRATION:

Arbitration must be invoked by NTEU within forty-five (45) calendar days after receipt of the final decision, or within forty-five (45) calendar days after the date when the decision should have been issued.

SECTION 10: REQUESTS FOR INFORMATION

A. In accordance with 5 U.S.C. § 7114(b)(4), the Union may request in writing that the Employer provide such written information as is relevant to the subject matter of the grievance and necessary to its resolution. The Agency will timely respond to the request.

B. Pursuant to 5 U.S.C. § 7114(b)(4), the requesting party shall identify a particularized need for the requested information.

C. The Employer will inform the Union in writing within ten (10) workdays of receipt whether the information requested under 5 U.S.C. § 7114(b)(4) will be supplied, and any anticipated date for providing the information. If the Employer cannot meet the ten (10) workday timeframe, it will contact the Union official who filed the request for information to discuss the request, including any issues with responding to the request (e.g., whether or not the Union has provided a particularized need). If the Employer has not provided the information requested pursuant to 5 U.S.C. § 7114(b)(4) before the scheduled grievance meeting**,** and if requested by NTEU, the grievance meeting will be postponed to a mutually agreed upon date which will be after the date the Employer identifies for its response to the request. However, the grievance meeting will generally not be postponed for more than fourteen (14) calendar days after the date of the Employer's response, unless the response is still outstanding, or it is mutually agreed.

D. If a dispute arises over access to information in connection with the grievance, it may either be joined to the grievance or addressed through the filing of a ULP with the FLRA, but not both.

SECTION 11: ALTERNATIVE DISPUTE RESOLUTION (ADR)

Either before or after a grievance is filed, the following Alternative Dispute Resolution (ADR) process may be followed, by mutual agreement:

A. One or more meeting(s) may be arranged by the Union representative and the management official, at mutually agreeable time(s), to attempt to resolve the matter;

B. A mediator will attend each meeting. The Parties may mutually agree to other participants such as Union and management representatives or subject matter experts;

C. If the matter is resolved, the settlement agreement will be reduced to a formal written agreement and will be signed by the grievant, the Union's representative and the Employer's representative. One provision in the settlement agreement must be that the grievance will be withdrawn;

D. If the matter is not resolved through ADR, the grievance will continue through the grievance process. The grievant may resume the normal grievance process at any time during ADR, upon written notice to the participants; and

E. Offers to settle any aspects of settlement discussions will not be used as evidence or referred to if the grievance is not resolved by this process.

Use of the ADR process will toll all timeframes set forth in the grievance procedure in Sections 7 and 8 above.

SECTION 12: RELEVANT EVIDENCE AND WITNESSES

Evidence and witnesses that are relevant to the resolution of a grievance may be introduced at any stage of the grievance or arbitration process. Neither party, nor its agents or representatives, shall interfere with, intimidate, or retaliate against any employee who appears as a witness at a grievance or arbitration hearing.

ARTICLE 46: ARBITRATION

SECTION 1: INVOCATION OF ARBITRATION

A. The right to invoke Arbitration is limited to the Union and the Agency at the level of exclusive recognition. Any unresolved grievance processed under Article 45, Grievance Procedures, may be appealed to binding arbitration upon written notification by the Union or by the Employer, as described in this Agreement. The party invoking arbitration shall notify the other party of its invocation of arbitration consistent this Article. The written notice will identify the grievance being invoked to arbitration including the name of the grievant(s), organization where the grievant(s) work (if known), and a copy of the grievance; failure to provide this information will not render invocation invalid. The notice shall also designate the name of the representative of the moving Party. Arbitration must be invoked within forty-five (45) calendar days after receipt of the final decision in the grievance procedure by the designated NTEU representative. If no final decision is issued, arbitration may be invoked no more than forty-five (45) days from the date the decision should have been issued.

B. Invocation must be served on the National Labor Relations Office via email to NLRO@hhs.gov, if filed by the Union, or on the National President of the NTEU, if filed by the Employee. Invocation notices will be transmitted via email. Arbitration is deemed to be invoked upon email to the appropriate party.

SECTION 2: ARBITRATOR SELECTION

A. The Parties will maintain a permanent panel of arbitrators for hearing arbitration appeals filed by the Union or the Employer. There will be three panels - East, West, and Washington, DC area. There will be ten (10) arbitrators for the East panel, six (6) arbitrators on the West panel, and ten (10) arbitrators on the DC area panel. For the East and Washington, DC panels each, the Parties will request lists for the East and Washington, DC panels of twenty-five (25) arbitrators who are members of the National Academy of Arbitrators and who have experience arbitrating Federal sector labor-management disputes from the Federal Mediation and Conciliation Service (FMCS); one such panel shall consist of arbitrators located within the FMCS Regions 5-8 (East Panel), and the other shall consist of arbitrators located in the Washington, DC area (DC Panel). For the West panel, the Parties will request a list of fourteen (14) arbitrators who are members of the National Academy of Arbitrators who have experience arbitrating Federal sector labor-management disputes from the Federal Mediation and Conciliation Service (FMCS) consisting of arbitrators located within the FMCS' Regions 1-4.

B. Either party may modify one (1) arbitrator on each of the current panels by giving written notice to the other party within ten (10) business days of the effective date of this Agreement. Thereafter, each party may strike up to one (1) arbitrator during a calendar year twelve (12) month period from either panel by giving written notice to the other party. Upon receipt of notice by the other party regarding an arbitrator struck from a panel, no additional cases will be assigned to that arbitrator; however, they will hear and decide any case already assigned. The arbitrator will be notified only after all cases already assigned to them have been decided or

otherwise resolved. After removal, the arbitrator cannot be re-added to a panel for two (2) years after the completion of their final case.

C. If an arbitrator is removed, the Parties will select a replacement using the procedure described in 2A above (the parties shall request from the FMCS a list of three (3) arbitrators appropriate for the panel in question consistent with the criteria set forth in 2A above). Any unassigned pending cases will be assigned to the remaining arbitrator(s), until a replacement arbitrator is selected. The parties will commence filling replacements within thirty (30) days of a removal.

D. Cases will be assigned to the designated arbitrators on a rotating basis in the order they appear on the arbitrator list based on date and time of invocation. Case assignments will be made by telephone contact between the designated case assignment representatives of the parties, normally within five (5) workdays of the invocation date. Within thirty (30) days of the effective date of this Agreement, the parties will exchange contact information for their case assignment representatives. Contact information will be updated promptly as needed.

    1. In the event an arbitrator is unavailable for three (3) consecutive months from the date the arbitrator is notified of their assignment, upon mutual agreement of the parties, the arbitrator will be withdrawn from handling that particular arbitration, will be skipped on the list, and the case will be offered to the next arbitrator on the list.

    2. In circumstances where the parties decide to combine cases after the cases are offered to two arbitrators, the first arbitrator, who was first offered one of the cases being combined, will hear the combined cases.

E. Within thirty (30) days of the implementation of the new Collective Bargaining Agreement, the arbitrators will be put in alphabetic order and assigned a number. Then, newly appointed arbitrators will be assigned a number and will be placed at the bottom of the current list in order of the date they are appointed. If multiple arbitrators are appointed on the same date, they will be listed in alphabetical order by their last name. Case assignments will be determined by the date and time arbitration is invoked.

F. Within thirty (30) days of the effective date of this Agreement, the parties will meet at a mutually agreed upon date and time to begin the process in Section 2A above of selecting arbitrators to fill all vacant positions on arbitration panels. Whenever there is a vacancy on an arbitration panel, that panel will be reviewed by the parties within thirty (30) days of the vacancy. All arbitration panels will be reviewed by the parties at least annually to verify the order of the arbitrators and which arbitrator is next in line for an assignment. The timeframes in this subsection may be extended by mutual agreement.

SECTION 3

Within twenty-one (21) calendar days of invocation, the party invoking arbitration will contact the arbitrator assigned to the case to schedule the hearing to take place on a date mutually agreeable to all Parties. Prior to contacting the arbitrator to schedule a hearing, the invoking party should contact the HHS representative, or NLRO if the representative is not known, to attempt to discuss potential hearing dates. If the party invoking arbitration fails to contact the arbitrator within the twenty-one (21) calendar

day period, the grievance will be considered withdrawn and may not be re-filed. If within thirty (30) calendar days after arbitration is invoked, the Parties have not agreed upon a hearing date, the arbitrator has the unilateral authority to impose a hearing date.

SECTION 4

For other than national grievances, the arbitration hearing will be held on the Employer's premises during regular duty hours (day shift) of the basic workweek, unless the Parties agree otherwise. The arbitration will be held within the local commuting area of the grievant(s) unless the Parties mutually agree otherwise. For employees who are on a remote work agreement, the parties will mutually agree on an arbitration location. For national grievances, the hearing will be held alternately at the Employer's premises and the Union's National Office during regular duty hours. Where appropriate, the Parties will consider the use of long-distance telephone and/or video-conferencing during the arbitration hearing for the taking of testimony of witnesses whose assigned duty station is outside the commuting area of the site selected. By mutual agreement of the parties, the entire hearing may be held virtually.

SECTION 5: EMPLOYEE RIGHT TO PARTICIPATE

The grievant, the grievant's representative, and all employees who are approved as witnesses and who are in an active duty status, shall be excused from other assignments to the extent necessary to prepare for and participate in the arbitration proceeding without loss of pay.

SECTION 6: HEARING TRANSCRIPT

A verbatim transcript of the arbitration shall be made, (unless mutually waived). The cost of the transcript will be shared equally. The Employer will make the necessary arrangements for a court reporter to transcribe the hearing.

SECTION 7: ARBITRATOR AUTHORITY

The arbitrator has no power to add to, subtract from, disregard, alter or modify any terms of this Agreement. The procedures used to conduct the arbitration shall be determined by the arbitrator, except to the extent provided herein, or as otherwise mutually agreed by the parties.

SECTION 8: PRE-HEARING CONFERENCE

A. At the request of either party, the parties' representatives shall meet no later than seven (7) calendar days prior to the date of the arbitration hearing to discuss witnesses, consider possible settlement and attempt to agree on a statement of the issue(s), proposed joint exhibits and stipulations, and, as appropriate, the format of the hearing and whether there will be telephonic/virtual testimony. A pre-hearing conference does not require the attendance of an arbitrator, unless the parties mutually agree.

B. As applicable, a joint exhibit list, witness lists and any stipulations agreed to shall be delivered to the arbitrator at or prior to the hearing.

C. All other exhibits will be exchanged and delivered on the day of the hearing, unless mutually agreed otherwise.

SECTION 9: ISSUE STATEMENT

If the Parties fail to agree on a joint submission concerning the facts and issues for arbitration, each shall submit a separate statement of the issue(s) and the Arbitrator will determine the issue(s) to be heard. Issues not raised by the Parties during the grievance procedure may not be raised by either Party or the Arbitrator during arbitration.

SECTION 10: WITNESS LIST EXCHANGE

A. Normally, the Parties agree to exchange a complete list of prospective witnesses at least fifteen (15) days prior to the hearing, after which they will attempt to agree on witnesses to testify at the hearing.

B. In the event the Parties cannot agree on appropriate proposed witnesses, the respective lists of requested witnesses will be presented to the Arbitrator, in whose sole discretion the witnesses will be determined. In approving witnesses, the Arbitrator will include only those persons whose testimony will be material to the matter in dispute and not unduly repetitious of other testimony to be offered. Attendance at the hearing will be limited to those individuals determined by the arbitrator to be relevant and material witnesses with direct knowledge of the circumstances and factors bearing on the case.

SECTION 11: GRIEVABILITY/ARBITRABILITY

If the Employer or the Union declares a grievance to be non-grievable and/or nonarbitrable, the original grievance will be considered amended to include this issue. The Arbitrator will have the authority to make all arbitrability and/or grievability determinations. The Arbitrator must hear arguments regarding both arbitrability and the merits of the case at the same hearing. Any arbitrability/grievability determination(s) must be made prior to addressing the merits of the original grievance.

SECTION 12: POST-HEARING BRIEFS

Absent mutual agreement, the Parties will be entitled to submit pre-hearing and post hearing briefs, provided that all documents given to the arbitrator are also provided to the opposing party's representative at the same time.

SECTION 13: HEARING SCHEDULE

The Arbitrator will set the date of the hearing with the concurrence of the representatives of the Parties. Once that date has been established, a party unilaterally requesting that an arbitration hearing be postponed, delayed, and/or canceled for any reason (which results in any fees being charged by the arbitrator and/or court reporter) shall pay any and all fees. In any case where the Parties mutually agree to postpone, delay, and/or cancel an arbitration proceeding, the Parties, will equally share the cost of any fees being charged by the Arbitrator. The Arbitrator shall have the authority to draw an appropriate

inference when either party fails to present facts or witnesses that the arbitrator deems necessary and relevant.

SECTION 14

A. The hearing will be informal, and the rules of evidence will not apply. The Parties have the right to issue opening and closing statements, and to present and cross-examine witnesses. All testimony must be given under oath or affirmation.

B. The Arbitrator's fees and expenses (including travel and per diem), and the transcript costs, shall be shared equally by the Parties.

SECTION 15: ARBITRATOR DECISION AUTHORITY

A. The Arbitrator will strive to issue a decision within thirty (30) calendar days from the close of the record (which will occur at the close of the hearing unless the Arbitrator approves submission of post-hearing briefs, in which case the record will close at the end of the specified briefing period). If the Arbitrator issues a bench decision, it will be placed on the record at the end of the transcript. The award or recommendation shall be limited to the issue(s) stipulated to by the Parties or determined by the Arbitrator pursuant to Section 4C of this Article.

B. The written decision will include findings of fact and an opinion containing the reasoning and basis for the decision.

C. The Arbitrator's decision**,** once final including through any appeal, shall be final and binding for that grievance.

D. The Arbitrator shall possess the authority to make an aggrieved employee whole to the extent such remedy is not limited by law, including the authority to award back pay, interest, and attorney's fees in accordance with 5 CFR § 550.801(a), reinstatement, retroactive promotion where appropriate, and to issue an order to expunge the record of all references to a disciplinary, adverse, or unacceptable performance action, if appropriate.

E. The arbitrator will have no authority to address any matters excluded from the grievance procedure.

F. Consistent with 5 U.S.C. § 7121(b)(2)(A), if a grievance alleges a prohibited personnel practice, an arbitrator may order a stay of the personnel action in a manner similar to the manner described in 5 U.S.C. § 1221(c) with respect to the Merit Systems Protection Board; and the taking, by the Agency, of any disciplinary action identified under section 1215(a)(3) that is otherwise within the authority of the Agency to take.

G. The Arbitrator must submit a copy of the decision to the Employer and the Union.

SECTION 16: HEARING PROCEDURES

A. Burden of Proof

1. In any arbitration where the grievant is contesting a performance appraisal of lower than fully successful, the burden of proof shall be on the Employer to establish that the rating was proper.

2. In all cases in which an employee challenges a final rating of record in a performance appraisal of fully successful or above, the burden of proof shall be on the employee/Union and the evidentiary standard shall be substantial evidence.

B. The invoking Party shall present its case first, except in disciplinary or adverse action cases where the Agency shall present its case first.

C. Copies of any documents filed with the arbitrator at any stage of the arbitration proceeding shall be simultaneously served on the other party. There will be no *ex parte* communication with the arbitrator on the merits of the matter, unless both Parties are participating in the communication. However, if a party fails to attend a proceeding with the arbitrator, the other party may submit documents and communicate *ex parte* with the arbitrator.

D. The Agency shall make all reasonable efforts to ensure witnesses who are employed by the Agency are released on duty time for the hearing if otherwise in a duty status. The employee-witness should notify their supervisor of the approximate time frame during which they expect to participate in the hearing, if known.

E. The arbitration hearing shall be conducted between the hours of 9:00 AM to 5:00PM at the location of the hearing Monday through Friday, unless the parties agree otherwise. The parties may agree to continue the hearing beyond 5:00PM but will not be compelled to do so.

F. In computing periods of time for the purposes of this Article, the first day of counting will be the day following the date of the act or event (e.g., the day after the employee received a final decision to take discipline or the day after the deadline for submitting a response to a grievance). If the last day in the count is a Saturday, Sunday, or a legal holiday, that day shall not be counted, and the last day will be the next regular workday.

SECTION 17: ARBITRATION APPEALS

A. Either Party may file exceptions to an Arbitrator's award under regulations prescribed by the Federal Labor Relations Authority. Unless overturned by the FLRA or a court, the Arbitrator's award will be binding on both Parties.

B. If exceptions are not timely filed, the Arbitrator's award becomes final and binding pursuant to 5 U.S.C. § 7122(a), unless properly appealed to the Merit Systems Protection Board pursuant to 5 USC § 7702.

SECTION 18: EXPEDITED ARBITRATION

A. This expedited arbitration procedure is intended to provide prompt and efficient resolution of certain matters. Accordingly, at the option of either the Union or the Employer, grievances concerning the following matters may be submitted to expedited arbitration:

1. Travel Issues
2. Dues withholding
3. Denials of annual leave, sick leave or leave without pay, use of credit hours
4. Denials of requests for official time
5. Bulletin board posting and literature distribution
6. Any other matters mutually agreed upon by the parties

B. Where compensatory damages are claimed in a grievance alleging discrimination or reprisal under EEO laws, this expedited arbitration process may not be used.

C. The same procedure for arbitrator selection will be followed in accordance with Section 2D above.

D. All other procedures as outlined above in this article, will govern, except as follows:

1. There will be no mandatory transcript of the proceedings. However, if a party wants the proceedings transcribed, that party may arrange and pay for a transcript for their exclusive use.
2. Post hearing briefs shall not be filed.
3. The arbitrator may issue a bench decision. Where a bench decision is issued the arbitrator shall additionally issue the decision in writing within ten (10) business days of the close of the hearing unless such time is extended by mutual agreement of the parties. A bench decision under this Article may be summary in form and need not include all findings of fact.

SECTION 19: ADDITIONAL PROCEDURE FOR EXPEDITED ARBITRATION OF NATIONAL GRIEVANCES

A. This section provides for an additional expedited grievance arbitration procedure that shall apply to any national grievance that involves a purely legal issue and does not involve any material factual disputes.

B. If the parties mutually agree that the matter does not involve any material factual disputes, upon invocation of arbitration, the matter will be submitted to the arbitrator for resolution without a hearing

C. If arbitration is invoked, the arbitrator will be assigned pursuant to Section 2D above. The invoking party will promptly notify the arbitrator of their assignment, and that the matter will be decided based on a stipulated record and legal briefing, without a hearing.

D. Within thirty calendar days after arbitration is invoked, the parties will submit joint stipulations and exhibits to the arbitrator, including issue statements, and each party may submit a brief containing its position on the issues raised in the grievance and the Employer's response. No other exhibits are allowed. In all such cases, the joint exhibits will include, but are not limited to:

    1. The parties' term collective bargaining agreement;

    2. The grievance;

    3. The grievance response; and

    4. The invocation of arbitration.

E. The arbitrator will be requested to issue a decision no later than 30 days of receipt of the submissions in section 18D above.

ARTICLE 47: DIGNITY, MORALE, AND WORK ENVIRONMENT

This Article provides guiding principles which the Employer and Union have determined to be important in an effort to foster a safe, healthy, and respectful work environment. The provisions of this Article are not intended to create an independent right of action. While not all inclusive, the below are reiterated here and throughout the agreement to emphasize their importance.

A. Employees, supervisors, management officials, and union representatives will treat each other and members of the public with courtesy, dignity and respect.

B. It is the responsibility of all employees, supervisors, management officials, and union representatives to control their behavior at all times and to abide by the Standards of conduct of the Department.

C. It is the goal of the Employer to provide a healthy and safe work environment for employees. To the extent practical, the Employer will be proactive in addressing situations where there are health and safety concerns relating to working conditions.

D. The Employer recognizes that information shared by employees in confidence must not be shared or discussed with others unless the employee agrees that it is appropriate. This includes, but is not limited to, information about an employee's intent to seek employment outside the employee's immediate office, and information about an employee's mental or health or personal problems. In the event there is a regulatory requirement to convey confidential information, the Employer will inform the employee as soon as it recognizes that this may be necessary.

E. Supervisors, management officials, union representatives, personnel specialists, and employees as well, should refrain from discussing with others, except when there is a legitimate business need, negative and potentially hurtful comments regarding an employee's performance, as well as any negative or potentially hurtful comments regarding an employee's mental health or professional demeanor.

F. At no time will the act of employees making a complaint or exercising their rights, as it relates to the provision of this Agreement or any other employee right, be the basis for any form of retaliation by the Employer.

ARTICLE 48: EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION

SECTION 1

The parties agree that the Employer will not discriminate against any employee on the basis of race, color, national origin, age, sex, sexual orientation, disabilities or religion. Toward this end, the Employer will administer an equal employment opportunity (EEO) program in accordance with applicable laws and regulations.

SECTION 2

A. EEO issues raised under this Agreement either through the negotiated grievance procedure, through the HHS-wide administrative EEO complaint process established pursuant to and in conformance with government-wide regulations of the Equal Employment Opportunity Commission (EEOC), or, in cases within its jurisdiction, in an appeal to the Merit Systems Protection Board.

B. Once an employee has elected one of these procedures, that election is irrevocable. The employee may not decide to change thereafter to a different procedure.

SECTION 3

The Employer will provide bargaining unit employees with access to trained Equal Employment Opportunity Counselors with whom they may speak in connection with an EEO issue, in an effort to resolve the issue before pursuing a formal action complaining of discrimination on a protected basis.

SECTION 4

A. The Employer will provide to the Union a copy of each report on the HHS EEO program that is prepared for EEOC, provided that such report encompasses data/information on at least one of the OPDIVs represented by NTEU. This provision includes the Affirmative Employment Accomplishment and Update Report, annual compliance with EEO law reports, and the Affirmative Employment Plan.

B. If the Employer makes changes to its affirmative employment plan, a copy of any proposed changes will be provided to National NTEU. The Union may submit comments on the document within ten workdays after receipt of proposed changes and the Employer will consider any timely comments in determining final changes.

SECTION 5

The Union shall maintain the same representative rights at the meeting of any existing, management-chartered committee that deals with race, color, national origin, age, sex, sexual orientation, disabling condition, and/or religion, and which addresses conditions of employment of bargaining unit employees. In the event the Employer charters additional committees of such nature, the Employer will provide the Union notice and an opportunity to bargain to the extent allowable by law.

ARTICLE 49: EMPLOYEE ASSISTANCE PROGRAM

SECTION 1

The Employer agrees that, to the extent possible based on funding and staffing limitations, it will operate an employee assistance program (EAP). This program will offer short-term and crisis- oriented counseling for employees experiencing problems in the areas of alcohol abuse, drug abuse, emotional behavioral and/or health problems, and/or certain family situational problems. If this program is to be discontinued due to funding and staffing limitations, the Employer will notify the Union, and negotiations may take place in accordance with this Agreement. The employer provides an EAP that is consistent with this Article and the requirements found in the current HHS Personnel Instruction 792-2.

SECTION 2

The Employer and the Union will advise employees who appear to be experiencing performance, conduct and/or attendance problems of the availability of the EAP to provide counseling and referral assistance to resolve any personal problems that may be affecting performance, conduct and/or attendance. The Employer will provide information to Union representatives on the basic operating principles of the program.

SECTION 3

A. EAP consultation(s) will be approved by the Employer on duty time or as excused absence, provided employees inform their leave-approving official that the requested time away from the office will be used for EAP consultation. The employee need not provide further details to the official.

B. Employees may request sick leave, annual leave, leave without pay, and/or earned compensatory time, consistent with applicable provisions of this Agreement, for purposes of undergoing a treatment program resulting from a referral by an EAP Counselor. Such leave requests will be approved or denied on the basis as for any other request which necessitates absence from work.

C. If employees choose to inform their leave-approving official that requested leave will be used to undergo regular outside professional counseling/assistance for substance abuse or personal problems, that official will assist the employee in working out the schedule for taking any such approved leave. The leave approving official will keep such information in strict confidence. The EAP can provide information to the Employer as to whether an employee attended a counseling session and the approximate length of the session.

SECTION 4

A. Counseling records and information from employee visits to EAP will be kept by the EAP in a confidential manner consistent with applicable laws and except where disclosure without consent is allowed (see below), the EAP must obtain the employee's written consent before any release of information can be made. This applies to all releases, including those to supervisors, treatment

facilities, and family members, without regard to the type of problem the employee is experiencing.

B. Disclosure by the EAP without consent is only permissible in a few specific instances, such as to medical personnel in a medical emergency, under certain court orders, and to comply with Executive Order 12564 (Drug Free Federal Workplace). If the employee's absence from duty is excused when the employee uses the services of the EAP, the EAP can provide information to the Employer as to whether an employee attended a counseling session and the length of the session.

C. In certain situations, information provided to the EAP is not protected by the confidentiality regulations and policies and, due to the nature of the information, must be reported to appropriate authorities. Examples include, but may not be limited to:

    1. The EAP is required by law to report incidents of suspected child abuse and neglect (and in some states elder and spouse abuse and neglect) to the appropriate state and local authorities.

    2. If an employee commits or threatens to commit a crime that would physically harm someone or cause substantial property damage, disclosures may be made by the EAP to appropriate persons, such as law enforcement authorities and those persons being threatened.

    3. If the employee indicates that the employee is contemplating suicide, disclosures may be made to appropriate medical and/or law enforcement authorities.

SECTION 5

The Employer will issue an annual notice to all employees explaining the program.

ARTICLE 50: HEALTH AND SAFETY

SECTION 1

A. The Employer will provide a safe and healthy work environment for employees. As such, the Employer will comply with the applicable standards of the Occupational Safety and Health Administration as well as with all relevant health and safety codes and standards established and mandated by an authorized government entity. The Employer will maintain work area temperatures within acceptable ranges to the maximum extent possible.

B. Employee has a responsibility for their safety and an obligation to observe established health and safety rules and precautions as a measure of protection for him/herself and others. Employees will not engage in willful misconduct that causes or will likely cause the Employer to be in violation of any rule, regulation, order, permit or license issued by a regulatory authority.

C. Each employee will become familiar with and observe health and safety-related policies and procedures and guidelines issued by the Employer, which are applicable to the employee's own actions and conduct. If the Employer provides employees with safety equipment, personal protective equipment, or any other devices and procedures that the Employer considers to be necessary for employee protection, the employees will use such equipment as directed by the Employer.

D. Behavior that is considered threatening or intimidating and/or violence in the workplace are unacceptable forms of conduct and will not be tolerated.

SECTION 2

A. In the course of performing their assigned work, employees will be alert to the presence of unsafe or unhealthy conditions. Employees will attend mandatory safety training provided by the Employer. When such conditions are observed, it is the employee's right and responsibility to report them to supervisory personnel and/or facility safety and health personnel, such as the Health and Safety Officer. The employee may also notify a member of the Health & Safety Committee or a Union representative if the employee wishes to remain anonymous. That person will then immediately forward the information to the appropriate management official(s). Where an employee has notified the Employer of an unsafe condition, the Employer will look into the matter as appropriate. The Employer will notify the Union of the results and give the Union an opportunity to be present during any formal discussions between the Employer and employee pertaining to a safety or occupational health hazard.

B. If an employee makes an oral report to the Employer of an unsafe or unhealthy working condition, the Employer shall reduce that report to writing. Where the problem is not corrected by the beginning of the second workday, the Employer will alert the appropriate chapter president of the condition no later than the end of that workday. Upon request, the Union will be given a copy of the employee's report and any report of the corrective action within a reasonable period of time.

Copies of health and safety reports in the possession of the Employer, including the results of testing's and inspections, will be made available to the Union, upon specific request, to the extent practicable within three (3) days of receiving said report, in accordance with law and regulations. Reports will be provided in accordance with the provisions of the Privacy Act and other applicable laws.

C. In the case of imminent danger situations, employees or the Union will make reports to the Employer by the most expeditious means available. The term "imminent danger" means any conditions or practices in any workplace which are such that a danger exists that could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through normal procedures. In such situations, employees may decline to perform assigned tasks in the usual work area when they have a reasonable belief that, under the circumstances, the task or area poses an imminent danger. However, in these instances, the employee must report the situation to the employee's supervisor, another supervisor who is immediately available, and/or facility safety and health personnel. After making the report, the employee may leave the affected work area but must hold be available for work under appropriate working conditions in another work area. If these procedures are strictly followed, employees will continue to be paid as long as they remain available to, and do if requested, perform any work as directed by the Employer. An employee who abuses these procedures may be subject to disciplinary action.

D. The Employer will assure that each building or work area occupied by unit employees has an annual safety and health inspection. The Union will be given an opportunity to designate a local representative of the Union to be present for all such inspections. In addition, the Union will be entitled to be included on any other health and safety inspection involving the Employer. When feasible, the Employer will give at least two (2) workdays advance notice of the date an inspection is scheduled. Such notice will provide the time and place where the inspection will begin. Prior to the scheduled inspection the Union will notify the Employer of either the name of its representative who will be present or its intent not to participate. When the designated Union representative is an employee, the representative may participate in the inspection without charge to leave. If multiple sites are being inspected simultaneously, the Union shall have the right to designate a local representative to be present at all sites. Employee representatives will be released from duty in accordance with Article 10.

SECTION 3

A. The Employer will take steps on at least an annual basis to ensure that employees are familiar with proper emergency procedures. When emergencies occur, the Employer will take all steps necessary to ensure employee safety. The Union will assist in this effort by encouraging its members to follow established procedures and by having its representatives serve as wardens/monitors/coordinators after appropriate training has been provided.

B. The Employer will appropriate emergency supplies and equipment at each office location and inform employees as to their location.

SECTION 4

A. The Employer will provide the normal and routine services offered under existing contracts with Health Units. Where considered feasible based on the location of the Health Unit, such services will include care for employees during emergency situations and until proper outside medical authorities can reach the employee. Employees needing first aid should go to the Health Unit where available. As testing, inoculations, and special programs are offered by the Health Unit, such programs will be made available to employees subject to any limitations established on the Health Unit and budgetary restrictions imposed on the Employer. If the Health Unit is permanently closed, the Employer will notify the Union and negotiations will take place in accordance with this Agreement. The Union will also be notified by the Employer if the Health Unit reduces its services. In addition, the Employer will provide employees with medical screenings and physicals that are required for identified job descriptions and/or are within the bounds of its contract for these services. Health Unit visits will be approved by the Employer on duty time or as excused absence, provided employees inform their leave approving official that the requested time away from the office will be used for Health Unit services.

B. The Employer will provide employees, when practical, with information concerning of the nearest medical service facility/clinic where emergency medical services can be provided. Employees will also be informed of the procedures to use to contact the local emergency management system (e.g., paramedics, fire departments, police departments, ambulance services, etc.). Employees should assume personal responsibility for taking appropriate steps to inform themselves about emergency services and procedures.

C. Contingent upon funding, the Employer will offer cardiopulmonary resuscitation (CPR) and automatic external defibrillators (AED) training to interested employees at all facilities. The training will be offered at least annually on duty time. The Employer will arrange for such training in an appropriate form and setting (e.g., within an OPDIV/STAFFDIV, in combination with other OPDIVS of HHS, or on a multi-agency basis). The Employer and the Union will encourage employees to take the course. If the local facility emergency action plan contains provisions for publicizing the names and locations of CPR/AED trained employees, the employees must first give permission to the Employer to publicize their name.

D. Other health promotion and disease prevention information will be made available by appropriate means.

E. The Employer will provide the local Union chapter with the name of the Employer safety officer or other contact person for health and safety matters, as well as the location and availability of relevant resource materials.

SECTION 5

The Employer agrees to continue to provide periodic health and safety presentations for employees. Health and safety program information will be disseminated and posted in accordance with 29 CFR § 1960.12(e).

SECTION 6

The Employer will provide advance notice to the Union when physical construction will occur to a worksite and when pesticides, paint, carpet glue, HVAC cleaning agents, and similar construction and maintenance chemicals are used in a large-scale application. In such cases, provisions will be made for individuals with administratively acceptable documented special health conditions. Where possible, the notice will be given at least forty-eight (48) hours before the construction occurs or before the above-named chemicals are to be used. When the use of such chemicals occurs in buildings not controlled/managed by the Employer, the Employer will notify the Union Chapter President as soon as it is aware of such use. Warning statements and Material Safety Data Sheets (MSDS) given to the Employer or its agents by the organization applying such materials will be available for inspection. When the Employer determines that there is a reasonable likelihood of harm due to application of such materials or a reasonable likelihood of disruption due to the construction, employees will be directed to move to another work area until their area is determined to be safe for use. Emergency situations may arise that require the use of such chemicals or that require unplanned construction. In these instances, the Employer will respond and notify the Union as soon as possible.

SECTION 7

A. The Employer will comply with all government-wide regulations relating to health benefit coverage for employees and open season procedures.

B. The Employer will furnish to employees, as early as possible during the open season, with the information on electronic sources for materials relating to health benefit coverage, including, when available, the open season instructions, a list of the benefit rates for all OPM-approved health benefit plans for which employees quality (including any plan offered by the Union), and all summaries of coverage (both in cross-plan comparison and plan- specific formats, if available) provided by OPM. Open Season information is available from the OPM Website at http://www.OPM.Gov/insure/index.html.

C. The Employer will provide hard copies of each OPM-approved plan for which employees qualify in those locations where electronic access is not available.

SECTION 8

When it is necessary for an employee to leave work and return home because of illness or incapacitation, the Employer will, to the extent possible, facilitate in securing a means to transport the employee home. The Parties recognize that the employees' monetary, tort, and pecuniary liability is governed by statute and decisions of the Comptroller General and the Federal Courts. The Employer assumes only that responsibility and liability allowable by law, regulation, or such decisions.

SECTION 9

A. Subject to budgetary constraints, the Employer shall provide employees who are required to use computers on the job with workstations or desks that are designed for computer monitors and that may include adjustable keyboard trays, adjustable work surfaces which are large enough to

accommodate the computer workstations, e.g., printers manuals, work papers, and any other equipment required by the employee to perform the duties and responsibilities of their positions. Wrist rests may be provided if requested by individual employees.

B. As furniture is replaced, the Employer shall provide employees, at their request, with ergonomically designed furniture that meets commonly accepted industry standards, e.g., chairs that shall include arm rests, etc. If more than one (1) style of chair is available at any facility, bargaining unit employees shall be offered an opportunity to choose the chair of their choice.

SECTION 10

Joint labor-management Health and Safety Committees, with equal representation, may be established in the Headquarters location of each OPDIV, in each Regional Office (on a multi-OPDIV basis if the Employer so desires), and/or at a separate field office level. The Committees' function and procedures may include studying health and safety problems and pursuing recommendations for their resolution to appropriate officials. Existing Health & Safety Committees shall continue to operate for the duration of this Agreement and under the same procedures and practices as are currently in effect.

SECTION 11

1. When employees are injured in the performance of their duties, they will be informed by the Employer of the procedures for filing a claim for benefits under the Federal Employees Compensation Act. Information will be provided about the type of benefits available, including specific reference to their option to file a claim for disability compensation if they are disabled for work.

2. The Employer will provide an employee who is injured while in work status with a copy of the current Pamphlet CA-550, which answers questions about the Federal Employees Compensation Act. A copy of Pamphlet 550 will be kept in the servicing personnel office and on the HHS intranet.

SECTION 12

The Employer will provide the Union copies of reports of all health and safety accidents that result in loss of time from the job. At the Employer's option, these may be provided to the chapter(s) with jurisdiction over the place where the accident happened.

SECTION 13

1. Employer drug testing will be carried out in accordance with all applicable laws and government-wide rules and regulations.

2. Test results will be protected under the provisions of the Privacy Act of 1974, 5 U.S.C. § 552a, and Pub. L. 100-71, section 503. Employees subject to drug testing will, upon written request, have access to any records relating to their drug test(s).

ARTICLE 51: DOCUMENTATION OF MEDICAL STATUS

SECTION 1

All medical documentation acquired under this Article, whether submitted by the employee or obtained through medical examination, will be treated confidentially and the Employer will observe all requirements of the Privacy Act and other legal authorities. No medical information other than information on how the medical condition affects an employee's job requirements will be shared with supervisors or LR/ER representatives, unless an employee consents to a broader medical release. Reports produced during any such examinations will be maintained in accordance with applicable provisions of 5 CFR § 293 and other legal authorities. The report of an examination conducted pursuant to this Article will be available to the employee pursuant to 5 C.F.R. § 293.504(b) and 5 C.F.R. § 297.205.

SECTION 2

Employee Initiated Requests. When employees request a change in duty status, assignment, or working conditions, or any other benefit, special treatment, or accommodation based on medical reasons, the employees will submit a request in writing to their supervisor, along with medical documentation in support of the request. The documentation shall be limited to the specific information necessary for the Employer to make a determination regarding the validity of the employee's request. Subject to Federal law, the Employer shall not require the employee to provide a statement of a specific diagnosis or medical condition or disability to the Agency. In the event the medical documentation submitted is inadequate for the Employer to make a sound and informed decision, the Employer may request that the employee provide additional medical / documentation in accordance with 5 CFR § 339. It is the employee's option to provide the requested information. However, if sufficient medical documentation to support the request is not provided, the Employer may not approve the request. The Employer retains responsibility for granting requests, for granting requests in modified form and for denying requests, as appropriate.

SECTION 3

A. When the Employer orders or offers a medical examination under the provisions of the OPM regulations, it will inform the employee in writing of its reasons for ordering or offering the examination and the consequences of failure to cooperate. Except in emergency situations, employees are entitled to at least seven (7) calendar days' advance written notice that they are to take a fitness-for-duty examination or psychiatric examination. In the event that employees are requested to set up an appointment, they will be allowed reasonable time to do so. The notice will set forth the reasons for the examination (including the behavior the Employer has observed), and the general scope and character of the examination. Any employee ordered to take an examination by the Employer will be allowed to do so on duty time.

B. *Continuation of Pay/Workers' Compensation* -The procedures in this article are not designed to address benefit claims filed with the Department of Labor, Office of Workers Compensation Programs (OWCP), for alleged job-related injuries. Employees filing such claims must adhere to the OWCP rules, regulations, and policies. The Employer may order any employee who has

applied for, or is receiving, continuation of pay or workers' compensation resulting from an on the job injury or occupational disease to undergo examinations(s) at the Employer's expense in accordance with 5 CFR § 339. An employee's refusal to be examined, in accordance with a properly authorized order of the Employer under 5 CFR § 339, will be grounds for appropriate disciplinary or adverse action.

C. Medical examinations under this Article must be conducted in accordance with accepted professional standards by a licensed practitioner or physician authorized to conduct such examinations. Employees directed by the Employer to take a medical examination will have an opportunity to submit to the Employer the names of three (3) physicians located in the commuting area to be considered to conduct the examination. If the Employer does not agree with any of the choices submitted by the employee, the Parties recognize that, pursuant to 5 CFR § 339.303(b), the Employer retains the authority to designate the examining physician. In the event that a physician not suggested by an employee is designated to conduct the examination, any medical documentation submitted by the employee's personal physician will be reviewed and given due consideration by the Employer or its agents. The employee will be responsible for furnishing such medical documentation to the designated examining official.

D. *Employees Whose Positions Are Not Subject to Physical Requirements/Medical Standards.* If the Employer has offered employees an opportunity to provide acceptable supporting documentation from their own physician(s) and the medical documentation provided is inadequate for the Employer to make an informed decision, the Employer may offer an employee a medical examination at the Employer's expense in accordance with 5 CFR § 339. The Employer's designated medical consultant and the examining physician, chosen by the Employer, will consider any documentation employees have submitted to the Employer from their own physician. If the employee declines to submit to the examination offered by the Employer, the Employer will base its decisions on the documentation it has received.

E. The Employer may direct an employee occupying a position for which physical requirements, medical standards or medical evaluation programs have been established to undergo a fitness for-duty examination only under those conditions authorized in prevailing OPM regulations (currently found at 5 C.F.R. Part 339) at the time the examination is requested or ordered.

1. The Employer will provide the examining physician with a copy of the applicable standards and requirements for the position, and/or a detailed description of the duties of the position, including critical elements, physical demands, and environmental factors. An employee's refusal to be examined, in accordance with a properly authorized order of the Employer under 5 CFR § 339, will be grounds for appropriate disciplinary or adverse action. This provision shall not be interpreted as granting to the Employer any right to conduct drug screening, HIV testing, or any other medical testing or procedure not specifically mandated by law, rule or regulation.

2. When an individual is hired for a position which is subject to physical safety requirements and/or medical standards, the Employer will follow the requirements and procedures in government-wide regulations in assessing whether the prospective employee satisfies those requirements and/or standards. If the Employer has reason to believe that the employee no longer meets such requirements and/or standards at a

subsequent point in time, it will similarly adhere to government-wide regulations in order to determine whether the employee still meets the necessary requirements/standards for employment in that position.

F. An agency may order a psychiatric examination (including a psychological assessment) only when:

1. The result of a current general medical examination which the agency has the authority to order under this section indicates no physical explanation for behavior or actions that may affect the safe and efficient performance of the individual or others, or

2. A psychiatric examination is specifically called for in a position having medical standards or subject to a medical evaluation program established under 5 C.F.R. § 339.

A psychiatric examination or psychological assessment authorized under 1 or 2 above must be conducted in accordance with accepted professional standards, by a licensed practitioner or physician authorized to conduct such examinations, and may only be used to make legitimate inquiry into a person's mental fitness to successfully perform the duties of his or her position without undue hazard to the individual or others.

G. An examining physician's report may not be used as a basis for a reduction in grade or termination of an employee due to unacceptable performance unless:

1. The job has specific medical requirements as a condition of acceptable performance; or

2. The employee, due to the medical condition(s) addressed in the report, is unable (with or without reasonable accommodation) to perform the essential functions of their position. However, if the employee asserts that medical reasons contributed to their performance problems, such reports of medical evidence must be considered.

SECTION 4

An employee experiencing health-related problems potentially attributable to working at a computer and/or an associated workstation will promptly inform the Employer (either directly or through the Union) in writing of all pertinent facts. The Employer will consult with the appropriate officials and a determination will be made whether an ergonomic adjustment is necessary to resolve the problem. If those measures do not correct the problem, the employee may submit medical documentation, in accordance with 5 CFR § 339, for the Employer's further consideration. If review of the documentation by the Employer's consulting physician supports a determination that damage to the employee's health will likely result from continued work on the computer and/or on associated workstation, the Employer will attempt either to take further reasonable measures at the employee's workstation or, where reasonably practical, to reassign the employee to other appropriate work. The Employer may, at its option, offer a voluntary medical examination in such circumstances. Nothing in this Section is intended to alter either an employee's right to request, or the Employer's duty to respond to a request for reasonable accommodation of a qualified handicapped individual's documented disabling condition.

SECTION 5

The Employer will pay all costs for the examination(s) of employees which it orders or offers under the provisions of this article. Employees must pay for medical examinations conducted by a private physician or practitioner where the purpose of the examination is to secure a benefit sought by the employee such as but not limited to a request for a reasonable accommodation or advance sick leave.

ARTICLE 52: PARKING

SECTION 1

Current parking practice, procedures and policies will continue under this agreement. The Union will be given notice and an opportunity to bargain locally over any proposed changes in parking spaces allocated to bargaining unit employees provided the changes are not *de minimis*.

SECTION 2

Notwithstanding Section 1 of this Article, the Employer and the Union may discuss concerns regarding parking at the request of either party.

ARTICLE 53: PUBLIC TRANSPORATION SUBSIDIES AND BICYCLE REIMBURSEMENT PROGRAM

SECTION 1

The parties support the objectives of the Energy Policy Act of 1992 and the Federal Employees Clean Air Incentives Act of 1993 and encourage bargaining unit employees' usage of alternatives to single-occupancy vehicle commuting. The programs in this Article are available to all bargaining unit employees. Employees may participate in one or more of the programs provided they meet the eligibility requirements.

SECTION 2: Public Transportation Subsidy Program

A. The Employer understands the value of providing a public transit subsidy benefit for employees and will continue to provide such benefit, consistent with applicable law, rule, and regulation, within the context of mission requirements, limited budget resources, and the impact such subsidies would have on other budget items.

B. The Employer will offer a monthly Public Transportation Subsidy Program (PTSP) benefit to employees equal to their actual qualifying monthly commuting costs, but not to exceed the maximum nontaxable amount authorized by applicable law, rule, and regulations governing public transportation benefits for federal employees, including any annual inflationary adjustments provided by the Internal Revenue Code. Annual inflation adjustment increases to the monthly benefit will be implemented as soon as practicable after the effective date of the change, but no later than two (2) pay periods. Where retroactive transit subsidy increases are authorized by Congress, those increases will be processed as soon as practicable, normally no later than six (6) pay periods from the date of authorization. If a retroactive transit subsidy increase cannot be processed within this time period due to Congressional funding action, the Employer will provide notice to NTEU of any potential delay in processing the retroactive payments.

C. The Employer agrees that is will notify the Union should budgetary issues adversely affect the monthly benefit.

D. The transit subsidies will be made available in the form of commuter passes or vouchers for mass/public transportation. A subsidy cannot exceed the actual commuting cost incurred by the employee and cannot be used to subsidize transportation costs of individuals other than the employee. All employees are eligible to participate in this program based on the following criteria:

    1. The employee must submit an application form provided by the Employer.

    2. The employee must relinquish any government supplied or subsidized parking space, except for spaces designated for transit agency sponsored vehicles used for car/van pooling.

E. The Employer shall have discretion to utilize the most efficient method of administering this program, including (but not limited to) the use of SmartCard or other similar public transportation payment programs.

F. It is incumbent upon Employees who receive a transit subsidy paid by the Employer to reduce the transit subsidy amount which they claim or accepts each month to account for days of leave, travel, work at an alternate duty station, etc. Federal law requires that transit subsidy funds be paid only for days on which the employee uses public transit between their residence and the official duty station.

G. Transit subsidy benefits for van pool commuting will be administered consistent with law and regulation.

SECTION 3: Bicycle Reimbursement Program

A. The Agency has a Bicycle Reimbursement Program (BRP) that provides a qualified bicycle commuting reimbursement authorized by 26 U.S.C. §132(f) to participating employees.

B. The term "qualified bicycle commuting reimbursement" means, with respect to any calendar year, any employer reimbursement during the 15-month period beginning with the first day of such calendar year for reasonable expenses incurred by the employee during such calendar year for the purchase of a bicycle and bicycle improvements, repair, and storage, if such bicycle is regularly used for travel between the employee's residence and place of employment.

C. This benefit provides HHS employees who regularly commute to work via bicycle at least fifty percent (50%) of the time in any given month for which reimbursement is requested, with a reimbursement of up to the applicable annual limitation authorized by 26 U.S.C. § 132(f). This amount is currently $20 per month, not to exceed $240 per year, unless permitted by law.

D. If the maximum non-taxable amount of the qualified bicycle commuting reimbursement increases, those increases will be implemented as soon as practicable after the effective date of the change, but no later two (2) pay periods. Where retroactive increases are authorized by Congress, those increases will be processed as soon as practicable, normally no later than six (6) pay periods from the date of authorization. If a retroactive increase cannot be processed within this time period due to Congressional funding action, the Employer will provide notice to NTEU of any potential delay in processing the retroactive payments.

E. This benefit may only be received for months in which an employee does not receive a transit benefit pursuant to Section 2 above.

F. BRP Enrollment

1. Participating employees must certify that they regularly uses a bicycle for any portion of their commute. Participants must provide receipts for bicycle commuting expenses incurred in order to receive reimbursement for allowable expenses.

2. The Employer will provide a link to instructions for the enrollment process and/or enrollment form available on the HHS intranet as soon as possible after this Agreement becomes effective. Employees must use the enrollment form that is provided by the Employer.

3. All employees who request enrollment as provided in this Article will be approved to participate in the BRP. The Employer will process properly completed and submitted enrollment, change and cancellation requests within a reasonable period from date of receipt, normally within thirty (30) days.

4. Employees who enroll in the BRP will be emailed a notification of their enrollment.

G. The BRP benefit may not be used any month in which the employee receives a Public Transportation Subsidy Program benefit described in Section 2 above.

SECTION 4: Pre-Tax Parking Exploratory Committee

A. Within sixty (60) days of the effective date of this Agreement, the Employer and NTEU will establish a joint labor-management exploratory committee to investigate and identify the steps necessary to establish a pre-tax parking program consistent with 26 U.S.C. § 132(f), including identifying necessary vendors, conducting a cost analysis, and identifying the level of need for such a program, potentially relevant locations, and the employee interest. The CDC/Hyattsville location may be exempt from participating in the exploratory committee.

B. The committee will consist of an equal number of NTEU bargaining unit participants appointed by NTEU National and non-bargaining unit participants appointed by HHS, not to exceed a total of eight (8) committee members. The NTEU committee members will receive official time to participate. In addition, NTEU National may also appoint a NTEU staff member to participate on the committee.

C. The committee will meet at agreed upon dates and times, but at least monthly, unless mutually agreed otherwise. It will strive to complete its work within nine (9) months of formation of the committee, but not later than twelve months, unless the parties mutually agree to extend the time.

D. The committee will generate a report of its findings no later than twelve (12) months after the committee is formed, unless extended by mutual agreement of the parties. The report will include the committee's findings, including the results of the cost analysis for establishing and maintaining a pre-tax parking program, vendor requirements, and employee interest in the program. The report will be provided simultaneously to the NTEU National President and the HHS Assistant Secretary for Administration.

E. Either party may propose to bargain over the establishment of a pre-tax parking program at the mid-term table pursuant to Article 3.

SECTION 5

The Employer will make available through the intranet information on transit alternatives. This information may include:

A. Public Transit and fare information.

B. Van/Shuttle information.

C. Bikeshare information

D. Other relevant information locally available and applicable.

E. Local telephone numbers of public transportation offices where additional information can be obtained.

Section 6: Policies and Forms

The Employer will have forms and other applicable guidance for the Bicycle Reimbursement Program that is consistent with this Article.

ARTICLE 54: REDUCTION-IN-FORCE

Consistent with law, rule, and regulations, once the Employer makes a final decision to conduct a reduction-in-force (RIF), it will give official notice to the Union and offer the Union an opportunity to bargain any and all impact and implementation issues. The Employer shall issue such notice as far as practicable in advance of official notification to the affected bargaining unit employees. At a minimum, the notice will include the competitive area and level initially affected, the number of anticipated employees involved, the proposed effective date, and the reason(s) for the RIF action.

ARTICLE 55: OUTSIDE EMPLOYMENT AND ACTIVITIES

SECTION 1

Written approval is required before any HHS employee may, with or without compensation:

A. Provide consultative or professional services, including service as an expert witness;

B. Engage in teaching, speaking, writing, or editing undertaken at the request of a prohibited source (i.e., a person or entity who does or seeks to do business with HHS; seeks official action by HHS; conducts activities regulated by HHS; has interests which may be substantially affected by the performance of the employee's duties; or an organization composed of prohibited sources);

C. Provide services to a non-federal entity as an officer, director, or board member, or as a member of a group, however denominated, that renders advice or consultation.

SECTION 2

A. When an employee is ordered to divest financial holdings, the Employer will provide the employee with written confirmation of its order that the employee divests, including the reasons for the divestiture.

B. In order for employees to be made aware of their legal rights regarding the divestiture order, the notice must include citations of all pertinent authorities and regulations that are the basis for the divestiture order, including appropriate citations of 5 CFR § 2634, 5 CFR § 2635, and 5 CFR § 550l.

C. After notice is served and prior to the Employer taking any action in support of the divestiture order, the Employer will give the employee a reasonable opportunity (not to exceed 90 days) to comply with the divestiture order.

ARTICLE 56: RETIREMENT/ RESIGNATION

SECTION 1

Within available resources, the Employer agrees that those employees who are eligible to retire within five (5) years will be given an opportunity to participate voluntarily in a retirement planning seminar. This seminar, whether established by the Employer or obtained through another source, will include at a minimum the prescribed requirements of the federal retirement plans.

SECTION 2

Counseling is available to each employee who separates, voluntarily or involuntarily, as to her/his rights and benefits under the applicable retirement system.

SECTION 3

After an employee has submitted a resignation or retirement application, the employee may request, in writing, to withdraw the application at any time prior to its effective date. The Employer may deny the withdrawal request only for legitimate reasons including, but not limited to, the hiring of or valid commitment to hire a replacement. This denial and the reasons for it will be communicated to the employee in writing.

ARTICLE 57: SECURITY ISSUES

SECTION 1

A. The parties recognize that the Employer has the right to determine the internal security practices of the Agency, which includes the right to review and determine whether current security measures are adequate and consistent with the requirements of existing laws, regulations, Executive Orders and internal security policies, including but not limited to, 5 CFR Part 731, E.O. 10577 (as amended), HSPD-12, and HHS security policies. This article is intended to address the issuance of identification badges, background investigations, security clearances, and security measures.

B. As part of the exercise of this right and consistent with law, rule and regulation, the Employer will issue identification badges/cards and to have electronic or other state of the art tools embedded on or inside the cards for security purposes. The Employer recognizes its obligation to exercise this right consistent with the Privacy Act, the parties' contract, law, rule and regulation. To that end, badges will not contain social security numbers or other information of a personal nature - beyond that which is required by law, rule, and regulation.

C. The Employer will post specific applicable background investigation and security clearance requirements on all vacancy announcements, including the need for a credit check, the minimum background investigation required for the position, and indicate that favorable adjudication of the background investigation, and granting the required security clearance if applicable, is a condition of employment.

D. The Employer will notify impacted employees and local Chapter President of any changes in background investigation requirements (including new or updated forms) for their current positions and of any implication on their employment as far in advance of the effective date as practicable, but not less than thirty (30) days.

E. The Employer will provide employees falling under section D above thirty (30) days to complete any required background investigation forms. Employee requests for extensions in time to complete the forms will be considered on a case-by-case basis.

SECTION 2

A. If an employee's background investigation can be favorably adjudicated by the personnel Security staff without supervisory input, the supervisor will not be provided any information on issues that are contained in the investigative report other than it contained non-disqualifying issues.

B. If the employee's investigation has potentially disqualifying or disqualifying issues, the supervisor shall be included in the adjudication process and provided information consistent with the employee's release statement on the SF-85/85P/86 and the supervisor's need to know.

C. Background investigations will be conducted in a manner that balances the employee's right to privacy with the government's need to know information in order to make a suitability determination. The investigation will be consistent with existing law, regulation, and policy.

D. The parties recognize that if medical information is required for a background investigation for a public trust position, the investigator will contact the employee for a separate medical release that specifies the questions that will be asked.

E. Employees who are potentially identified as unsuitable for the security/suitability requirement of their position will be provided written notice of the specific reasons and to whom a request for expedited review is to be directed.

F. Employees may request an expedited review of their case prior to final decision on their suitability for their position. The employee must request such review within five (5) workdays after receiving the written notification. To the extent practicable, the employee's supervisor who was involved in the adjudication will not conduct the review or make the final decision on suitability. The employee will have the opportunity to present written and/or oral response, with supporting documentation, to all disqualifying information obtained during the background investigation. The employee will have the right to union representation during any expedited review.

G. The review will normally occur within ten (10) workdays of the employee's receipt of the initial determination. Reasonable requests for extensions of these timeframes will be considered. The Employer's decision regarding suitability is final.

H. If an employee does not meet the suitability or security requirements of the position, the Employer will make reasonable, good-faith efforts to place the employee in a vacant position available to be filled for which the employee is suitable and qualified, to reassign the employee temporarily, to detail the employee and/or adjust the employee's workload.

SECTION 3

An employee who is terminated due to security requirements may appeal that termination pursuant to 5 C.F.R. Part 731 or 752,as appropriate.

SECTION 4

Nothing in this article may be construed as infringing upon the authority of the Office of Personnel Management pursuant to federal law and 5 C.F.R. Part 731.

ARTICLE 58: LABOR-MANAGEMENT RELATIONS COMMITTEES

A. The parties recognize that a strong relationship between labor and management as true and equal partners is essential in order for HHS to continue to deliver high quality of services to the American people as well as continue to recognize and value its employees and their union representative. This cooperative relationship envisions the open sharing of information thereby engendering mutual trust, respect, and resolution at the earliest possible time.

1. The National NTEU/HHS Labor Management Forum will operate pursuant to its charter dated April 7, 2022. All other current Labor-Management Relations Committees, Cooperation Councils, or similar committees/groups established prior to this Agreement will continue to operate during the term of this Agreement, subject to subsection A3 below. This will include:

    a. Established labor-management relations committees, cooperation councils or similar committees in each Operating Division. To the extent not already established, each Operating Division (e.g., ACF, CDC, FDA, HRSA, IHS, ACL, ASPR, SAMHSA) will establish a labor-management relations committee within forty-five (45) days of the effective date of this Agreement. ACL, ASPR, and SAMHSA will establish a combined LMRC where each OpDiv is represented.

    b. Staff Divisions will hold collective committees and/or councils at the OS HR Center level (Appendix 58-1**)**. The Staff Divisions (OS HR Center) will establish one labor- management relations committee within forty-five (45) days of the effective date of this Agreement.

    c. Local labor-management relations committees, cooperation councils or similar committees may be consolidated into the labor-management relations committee for that Operating Division or Staff Division (OS HR Center), by mutual agreement of NTEU and HHS.

2. The following will continue to be used as guiding principles and objectives in achieving this cooperative relationship, and for participation in Labor-Management Relations Committees, Cooperation Councils, or similar committees/ groups;

    a. Building strong relationships nationally and locally between the key leaders of each party;

    b. Exchanging information;

    c. As determined by the Operating Division Head, receiving pre-decisional input and discussion matters of concern or interest in the

broad areas of personnel policy and practice and working conditions;

d. Attempting to resolve problems informally in an effort to avoid protracted and costly negotiations or grievances.

3. Each LMRC and Cooperation Council established under this Article shall:

   a. establish a charter or other ground rules which will govern the procedures under which the committee will operate or discontinue, which will be mutually agreed to by the parties;

   b. meet at least bi-annually at times mutually agreed to by the parties;

   c. be comprised of an equal number of bargaining unit employees appointed by the Union, and non-bargaining unit employees appointed by Management, but in no event less than four (4) total members;

   d. discuss matters of interest to both the Union and Management members of the committee; and

   e. be empowered to make recommendations to Management to address issues discussed by the committee.

4. By mutual agreement, each Operating Division/Staff Division and their Chapter Union representatives on the OpDiv/StaffDiv LMRCs in Section A1 above may establish additional LMRCs and Cooperation Councils.

5. Union representatives serving as committee members are engaged in representational activity and therefore must be on approved official time.

ARTICLE 59: TOBACCO FREE HHS

The agency, as part of its mission to promote healthy practices has decided that all buildings occupied by HHS employees whether owned and/or leased and space immediately surrounding the building shall be free of tobacco products. This means that no tobacco product, including but not limited to snuff, cigars, cigarettes, or any other product containing tobacco may be used by employees inside the building or within 50 feet immediately surrounding the building. This section does not apply inside private cars or in parking garages more than 50 feet from the building.

HHS is committed to assist employees who wish to utilize cessation programs to stop the use of tobacco products. These programs are sponsored by the Agency with no cost to the employee. Interested employees are encouraged to contact the appropriate office to enroll in a cessation program. There are currently two programs offered, one for CDC employees and one for all other HHS employees. Contact information is as follows:

CDC Employees

- Call (404) 639-2164
- Send an email to life@cdc.gov.

All Other HHS Employees

- Call (206) 615-2511
- On the intranet: http://foh.psc.gov/services/smokingcessation/ProductfocusNov.asp

SIGNATURE PAGE

This agreement is deemed executed on June 28, 2023, and implemented on July 2, 2023 at Washington, DC.

FOR THE AGENCY

Xavier Becerra
Secretary
Department of Health and Human Services (DHHS)

FOR THE UNION

Anthony M. Reardon
National President
National Treasury Employees Union (NTEU)

Cheryl R. Campbell
Assistant Secretary for Administration
Department of Health and Human Services (DHHS)

Anna M. Gnadt, Esq.
National Negotiator/Chief Negotiator
National Treasury Employees Union (NTEU)

Christina V. Ballance
Executive Director, National Labor/Employee Relations
Department of Health and Human Services (DHHS)

Agency Bargaining Members
Jonathan Theodule, CDC
Lisa Honeczy, NLRO
Aster Patel, OHR
Clarence Kulish, HRSA
Anthony Gipson, FDA
Blanca Sanchez, NLRO
Chris Craighead, OMHA
Tania Tse, FDA
Julie Murphy, ASA

NTEU Bargaining Members
Samuel L. Collins, Chapter 210
Sean Mulligan, Chapter 215
Melvenia L. Wright, Chapter 229
Cheryl Monroe, Chapter 230
Roosevelt Turner II, Chapter 254
Anthony W. Lee, Chapter 282
Michael C. Theodorakis, Chapter 282

APPENDIX 5-1: GENERAL NOTICE

I am investigating the alleged _____ (theft, misuse, loss, etc.) You, _____ (employee's name) _____, are the subject of the investigation concerning this matter.

One of the following must be checked.

_____ The general nature of this matter was criminal.

_____ The general nature of this matter is administrative.

One of the following must be checked.

_____ This interview is related to possible criminal misconduct by you.

_____ This interview is not related to possible criminal misconduct by you.

_____ _____
Employee's initials Date

*This form may be added to a OpDiv/Staff Div specific header. However, this language must be used.

APPENDIX 5-2A: SEMI-ANNUAL NOTICE WEINGARTEN RIGHTS/ LABOR ORGANIZATION

HHS recognizes the rights afforded to employees under the Federal Service Labor Management Relations Statute ("The Statute") to bargain collectively, organize and to participate in any labor organization of their choosing.

As a bargaining unit employee, this notice is to inform you of these rights and to provide you with your labor organization contact information.

Employee Rights

5 U.S.C. §7102 provides:

> 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 rights 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.

5 U.S.C. §7114, in part, provides:

> (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—

(is) the employee reasonably believes that the examination may result in disciplinary action against the employee; and

(ii) the employee requests representation. Individual Employee Rights Under the Federal Service Labor-Management Relations Statute 4 Insert Labor Organization, Insert Local Number has been certified by the Federal Labor Relations Authority as your exclusive representative.

The National Treasury Employees Union has been certified by the Federal Labor Relations Authority as your exclusive representative.

The National Treasury Employees Union

www.nteu.org

NTEU National Office Phone Number: 202-572-5500

HHS National Labor Relations - Home (sharepoint.com)

Union Membership

As provided by the Statute, you have the right to join or to refrain from joining the union. If you wish to join (i.e. become a dues-paying member of the union), you may use Standard Form 1187, Request for Payroll Deductions for Labor Organization Dues, to join the union (attachment). The completed form is a request that labor organization dues be deducted from your pay and to notify your labor organization of the deduction. You will submit your completed form to Insert Point of Contact Info.

By providing this information, the agency is neither encouraging nor discouraging union membership.

For more information regarding your rights or the information contained in this letter, you may contact Insert Labor Organization Representative or your local human resources office.

References

- **FLRA** @ www.FLRA.gov
- The Federal Service Labor Management Relations Statue, 5.U.S.C. Chapter 71
- SF-1187
- HHS NLRO

APPENDIX 5-2B: WEINGARTEN NOTICE DELIVERED PRIOR TO EXAMINATION

The following notice must be provided to the Bargaining Unit Employee being interviewed prior to the commencement of questioning.

Sample: TO: BARGAINING UNIT EMPLOYEE (BEING INTERVIEWED)

Subject: Weingarten Rights

In accordance with 5 U.S.C. section 7114(a)(2)(B), bargaining unit employees have the right to Union representation, upon their request, at any examination of them by a representative of the Employer (e.g., management) in connection with an investigation if the employee reasonably believes that the examination may result in disciplinary or adverse action against them. The Employer recognizes the need for these examinations to be conducted in a manner that assures that the privacy of the employee is protected.

I have been given the above statement of rights and obligations at the beginning of the interview held on [Date]_____.

X _____

Signature of Employee

_____ _____

Printed Name of Employee Date

X _____ X _____

Witness Signature Witness Signature

_____ _____ _____ Printed

Name of Witness Printed Name of Witness Date

* This form may be added to a OpDiv/Staff Div specific header. However, this language must be used.

APPENDIX 5-3: THIRD PARTY NOTICE

Statement of Rights and Obligations (Administrative Warning)

Before we ask you any questions, it is my obligation to inform you of the following:

You are here to be asked questions pertaining to your employment with HHS/[OpDiv/StaffDiv] and the duties you perform. As a federal employee you have a duty to reply to these questions, and Agency disciplinary proceedings resulting in discipline up to and including discharge may be initiated as a result of your answers. You are also advised that you may be subject to criminal prosecution for any false answers given in response to any questions. You may be subject to discharge if you refuse to answer or fail to respond truthfully to any relevant questions.

Acknowledgement of Receipt by Employee

I have been given the above statement of rights and obligations at the beginning of the interview held on [Date]_____.

X _____
Signature of Employee

_____ _____
Printed Name of Employee Date

X _____ X _____
Witness Signature Witness Signature

_____ _____ _____
Printed Name of Witness Printed Name of Witness Date

* This form may be added to a OpDiv/Staff Div specific header. However, this language must be used.

APPENDIX 5-4: MIRANDA NOTICE

WARNING AND WAIVER FORM

BEFORE I ASK YOU ANY QUESTIONS, AND BEFORE YOU MAKE ANY STATEMENTS, YOU MUST

UNDERSTAND YOUR RIGHTS. I WANT TO EXPLAIN YOUR RIGHTS TO YOU.

WARNING

YOU HAVE THE RIGHT TO REMAIN SILENT.

ANYTHING YOU SAY CAN BE USED AGAINST YOU IN COURT OF LAW.

YOU HAVE THE RIGHT TO CONSULT WITH A LAWYER BEFORE QUESTIONING AND TO HAVE A LAWYER PRESENT DURING QUESTIONING.

IF YOU CANNOT AFFORD A LAWYER, ONE WILL BE APPOINTED TO REPRESENT YOU FREE OF CHARGE PRIOR TO ANY QUESTIONING.

IF YOU DECIDE TO ANSWER QUESTIONS NOW WITHOUT A LAWYER PRESENT, YOU WILL STILL HAVE THE RIGHT TO STOP ANSWERING AT ANY TIME. YOU ALSO HAVE THE RIGHT TO STOP ANSWERING AT ANY TIME UNTIL YOU CAN TALK TO A LAWYER.

WAIVER

I understand what my rights are. I am willing to waive these rights and talk to you now without a lawyer being present. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me. I hereby voluntarily waive my right to remain silent and my right to have an attorney present at this time.

Signature	Date	Time

I certify that I explained the above statement of rights to _____ and that the waiver was voluntarily executed.

Signature of Investigator	Date	Time
Printed Name of Investigator		
Signature of Witness	Date	Time

* This form may be added to a OpDiv/Staff Div specific header. However, this language must be used.

APPENDIX 5-5: BECKWITH NOTICE

NON-CUSTODIAL WARNINGS

The matter under investigation could constitute a violation of criminal or civil law or regulations and/or violations of administrative policy and rules. Before we ask you any questions or you make a statement, you must understand the following warnings and assurances:

This is a voluntary interview. Accordingly, you do not have to answer questions. No disciplinary action will be taken against you for solely refusing to answer questions. If you refuse to answer the questions posed to you on the ground that the answers may tend to incriminate you, you cannot be discharged or otherwise disciplined solely for remaining silent.

You have a right to remain silent if your answers may tend to incriminate you.

Any statement you furnish may be used as evidence in any future criminal, civil, administrative and/or agency disciplinary proceedings.

I understand the warnings and assurances stated above.

_____ _____

Employee's Signature/ Printed Name Date

WAIVER

I understand the warnings and assurances stated above, and I am willing to make a statement and answer questions. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

_____ _____

Employee's Signature/ Printed Name Date

Other Parties Present:

_____ _____

Witness' Signature/Printed Name Date

_____ _____

Investigator Signature /Printed Name Date

This meeting occurred on ____/____/_____at____:____ _____in_____.

APPENDIX 5-6: KALKINES NOTICE

Statement of Administrative Rights and Obligations

Before you are asked any questions, I wish to explain your rights and responsibilities as an employee of the U.S. Department of Health & Human Services.

You are being interviewed as part of an investigation being conducted by Agency OpDiv/Staff Div authorized personnel. You are going to be asked questions concerning the performance of your official duties. You have a duty to reply to these questions, and disciplinary proceedings resulting in discipline up to and including discharge may be initiated as a result of your answers. Neither your answers nor any information or evidence which is gained by reason of your answers can be used against you in any criminal proceeding.

If you refuse to answer the questions posed, you may be subject to discharge. You may also face criminal charges if you knowingly provide false statements or information to investigators.

ACKNOWLEDGEMENT

I understand the administrative rights and obligations stated above.

_____ _____

Signature of Employee Date

_____ _____

Signature of Agency Representative Date

_____

Printed Name of Witness

* This form may be added to a OpDiv/Staff Div specific header. However, this language must be used.

APPENDIX 5- 7: MERIT SYSTEM PRINCIPLES 5 U.S.C. § 2301 (b)

(a) This section shall apply to-
(1) an Executive agency; and

(1) the Government Printing Office.
(b) Federal personnel management should be implemented consistent with the following merit system principles:

(1) Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.
(2) All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.
(3) Equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector, and appropriate incentives and recognition should be provided for excellence in performance.
(4) All employees should maintain high standards of integrity, conduct, and concern for the public interest.
(5) The Federal work force should be used efficiently and effectively.
(6) Employees should be retained on the basis of the adequacy of their performance, inadequate performance should be corrected, and employees should be separated who cannot or will not improve their performance to meet required standards.
(7) Employees should be provided effective education and training in cases in which such education and training would result in better organizational and individual performance.
(8) Employees should be-
(A) protected against arbitrary action, personal favoritism, or coercion for partisan political purposes, and
(B) prohibited from using their official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for election.
(9) Employees should be protected against reprisal for the lawful disclosure of information which the employees reasonably believe evidences-

(A) a violation of any law, rule, or regulation, or
(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.
(C) In administering the provisions of this chapter-
(1) with respect to any agency (as defined in section 2302(a)(2)(C) of this title), the President shall, pursuant to the authority otherwise available under this title, take any action, including the issuance of rules, regulations, or directives; and
(2) with respect to any entity in the executive branch which is not such an agency or part of such an agency, the head of such entity shall, pursuant to authority otherwise available, take any action, including the issuance of rules, regulations, or directives; which is consistent with the provisions of this title and which the President or the head, as the case may be, determines is necessary to ensure that personnel management is based on and embodies the merit system principles.

The Merit System Principles

Adapted from Title 5, United States Code, Section 2301(b).

#	Merit System Principle
1	Recruit qualified individuals from all segments of society; conduct fair and open competition; select and advance employees based solely on merit.
2	Treat employees and applicants fairly and equitably, with proper regard for their privacy and constitutional rights.
3	Provide equal pay for work of equal value and recognize excellent performance.
4	Maintain high standards of integrity, conduct, and concern for the public interest.
5	Manage employees efficiently and effectively.
6	Address inadequate performance fairly and decisively and separate poor performers, as appropriate.
7	Educate and train employees to improve individual and organizational performance.
8	Protect employees against favoritism, political coercion and arbitrary action and prohibit abuse of authority.
9	Protect employees against reprisal for the lawful disclosure of information that is reasonably believed to evidence: (1) a violation of any law, rule, or regulation; or (2) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

The MSPB report *The Merit System Principles: Guiding the Fair and Effective Management of the Federal Workforce* (September 2016), available at www.mspb.gov/studies, provides the full text of each MSP with an explanation of its intent, a discussion of Federal employee perceptions of adherence to the principle, related MSPB findings and recommendations, and a brief discussion of illustrative MSPB cases.

APPENDIX 5-8: PROHIBITED PERSONNEL PRACTICES

5 USCS § 2302

Current through Public Law 117-362, approved January 5, 2023.

United States Code Service > TITLE 5. GOVERNMENT ORGANIZATION AND EMPLOYEES (§§ 101 —

13146) > Part III. Employees (Subpts. A — J) > Subpart A. General Provisions (Chs. 21 — 29) > CHAPTER

23. MERIT SYSTEM PRINCIPLES (§§ 2301 — 2307)

§ 2302(b) Prohibited personnel practices

(b) Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority—

(1) discriminate for or against any employee or applicant for employment—

(A) on the basis of race, color, religion, sex, or national origin, as prohibited under section 717 of the Civil Rights Act of 1964 (*42 U.S.C. 2000e-16*);

(B) on the basis of age, as prohibited under sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (*29 U.S.C. 631*, *633a*);

(C) on the basis of sex, as prohibited under section 6(d) of the Fair Labor Standards Act of 1938 (*29 U.S.C. 206(d)*);

(D) on the basis of handicapping condition, as prohibited under section 501 of the Rehabilitation Act of 1973 (*29 U.S.C. 791*); or

(E) on the basis of marital status or political affiliation, as prohibited under any law, rule, or regulation;

(2) solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of—

(A) an evaluation of the work performance, ability, aptitude, or general qualifications of such individual; or

(B) an evaluation of the character, loyalty, or suitability of such individual;

(3) coerce the political activity of any person (including the providing of any political

contribution or service), or take any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity;

(4) deceive or willfully obstruct any person with respect to such person's right to compete for employment;

(5) influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment;

(6) grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment;

(7) appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in section 3110(a)(3) of this title [*5 USCS § 3110(a)(3)*]) of such employee if such position is in the agency in which such employee is serving as a public official (as defined in section 3110(a)(2) of this title [*5 USCS § 3110(a)(2)*]) or over which such employee exercises jurisdiction or control as such an official;

(8) take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant for employment because of—

(A) any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences—

(i) any violation of any law, rule, or regulation, or

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

if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs;

(B) any disclosure to the Special Counsel, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences—

(i) any violation (other than a violation of this section) of any law, rule, or regulation, or

(ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety; or

(C) any disclosure to Congress (including any committee of Congress) by any employee of an agency or applicant for employment at an agency of information described in subparagraph (B) that is—

(i) not classified; or

(ii) if classified—

(I) has been classified by the head of an agency that is not an element of the intelligence community (as defined by section 3 of the National Security Act of 1947 (*50 U.S.C. 3003*)); and

(II) does not reveal intelligence sources and methods.[;]

(9) take or fail to take, or threaten to take or fail to take, any personnel action against any employee or applicant for employment because of—

(A) the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation—

(i) with regard to remedying a violation of paragraph (8); or

(ii) other than with regard to remedying a violation of paragraph (8);

(B) testifying for or otherwise lawfully assisting any individual in the exercise of any right referred to in subparagraph (A) (i) or (ii);

(C) cooperating with or disclosing information to the Inspector General (or any other component responsible for internal investigation or review) of an agency, or the Special Counsel, in accordance with applicable provisions of law; or

(D) refusing to obey an order that would require the individual to violate a law, rule, or regulation;

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

(11)

(A) knowingly take, recommend, or approve any personnel action if the taking of such action would violate a veterans' preference requirement; or

(B) knowingly fail to take, recommend, or approve any personnel action if the failure to take such action would violate a veterans' preference requirement;

(12) take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in section 2301 of this title [*5 USCS § 2301*];

(13) implement or enforce any nondisclosure policy, form, or agreement, if such policy, form, or agreement—

(A) does not contain the following statement: "These provisions are consistent with

and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General or the Office of Special Counsel of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling."; or

(B) prohibits or restricts an employee or applicant for employment from disclosing to Congress, the Special Counsel, the Inspector General of an agency, or any other agency component responsible for internal investigation or review any information that relates to any violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or any other whistleblower protection; or

(14) access the medical record of another employee or an applicant for employment as a part of, or otherwise in furtherance of, any conduct described in paragraphs (1) through (13).

This subsection shall not be construed to authorize the withholding of information from Congress or the taking of any personnel action against an employee who discloses information to Congress. For purposes of paragraph (8), (i) any presumption relating to the performance of a duty by an employee whose conduct is the subject of a disclosure as defined under subsection (a)(2)(D) may be rebutted by substantial evidence, and (ii) a determination as to whether an employee or applicant reasonably believes that such employee or applicant has disclosed information that evidences any violation of law, rule, regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety shall be made by determining whether a disinterested observer with knowledge of the essential facts known to and readily ascertainable by the employee or applicant could reasonably conclude that the actions of the Government evidence such violations, mismanagement, waste, abuse, or danger.

APPENDIX 6-1: FDA FORMULA FOR ASSIGNED WORKSPACE SELECTION

FORMULA for Ranking Bargaining Unit Employees:

Unless other voluntary arrangements are approved, the following formula will be used for the selection of workspace in connection with space moves and workspace sharing solutions in FDA:

Ranking score = (Grade + SCD) x (Hours reporting to FDA onsite per pay period / 80 hours)

For an employee Grade 13 with SCD of 12 years and 7 months and 48 hours onsite at an FDA facility per 80-hour pay period the ranking score will be (13+13) x 48 hrs./80 hrs. = 15.6.

The SCD in this case is the number of years of federal service (as determined by their federal service computation date and augmented by any military, commissioned corps service not already included in the federal service computation date) and rounded to the nearest year (e.g., 12 years 7 months of service equals 13 points). The employee reports onsite to an FDA facility 48 hours out of 80-hour pay period or 60% of the time.

APPENDIX 10-1: OFFICIAL TIME FORM

HHS AND NTEU OFFICAL TIME FORM

REQUESTOR / REPORTER		REQUESTOR ONLY	
EMPLOYEE NAME		Official Time	
LABOR ORGANIZATION	NTEU	DATE OFFICIAL TIME **	
LOCAL CHAPTER		START TIME REQUESTED**	
		END TIME REQUESTED**	

** Requestor only section.

Section 1 A REPORTER ONLY SECTION

*This section applies to the following : six (6) 100% Positions identified in Chapters 210,212,229,230, and 254 (1 position each) with the last slot identified by NTEU National. Chapter 282 three (3) 100% official time positions of which one of the 100% slots maybe divided into (2) 50% slots. This section is a substitution for the Date Official time, Start time Requested, and End time Requested above.)

Bi-Weekly Totals identified in the categories below. *Use for employees who do not require approval yet need to account manually per the CBA.	Indicate week(s) of reporting hours. (pay period number or range of dates)	

HOURS REQUESTED

Categorize requested hours in the appropriate sections below.

7131(a)		7131 (c)		7131 (d)	
Mid-Term Neg.		FLRA Proceeding		Arbitration	
Term Bargaining				Weingarten/Formal Meetings	
Impasse Proceeding				MSPB/EEOC Proceeding	
				Grievance Meeting	
				Open Category (Article 10)	

*Signatures are not required for union representatives who complete section 1A above.

Union Official Signature/Date

Approver Signature/Date

This form is used when an employee does not have access to OTTS at the time they are making the requests (e.g. lack of internet connection or access to a computer) or when the OTTS system is down or not fully functioning, or the employee is experiencing other technical difficulties, and for reasons agreed to by the supervisor and the employee on a case-by-case basis.

APPENDIX 11- 1: REQUEST FOR STUDENT LOAN REPAYMENT

Name	Social Security Number	Date (MM/DD/YY)
Title	Series/Grade/Step	Type of Appointment & NTE Date

Total Amount of Student Loan Repayment Benefit Received to Date (Include the Requested Amount from this Request Form.) $_____

Student Loan Repayment Benefit Amount Requested: $_____	Student Loan Repayment Benefit for Year Number: (Circle One) 1 2 3 4 5 6 Other ____ *NOTE: Service Agreement must be attached to this Request form.*

Current Balance of Outstanding Loan: $_____

NOTE: Official Documentation from loan holder documenting loan balance and type of loan must be attached to this Request form.

Description identifying how the employee satisfies the recruitment or retention criteria in Article 11, Section 5C:

Compensation*:

Base/Locality Pay $_____

Other Continuing Pay, (e.g., PSP, retention allowance) $_____

* Physician's Comparability Allowance **(if applicable)** $_____

Other Payments, e.g., lump sum payments $_____

Student Loan Repayment Benefit Amount $_____

TOTAL COMPENSATION $_____

* Total Title 5 compensation cannot exceed Executive Level 1 salary per calendar year.
** Physician's Comparability Allowance must be reduced by the amount equal to the loan repayment assistance (5 CFR 595.105).

HHS Office of Human Resources Instruction 537-1, Student Loan Repayment Program Policy
Effective Date

Recommending Official	**Title**	**Date**
Certification of Funds	**Title**	**Date**
Approving Official	**Title**	**Date**
Human Resources Official	**Title**	**Date**

APPENDIX 11- 2: STUDENT LOAN REPAYMENT SERVICE AGREEMENT

NAME (Print or Type – First Middle Last)	SOCIAL SECURITY NUMBER	OPDIV	DATE

In consideration of the student loan repayment benefit for which I qualify under 5 U.S.C. 5379 as implemented by the regulations of the U.S. Office of Personnel Management (5 CFR, Part 537), the policies of the Department of Health and Human Services, and the OPDIV _____, I hereby agree:

1. To serve in _____ for ☐ 3 years (initial contract) or ☐ 1 year (extensions). (OPDIV)

2. The amount of the student loan repayment benefit is $_____ (up to $10,000/year). I understand that the commitment to repay my loan is for one year, subject to yearly extensions.

3. If student loan repayment benefits are made in the 2nd or 3rd year, my service agreement will not be extended.

4. If student loan repayment benefits are made beyond 3 years, my service agreement will be extended by one year for each payment made beyond the 3rd year.

5. The service agreement is effective _____ through _____.
(Month/Day/Year) (Month/Day/Year)

6. This service agreement in no way constitutes a right, promise, or entitlement for continued employment or noncompetitive conversion to the competitive service. That acceptance of this agreement does not alter the conditions or terms of my employment; accordingly, this agreement will not preclude nor limit the Agency from effecting personnel actions as may be appropriate.

7. That in the event I voluntarily leave the OPDIV, or in the event that I am involuntarily separated for misconduct, performance, or a negative suitability determination under 5 CFR Part 731 before completing the agreed upon period of service, I will be indebted to the Federal Government and must reimburse the OPDIV for the full amount of any student loan repayment benefits received under this service agreement, unless repayment is waived. In regard to granting SLRP based on retention, this service agreement significances that employee is likely to leave federal service in absence of SLRP.

8. I am responsible for making loan payments on the portion of the loan that continues to be my responsibility.

9. The student loan repayment benefits made do not exempt me from my responsibility and/or liability for the loan.

10. I am responsible for any income tax obligation resulting from the student loan repayment benefit.

11. HHS/OPDIV_____ is not responsible for any late fees assessed by the lender if the student

loan repayment benefit is not received on time.

12. The student loan repayment benefits made on my behalf from the Federal Government have/will not exceed $10,000 per annum and $60,000 in total.

APPENDIX 2 (Continued) STUDENT LOAN REPAYMENT PROGRAM SERVICE AGREEMENT

13. If I consolidate to a non-federally insured loan, then I will be ineligible for future payments on non-federally insured loans.

14. The service completion date must be extended by total amount of time spent in a non-pay status. Absence due to uniformed service or compensable injury is considered creditable toward the required service period upon re-employment. Authorized agency officials may verify the status and outstanding balance of each loan.

_____

_____

I AGREE TO THE TERMS OF THIS SERVICE AGREEMENT:

Signature _____

Name (Print/Type) _____

Date _____

General
This information is provided pursuant to the Privacy Act of 1974 (P.L. 93-597).

Authority for Collection of Information
5 U.S.C 5379 and 31 U.S.C. Section 7701(c)

Purpose and Uses

The main purpose for collecting the information requested on the above mentioned form is to establish the terms under which an individual receives a student loan repayment benefit under the Student Loan Repayment Program. The information collected will be used as a basis for payroll actions. Accordingly, disclosure of identifiable information, including your Social Security Number (SSN), may be made to the Internal Revenue Service for tax withholding purposes, the Department of Treasury for payroll action, and to the Department of Labor for worker compensation claims. This information may also be disclosed to the Department of Justice for other lawful purposes including law enforcement and in the event of litigation. In addition, these records, or information there from, may also be used within DHHS for study purposes, such as projection of staffing needs, and/or creation of non-identifiable statistical data for reports to other Federal agencies and Congress.

APPENDIX 2 (Continued) STUDENT LOAN REPAYMENT PROGRAM SERVICE AGREEMENT

Information Regarding Disclosure of Your Social Security Account Number

Disclosure of the SSN is mandatory since it is the identifier used by the Internal Revenue Service and for the withholding of taxes from your salary. The use of the SSN is made necessary because of the large number of present and former employees and applicants who have identical names and birth dates, and whose identities can only be distinguished by the SSN. It is used primarily to identify an employee's personnel, leave, and pay records and to relate on to the other. In this regard, it is also used by the HHS to locate records in order to respond to lawful requests for information from former employers, educational institutes, and financial or other organizations. The information gathered through the use of the number will be used only as necessary in personnel administration processes carried out in accordance with established regulations and published notices of systems of records. The SSN also will be used for the selection of persons to be included in statistical studies of personnel management matters.

Effect of Non-disclosure

Your submission of this agreement is voluntary; however, if the agreement is submitted, omission of significant information requested would preclude continued processing of the agreement for you to receive payment because payroll would be unable to process the necessary actions.

Approving Official

_____	_____	_____
(Signature)	(Print Name)	Date

Human Resources Review:

_____	_____	_____
(Signature)	(Print Name)	Date

APPENDIX 11-3: SLP: OUTSTANDING LOAN INFORMATION REQUEST

NAME: _____

SSN: _____

DATE: _____

The following information is required for each lender of a loan(s) being considered under the Student Loan Repayment Program.

1. **Loan Information*:**

   a. Name of the federally funded loan received, e.g., Federal Stafford Loan, Federal PLUS Loan, Federally Insured Student Loan, etc. _____

   b. Date Loan was Obtained _____

   c. Remaining Balance of Loan _____

*An official document/letter from the loan institution providing the above loan information must be attached to this form.

2. **Name, address, and telephone number for the lending institution holder of the loan, i.e., bank, educational institution, etc.**

   Name _____

   Address _____

   City/State _____

   Telephone _____

   EFT Routing Number _____

3. **Name, address, and telephone number of servicing agent of the loan to whom payments are sent (if different from #2).**

   Name _____

   Address _____

   City/State _____

   Telephone Number _____

4. **Name, job title, and telephone number of authorized official for the Lending Institution.**

   Name _____

   Job Title _____

   Telephone Number _____

5. **Federal Tax Identification Number or EIN (Required for sending payments).**

   ___ ___--___ ___ ___ ___ ___ ___ ___

   _____ _____ _____

   Name (Approving Official) **Title** **Date**

APPENDIX 11-4: SLP: WAIVER OF STUDENT LOAN INDEBTEDNESS INFORMAITON REQEUST

Attach a copy of the Student Loan Repayment Service Agreement and the loan balance information from the lending institution to this form. Return form to the employing Human Resources Center.

Employee Name (Last, First, MI)	Social Security Number	Date (MM/DD/YY)
Job Title	Agency	Outstanding Loan Balance

Reason for Requesting Waiver of Student Loan Indebtedness: (Explain why the recovery of this debt would be against equity and good conscience or against the public interest). Note: Repayment is automatically waived for those employees separated by death or disability retirement, or an inability to continue working because of disability evidenced by acceptable medical documentation).

_____

_____

_____

_____

_____

_____

_____

OPDIV Approval Signature	Print Name	Date

Certification of Health Care Provider for Employee's Serious Health Condition under the Family and Medical Leave Act

U.S. Department of Labor
Wage and Hour Division

WAGE AND HOUR DIVISION

DO NOT SEND COMPLETED FORM TO THE DEPARTMENT OF LABOR.
RETURN TO THE PATIENT.

OMB Control Number: 1235-0003
Expires: 6/30/2023

The Family and Medical Leave Act (FMLA) provides that an employer may require an employee seeking FMLA protections because of a need for leave due to a serious health condition to submit a medical certification issued by the employee's health care provider. 29 U.S.C. §§ 2613, 2614(c)(3); 29 C.F.R. § 825.305. The employer must give the employee at least 15 calendar days to provide the certification. If the employee fails to provide complete and sufficient medical certification, his or her FMLA leave request may be denied. 29 C.F.R. § 825.313. Information about the FMLA may be found on the WHD website at www.dol.gov/agencies/whd/fmla.

SECTION I - EMPLOYER

Either the employee or the employer may complete Section I. While use of this form is optional, this form asks the health care provider for the information necessary for a complete and sufficient medical certification, which is set out at 29 C.F.R. § 825.306. **You may not ask the employee to provide more information than allowed under the FMLA regulations, 29 C.F.R. §§ 825.306-825.308.** Additionally, you **may not** request a certification for FMLA leave to bond with a healthy newborn child or a child placed for adoption or foster care.

Employers must generally maintain records and documents relating to medical information, medical certifications, recertifications, or medical histories of employees created for FMLA purposes as confidential medical records in separate files/records from the usual personnel files and in accordance with 29 C.F.R. § 1630.14(c)(1), if the Americans with Disabilities Act applies, and in accordance with 29 C.F.R. § 1635.9, if the Genetic Information Nondiscrimination Act applies.

(1) Employee name: _____
First Middle Last

(2) Employer name: _____ Date: _____ (mm/dd/yyyy)
(List date certification requested)

(3) The medical certification must be returned by _____ (mm/dd/yyyy)
(Must allow at least 15 calendar days from the date requested, unless it is not feasible despite the employee's diligent, good faith efforts.)

(4) Employee's job title: _____ Job description ☐ is / ☐ is not attached.

Employee's regular work schedule: _____

Statement of the employee's essential job functions:

_____

(The essential functions of the employee's position are determined with reference to the position the employee held at the time the employee notified the employer of the need for leave or the leave started, whichever is earlier.)

SECTION II - HEALTH CARE PROVIDER

Please provide your contact information, complete all relevant parts of this Section, and sign the form. Your patient has requested leave under the FMLA. The FMLA allows an employer to require that the employee submit a timely, complete, and sufficient medical certification to support a request for FMLA leave due to the serious health condition of the employee. For FMLA purposes, a "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves **inpatient care** or **continuing treatment by a health care provider**. For more information about the definitions of a serious health condition under the FMLA, see the chart on page 4.

You also may, but are **not required** to, provide other appropriate medical facts including symptoms, diagnosis, or any regimen of continuing treatment such as the use of specialized equipment. Please note that some state or local laws may not allow disclosure of private medical information about the patient's serious health condition, such as providing the diagnosis and/or course of treatment.

Page of

Form WH-380-E, Revised June 2020

Employee Name: _____

Health Care Provider's name: (Print) _____

Health Care Provider's business address: _____

Type of practice / Medical specialty: _____

Telephone: _____ Fax: _____ E-mail: _____

PART A: Medical Information

Limit your response to the medical condition(s) for which the employee is seeking FMLA leave. Your answers should be your **best estimate** based upon your medical knowledge, experience, and examination of the patient. **After completing Part A, complete Part B to provide information about the amount of leave needed.** Note: For FMLA purposes, "incapacity" means the inability to work, attend school, or perform regular daily activities due to the condition, treatment of the condition, or recovery from the condition. Do not provide information about genetic tests, as defined in 29 C.F.R. § 1635.3(f), genetic services, as defined in 29 C.F.R. § 1635.3(e), or the manifestation of disease or disorder in the employee's family members, 29 C.F.R. § 1635.3(b).

(1) State the approximate date the condition started or will start: _____ (mm/dd/yyyy)

(2) Provide your **best estimate** of how long the condition lasted or will last: _____

(3) Check the box(es) for the questions below, as applicable. For all box(es) checked, the amount of leave needed must be provided in Part B.

☐ **Inpatient Care**: The patient (☐ has been / ☐ is expected to be) admitted for an overnight stay in a hospital, hospice, or residential medical care facility on the following date(s): _____

☐ **Incapacity plus Treatment**: (e.g. outpatient surgery, strep throat)

Due to the condition, the patient (☐ has been / ☐ is expected to be) incapacitated for **more than** three consecutive, full calendar days from: _____ (mm/dd/yyyy) to _____ (mm/dd/yyyy).

The patient (☐ was / ☐ will be) seen on the following date(s): _____

_____

The condition (☐ has / ☐ has not) also resulted in a course of continuing treatment under the supervision of a health care provider (e.g. prescription medication (other than over-the-counter) or therapy requiring special equipment).

☐ **Pregnancy**: The condition is pregnancy. List the expected delivery date: _____ (mm/dd/yyyy).

☐ **Chronic Conditions**: (e.g. asthma, migraine headaches) Due to the condition, it is medically necessary for the patient to have treatment visits at least twice per year.

☐ **Permanent or Long Term Conditions**: (e.g. Alzheimer's, terminal stages of cancer) Due to the condition, incapacity is permanent or long term and requires the continuing supervision of a health care provider (even if active treatment is not being provided).

☐ **Conditions requiring Multiple Treatments**: (e.g. chemotherapy treatments, restorative surgery) Due to the condition, it is medically necessary for the patient to receive multiple treatments.

☐ **None of the above**: If none of the above condition(s) were checked, (i.e., inpatient care, pregnancy) no additional information is needed. Go to page 4 to sign and date the form.

Employee Name: _____

(4) If needed, briefly describe other appropriate medical facts related to the condition(s) for which the employee seeks FMLA leave. (e.g., use of nebulizer, dialysis)

_____

PART B: Amount of Leave Needed

For the medical condition(s) checked in Part A, complete all that apply. Several questions seek a response as to the frequency or duration of a condition, treatment, etc. Your answer should be your **best estimate** based upon your medical knowledge, experience, and examination of the patient. Be as specific as you can; terms such as "lifetime," "unknown," or "indeterminate" may not be sufficient to determine FMLA coverage.

(5) Due to the condition, the patient (☐ had / ☐ will have) **planned medical treatment(s)** (scheduled medical visits) (e.g.psychotherapy, prenatal appointments) on the following date(s): _____

_____

(6) Due to the condition, the patient (☐ was / ☐ will be) **referred to other health care provider(s)** for evaluation or treatment(s).

State the nature of such treatments: (e.g. cardiologist, physical therapy) _____

Provide your **best estimate** of the beginning date _____ (mm/dd/yyyy) and end date _____ (mm/dd/yyyy). for the treatment(s).

Provide your **best estimate** of the duration of the treatment(s), including any period(s) of recovery (e.g. 3 days/week)

_____

(7) Due to the condition, it is medically necessary for the employee to work a **reduced schedule**.

Provide your **best estimate** of the reduced schedule the employee is able to work. From _____ (mm/dd/yyyy) to _____ (mm/dd/yyyy) the employee is able to work: (e.g., 5 hours/day, up to 25 hours a week)

_____

(8) Due to the condition, the patient (☐ was / ☐ will be) **incapacitated for a continuous period of time**, including any time for treatment(s) and/or recovery.

Provide your **best estimate** of the beginning date _____ (mm/dd/yyyy) and end date _____ (mm/dd/yyyy). for the period of incapacity.

(9) Due to the condition, it (☐ was / ☐ is / ☐ will be) medically necessary for the employee to be absent from work on an intermittent basis (periodically), including for any episodes of incapacity i.e., episodic flare-ups. Provide your **best estimate** of how often (frequency) and how long (duration) the episodes of incapacity will likely last.

Over the next 6 months, episodes of incapacity are estimated to occur _____ times per (☐ day ☐ week ☐ month) and are likely to last approximately _____ (☐ hours ☐ days) per episode.

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Form WH-380-E, Revised June 2020

Employee Name: _____

PART C: Essential Job Functions

If provided, the information in Section I question #4 may be used to answer this question. If the employer fails to provide a statement of the employee's essential functions or a job description, answer these questions based upon the employee's own description of the essential job functions. An employee who must be absent from work to receive medical treatment(s), such as scheduled medical visits, for a serious health condition is considered to be **not able** to perform the essential job functions of the position during the absence for treatment(s).

(10) Due to the condition, the employee (☐ was not able / ☐ is not able / ☐ will not be able) to perform **one or more** of the essential job function(s). Identify at least one essential job function the employee is not able to perform:

_____

Signature of Health Care Provider _____ Date: _____ (mm/dd/yyyy)

Definitions of a Serious Health Condition (See 29 C.F.R. §§ 825.113-.115)
Inpatient Care
• An overnight stay in a hospital, hospice, or residential medical care facility. • Inpatient care includes any period of incapacity or any subsequent treatment in connection with the overnight stay.
Continuing Treatment by a Health Care Provider (any one or more of the following)
Incapacity Plus Treatment: A period of incapacity of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves either: o Two or more in-person visits to a health care provider for treatment within 30 days of the first day of incapacity unless extenuating circumstances exist. The first visit must be within seven days of the first day of incapacity; or, o At least one in-person visit to a health care provider for treatment within seven days of the first day of incapacity, which results in a regimen of continuing treatment under the supervision of the health care provider. For example, the health provider might prescribe a course of prescription medication or therapy requiring special equipment.
Pregnancy: Any period of incapacity due to pregnancy or for prenatal care.
Chronic Conditions: Any period of incapacity due to or treatment for a chronic serious health condition, such as diabetes, asthma, migraine headaches. A chronic serious health condition is one which requires visits to a health care provider (or nurse supervised by the provider) at least twice a year and recurs over an extended period of time. A chronic condition may cause episodic rather than a continuing period of incapacity.
Permanent or Long-term Conditions: A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective, but which requires the continuing supervision of a health care provider, such as Alzheimer's disease or the terminal stages of cancer.
Conditions Requiring Multiple Treatments: Restorative surgery after an accident or other injury; or, a condition that would likely result in a period of incapacity of more than three consecutive, full calendar days if the patient did not receive the treatment.

PAPERWORK REDUCTION ACT NOTICE AND PUBLIC BURDEN STATEMENT

If submitted, it is mandatory for employers to retain a copy of this disclosure in their records for three years. 29 U.S.C. § 2616; 29 C.F.R. § 825.500. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. The Department of Labor estimates that it will take an average of 15 minutes for respondents to complete this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

DO NOT SEND COMPLETED FORM TO THE DEPARTMENT OF LABOR. RETURN TO THE PATIENT.

Page of Form WH-380-E, Revised June 2020

APPENDIX 18-2: FAMILY AND MEDICAL LEAVE ACT FORM -FAMILY WH-380F

Certification of Health Care Provider for Family Member's Serious Health Condition under the Family and Medical Leave Act

U.S. Department of Labor
Wage and Hour Division

WAGE AND HOUR DIVISION

DO NOT SEND COMPLETED FORM TO THE DEPARTMENT OF LABOR. RETURN TO THE PATIENT.

OMB Control Number: 1235-0003
Expires: 6/30/2023

The Family and Medical Leave Act (FMLA) provides that an employer may require an employee seeking FMLA leave to care for a family member with a serious health condition to submit a medical certification issued by the family member's health care provider. 29 U.S.C. §§ 2613, 2614(c)(3); 29 C.F.R. § 825.305. The employer must give the employee **at least 15 calendar days** to provide the certification. If the employee fails to provide complete and sufficient medical certification, his or her FMLA leave request may be denied. 29 C.F.R. § 825.313. Information about the FMLA may be found on the WHD website at www.dol.gov/agencies/whd/fmla.

SECTION I - EMPLOYER

Either the employee or the employer may complete Section I. While use of this form is optional, this form asks the health care provider for the information necessary for a complete and sufficient medical certification, which is set out at 29 C.F.R. § 825.306. **You may not ask the employee to provide more information than allowed under the FMLA regulations, 29 C.F.R. §§ 825.306-825.308.** Additionally, you **may not** request a certification for FMLA leave to bond with a healthy newborn child or a child placed for adoption or foster care.

Employers must generally maintain records and documents relating to medical information, medical certifications, recertifications, or medical histories of employees or employees' family members created for FMLA purposes as confidential medical records in separate files/records from the usual personnel files and in accordance with 29 C.F.R. § 1630.14(c)(1), if the Americans with Disabilities Act applies, and in accordance with 29 C.F.R. § 1635.9, if the Genetic Information Nondiscrimination Act applies.

(1) Employee name: _____
First Middle Last

(2) Employer name: _____ Date: _____ (mm/dd/yyyy)
(List date certification requested)

(3) The medical certification must be returned by _____ (mm/dd/yyyy)
(Must allow at least 15 calendar days from the date requested, unless it is not feasible despite the employee's diligent, good faith efforts.)

SECTION II - EMPLOYEE

Please complete and sign Section II before providing this form to your family member or your family member's health care provider. The FMLA allows an employer to require that you submit a timely, complete, and sufficient medical certification to support a request for FMLA leave due to the serious health condition of your family member. If requested by your employer, your response is required to obtain or retain the benefit of the FMLA protections. 29 U.S.C. §§ 2613, 2614(c)(3). **You are responsible for making sure the medical certification is provided to your employer within the time frame requested, which must be at least 15 calendar days.** 29 C.F.R. §§ 825.305-825.306. Failure to provide a complete and sufficient medical certification may result in a denial of your FMLA leave request. 29 C.F.R. § 825.313.

(1) Name of the family member for whom you will provide care: _____

(2) Select the relationship of the family member to you. The family member is your:

☐ Spouse ☐ Parent ☐ Child, under age 18

☐ Child, age 18 or older and incapable of self-care because of a mental or physical disability

Spouse means a husband or wife as defined or recognized in the state where the individual was married, including in a common law marriage or same-sex marriage. The terms "child" and "parent" include in loco parentis relationships in which a person assumes the obligations of a parent to a child. An employee may take FMLA leave to care for an individual who assumed the obligations of a parent to the employee when the employee was a child. An employee may also take FMLA leave to care for a child for whom the employee has assumed the obligations of a parent. No legal or biological relationship is necessary.

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Form WH-380-F, Revised June 2020

Employee Name: _____

(3) Briefly describe the care you will provide to your family member: (**Check all that apply**)

☐ Assistance with basic medical, hygienic, nutritional, or safety needs ☐ Transportation

☐ Physical Care ☐ Psychological Comfort ☐ Other: _____

(4) Give your **best estimate** of the amount of leave needed to provide the care described:

_____

(5) If a **reduced work schedule** is necessary to provide the care described, give your **best estimate** of the reduced schedule you are able to work. From _____ (mm/dd/yyyy) to _____ (mm/dd/yyyy), I am able to work _____ (hours per day) _____ (days per week)

Employee Signature _____ **Date** _____ (mm/dd/yyyy)

SECTION III - HEALTH CARE PROVIDER

Please provide your contact information, complete all relevant parts of this Section, and sign the form below. A family member of your patient has requested leave under the FMLA to care for your patient. The FMLA allows an employer to require that the employee submit a timely, complete, and sufficient medical certification to support a request for FMLA leave to care for a family member with a serious health condition. For FMLA purposes, a "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider. For more information about the definitions of a serious health condition under the FMLA, see the chart at the end of the form.

You also may, but are **not required** to, provide other appropriate medical facts including symptoms, diagnosis, or any regimen of continuing treatment such as the use of specialized equipment. Please note that some state or local laws may not allow disclosure of private medical information about the patient's serious health condition, such as providing the diagnosis and/or course of treatment.

Health Care Provider's name: (Print) _____

Health Care Provider's business address: _____

Type of practice / Medical specialty: _____

Telephone: _____ Fax: _____ E-mail: _____

PART A: Medical Information

Limit your response to the medical condition for which the employee is seeking FMLA leave. Your answers should be your **best estimate** based upon your medical knowledge, experience, and examination of the patient. **After completing Part A, complete Part B to provide information about the amount of leave needed.** Note: For FMLA purposes, "incapacity" means the inability to work, attend school, or perform regular daily activities due to the condition, treatment of the condition, or recovery from the condition. Do not provide information about genetic tests, as defined in 29 C.F.R. § 1635.3(f), genetic services, as defined in 29 C.F.R. § 1635.3(e), or the manifestation of disease or disorder in the employee's family members, 29 C.F.R. § 1635.3(b).

(1) Patient's Name: _____

(2) State the approximate date the condition started or will start: _____ (mm/dd/yyyy)

(3) Provide your **best estimate** of how long the condition lasted or will last: _____

(4) For FMLA to apply, care of the patient must be medically necessary. Briefly describe the type of care needed by the patient (e.g., assistance with basic medical, hygienic, nutritional, safety, transportation needs, physical care, or psychological comfort).

_____

Employee Name: _____

(5) Check the box(es) for the questions below, as applicable. For all box(es) checked, the amount of leave needed must be provided in Part B.

☐ **Inpatient Care**: The patient (☐ has been / ☐ is expected to be) admitted for an overnight stay in a hospital, hospice, or residential medical care facility on the following date(s): _____

☐ **Incapacity plus Treatment**: (e.g. outpatient surgery, strep throat)

Due to the condition, the patient (☐ has been / ☐ is expected to be) incapacitated for more than three consecutive, full calendar days from: _____ (mm/dd/yyyy) to _____ (mm/dd/yyyy).

The patient (☐ was / ☐ will be) seen on the following date(s): _____

_____

The condition (☐ has / ☐ has not) also resulted in a course of continuing treatment under the supervision of a health care provider (e.g. prescription medication (other than over-the-counter) or therapy requiring special equipment)

☐ **Pregnancy**: The condition is pregnancy. List the expected delivery date: _____ (mm/dd/yyyy).

☐ **Chronic Conditions**: (e.g. asthma, migraine headaches) Due to the condition, it is medically necessary for the patient to have treatment visits at least twice per year.

☐ **Permanent or Long Term Conditions**: (e.g. Alzheimer's, terminal stages of cancer) Due to the condition, incapacity is permanent or long term and requires the continuing supervision of a health care provider (even if active treatment is not being provided).

☐ **Conditions requiring Multiple Treatments**: (e.g. chemotherapy treatments, restorative surgery) Due to the condition, it is medically necessary for the patient to receive multiple treatments.

☐ **None of the above**: If none of the above condition(s) were checked, (i.e., inpatient care, pregnancy) no additional information is needed. Go to page 4 to sign and date the form.

(6) If needed, briefly describe other appropriate medical facts related to the condition(s) for which the employee seeks FMLA leave. (e.g., use of nebulizer, dialysis)

_____

PART B: Amount of Leave Needed

For the medical condition(s) checked in Part A, complete all that apply. Several questions seek a response as to the frequency or duration of a condition, treatment, etc. Your answer should be your **best estimate** based upon your medical knowledge, experience, and examination of the patient. Be as specific as you can; terms such as "lifetime," "unknown," or "indeterminate" may not be sufficient to determine if the benefits and protections of the FMLA apply.

(7) Due to the condition, the patient (☐ had / ☐ will have) **planned medical treatment(s)** (scheduled medical visits) (e.g. psychotherapy, prenatal appointments) on the following date(s): _____

_____

(8) Due to the condition, the patient (☐ was / ☐ will be) **referred to other health care provider(s)** for evaluation or treatment(s).

State the nature of such treatments: (e.g. cardiologist, physical therapy) _____

Provide your **best estimate** of the beginning date _____ (mm/dd/yyyy) and end date _____ (mm/dd/yyyy). for the treatment(s).

Provide your **best estimate** of the duration of the treatment(s), including any period(s) of recovery (e.g. 3 days/week)

_____

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Employee Name: _____

(9) Due to the condition, the patient (☐ was / ☐ will be) **incapacitated for a continuous period of time**, including any time for treatment(s) and/or recovery.

Provide your **best estimate** of the beginning date _____ (mm/dd/yyyy) and end date _____ (mm/dd/yyyy). for the period of incapacity.

(10) Due to the condition, it (☐ was / ☐ is / ☐ will be) medically necessary for the employee to be absent from work to provide care for the patient on an **intermittent basis** (periodically), including for any episodes of incapacity i.e., episodic flare-ups. Provide your **best estimate** of how often (frequency) and how long (duration) the episodes of incapacity will likely last.

Over the next 6 months, episodes of incapacity are estimated to occur _____ times per (☐ day ☐ week ☐ month) and are likely to last approximately _____ (☐ hours ☐ days) per episode.

Signature of Health Care Provider _____ Date: _____ (mm/dd/yyyy)

Definitions of a Serious Health Condition (See 29 C.F.R. §§ 825.113-.115)
Inpatient Care
• An overnight stay in a hospital, hospice, or residential medical care facility. • Inpatient care includes any period of incapacity or any subsequent treatment in connection with the overnight stay.
Continuing Treatment by a Health Care Provider (any one or more of the following)
Incapacity Plus Treatment: A period of incapacity of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves either: o Two or more in-person visits to a health care provider for treatment within 30 days of the first day of incapacity unless extenuating circumstances exist. The first visit must be within seven days of the first day of incapacity; or, o At least one in-person visit to a health care provider for treatment within seven days of the first day of incapacity, which results in a regimen of continuing treatment under the supervision of the health care provider. For example, the health provider might prescribe a course of prescription medication or therapy requiring special equipment.
Pregnancy: Any period of incapacity due to pregnancy or for prenatal care.
Chronic Conditions: Any period of incapacity due to or treatment for a chronic serious health condition, such as diabetes, asthma, migraine headaches. A chronic serious health condition is one which requires visits to a health care provider (or nurse supervised by the provider) at least twice a year and recurs over an extended period of time. A chronic condition may cause episodic rather than a continuing period of incapacity.
Permanent or Long-term Conditions: A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective, but which requires the continuing supervision of a health care provider, such as Alzheimer's disease or the terminal stages of cancer.
Conditions Requiring Multiple Treatments: Restorative surgery after an accident or other injury; or, a condition that would likely result in a period of incapacity of more than three consecutive, full calendar days if the patient did not receive the treatment.

PAPERWORK REDUCTION ACT NOTICE AND PUBLIC BURDEN STATEMENT

If submitted, it is mandatory for employers to retain a copy of this disclosure in their records for three years. 29 U.S.C. § 2616; 29 C.F.R. § 825.500. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. The Department of Labor estimates that it will take an average of 15 minutes for respondents to complete this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

DO NOT SEND COMPLETED FORM TO THE DEPARTMENT OF LABOR. RETURN TO THE PATIENT.

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Form WH-380-F, Revised June 2020

APPENDIX 18-3: PAID PARENTAL LEAVE REQUEST FORM

Paid Parental Leave (PPL) Request Form

Identifying Information

Employee name

Phone numbers (personal and work)	Email addresses (personal and work)

Name of organization (agency, office, division, branch, etc.)

Plans for Substituting Paid Parental Leave (PPL) for FMLA Leave

Reason FMLA leave is being requested:

☐ Birth of a child ☐ Placement for adoption ☐ Foster care placement

	Anticipated	Actual
Date of birth or placement		
Date use of PPL begins		
Date use of PPL concludes		
Date of planned return to duty (after use of other types of leave)		

Requested method of using PPL: ☐ Continuous use ☐ Intermittent use*

*Reason(s) intermittent leave is being requested:

*Describe plans for using PPL on an intermittent basis:

Employee Certifications (initial each box)

☐ I attest that PPL is being taken because of the birth of my child or because of placement of a child with me for adoption or foster care and that the PPL will be used in connection with my fulfillment of my parental role to care for and bond with the child.

☐ I will provide documentation to support this request, as directed by my agency.

☐ I acknowledge and understand the consequences of providing a false certification (e.g., the possibility that my agency could pursue appropriate disciplinary action, up to and including removal from Federal Service, or make a referral to a Federal entity that investigates whether conduct constitutes a criminal violation).

☐ If I provided an anticipated date of birth or placement, I will notify my agency as soon as practicable of the actual date.

☐ I attest that I am entering into the required work obligation agreement.

☐ I hereby certify that all statements made in this application are true and correct to the best of my knowledge and belief.

Employee's signature	Date

PRIVACY ACT STATEMENT

Section 6311 of Title 5, United States Code, authorizes collection of this information. The primary use of this information is by management and your payroll office to approve and record your use of leave. Additional disclosures of the information may be: to the Department of Labor when processing a claim for compensation regarding a job connected injury or illness; to a State unemployment compensation office regarding a claim; to Federal Life Insurance or Health Benefits carriers regarding a claim; to a Federal, State, or local law enforcement agency when your agency becomes aware of a violation or possible violation of civil or criminal law; to a Federal agency when conducting an investigation for employment or security reasons; to the Office of Personnel Management or the General Accounting Office when the information is required for evaluation of leave administration; or the General Services Administration in connection with its responsibilities for records management.

Public Law 104-134 (April 26, 1996) requires that any person doing business with the Federal Government furnish a social security number or tax identification number. This is an amendment to Title 31, Section 7701. Furnishing the social security number, as well as other data, is voluntary, but failure to do so may delay or prevent action on the application. If your agency uses the information furnished on this form for purposes other than those indicated above, it may provide you with an additional statement reflecting those purposes.

PPLR-2020

APPENDIX 18-4: PAID PARENTAL LEAVE SERVICE AGREEMENT

Paid Parental Leave Service Agreement

Agreement to Complete 12-Week Work Obligation

I, _____ understand that the usage of paid parental leave requires that I complete a 12-week work obligation at the agency employing me at the time I conclude using paid parental leave granted in connection with the birth or placement (for adoption or foster care) of my child.

I agree to return to work and complete the required 12 weeks of work. I understand that 12 weeks of work will be converted to hours of work based on my work schedule, consistent with OPM regulations at 5 CFR 630.1705.

I understand that the required 12-week work obligation is fixed and not proportionally reduced if I use less than 12 weeks of paid parental leave. I understand that only actual work periods when I am on duty (during my scheduled tour of duty) will count toward the 12-week work obligation. I understand that periods (paid or unpaid) of leave and time off (including holiday time off) do not count towards the completion of the 12-week work obligation.

I understand that only work performed after use of paid parental leave concludes counts toward the 12-week work obligation. I understand that any period(s) of work during intermittent usage of paid parental leave (i.e., work performed prior to the conclusion of the use of paid parental leave) does not count toward the 12-week work obligation.

I understand that, if I fail to return to work and fully complete the required 12-week work obligation, any agency that employed me during a period of time in which I used paid parental leave may require a reimbursement equal in amount to the total amount of any Government contributions paid by the agency(ies) on my behalf to maintain my health insurance coverage under the Federal Employees Health Benefits (FEHB) Program established under 5 U.S.C. chapter 89 during that period of time, unless I meet statutory conditions that bar application of such a reimbursement requirement. If I do not meet those conditions and if my agency determines that reimbursement must be made, I understand that it must seek collection of the full amount and that there is no authority for a partial waiver of the amount owed.

I understand that, if I separate from the employing agency to which the 12-week work obligation is owed before completing that obligation, such separation is considered to be a failure to meet that obligation. I understand that, in that circumstance, I will not be allowed to complete the work obligation at a later time. (Note: An intra-agency reassignment without a break in service will not be considered a separation.)

If an affected agency determines that the reimbursement requirement applies, I agree to make the required reimbursement to that agency and to permit offset of Federal payments to recover the amount owed. However, I reserve the right to challenge the agency decision through any applicable administrative or judicial process and to seek return of any amounts erroneously collected from me.

Employee's Signature: _____

Date: _____

Note: Employee's paid parental leave request must be attached to this work obligation agreement and copies entered into the OPF.

PPLA-2020

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE NATIONAL TREASURY EMPLOYEES UNION
AND
THE UNITED STATES DEPARTMENT of
HEALTH AND HUMAN SERVICES

This Memorandum of Understanding ("MOU") between the National Treasury Employees Union ("NTEU" or "Union"), and the United States Department of Health and Human Services ("HHS," "Agency," or "Employer") (collectively, "the Parties") addresses the Agency's implementation of the Voluntary Leave Bank Program ("VLBP") for HHS employees at the Food and Drug Administration ("FDA"). The Agency's FDA Voluntary Leave Bank Program Policies and Procedures ("Policies and Procedures") document and the FDA Leave Bank Recipient Application Package ("Application Package") is to be made available to all employees. The Application Package will contain the following documents:

- Form FDA 5036, FDA Voluntary Leave Bank Program Cover Sheet;
- Form FDA 5035, The Recipient Application for the FDA Voluntary Leave Bank Program;
- Form FDA 5034, Authorization for Disclosure of Information;
- Form FDA 5038, Confidential Medical Documentation Form
- Form FDA 5037, Voluntary Leave Bank Program Waiver

In order to implement the above-described Policies and Procedures and Application Package, the Parties agree to the following provisions:

1. **Application Package**.
   - Health Care Provider. The term "Physician/Certifying Medical Official" will be used in reference to the applicant's certifying official throughout the Application Package.
   - Any questions regarding the frequency of follow-up appointments, treatments, or therapy, will be removed from the Application Package.

2. **Leave Recipient Application for the FDA Leave Bank**. Form FDA 5035, Section A2, box for Question 5 will be changed to the following: The question 5 has been moved from the Section A (Applicant Section) to Section C (FDA Leave Bank) to ensure Leave Officials will not see the nature of the medical condition.

3. **Confidential Medical Documentation.** A hyperlink to OPM Fact Sheet: Sick Leave for Care for a Family Member with a Serious Health Condition (https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/sick-leave-to-care-for-a-family-member-with-a-serious-health-condition

1

will be included on FDA Form 5038, Confidential Medical Documentation Form.

4. The Agency will establish a Leave Bank Board(s) to administer the VLBP. Each Board will consist of three members and will have at least one (1) member who is an NTEU chapter representative.

5. Subsequent Changes. If the Agency makes additional changes to the application subsequent to this Agreement, the Agency will provide notice to NTEU and bargain to the extent required by law and contract.

6. Effective Date and Termination. This MOU will take effect upon Agency Head approval or on the thirty-first (31st) day following execution, whichever is earlier, and will run concurrently with the Parties' CBA.

For the Union: /s/ Folasade Omogun Date: 3/11/2022
Folasade Omogun
National Negotiator
NTEU

For FDA: Tania L. Tse -S Digitally signed by Tania L. Tse -S Date: 2022.03.13 11:50:52 -04'00' Date: _____
Tania Tse
Director
Office of Human Capital Management
Office of Operations
Food and Drug Administration

Anthony D. Gipson -S Digitally signed by Anthony D. Gipson -S Date: 2022.03.15 12:05:36 -04'00'
Anthony Gipson
Chief Negotiator
Acting Director
Division of Employee & Labor Relations
Office of Human Capital Management
Office of Operations
Food and Drug Administration

M. Anna Gnadt — Digitally signed by M. Anna Gnadt Date: 2023.04.24 08:21:05 -04'00'

Christina V. Ballance -S — digitally signed by christina.v.ballance -s Date: 2023.04.24 09:11:46 -04'00'

DEPARTMENT OF HEALTH AND HUMAN SERVICES

HHS Workplace Flexibilities Agreement

SECTION 1 – ARRANGEMENT AND ELIGIBILITY *(To be completed by the employee)*

PROPOSED ARRANGEMENT: *(Supervisors should familiarize themselves with HHS and Division-specific policies and practices before approving Workplace Flexibility Agreements.)*

Please select an arrangement

Start Date* *(mm/dd/yyyy)*:

End Date* *(mm/dd/yyyy)*:

* Start and end dates are only required for temporary workplace flexibilities.

PROPOSED TYPE OF WORK SCHEDULE

Please select type of work schedule

DEVELOPER NOTE: Drop-down menu: Date-range fields visible ONLY on menu selection: Temporary Workplace Flexibility

NAME AND ADDRESS OF ALTERNATIVE WORKSITE *(Street, Suite Number, City, State and Zip Code)*

SECTION 2 – EMPLOYEE INFORMATION *(To be completed by the employee)*

Name			Organization		
FIRST	M.	LAST	OPDIV	STAFF/DIV OR SUBCOMPONENT	OFFICE

Position Information

TITLE	SERIES	GRADE

Bi-Weekly Tour of Duty

For employees requesting telework please indicate in the appropriate box for telework days. Telework and remote employees alternative worksite are identified in section one above.

WEEK ONE SCHEDULE/ANTICIPATED SCHEDULE							
	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Start Time							
End Time							
Telework							

WEEK TWO SCHEDULE/ANTICIPATED SCHEDULE							
	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Start Time							
End Time							
Telework							

Continuity of Operations and "Emergency Response Group" Status

☐ Consistent with applicable CBA's,* the employee is expected to telework for the duration of an emergency pursuant to a pandemic and/ or when the agency worksite is closed due to emergency situations (e.g., snow emergencies, floods, hurricanes, act of terrorism, etc.). If the employee is unable to work due to illness, dependent care responsibilities, or other personal needs, the employee will take appropriate leave (e.g., annual or sick leave). The employee may be granted excused absence on a case-by- case basis when other circumstances (e.g., power failure) prevent the employee from working at the telework site. To the extent practicable, management will include a description of emergency duties with this agreement if the emergency duties differ from the employee's normal duties. **(Employees requesting telework must check to acknowledge reading and understanding this term of the workplace flexibility agreement.)**

☐ The employee has been designated as a team member of the Department's and/or organization's Continuity of Operations Plan (COOP). The employee agrees to follow the procedures established for reporting to duty when a COOP plan is activated. The employee understands that during any period that HHS is operating under a COOP plan, the plan shall supersede any telework policy. **(Employee to check if applicable.)**

* Managers and employees should refer to their collective bargaining unit agreement for additional obligations.

(continued on next page)

M. Anna Gnadt Digitally signed by M. Anna Gnadt Date: 2023.04.24 08:21:25 -04'00' Christina V. Ballance -S Digitally signed by Christina V. Ballance -S Date: 2023.04.24 08:21:25 -04'00'

SECTION 3 – SUPERVISOR REVIEW *(To be completed by the supervisor.)*

The employee's official worksite is documented on the most recent Standard Form (SF) 50, Notification of Personnel Action, for such purposes as determining special salary rates, locality pay adjustments, and travel.

☐ Employee has fully successful or higher performance rating.
☐ Employee has completed mandatory telework training.

SECTION 4 – TERMS AND CERTIFICATION OF TELEWORK ARRANGEMENT *(To be completed by the supervisor.)*

The terms of this agreement must be read in conjunction with the Department of Health and Human Services (HHS) Workplace Flexibilities Policy HHS Instruction 990-1, applicable collective bargaining agreement,* and/or any other guidance provided by the employing organization. HHS Workplace Flexibilities Policy is available on the Office of Human Resources Management Web Site at https://www.hhs.gov/about/agencies/asa/ohr/hr-library/990-1/index.html. Signatories certify that they will abide by this agreement, the HHS Workplace Flexibilities Policy and/or other supplemental terms established by the employing organization. Where any Department regulation/policy or term of this WFA conflicts with the Collective Bargaining Agreement* covering an individual, the Collective Bargaining Agreement language shall govern.

1. **Voluntary Participation**: The employee voluntarily agrees to work at the HHS approved alternative worksite and follow all applicable policies, and procedures. The employee recognizes that the telework arrangement is not an employee right but is an additional work flexibility that HHS management may approve at its discretion and consistent with any applicable collective bargaining agreement to accomplish organizational and HHS mission.
2. **Work Schedule and Tour of Duty**: Management and the employee agree that the employee's official tour of duty will be as stated in Section III - Work Schedule and Tour of Duty. Work schedules and hours of duty may be modified as necessary but are subject to approval and/or collective bargaining agreement* requirements prior to the effective date of any change. If the employee is designated to telework in an emergency situation (as indicated in Section II of this agreement), the work hours may be subject to change. Emergency schedules will be set based on mission needs. During any period that HHS is operating under a COOP plan, the plan may supersede any workplace flexibilities policy under 5 U.S.C. 6504(d)(2).
   a. Based on operational requirements, consistent with the applicable provisions of the parties' CBA, Management will afford the employee as much advance notice as practicable, but no less than 2 hours. The employee understands that a recall to the ODS for operational reasons is not a termination of the Workplace Flexibilities Agreement. In situations where the employee is recalled to report to the ODS the recall shall be made in accordance with established policy and/or collective bargaining agreements*, if applicable for all pay, leave, and travel entitlements.
   b. Management agrees to accommodate the request of the employee for a change in the employee's scheduled telework day(s) to the extent possible in a particular week or bi-weekly pay period consistent with mission requirements.
   c. Management and the employee agree that a permanent modification in the telework arrangement will require approval of a new Workplace Flexibilities Agreement.
3. **Official Worksite and Alternative Worksite**: The agency worksite is the official worksite for employees who have a WFA to telework (regular/recurring or situational/ad-hoc). Telework agreements require that the employee is scheduled to report to the agency worksite at least twice per pay period, and as such the agency worksite is generally the location of an employees duty station as documented at item 39 on the employee's Standard Form (SF) 50. With reasonable notice to the employee, management has the right to change the workdays at the agency worksite or alternative worksite. Exceptions to the twice each biweekly pay period requirements 5 CFR 531.605(d) may be made during emergencies (including a pandemic) and for short-term situations (e.g., special projects, medical accommodation).

   The official worksite for an employee with a WFA to work remote is the employee's alternative work site, 5 CFR 531.605—Determining an employee's official worksite. Supervisors and Employees should follow Division-specific policies for all pay, leave, and travel entitlements. Remote employees who have an approved alternative worksite/official worksite within 50 miles or requirements identified in the local CBA of the agency worksite may be eligible for travel reimbursement when commuting to and from the agency worksite. Additionally, If the employee is required to be in a travel status for 12 hours or longer, the employee may be entitled to Per Diem. Refer to the HHS Travel Policy for specific guidance.
4. **Pay and Benefits**: Management agrees that a telework arrangement is not a basis for changing the employee's pay and benefits unless the employee's official duty station is changed due to an approved alternative workplace arrangement in a locality pay area. All pay (to include locality pay or local market supplement) is based on the employee's official duty station as documented on a SF-50, Notice of Personnel Action.
5. **Official Duties (Refer to CBA or your contract.)**: The employee agrees to only perform official duties when on duty at the traditional worksite or approved alternative worksite although limited personal business may be conducted within the parameters of HHS Instruction 610-1, https://www.hhs.gov/about/agencies/asa/ohr/hr-library/610-1/index.html. When the provisions of this Instruction differ from the requirements contained in applicable collective bargaining agreement(s),* collective bargaining agreement takes precedence for bargaining unit employees. The employee acknowledges that a workplace flexibility is not a substitute for dependent care.

* Managers and employees should refer to their collective bargaining unit agreement for additional obligations. *(continued on next page)*

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6. **Time and Attendance**: The employee's supervisor will ensure that the timekeeper has a copy of the employee's telework work schedule.
7. **Leave**: The employee agrees to follow established office procedures, policy and regulations for requesting and obtaining approval of leave.
8. **Emergency Dismissal or Closure Procedures**: The employee may be expected to telework on scheduled or unscheduled telework days, as per the employee's tour of duty as outlined in the WFA subject to the provisions of the applicable collective bargaining agreement* or the duration of any proclaimed emergency when the agency worksite is closed or when the Department of the Office of Personnel Management allow for unscheduled leave/unscheduled telework. If the employee is unable to work due to illness, dependent care responsibilities or other personal needs, the employee will take appropriate leave (e.g., annual or sick leave.) The employee may be granted excused absences on a case-by case basis when other circumstances (e.g., power failure) prevent the employee from working at the alternative worksite. To the extent practicable, management will include a description of emergency duties with this emergency duties differ from the employee's normal duties.
9. **Overtime**: The employee agrees to work overtime (e.g., time in excess or the prescheduled and authorized tour of duty) only when ordered and approved in advance by the supervisor, unless otherwise permitted by law. The employee understands that working overtime without permission may result in appropriate disciplinary action including termination of the telework arrangement.
10. **Equipment/Supplies**: The employee agrees to protect any government-owned equipment and use equipment for official purposes. It is understood that limited personal use of government-owned equipment is acceptable within the parameters of HHS Rules of Behavior for the Use of HHS Information and IT Resources Policy, https://www.hhs.gov/web/governance/digital-strategy/it-policy-archive/hhs-rules-of-behavior-for-the-use-of-hhs-information-and-it-resources-policy.html. The employee agrees to promptly report the need for repairs and return the equipment to the designated office for maintenance and repairs as necessary. The employee further agrees not to install any non-approved software or hardware to government-owned equipment issued to them and comply with the terms of computer software license and copyright agreements, computer virus protection requirements and procedures. Management agrees to service and maintain any government-owned equipment issued to the employee and may require that the employee transport any equipment provided to and from the agency worksite for maintenance or other official purposes.
11. **Damage to Government Equipment**: The employee agrees to protect and maintain government-owned equipment in a secure environment. The employee understands that the loss, theft, or damage to government equipment will be handled in accordance with procedures for comparable situations at the traditional worksite. If equipment is damaged by someone other than the employee (for example, dependents of the employee) the employee may be held responsible for the repair or replacement of the equipment, software, etc., if government equipment is damaged due to the employee's own negligence or other misconduct by the employee.
12. **Lost, Mislaid or Stolen Equipment**: In the event that a laptop or other equipment issued to the employee is lost, mislaid or stolen, the employee shall immediately notify his or her Information Security Officer, immediate supervisor, and the Privacy Officer.
13. **Liability**: The employee understands that the government will not be responsible for damages to an employee's personal or real property while the employee is working at the approved alternative worksite, except to the extent the government is held liable by the Federal Tort Claims Act, 28 U.S.C. §§ 2671-2680, or the Military Personnel and Civilian Claims Act, 31 U.S.C. § 3721, 38 U.S.C. §§ 14.664-14.669.
14. **Work Area (work-at-home only)**: The employee agrees to provide a distraction-free worksite adequate for the performance of official duties and alternative worksite best practices checklist
15. **Worksite Inspection**: The employee agrees to permit the government to inspect the alternative worksite during the employee's normal working hours to ensure proper maintenance of government-owned property and conformance with safety standards. The employer will give the employee reasonable notice of a planned inspection consistent with applicable collective bargaining agreement.
16. **Alternative Worksite Costs**: The employer agrees that the government will not be responsible for any operating costs that are associated with the employee using his or her home as an alternative worksite (e.g., home maintenance and utilities). Utility costs include monthly service charges for telephone, cable or Internet service providers. Management agrees to reimburse the employee for business-related long distance calls with prior written approval only. Management has the option to provide the employee with a government-issued calling card or personal digital assistant (e.g., iphone) for business-related long distance calls. Approved authorizations are filed with this agreements. The employee understands that he or she does not relinquish any entitlement to reimbursement for authorized expenses incurred while performing official duties, as provided for by statute or regulation.
17. **Workers' Compensation**: The employee understands that he or she is covered under the Federal Employees' Compensation Act if injured while performing official duties at the authorized alternative worksite. The employee agrees to notify the supervisor immediately of any accident or injury that occurs at the alternative worksite and to complete any required forms. The supervisor will investigate all reports of injury as soon as practicable following the notification.
18. **Work Assignments/Performance**: The employee agrees to complete all assigned work according to procedures established by the supervisor. The employee may be required to attend meetings, conferences, training or otherwise report to the traditional office on day or hours normally scheduled as the alternative worksite. The employee will meet with the supervisor to receive assignments and review completed work as necessary and appropriate. The employee's performance will be evaluated against standards contained in the employee's performance plan. Management and the employee understand there will be no distinction in the performance standards

* Managers and employees should refer to their collective bargaining unit agreement for additional obligations. *(continued on next page)*

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for teleworkers and non-teleworkers. Teleworkers and non-teleworkers will be treated equally for purposes of periodic appraisals of job performance, training, rewarding, reassigning, promoting, reduction in grade, retaining, and removal, work requirements, and acts involving managerial discretion.

19. **Information Security**: The employee will apply approved safeguards to protect government/HHS records from unauthorized access, disclosure or damage and will comply with the requirements of the Privacy Act of 1974, (5 U.S.C. § 552a), all applicable Federal privacy laws, regulations, and HHS policies and procedures. The employee understands that if confidential, sensitive, sensitive classified, unclassified or source selection data is authorized for use at the alternative worksite location, management will include criteria for proper handling, encryption, storage, safeguarding, and return of such information and data in the space allowed for Supervisor - Employee Specific Terms and Conditions (Section VIII-A) of this agreement.
20. **Standards of Ethical Conduct**: The employee agrees that he or she is bound by official Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR Part 2635), while working at the alternative worksite.
21. **Compliance with this Agreement**: The employee understands that failure to comply with the terms of this agreement may result in termination of this agreement or applicable portions thereof. The employee also understands that nothing in this agreement precludes management from taking any appropriate disciplinary or adverse action against an employee who fails to comply with the provisions of the agreement. Failure to comply also may result in disciplinary action against the employee if just cause exists to warrant such action.
22. **Termination of Agreement**: Participation in the HHS WFP is voluntary and extended to provide the flexibility required of a changing workforce. WFA may be terminated by the supervisor or the employee at any time. Reasons for termination may include circumstances wherein the arrangement is no longer conducive to the business needs of the organization, subject to the provisions of the applicable collective bargaining agreement the employee's performance diminishes, or the employee no longer wants to work from a remote worksite.

    a. If the WFA for remote work is terminated by the supervisor because the arrangement no longer meets the business needs of the organization **or, where a collective bargaining agreement* applies for reasons permitted by the collective bargaining agreement** and the supervisor reassigns the employee to the agency worksite or other official worksite, the employee is entitled to relocation reimbursement.

    b. If a WFA for remote work is terminated due to diminished performance or conduct violations and the supervisor elects to reassign the employee to the agency worksite, the employee is not entitled to relocation reimbursement.

SUPERVISOR/EMPLOYEE SPECIFIC TERMS AND CONDITIONS *(Required for conditional otherwise optional)*

Proposed Arrangement ☐ Approved ☐ Disapproved	**Proposed Type of Work Schedule** ☐ Approved ☐ Disapproved

CERTIFICATION

Employee Certification: By signing this Workplace Flexibility Agreement, the employee certifies that he/she has read the terms of this agreement, taken the required training, and agrees to adhere with applicable policies and procedures.

Management Certification: By signing this Workplace Flexibility Agreement, management officials certify that the position of the employee is suitable for telework, the employee is personally eligible for telework and/or remote work, and they have taken required telework training.

EMPLOYEE SIGNATURE	DATE *(mm/dd/yyyy)*	SUPERVISOR SIGNATURE	DATE *(mm/dd/yyyy)*
AUTHORIZING OFFICIAL SIGNATURE *(If required by your management)*	DATE *(mm/dd/yyyy)*		

* Managers and employees should refer to their collective bargaining unit agreement for additional obligations.

Public Law 111–292
111th Congress

An Act

To require the head of each executive agency to establish and implement a policy under which employees shall be authorized to telework, and for other purposes.

Dec. 9, 2010
[H.R. 1722]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Telework Enhancement Act of 2010.
5 USC 101 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Telework Enhancement Act of 2010".

SEC. 2. TELEWORK.

(a) IN GENERAL.—Part III of title 5, United States Code, is amended by inserting after chapter 63 the following:

"CHAPTER 65—TELEWORK

"Sec.
"6501. Definitions.
"6502. Executive agencies telework requirement.
"6503. Training and monitoring.
"6504. Policy and support.
"6505. Telework Managing Officer.
"6506. Reports.

"§ 6501. Definitions

5 USC 6501.

"In this chapter:

"(1) EMPLOYEE.—The term 'employee' has the meaning given that term under section 2105.

"(2) EXECUTIVE AGENCY.—Except as provided in section 6506, the term 'executive agency' has the meaning given that term under section 105.

"(3) TELEWORK.—The term 'telework'or 'teleworking' refers to a work flexibility arrangement under which an employee performs the duties and responsibilities of such employee's position, and other authorized activities, from an approved worksite other than the location from which the employee would otherwise work.

"§ 6502. Executive agencies telework requirement

5 USC 6502.

"(a) TELEWORK ELIGIBILITY.—

"(1) IN GENERAL.—Not later than 180 days after the date of enactment of this chapter, the head of each executive agency shall—

Deadline.

"(A) establish a policy under which eligible employees of the agency may be authorized to telework;

"(B) determine the eligibility for all employees of the agency to participate in telework; and

Determination.

Notification.

"(C) notify all employees of the agency of their eligibility to telework.

"(2) LIMITATION.—An employee may not telework under a policy established under this section if—

"(A) the employee has been officially disciplined for being absent without permission for more than 5 days in any calendar year; or

"(B) 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.

"(b) PARTICIPATION.—The policy described under subsection (a) shall—

"(1) ensure that telework does not diminish employee performance or agency operations;

Contracts.

"(2) require a written agreement that—

"(A) is entered into between an agency manager and an employee authorized to telework, that outlines the specific work arrangement that is agreed to; and

"(B) is mandatory in order for any employee to participate in telework;

"(3) provide that an employee may not be authorized to telework if the performance of that employee does not comply with the terms of the written agreement between the agency manager and that employee;

"(4) except in emergency situations as determined by the head of an agency, not apply to any employee of the agency whose official duties require on a daily basis (every work day)—

"(A) direct handling of secure materials determined to be inappropriate for telework by the agency head; or

"(B) on-site activity that cannot be handled remotely or at an alternate worksite; and

"(5) be incorporated as part of the continuity of operations plans of the agency in the event of an emergency.

5 USC 6503.

"§ 6503. Training and monitoring

"(a) IN GENERAL.—The head of each executive agency shall ensure that—

"(1) an interactive telework training program is provided to—

"(A) employees eligible to participate in the telework program of the agency; and

"(B) all managers of teleworkers;

"(2) except as provided under subsection (b), an employee has successfully completed the interactive telework training program before that employee enters into a written agreement to telework described under section 6502(b)(2);

"(3) teleworkers and nonteleworkers are treated the same for purposes of—

"(A) periodic appraisals of job performance of employees;

"(B) training, rewarding, reassigning, promoting, reducing in grade, retaining, and removing employees;

"(C) work requirements; or

"(D) other acts involving managerial discretion; and

"(4) when determining what constitutes diminished employee performance, the agency shall consult the performance management guidelines of the Office of Personnel Management.

"(b) TRAINING REQUIREMENT EXEMPTIONS.—The head of an executive agency may provide for an exemption from the training requirements under subsection (a), if the head of that agency determines that the training would be unnecessary because the employee is already teleworking under a work arrangement in effect before the date of enactment of this chapter.

"§ 6504. Policy and support

5 USC 6504.

"(a) AGENCY CONSULTATION WITH THE OFFICE OF PERSONNEL MANAGEMENT.—Each executive agency shall consult with the Office of Personnel Management in developing telework policies.

"(b) GUIDANCE AND CONSULTATION.—The Office of Personnel Management shall—

"(1) provide policy and policy guidance for telework in the areas of pay and leave, agency closure, performance management, official worksite, recruitment and retention, and accommodations for employees with disabilities;

"(2) assist each agency in establishing appropriate qualitative and quantitative measures and teleworking goals; and

"(3) consult with—

"(A) the Federal Emergency Management Agency on policy and policy guidance for telework in the areas of continuation of operations and long-term emergencies;

"(B) the General Services Administration on policy and policy guidance for telework in the areas of telework centers, travel, technology, equipment, and dependent care; and

"(C) the National Archives and Records Administration on policy and policy guidance for telework in the areas of efficient and effective records management and the preservation of records, including Presidential and Vice-Presidential records.

"(c) SECURITY GUIDELINES.—

"(1) IN GENERAL.—The Director of the Office of Management and Budget, in coordination with the Department of Homeland Security and the National Institute of Standards and Technology, shall issue guidelines not later than 180 days after the date of the enactment of this chapter to ensure the adequacy of information and security protections for information and information systems used while teleworking.

Deadline.

"(2) CONTENTS.—Guidelines issued under this subsection shall, at a minimum, include requirements necessary to—

"(A) control access to agency information and information systems;

"(B) protect agency information (including personally identifiable information) and information systems;

"(C) limit the introduction of vulnerabilities;

"(D) protect information systems not under the control of the agency that are used for teleworking;

"(E) safeguard wireless and other telecommunications capabilities that are used for teleworking; and

"(F) prevent inappropriate use of official time or resources that violates subpart G of the Standards of Ethical Conduct for Employees of the Executive Branch by viewing, downloading, or exchanging pornography, including child pornography.

"(d) CONTINUITY OF OPERATIONS PLANS.—

"(1) INCORPORATION INTO CONTINUITY OF OPERATIONS PLANS.—Each executive agency shall incorporate telework into the continuity of operations plan of that agency.

"(2) CONTINUITY OF OPERATIONS PLANS SUPERSEDE TELEWORK POLICY.—During any period that an executive agency is operating under a continuity of operations plan, that plan shall supersede any telework policy.

"(e) TELEWORK WEBSITE.—The Office of Personnel Management shall—

"(1) maintain a central telework website; and

"(2) include on that website related—

"(A) telework links;

"(B) announcements;

"(C) guidance developed by the Office of Personnel Management; and

Deadline.

"(D) guidance submitted by the Federal Emergency Management Agency, and the General Services Administration to the Office of Personnel Management not later than 10 business days after the date of submission.

"(f) POLICY GUIDANCE ON PURCHASING COMPUTER SYSTEMS.—

Deadline.

Not later than 120 days after the date of the enactment of this chapter, the Director of the Office of Management and Budget shall issue policy guidance requiring each executive agency when purchasing computer systems, to purchase computer systems that enable and support telework, unless the head of the agency determines that there is a mission-specific reason not to do so.

5 USC 6505.

"§ 6505. Telework Managing Officer

"(a) DESIGNATION.—The head of each executive agency shall designate an employee of the agency as the Telework Managing Officer. The Telework Managing Officer shall be established within the Office of the Chief Human Capital Officer or a comparable office with similar functions.

"(b) DUTIES.—The Telework Managing Officer shall—

"(1) be devoted to policy development and implementation related to agency telework programs;

"(2) serve as—

"(A) an advisor for agency leadership, including the Chief Human Capital Officer;

"(B) a resource for managers and employees; and

"(C) a primary agency point of contact for the Office of Personnel Management on telework matters; and

"(3) perform other duties as the applicable delegating authority may assign.

"(c) STATUS WITHIN AGENCY.—The Telework Managing Officer of an agency shall be a senior official of the agency who has direct access to the head of the agency.

"(d) RULE OF CONSTRUCTION REGARDING STATUS OF TELEWORK MANAGING OFFICER.—Nothing in this section shall be construed to prohibit an individual who holds another office or position in

an agency from serving as the Telework Managing Officer for the agency under this chapter.

"§ 6506. Reports 5 USC 6506.

"(a) DEFINITION.—In this section, the term 'executive agency' shall not include the Government Accountability Office.

"(b) REPORTS BY THE OFFICE OF PERSONNEL MANAGEMENT.—

"(1) SUBMISSION OF REPORTS.—Not later than 18 months after the date of enactment of this chapter and on an annual basis thereafter, the Director of the Office of Personnel Management, in consultation with Chief Human Capital Officers Council, shall—

"(A) submit a report addressing the telework programs of each executive agency to—

"(i) the Committee on Homeland Security and Governmental Affairs of the Senate; and

"(ii) the Committee on Oversight and Government Reform of the House of Representatives; and

"(B) transmit a copy of the report to the Comptroller General and the Office of Management and Budget.

"(2) CONTENTS.—Each report submitted under this subsection shall include—

"(A) the degree of participation by employees of each executive agency in teleworking during the period covered by the report (and for each executive agency whose head is referred to under section 5312, the degree of participation in each bureau, division, or other major administrative unit of that agency), including—

"(i) the total number of employees in the agency;

"(ii) the number and percent of employees in the agency who are eligible to telework; and

"(iii) the number and percent of eligible employees in the agency who are teleworking—

"(I) 3 or more days per pay period;

"(II) 1 or 2 days per pay period;

"(III) once per month; and

"(IV) on an occasional, episodic, or short-term basis;

"(B) the method for gathering telework data in each agency;

"(C) if the total number of employees teleworking is 10 percent higher or lower than the previous year in any agency, the reasons for the positive or negative variation;

"(D) the agency goal for increasing participation to the extent practicable or necessary for the next reporting period, as indicated by the percent of eligible employees teleworking in each frequency category described under subparagraph (A)(iii);

"(E) an explanation of whether or not the agency met the goals for the last reporting period and, if not, what actions are being taken to identify and eliminate barriers to maximizing telework opportunities for the next reporting period;

"(F) an assessment of the progress each agency has made in meeting agency participation rate goals during the reporting period, and other agency goals relating to telework, such as the impact of telework on—

(Public Law 108–7; 117 Stat. 103) is amended by striking "designate a 'Telework Coordinator' to be" and inserting "designate a Telework Managing Officer to be". 5 USC 6120 note.

(B) APPROPRIATIONS ACT, 2004.—Section 627 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2004 (Public Law 108–199; 118 Stat. 99) is amended by striking "designate a 'Telework Coordinator' to be" and inserting "designate a Telework Managing Officer to be". 5 USC 6120 note.

(C) APPROPRIATIONS ACT, 2005.—Section 622 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2005 (Public Law 108–447; 118 Stat. 2919) is amended by striking "designate a 'Telework Coordinator' to be" and inserting "designate a Telework Managing Officer to be". 5 USC 6120 note.

(D) APPROPRIATIONS ACT, 2006.—Section 617 of the Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2006 (Public Law 109–108; 119 Stat. 2340) is amended by striking "maintain a 'Telework Coordinator' to be" and inserting "maintain a Telework Managing Officer to be". 5 USC 6120 note.

SEC. 3. AUTHORITY FOR TELEWORK TRAVEL EXPENSES TEST PROGRAMS.

(a) IN GENERAL.—Chapter 57 of title 5, United States Code, is amended by inserting after section 5710 the following:

"§ 5711. Authority for telework travel expenses test programs 5 USC 5711.

"(a) Except as provided under subsection (f)(1), in this section, the term 'appropriate committees of Congress' means— Definition.

"(1) the Committee on Homeland Security and Governmental Affairs of the Senate; and

"(2) the Committee on Oversight and Government Reform of the House of Representatives.

"(b)(1) Notwithstanding any other provision of this subchapter, under a test program which the Administrator of General Services determines to be in the interest of the Government and approves, an employing agency may pay through the proper disbursing official any necessary travel expenses in lieu of any payment otherwise authorized or required under this subchapter for employees participating in a telework program. Under an approved test program, an agency may provide an employee with the option to waive any payment authorized or required under this subchapter. An agency shall include in any request to the Administrator for approval of such a test program an analysis of the expected costs and benefits and a set of criteria for evaluating the effectiveness of the program.

"(2) Any test program conducted under this section shall be designed to enhance cost savings or other efficiencies that accrue to the Government.

"(3) Under any test program, if an agency employee voluntarily relocates from the pre-existing duty station of that employee, the Administrator may authorize the employing agency to establish a reasonable maximum number of occasional visits to the pre-existing duty station before that employee is eligible for payment of any accrued travel expenses by that agency.

"(4) Nothing in this section is intended to limit the authority of any agency to conduct test programs.

Deadline.

"(c) The Administrator shall transmit a copy of any test program approved by the Administrator under this section, and the rationale for approval, to the appropriate committees of Congress at least 30 days before the effective date of the program.

Reports.
Deadline.

"(d)(1) An agency authorized to conduct a test program under subsection (b) shall provide to the Administrator, the Telework Managing Officer of that agency, and the appropriate committees of Congress a report on the results of the program not later than 3 months after completion of the program.

"(2) The results in a report described under paragraph (1) may include—

"(A) the number of visits an employee makes to the pre-existing duty station of that employee;

"(B) the travel expenses paid by the agency;

"(C) the travel expenses paid by the employee; or

"(D) any other information the agency determines useful to aid the Administrator, Telework Managing Officer, and Congress in understanding the test program and the impact of the program.

"(e) No more than 10 test programs under this section may be conducted simultaneously.

Definition.

"(f)(1) In this subsection, the term 'appropriate committee of Congress' means—

"(A) the Committee on Homeland Security and Governmental Affairs of the Senate;

"(B) the Committee on Oversight and Government Reform of the House of Representatives;

"(C) the Committee on the Judiciary of the Senate; and

"(D) the Committee on the Judiciary of the House of Representatives.

"(2) The Patent and Trademark Office shall conduct a test program under this section, including the provision of reports in accordance with subsection (d)(1).

"(3) In conducting the program under this subsection, the Patent and Trademark Office may pay any travel expenses of an employee for travel to and from a Patent and Trademark Office worksite or provide an employee with the option to waive any payment authorized or required under this subchapter, if—

"(A) the employee is employed at a Patent and Trademark Office worksite and enters into an approved telework arrangement;

"(B) the employee requests to telework from a location beyond the local commuting area of the Patent and Trademark Office worksite; and

"(C) the Patent and Trademark Office approves the requested arrangement for reasons of employee convenience instead of an agency need for the employee to relocate in order to perform duties specific to the new location.

"(4)(A) The Patent and Trademark Office shall establish an oversight committee comprising an equal number of members representing management and labor, including representatives from each collective bargaining unit.

Procedures.

"(B) The oversight committee shall develop the operating procedures for the program under this subsection to—

"(i) emergency readiness;
"(ii) energy use;
"(iii) recruitment and retention;
"(iv) performance;
"(v) productivity; and
"(vi) employee attitudes and opinions regarding telework; and
"(G) the best practices in agency telework programs.

"(c) COMPTROLLER GENERAL REPORTS.—
"(1) REPORT ON GOVERNMENT ACCOUNTABILITY OFFICE TELEWORK PROGRAM.—
"(A) IN GENERAL.—Not later than 18 months after the date of enactment of this chapter and on an annual basis thereafter, the Comptroller General shall submit a report addressing the telework program of the Government Accountability Office to—
"(i) the Committee on Homeland Security and Governmental Affairs of the Senate; and
"(ii) the Committee on Oversight and Government Reform of the House of Representatives.
"(B) CONTENTS.—Each report submitted by the Comptroller General shall include the same information as required under subsection (b) applicable to the Government Accountability Office.
"(2) REPORT TO CONGRESS ON OFFICE OF PERSONNEL MANAGEMENT REPORT.—Not later than 6 months after the submission of the first report to Congress required under subsection (b), the Comptroller General shall review that report required under subsection (b) and submit a report to Congress on the progress each executive agency has made towards the goals established under section 6504(b)(2).

"(d) CHIEF HUMAN CAPITAL OFFICER REPORTS.—
"(1) IN GENERAL.—Each year the Chief Human Capital Officer of each executive agency, in consultation with the Telework Managing Officer of that agency, shall submit a report to the Chair and Vice Chair of the Chief Human Capital Officers Council on agency management efforts to promote telework.
"(2) REVIEW AND INCLUSION OF RELEVANT INFORMATION.—The Chair and Vice Chair of the Chief Human Capital Officers Council shall—
"(A) review the reports submitted under paragraph (1);
"(B) include relevant information from the submitted reports in the annual report to Congress required under subsection (b); and
"(C) use that relevant information for other purposes related to the strategic management of human capital.".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—
(1) TABLE OF CHAPTERS.—The table of chapters for part III of title 5, United States Code, is amended by inserting after the item relating to chapter 63 the following:

65. Telework 6501

(2) TELEWORK COORDINATORS.—
(A) APPROPRIATIONS ACT, 2003.—Section 623 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2003

(Public Law 108–7; 117 Stat. 103) is amended by striking "designate a 'Telework Coordinator' to be" and inserting "designate a Telework Managing Officer to be". 5 USC 6120 note.

(B) APPROPRIATIONS ACT, 2004.—Section 627 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2004 (Public Law 108–199; 118 Stat. 99) is amended by striking "designate a 'Telework Coordinator' to be" and inserting "designate a Telework Managing Officer to be". 5 USC 6120 note.

(C) APPROPRIATIONS ACT, 2005.—Section 622 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2005 (Public Law 108–447; 118 Stat. 2919) is amended by striking "designate a 'Telework Coordinator' to be" and inserting "designate a Telework Managing Officer to be". 5 USC 6120 note.

(D) APPROPRIATIONS ACT, 2006.—Section 617 of the Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2006 (Public Law 109–108; 119 Stat. 2340) is amended by striking "maintain a 'Telework Coordinator' to be" and inserting "maintain a Telework Managing Officer to be". 5 USC 6120 note.

SEC. 3. AUTHORITY FOR TELEWORK TRAVEL EXPENSES TEST PROGRAMS.

(a) IN GENERAL.—Chapter 57 of title 5, United States Code, is amended by inserting after section 5710 the following:

"§ 5711. Authority for telework travel expenses test programs 5 USC 5711.

"(a) Except as provided under subsection (f)(1), in this section, the term 'appropriate committees of Congress' means— Definition.

"(1) the Committee on Homeland Security and Governmental Affairs of the Senate; and

"(2) the Committee on Oversight and Government Reform of the House of Representatives.

"(b)(1) Notwithstanding any other provision of this subchapter, under a test program which the Administrator of General Services determines to be in the interest of the Government and approves, an employing agency may pay through the proper disbursing official any necessary travel expenses in lieu of any payment otherwise authorized or required under this subchapter for employees participating in a telework program. Under an approved test program, an agency may provide an employee with the option to waive any payment authorized or required under this subchapter. An agency shall include in any request to the Administrator for approval of such a test program an analysis of the expected costs and benefits and a set of criteria for evaluating the effectiveness of the program.

"(2) Any test program conducted under this section shall be designed to enhance cost savings or other efficiencies that accrue to the Government.

"(3) Under any test program, if an agency employee voluntarily relocates from the pre-existing duty station of that employee, the Administrator may authorize the employing agency to establish a reasonable maximum number of occasional visits to the pre-existing duty station before that employee is eligible for payment of any accrued travel expenses by that agency.

"(4) Nothing in this section is intended to limit the authority of any agency to conduct test programs.

Deadline. "(c) The Administrator shall transmit a copy of any test program approved by the Administrator under this section, and the rationale for approval, to the appropriate committees of Congress at least 30 days before the effective date of the program.

Reports. Deadline. "(d)(1) An agency authorized to conduct a test program under subsection (b) shall provide to the Administrator, the Telework Managing Officer of that agency, and the appropriate committees of Congress a report on the results of the program not later than 3 months after completion of the program.

"(2) The results in a report described under paragraph (1) may include—

"(A) the number of visits an employee makes to the pre-existing duty station of that employee;

"(B) the travel expenses paid by the agency;

"(C) the travel expenses paid by the employee; or

"(D) any other information the agency determines useful to aid the Administrator, Telework Managing Officer, and Congress in understanding the test program and the impact of the program.

"(e) No more than 10 test programs under this section may be conducted simultaneously.

Definition. "(f)(1) In this subsection, the term 'appropriate committee of Congress' means—

"(A) the Committee on Homeland Security and Governmental Affairs of the Senate;

"(B) the Committee on Oversight and Government Reform of the House of Representatives;

"(C) the Committee on the Judiciary of the Senate; and

"(D) the Committee on the Judiciary of the House of Representatives.

"(2) The Patent and Trademark Office shall conduct a test program under this section, including the provision of reports in accordance with subsection (d)(1).

"(3) In conducting the program under this subsection, the Patent and Trademark Office may pay any travel expenses of an employee for travel to and from a Patent and Trademark Office worksite or provide an employee with the option to waive any payment authorized or required under this subchapter, if—

"(A) the employee is employed at a Patent and Trademark Office worksite and enters into an approved telework arrangement;

"(B) the employee requests to telework from a location beyond the local commuting area of the Patent and Trademark Office worksite; and

"(C) the Patent and Trademark Office approves the requested arrangement for reasons of employee convenience instead of an agency need for the employee to relocate in order to perform duties specific to the new location.

"(4)(A) The Patent and Trademark Office shall establish an oversight committee comprising an equal number of members representing management and labor, including representatives from each collective bargaining unit.

Procedures. "(B) The oversight committee shall develop the operating procedures for the program under this subsection to—

"(i) provide for the effective and appropriate functioning of the program; and

"(ii) ensure that—

"(I) reasonable technological or other alternatives to employee travel are used before requiring employee travel, including teleconferencing, videoconferencing or internet-based technologies;

"(II) the program is applied consistently and equitably throughout the Patent and Trademark Office; and

"(III) an optimal operating standard is developed and implemented for maximizing the use of the telework arrangement described under paragraph (2) while minimizing agency travel expenses and employee travel requirements.

"(5)(A) The test program under this subsection shall be designed to enhance cost savings or other efficiencies that accrue to the Government.

"(B) The Director of the Patent and Trademark Office shall—

"(i) prepare an analysis of the expected costs and benefits and a set of criteria for evaluating the effectiveness of the program; and

Cost analysis.

"(ii) before the test program is implemented, submit the analysis and criteria to the Administrator of General Services and to the appropriate committees of Congress.

Criteria.

"(C) With respect to an employee of the Patent and Trademark Office who voluntarily relocates from the pre-existing duty station of that employee, the operating procedures of the program may include a reasonable maximum number of occasional visits to the pre-existing duty station before that employee is eligible for payment of any accrued travel expenses by the Office.

"(g) The authority to conduct test programs under this section shall expire 7 years after the date of the enactment of the Telework Enhancement Act of 2010.".

Expiration date.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 57 of title 5, United States Code, is amended by inserting after the item relating to section 5710 the following:

"5711. Authority for telework travel expenses test programs.".

SEC. 4. TELEWORK RESEARCH.

5 USC 6501 note.

(a) RESEARCH BY OPM ON TELEWORK.—The Director of the Office of Personnel Management shall—

(1) research the utilization of telework by public and private sector entities that identify best practices and recommendations for the Federal Government;

(2) review the outcomes associated with an increase in telework, including the effects of telework on energy consumption, job creation and availability, urban transportation patterns, and the ability to anticipate the dispersal of work during periods of emergency; and

(3) make any studies or reviews performed under this subsection available to the public.

(b) USE OF CONTRACT TO CARRY OUT RESEARCH.—The Director of the Office of Personnel Management may carry out subsection (a) under a contract entered into by the Director using competitive procedures under section 303 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253).

(c) USE OF OTHER FEDERAL AGENCIES.—The heads of Federal agencies with relevant jurisdiction over the subject matters in subsection (a)(2) shall work cooperatively with the Director of the Office of Personnel Management to carry out that subsection, if the Director determines that coordination is necessary to fulfill obligations under that subsection.

Approved December 9, 2010.

LEGISLATIVE HISTORY—H.R. 1722:

HOUSE REPORTS: No. 111–474 (Comm. on Oversight and Government Reform).
CONGRESSIONAL RECORD, Vol. 156 (2010):
May 5, 6, considered and failed House.
July 14, considered and passed House.
Sept. 29, considered and passed Senate, amended.
Nov. 18, House concurred in Senate amendment.

APPENDIX 27-1: FDA AWARDS POOLS

Food and Drug Administration Awards Pools CBER – Center for Biologics Evaluation & Research
CDER – Center for Drug Evaluation & Research
CDRH – Center for Devices & Radiological Health
CFSAN – Center for Food Safety & Applied Nutrition
CTP – Center for Tobacco Products
CVM – Center for Veterinary Medicine
NCTR – National Center for Toxicological Research
ORA – Office of Regulatory Affairs (Six Committees with 2 sub-Committees)
OO – Office of Operations
ODT – Office of Digital Transformation
OC-IO – Office of the Commissioner and Office of the Counselor to the Commissioner
OES – Office of the Executive Secretariat
OCC – Office of the Chief Counsel
OCE – Oncology Center of Excellence
OCPP – Office of Clinical Policy & Programs
OEA – Office of External Affairs
OFPR – Office of Food Policy & Response
OPPLIA – Office of Policy, Legislation & International Affairs
OCS – Office of the Chief Scientist
OMHHE – Office of Minority Health & Health Equity
OWH – Office of Women's Health

APPENDIX 27-2: ORA INCENTIVE AWARD COMMITTIES

Food and Drug Administration: **Office of Regulatory Affairs**
Incentive Award Committee Structure

ORA Office Name

1. Small Office Committee (OCPM, OISM, OPM, OSPQM, OPCE, OACRA IO)
    - Small Office Committee 1
    - Small Office Committee 2

2. Office of Regulatory Management Operations (ORMO)
    - ORMO Committee 1
    - ORMO Committee 2

3. Office of Import Operations (OIO)
    - ORMO Committee 1
    - ORMO Committee 2

4. Office of Regulatory Science (ORS)
    - ORMO Committee 1
    - ORMO Committee 2

5. Office of Human and Animal Food Operations (OHAFO)
    - ORMO Committee 1
    - ORMO Committee 2

6. Office of Medical Products and Tobacco Operations (OMPTO)
    - ORMO Committee 1
    - ORMO Committee 2

**Sub-offices within a committee will be analyzed every year to ensure that the two sub-committees within each committee are divided up as close to equal as possible.*

HHS Instruction 430-1: Performance Management Appraisal Program (PMAP)

Effective Date 01/01/2023

Material Transmitted:

Department of Health and Human Services (HHS) Instruction 430-1, PMAP Policy, dated 11/22/2022

Material Superseded:

HHS Instruction 430-1, Performance Management Appraisal Program, dated August 4, 2011

HHS Instruction 430-4 and 430-7, Performance Management Appraisal Program, dated October 3, 2011

Department of Health and Human Services (HHS) Instruction 430-1, PMAP Policy, dated 12/03/2020

Department of Health and Human Services (HHS) Instruction 430-1, PMAP Policy, dated 11/09/2022

Background:

This Instruction has been revised to reflect a culture of high performance, clarify coverage and exclusions, replace the standard administrative critical element with a customer experience standard element, and define terms used in the performance management program.

This policy is effective January 1, 2023 and must be carried out in accordance with applicable laws, regulations, bargaining agreements, and Departmental policy.

W. Robert Leavitt
Deputy Assistant Secretary for Human Resources
and Chief Human Capital Officer

Subject: Performance Management Appraisal Program

430-1-00 Purpose

This Instruction establishes the authority for the Performance Management Appraisal Program (PMAP) within the Department of Health and Human Services (HHS) and implements a 5-tier rating system consisting of the following levels of performance: Achieved Outstanding Results (AO), Achieved More than Expected Results (AM), Achieved Expected Results (AE), Partially Achieved Expected Results (PA), and Achieved Unsatisfactory Results (UR).

See the HHS PMAP Handbook for in-depth information and instructions on how to execute the policy.

When provisions of this policy differ from changes in applicable law or regulation, the changes in law or regulation apply.

430-1-10 References

A. 5 U.S.C. Chapter 43, Performance Appraisal, and 5 CFR Part 430, Performance Management

B. 5 U.S.C. §§4303 and 4305 and 5 CFR Part 432.104, Achieved Unsatisfactory Results (UR) Performance

C. 5 U.S.C. Chapter 45 and 5 CFR Part 451, Awards

D. 5 U.S.C. §§5335 and 5304 and 5 CFR Part 531, Subpart D, Within-Grade Increases

E. 5 U.S.C. §5336 and 5 CFR Part 531, Subpart E, Quality Step Increases

F. 5 U.S.C. §3502 and 5 CFR §351.504, Reduction-in-Force

G. 5 U.S.C. §§552a and 5 CFR §293.404 and 5 CFR §293.405, Employee Performance Records

H. 5 CFR §432.104, Addressing Unacceptable Performance

I. Executive Order 13839, *Promoting Accountability and Streamlining Removal Procedures Consistent with Merit System Principles*, May 25, 2018

J. OMB Memorandum, *Comprehensive Plan for Reforming the Federal Government and Reducing the Federal Civilian Workforce (M-17-22)*, April 17, 2017

K. HHS Performance Management Appraisal Program Handbook, 2016

L. All applicable HHS Collective Bargaining Agreements

430-1-20 Coverage and Exclusions

A. This Instruction applies to all HHS employees except the following:

1. Members of the Senior Executive Service (SES); Senior Level (SL); or Scientific and professional (ST);

2. A Title 42 employee who is covered under the HHS SES performance system;

3. An employee appointed to the excepted service under Schedule A, 5 CFR § 213.3102(o) whose appointment is limited to one (1) year or less;

4. An expert or consultant appointed under 5 U.S.C. § 3109;

5. A member of the Public Health Service Commissioned Corps;

6. A member of an advisory committee;

7. A person serving under an appointment in the excepted service having a time limit of less than sixty (60) calendar days;

8. An employee on detail to a public international organization;

9. An employee in a position for which employment is not reasonably expected to exceed sixty (60) calendar days in a consecutive twelve-month period;

10. An employee outside the United States who is paid in accordance with local native prevailing wage rates for the area in which employed;

11. An Administrative Law Judge appointed under 5 U.S.C. § 3105;

12. An individual appointed by the President; and

13. An individual who is serving in a position under a temporary appointment for less than one year, agrees to serve without a performance evaluation, and will not be considered for a reappointment or for an increase in pay based in whole or in part on performance.

430-1-30 Definitions

A. **Acceptable Level of Competence**: Performance by an employee that warrants advancement of the employee's rate of basic pay to the next higher step of the grade or the next higher rate within the grade (as defined in this section) of his or her position, subject to the requirements of § 531.404 of this subpart, as determined by the head of the agency (or designee). § 531.403 Definitions.

B. **Achieved Expected Results (AE) Level of Performance**: An employee's performance of the duties and responsibilities of their assigned position reflects at least the "Achieved Expected Results (AE)" level in all critical elements. The employee fully meets the expectations outlined in the standards; the results meet the standards for quality, quantity, and/or timeliness associated with the objective and were achieved with the appropriate level of guidance. Performance must be at this level for the employee to receive a within-grade increase to the next higher step of the grade, or the next higher grade in a career ladder promotion.

C. **Achieved More Than Expected Results (AM) Level of Performance:** The employee consistently exceeds expectations of "Achieved Expected Results (AE)" performance requirements, continually demonstrates successful collaborations within the work environment, overcomes significant organizational challenges, and works productively and strategically with others in non-routine matters, some of which may be complex and sensitive. The employee consistently demonstrates the highest level of integrity and accountability in achieving HHS program and management goals.

D. **Achieved Outstanding Results (AO) Level of Performance**: The employee produces results that significantly exceed expectations and/or result in uncommon successes, are consistently superior, and/or exceed performance requirements. Despite major challenges such as changing priorities, insufficient resources, unanticipated resource shortages, or externally-driven parameters, employee performance is a model of excellence. Contributions impact well beyond the employee's level of responsibility. The employee demonstrates exceptional initiative in achieving results critical to Departmental success and strategic goals. Products and skills create significant changes in their area of responsibility and authority.

E. **Achieved Unsatisfactory Results (UR) Level of Performance:** The employee fails to achieve the successful level of performance standard in one or more critical elements even though circumstances allowed for its achievement. "Achieved Unsatisfactory Results (UR)" performance can result in the employee's reassignment, removal, or reduction grade.

F. **Appraisal Cycle:** The appraisal cycle is typically twelve (12) months.

G. **Appraisal Period**: The time period that a performance plan is in effect.

H. **Critical Elements**: A critical element is a work assignment or responsibility of such importance that "Achieved Unsatisfactory Results (UR)" performance on the element would result in the determination that the employee's overall performance is Achieved Unsatisfactory Results (UR). All elements in the HHS performance plan are considered critical. The performance plan has a maximum of six (6) critical elements.

I. **Forced Distribution of Summary Ratings**: A prohibited method of distributing performance ratings by assessing an individual's performance relative to their colleagues instead of against documented standards.

J. **Interim Rating**: A rating that is assigned when an employee has served at least 90[1] days under a performance plan and changes positions during the Appraisal Period. Position changes may be

temporary (e.g. a detail or temporary promotion) or permanent. This may happen more than once during the rating period.

K. **Measures**: Targets or indicators of quality, quantity, timeliness, or cost effectiveness used to determine work unit and employee performance.

L. **Minimum Period of Performance**: The minimum period of performance that must be completed before a performance rating can be prepared is 90 days. An employee must be placed on a performance plan with critical elements assigned for a minimum of 90 days for a rating to be assigned. In the event the performance plan is revised during the appraisal period, and a critical element is changed with less than 90 days remaining in the appraisal period, the employee's performance may not be evaluated and a No Rating (NR) must be assigned to that element.

M. **No Rating**: This rating is assigned to an element when the employee's performance cannot be evaluated, typically in the case that the Minimum Period of Performance has not been met, or if the employee's duties changed but were not reflected in the PMAP. An NR rating does not negatively impact a summary rating or Rating of Record.

N. **Partially Achieved Expected Results (PA):** This is the minimum level of acceptable performance for retention on the job and improvement is necessary. The employee has difficulties in meeting expectations. Actions taken by the employee are sometimes inappropriate or marginally effective. Organizational goals and objectives are met only as a result of close supervision.

O. **Performance Management Appraisal Program Coordinator:** PMAP Coordinators, identified by their respective Operating Division or Staff Division (OpDiv or StaffDiv), are performance management liaisons for the operations of the PMAP who share knowledge and best practices across HHS and provide essential advice, guidance, coordination, and support to their organization.

P. **Performance Standards:** The written benchmarks against which performance of each element is evaluated and given a rating level.

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

R. **Progress Review:** A periodic assessment of an employee's performance that occurs at least once during the Appraisal Period at the mid-point of the appraisal cycle.

S. **Quality Step Increase**: An increase in the employee's rate of basic pay from one step to the next higher step of the grade. Only an employee who receives a rating of record at "Achieved Outstanding Results (AO)" is eligible.

T. **Rating of Record:** The overall summary rating for all of the critical elements in an employee's PMAP, which is provided at the end of the appraisal cycle provided that the employee has completed the minimum period of performance as required for a rating.

U. **Rating Official:** The Rating Official is typically the employee's immediate supervisor. However, a Rating Official can be any delegated official who is in a supervisory or managerial position with oversight or responsibility for the day-to-day supervision of that employee.

V. **Reviewing Official:** The Reviewing Official has review and approval authority above the Rating Official and is ordinarily two supervisory levels above the employee.

W. **Summary Rating:** The term used to describe the employee's overall performance level. The summary rating averages each individual critical element and may be "Achieved Outstanding Results (AO)", "Achieved More Than Expected Results (AM)", Achieved Expected Results (AE)", "Partially Achieved Expected Results (PA)", "Achieved Unsatisfactory Results (UR)", or "Not Rated (NR)."

X. **Within Grade Increase:** An increase in an employee's rate of basic pay from one step of the grade of their position to the next step of that grade. This is granted when the employee has met the waiting period and has received at least an "Achieved Expected Results (AE)" level of performance on their most recent Rating of Record.

430-1-40 Responsibilities

A. HHS Assistant Secretary for Administration (ASA), Office of Human Resources (HHS OHR)

1. Develops Department-wide human resources guidance and policy consistent with HHS and Office of Personnel Management (OPM) policy, procedures and all applicable federal laws and regulations.

2. Periodically reviews OpDiv/StaffDiv procedures, actions, and reports to assure conformance with HHS and OPM policy and guidance, and all applicable federal laws and regulations.

B. Deputy Assistant Secretary for Human Resources and Chief Human Capital Officer (CHCO)

1. Provides policy oversight and direction on issues that arise;

2. Develops Department-wide policies and guidance regarding Performance Management consistent with HHS and OPM policies, procedures, guidance and all applicable federal laws and regulations;

3. Attains OPM approval as necessary and/or required;

4. Monitors and evaluates HHS's Performance Management Appraisal Program for compliance with applicable laws and regulations, including Merit System Principles and Prohibited Personnel Practices;

5. Ensures all components of the Department provide Performance Management Training for supervisors and for non-supervisors.

C. OpDiv/StaffDiv Human Resources Offices

1. Comply with this Instruction, any HHS and OPM policies, procedures, guidance, and all applicable federal laws and regulations;

2. Ensure performance records are retained in accordance with OPM regulations and HHS policy as stated in section 430-1-110 of this document.

D. OpDiv/StaffDiv Heads

1. Delegate appropriate authority to supervisors and other officials, as required, to effectively implement and operate under the PMAP in a manner consistent with the law and HHS policy, and to promote a performance-based culture;

2. Develop and communicate OpDiv and/or StaffDiv goals, initiatives, and priorities used in developing individual performance plans;

3. Hold supervisors accountable for the accomplishment of their performance management duties;

4. Ensure employees and supervisors participate in appropriate performance management training, as required by regulations.

E. PMAP Coordinators

1. Assist in providing training and information to supervisors and employees on the HHS PMAP;

2. Provide support and guidance for linking performance to higher-level organizational goals, and for establishing performance plans with results-focused performance elements and credible standards;

3. Provide assistance and guidance to supervisors and employees in the execution of their PMAP responsibilities;

4. Conduct PMAP reviews to evaluate compliance, determine the need for program improvements and make recommendations;

5. Provide required reports and documentation of Performance Management activities to support HHS and OPM accountability reviews;

6. Provide assistance to supervisors and employees in dealing with the appeal process, and on procedures for dealing with "Achieved Unsatisfactory Results (UR)" performance by facilitating coordination with Labor and Employee Relations (LER).

F. Reviewing Officials

1. Review performance plans with ratings at the "Achieved Unsatisfactory Results (UR)" level, and advise the Rating Official of findings, recommendations and next steps;

2. Hold Rating Officials accountable for developing specific, measurable, attainable, relevant, and timely performance standards and ensure employees are given the necessary support and resources to perform at or above the "Achieved Expected Results (AE)" level of performance;

3. Refer Rating Official to LER for consultation, as needed.

4. Upon request, provide a second-level review of a summary rating and either change or concur with the rating.

G. Rating Officials

1. Promote a performance-based culture and environment which fosters a results-oriented work unit by establishing open, two-way communication with employees on work expectations and requirements;

2. Engage employees in the process of establishing performance plans and provide the employee with a signed copy of the plan within the first 30 days of the beginning of the appraisal cycle, entry on duty into a new position, or beginning of a detail expected to exceed 89 days;

3. Manage the full performance cycle including:

a. communicating performance expectations clearly and ensuring employees understand what is expected;

b. holding employees accountable; monitoring performance during the appraisal period, and providing regular performance feedback to employees;

c. modifying the performance plan to account for changes in the employee's job duties or shifting priorities;

d. appropriately recognizing and rewarding employee performance;

e. developing employees by providing substantive feedback and stretch goals; and

f. taking appropriate actions to address performance determined to be below the "Achieved Expected Results (AE)" level.

4. Ensure that plans meet all requirements as outlined in this policy;

5. Conduct progress reviews required by this policy;

6. If, at any time during the performance cycle, an employee's performance is at the "Partially Achieved Expected Results (PA)" level, immediately contact LER and notify the Reviewing Official;

7. Prepare ratings of record within 30 days of the end of the Appraisal Cycle, unless an exception or non-standard situation applies, and equitably consider employees who demonstrate noteworthy performance for appropriate recognition;

8. Complete required supervisory Performance Management training as assigned by the PMAP Coordinator.

H. Employees

1. Provide input and feedback to the Rating Official in the development of performance elements, standards, and measures;

2. Request clarification of performance expectations from the Rating Official, if necessary;

3. Perform at full potential, support team endeavors, and pursue professional development to support performance and results;

4. Identify issues, or other obstacles, which may hinder the accomplishment of performance expectations, and work with the Rating Official to resolve them;

5. Continuously seek performance feedback;

6. Participate in progress reviews and performance appraisals by providing input to the Rating Official on accomplishments toward achieving performance expectations;

7. Complete required Performance Management training as assigned by the PMAP Coordinator.

I. Labor and Employee Relations staff consult with supervisors with regard to performance-related issues requiring corrective action.

430-1-50 Performance Management Cycle

A. The appraisal cycle is on a calendar year cycle beginning on January 1 of each year and ending on December 31.

B. Rating Officials will consistently measure employee performance and provide ongoing oral or written feedback to employees on their progress toward reaching their performance goals. Rating Officials will meet with employees three times per year to give feedback on the employee's performance. The reviews may incorporate feedback from key stakeholders and from the employee. These reviews typically will occur to establish the performance plan, to provide a mid-year review, and to close out the performance plan with a rating of record.

C. The Rating Official must engage LER if, at any time, the employee's performance is less than the "Achieved Expected Results (AE)" level.

430-1-60 Performance Planning

A. Rating Officials will set performance expectations and goals for employees to channel their efforts toward achieving organizational objectives. Performance elements and standards should be SMART – specific, measurable, attainable, relevant, and timely.

1. Either the employee or the Rating Official may initiate the performance plan.

2. Standards must be written at the "Achieved Expected Results (AE)" level and be based on the requirements of the position. If substantive changes are made to critical elements and performance standards, the changes are effective when presented in writing to the employee. The employee must be granted a minimum of 90[1] days to demonstrate acceptable performance before being evaluated on those elements.

3. All performance plans must link at least one critical element to the organizational Strategic Plan at the Department, Operating Division, or Staff Division level, and must include relevant tasks at the appropriate level of responsibility of the position.

B. Required Performance Elements

1. Supervisory employees must have a minimum of three (3) but no more than six (6) critical elements. These must include:

a. **HHS standard Leadership Element**

i. Supervisors will have a set of required performance standards.

ii. Supervisors may not remove or edit the established standards but may include additional standards.

b. **Customer Experience Element.** While the element definition cannot be changed, Rating Officials can include custom performance standards under the element.

c. **At least one (1) individual Critical Element.**

2. Non-supervisory employees must have a minimum of two (2), but no more than six (6) critical elements. These must include:

a. **HHS standard Customer Experience Element,** applicable to all employees, and

b. **At least one (1) individual Critical Element.**

3. All performance plans include at least one critical element linked to the organizational Strategic Plan at the Department, Operational Division, or Staff Division level, and include relevant tasks at the appropriate level of responsibility of the position.

430-1-70 Rating Performance

Employees who have been under a documented performance plan for 90[1] days or more should receive a Rating of Record at the end of the appraisal period. When required by the OpDiv/StaffDiv, the Rating Official should obtain the Reviewing Official's signature prior to discussion of the final rating with the employee.

A. **Determining Element Ratings**: Ratings are based on a comparison of performance with the standards established for the appraisal period. Rating Officials, at the end of the annual appraisal period, should solicit performance input from former supervisors for those employees who have changed positions or supervisors during the appraisal period. (See Table 1).

1. **Element Comments**: Written comments are recommended for each element rated higher or lower than "Achieved Expected Results (AE)."

Table 1: Critical Element Ratings	Points Assigned
Level 5: Achieved Outstanding Results (AO)	5.00
Level 4: Achieved More Than Expected Results (AM)	4.00
Level 3: Achieved Expected Results (AE)	3.00
Level 2: Partially Achieved Expected Results (PA)	2.00
Level 1: Achieved Unsatisfactory Results (UR)	1.00

2. **Determining Summary Rating**: Summary ratings are determined based on a review of all the critical element ratings.

a. After rating and assigning a score to each critical element, the Rating Official will total the points and divide that by the number of critical elements to arrive at an average score (up to two decimal places).

b. This score will be converted to a summary rating using the point values in Table II.

c. If an employee receives a "Partially Achieved Expected Results (PA)" rating on one or more critical elements, he or she cannot receive a summary rating of higher than "Achieved Expected Results (AE)".

d. A summary rating of "Achieved Unsatisfactory Results (UR)" must be assigned to any employee who is rated "Achieved Unsatisfactory Results (UR)" on any critical element.

e. An element rating of Not Rated (NR) will not affect the average score used to determine the summary rating.

Table II: Summary Ratings	Points
Level 5: Achieved Outstanding Results (AO)	4.50 to 5.00
Level 4: Achieved More Than Expected Results (AM)	3.60 to 4.49
Level 3: Achieved Expected Results (AE)	3.00 to 3.59
Level 2: Partially Achieved Expected Results (PA)	2.00 to 2.99
Level 1: Achieved Unsatisfactory Results (UR)	1.00 to 1.99

3. **Narrative Summaries**: Rating Officials must provide a narrative summary rating when an employee's performance is at the "Achieved Unsatisfactory Results (UR)" or "Achieved Outstanding Results (AO)" level. The narrative should contain examples of the employee's performance which substantiate how the employee's performance falls within the levels assigned. Narratives are recorded on the performance plan.

4. **Disagreement with Rating**: Recognizing that there may be differences of opinion between employees and Rating Officials on performance assessments and ratings, employees may respond to performance ratings and request reconsideration. Employee comments become a part of the official appraisal rating of record.

a. Employees who desire to add such written comments shall have seven (7) calendar days from the date of the issuance of the appraisal.

b. Employee comments must be reviewed by the Rating and Reviewing Officials to determine whether these comments warrant any changes in the element or summary ratings to be submitted for the record.

c. Reviewing Officials may elect to change the rating of record. This amended rating will be entered into the performance plan and signed by the Reviewing Official and the employee.

d. Employees being reduced in grade or removed based on performance have the right to appeal to the Merit Systems Protection Board; or if an employee believes he or she was discriminated against based on any of the protected classes or actions, an EEO complaint may be filed.

430-1-80 Recognizing and Rewarding Performance

A. Performance awards are linked to the rating of record and are submitted and considered for approval only at the conclusion of the rating period.

B. All performance awards are at the discretion of the OpDiv/StaffDiv and are subject to funds availability. According to OPM, no employee is entitled to an award.

C. For more information on recognizing and rewarding performance, please refer to HHS Instruction 451-1, Incentive Awards.

430-1-90 Appraisal Program Requirements

A. **Training Requirements**

1. **Rating Officials**: Every Rating Official must be trained in the policies and practices of performance management to ensure its effective administration. Training on developing performance plans, conducting progress reviews, assigning ratings, coaching, and using appraisals as a key factor in making other management decisions will be provided to managers and supervisors. Any individual hired into their first supervisory position should receive performance management training within one year of being hired. Other seasoned supervisors should receive a performance management training at least once every three years. Rating Officials are expected to explain the system to subordinate employees and provide performance management training to enable them to understand the specific aspects of their performance plan.

2. **Employees**: Employees are recommended to take training within one year of being hired at HHS and at least once every three years thereafter.

B. **Monitoring and Evaluating**: Generally, each OpDiv/StaffDiv has the responsibility for monitoring, evaluating, and auditing its PMAP, including issues arising from, and connected to, performance-based awards, within the framework of these guidelines. Each OpDiv/StaffDiv should monitor, evaluate, and audit its PMAP at least once every three years.

C. **Recordkeeping and Record Uses:** As part of monitoring performance, supervisors may make notes on significant instances of performance so that the instances will not be forgotten. Such notes are not required by HHS or any of its OpDivs/StaffDivs. Such notes are not subject to the Privacy Act as long as they:

1. remain solely for the personal use of the supervisor;

2. are not provided to any other person;

3. are not used for any other purposes; and

4. are retained or discarded at the supervisor's sole discretion.

The retention, maintenance, accessibility, and disposal of performance records, as well as supervisors' copies, will be in accordance with OPM regulations and this policy.

D. **Relationship to Other Personnel Actions**

1. **Probationary Periods**: New employees must be closely observed during the probationary/trial period to determine whether they are a good fit for the position. Periodic progress reviews to assess performance during the probationary period are helpful to validate qualifications and job fitness. Generally, a probationary employee may be removed at any time during the probationary period for any reason, including demonstrating "Achieved Unsatisfactory Results (UR)" performance; however, the OpDiv/StaffDivs LER staff must be consulted prior to initiating any performance based or adverse action to ensure the requirements specified under 5 CFR Parts 432 and 752 are followed and the proposed action is legally supportable (HHS Instruction, 315-1, Probation and Trial Periods).

2. **Reduction-in-Force (RIF)**: Ratings of record are used to establish service credit for RIF purposes. For RIF purposes, the rating of record is the annual summary rating that is assigned at the end of the appraisal period that was signed, approved, and issued to the employee by an appropriate management official or a rating of record assigned following completion of a performance improvement period. A Rating Official may not assign an employee a new rating of record for the sole purpose of affecting their retention standing. Ratings of record that were due before the date of specific RIF notices, but were not officially approved and placed on record until on or after the date of the specific notices, will not be used to determine additional service credit (HHS Instruction, 351-1 Reduction in Force, and 5 CFR Part 351).

430-1-100 Documentation and Accountability

A. Performance records must be retained for four (4) years, under 5 CFR § 293.404, and transferred with the employee's electronic Official Personnel File (eOPF) when the employee transfers to a new organization within HHS or to another federal agency.

1. Performance ratings of record, including the performance plans on which they are based, shall be retained for 4 years. When an employee is reassigned to a new Rating Official within the Department

during the performance cycle, that rating plan is closed out, and does not transfer with the employee but is retained in the employee's eOPF for 4 years.

2. Supporting documents shall be retained for up to four (4) years.

a. Performance records superseded (e.g., through an administrative or judicial procedure) shall be destroyed, and performance-related records pertaining to a former employee (except as prescribed in 5 CFR § 293.405(a) shall be retained for a minimum of 2 years.

b. Notices of proposed demotion or removal issued **but not executed**, and all related documents, pursuant to 5 U.S.C. § 4303(d) must be destroyed after the employee completes one year of acceptable performance from the date of the written advance notice of the proposed removal or reduction in grade notice.

c. Except where prohibited by law, retention of automated records longer than the maximum prescribed here is permitted for purposes of statistical analysis so long as the data are not used in any action affecting the employee when the manual record has been or should have been destroyed.

B. Records associated with personnel actions, including all documentation sufficient for third party reconstruction purposes, must be retained according to the record disposition schedule. Generally, records created in a given year must be retained for a total of three (3) full years. Records involved in litigation and grievance processes may be destroyed only after official notification is received from OPM, Department of Justice, courts, the Office of the General Counsel, etc. that the matter has been fully litigated, or resolved, and closed, or if the time limits associated with grievance processes have passed (e.g., before the anniversary date).

C. OHR will conduct periodic accountability reviews to analyze compliance with this Instruction, HHS and OPM policy and guidance and all applicable federal laws and regulations.

Endnotes:

[1] Bargaining Unit employees' minimum performance period may differ and Rating Officials should consult the applicable Collective Bargaining Agreement.

Department and Health and Human Services HHS

Employee Performance Plan (PMAP) FORM

DEPARTMENT OF HEALTH AND HUMAN SERVICES

HHS EMPLOYEE PERFORMANCE PLAN

EMPLOYEE'S NAME *(Last, First, MI)*	APPRAISAL PERIOD From:	To:
ORGANIZATION	POSITION TITLE, SERIES, AND GRADE	

I. PERFORMANCE PLAN DEVELOPMENT, MONITORING AND APPRAISAL

A. Performance Plan Development - *Establishes Annual Performance Expectations*

[NOTE: The employee's signature does not necessarily mean agreement; only that the plan has been communicated.]

RATING OFFICIAL'S SIGNATURE	DATE *(mm/dd/yyyy)*
REVIEWING OFFICIAL'S SIGNATURE *(If required by OPDIV/STAFFDIV Head)*	DATE *(mm/dd/yyyy)*
EMPLOYEE'S SIGNATURE	DATE *(mm/dd/yyyy)*

B. Progress Review - *Written narrative required if performance on any element is less than Achieved Expected Results.*

RATING OFFICIAL'S SIGNATURE	DATE *(mm/dd/yyyy)*
EMPLOYEE'S SIGNATURE	DATE *(mm/dd/yyyy)*

C. Summary Rating - *Section II, Critical Elements, must be completed in order to generate this Summary Rating.*

[NOTE: The employee's signature does not necessarily indicate agreement; only that the rating has been communicated.]

Critical Element Ratings	Points Assigned	Employee PMAP Score
Level 5: Achieved Outstanding Results (AO)	4.50 to 5.00	
Level 4: Achieved More than Expected Results (AM)	3.60 to 4.49	
Level 3: Achieved Expected Results (AE)	3.00 to 3.59	
Level 2: Partially Achieved Expected Results (PA)	2.00 to 2.99	
Level 1: Achieved Unsatisfactory Results (UR)	1.00 to 1.99	

RATING OFFICIAL'S SIGNATURE	DATE *(mm/dd/yyyy)*
REVIEWING OFFICIAL'S SIGNATURE *(If required by OPDIV/STAFFDIV Head and required if rating is Achieved Unsatisfactory Results)*	DATE *(mm/dd/yyyy)*
EMPLOYEE'S SIGNATURE	DATE *(mm/dd/yyyy)*

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HHS EMPLOYEE PERFORMANCE PLAN *(continued)*

EMPLOYEE'S NAME *(Last, First, MI)*	APPRAISAL PERIOD From:	To:

II. CRITICAL ELEMENTS

The following guidance will be followed in determining an overall summary rating:
A rating will be assigned to each critical element Customer Experience (Part A. of this Section), Leadership (Part B. of this section), if applicable, and the individual critical elements under the Individual Performance Outcomes (Part C. of this Section). This rating will be based upon the extent to which the employee's performance meets one of the "Performance Standards" defined in Section V.

Non-supervisory employees must have a minimum of two (2), but no more than six (6) critical elements. These must include: Customer Experience Element and at least one (1) Individual Performance Outcomes Element.

Supervisory employees must have a minimum of three (3) but no more than six (6) critical elements. These must include: Leadership Element, Customer Experience Element and at least one (1) Individual Performance Outcomes Element.

NOTE: Performance plans must include one or more outcomes *that include or track back to the HHS Strategic Plan.*

The rating level definitions will be assigned a numerical score as follows:

Critical Element Ratings	Points Assigned
Level 5: Achieved Outstanding Results (AO)	5.00
Level 4: Achieved More than Expected Results (AM)	4.00
Level 3: Achieved Expected Results (AE)	3.00
Level 2: Partially Achieved Expected Results (PA)	2.00
Level 1: Achieved Unsatisfactory Results (UR)	1.00

A. *CUSTOMER EXPERIENCE - CRITICAL ELEMENT*

NOTE: All aspects of this critical element apply to the employee's job duties and responsibilities. This element is assessed based on feedback received from internal and external customers indicating general satisfaction as defined by rating officials. Supervisors may not remove or edit the established standards but may include additional standards in the other aspects area.

For All Staff

- Presents advice and guidance, including providing options, recommendations, and results. Advice and guidance is complete, consistent, and provided by the established deadlines.
- Establishes effective working relationships with 90% of stakeholders both internal and external to HHS as required; cooperates with co-workers and others in meeting commitments and accomplishing assigned work on time.
- Routinely responds to each customer request within 24 hours of initial contact, at a minimum to confirm receipt of the request, while ensuring that the most accurate and complete information is communicated to the customer as it is available.

☐ Other aspects *(describe)*:

ELEMENT	RATING
Customer Experience	☐ AO(5) ☐ AM(4) ☐ AE(3) ☐ PA(2) ☐ UR(1)

(Summary Rating Elements, continued)

EMPLOYEE'S NAME *(Last, First, MI)*	APPRAISAL PERIOD From:	To:

II. CRITICAL ELEMENTS

B. *LEADERSHIP - CRITICAL ELEMENT*

NOTE: All aspects of this critical element apply to the employee's job duties and responsibilities. Supervisors may not remove or edit the established standards but may include additional standards in the other aspects area.

☐ Leadership** - By checking the Leadership box, you've indicated the employee is in a Leadership role, this negates Element 5 as it is not applicable.

- Ensures 90% of employee performance plans have at least one element aligned to the organization's mission and goals and are appraised against clearly-defined and communicated performance standards to allow for a rating once a minimum performance period has been reached within the current performance cycle.
- Ensures timely and regular feedback of employees' performance on at least three occasions to include constructive suggestions for improvement, ensuring the employee understands expectations.
- Addresses employee performance and conduct issues in a timely and appropriate manner with guidance from Labor and Employee Relations staff and in accordance with HHS and government-wide policies and guidelines.
- Promotes high performance through use of employee development activities, balanced workload, and stretch goals; appropriately rewards high performance in accordance with HHS performance and awards policies.
- Complies with EEO, Reasonable Accommodation, and Anti-Harassment policies/procedures, communicates these policies and processes to employees at least once per year, and completes all required supervisory training within the first year, with refresher training every 3 years.
- Takes substantive measures to create and maintain an inclusive environment, which supports a workplace with a diversity of perspectives.
- Works to remove barriers to successful employee performance, seeking resolution of workplace conflicts, and escalating issues, if appropriate.

☐ Other aspects *(describe)*:

*** To be applied only to Team Leaders who have official position descriptions identifying them as team leaders. Non-bargaining unit employee team leads only.*

ELEMENT	RATING
Leadership	☐ AO(5) ☐ AM(4) ☐ AE(3) ☐ PA(2) ☐ UR(1)

C. *INDIVIDUAL PERFORMANCE OUTCOMES - CRITICAL ELEMENT*

ELEMENT	RATING
1.	☐ AO(5) ☐ AM(4) ☐ AE(3) ☐ PA(2) ☐ UR(1)

Description:

ELEMENT	RATING
2.	☐ AO(5) ☐ AM(4) ☐ AE(3) ☐ PA(2) ☐ UR(1)

Description:

(Summary Rating Elements, continued)

EMPLOYEE'S NAME *(Last, First, MI)*	APPRAISAL PERIOD From:	To:

II.	CRITICAL ELEMENTS	
	ELEMENT	**RATING**
3.		☐ AO(5) ☐ AM(4) ☐ AE(3) ☐ PA(2) ☐ UR(1)

Description:

	ELEMENT	**RATING**
4.		☐ AO(5) ☐ AM(4) ☐ AE(3) ☐ PA(2) ☐ UR(1)

Description:

	ELEMENT	**RATING**
5.		☐ AO(5) ☐ AM(4) ☐ AE(3) ☐ PA(2) ☐ UR(1)

Description:

(Summary Rating Elements, continued)

EMPLOYEE'S NAME *(Last, First, MI)*	APPRAISAL PERIOD From:	To:

III. CONVERSION OF ELEMENTS TO SUMMARY RATINGS

After rating and assigning a score to each critical element: the rating official will total the points and divide that by the number of critical elements to arrive at an average score (up to two decimal places). This score will be converted to a summary rating based on the following point values:

Total Point Value: _____ **Divide by Number of Critical Elements:** _____ **= Average Score:** _____

Average Score will be calculated up to 2 decimal places. This numerical score will then be converted to a Summary Rating, as follows:

Critical Element Ratings	Points Assigned
Level 5: Achieved Outstanding Results (AO)	4.50 to 5.00
Level 4: Achieved More than Expected Results (AM)	3.60 to 4.49
Level 3: Achieved Expected Results (AE)	3.00 to 3.59
Level 2: Partially Achieved Expected Results (PA)	2.00 to 2.99
Level 1: Achieved Unsatisfactory Results (UR)	1.00 to 1.99

This Summary Rating will be recorded on **Page 1** of this form.

Exceptions to the mathematical formula:

If an employee receives Partially Achieved Expected Results (PA) on one or more critical elements regardless of the average point score, he/she cannot receive a summary rating higher than Achieved Expected Results (AE). A summary rating of Achieved Unsatisfactory Results (UR) must be assigned to any employee who is rated Achieved Unsatisfactory Results (UR) on any critical element.

If required by the OPDIV/STAFFDIV Head, the supervisor will submit the rating to the reviewing official for concurrence. The supervisor will conduct a performance discussion with the employee. The supervisor and employee should sign and date Part I.C. The employee will be provided with a copy of the complete final rating of record. If the employee refuses to sign, the supervisor should annotate the form, "Employee declined to sign. Rating discussed and copy provided on [date]."

A copy will be provided to the employee and the original forwarded to the designated individual within the OPDIV/STAFFDIV.

(Summary Rating Elements, continued)

HHS EMPLOYEE PERFORMANCE PLAN *(continued)*

EMPLOYEE'S NAME *(Last, First, MI)*	APPRAISAL PERIOD From:	To:

IV. WRITTEN NARRATIVE

a. For progress review and/or summary rating. Required, for summary ratings of Level 1: Achieved Unsatisfactory Results (UR) or Level 5: Achieved Outstanding Results (AO).

(Summary Rating Elements, continued)

EMPLOYEE'S NAME *(Last, First, MI)*	APPRAISAL PERIOD From:	To:

V. PERFORMANCE STANDARDS

Level 5: Achieved Outstanding Results (AO)

Consistently superior; significantly exceeds Level 4 (AM) performance requirements. Despite major challenges such as changing priorities, insufficient resources, unanticipated resource shortages, or externally driven parameters, employee leadership is a model of excellence. Contributions impact well beyond the employee's level of responsibility. They demonstrate exceptional initiative in achieving results critical to Agency success and strategic goals. Products and skills create significant changes in their area of responsibility and authority. Indicators of performance at this level include outcomes that consistently exceed the **AM** level standards for critical elements described in the annual performance plan. Examples include:

- Innovations, improvements, and contributions to management, administrative, technical, or other functional areas that have influence outside the work unit;
- Increases office and/or individual productivity;
- Improves customer, stakeholder, and/or employee satisfaction, resulting in positive evaluations, accolades, and recognition; methodology is modeled outside the organization;
- Easily adapts when responding to changing priorities, unanticipated resource shortages, or other obstacles;
- Initiates significant collaborations, alliances, and coalitions;
- Leads workgroups or teams, such as those that design or influence improvements in program policies, processes, or other key activities;
- Anticipates the need for, and identifies, professional developmental activities that prepare staff and/or oneself to meet future workforce challenges; and/or
- Consistently demonstrates the highest level of ethics, integrity and accountability in achieving specific HHS, OPDIV/STAFFDIV, or program goals; makes recommendations that clarify and influence improvements in ethics activities.

Level 4: Achieved More than Expected Results (AM)

Consistently exceeds expectations of Level 3 (AE) performance requirements . The employee continually demonstrates successful collaborations within the work environment, overcoming significant organizational challenges such as coordination with external stakeholders or resource shortfalls. Employee works productively and strategically with others in non-routine matters, some of which may be complex and sensitive. The employee consistently demonstrates the highest level of integrity and accountability in achieving HHS program and management goals. Employee contributions have impact beyond their immediate level of responsibility. The employee meets all critical elements, as described in the annual performance plan. Examples include:

- Effectively plans, is well-organized, and completes work assignments that reflect requirements;
- Decisions and actions demonstrate organizational awareness. This includes knowledge of mission, function, policies, technological systems, and culture;
- Independently follows-up on actions and improvements that impact the immediate work unit; establishes and maintains strong relationships with employees and/or clients; understands their priorities; balances their interests with organizational demands and requirements; effectively communicates necessary actions to them and employee/customer satisfaction is conveyed; and/or
- When serving on teams and workgroups, contributes substantively and completely according to standards identified in the plan.

Level 3: Achieved Expected Results (AE)

Consistently meets performance requirements. Work is solid and dependable; customers are satisfied with program results. The employee successfully resolves operational challenges without higher-level intervention. The employee consistently demonstrates integrity and accountability in achieving HHS program and management goals. Employee conducts follow-up actions based on performance information available to him/her. Employee seizes opportunities to improve business results and include employee and customer perspectives. Examples include:

- Acquires new skills and knowledge to meet assignment requirements;
- Demonstrates ethics, integrity and accountability to achieve HHS and agency goals; and
- Resolves operational challenges and problems without assistance from higher-level staff.

Level 2: Partially Achieved Expected Results (PA)

Marginally acceptable; needs improvement; inconsistently meets Level 3 (AE) performance requirements. The employee has difficulties in meeting expectations. Actions taken by the employee are sometimes inappropriate or marginally effective. Organizational goals and objectives are met only as a result of close supervision. This is the minimum level of acceptable performance for retention on the job. Improvement is necessary. Examples include:

- Sometimes meets assigned deadlines;

EMPLOYEE'S NAME *(Last, First, MI)*	APPRAISAL PERIOD From:	To:

- Work assignments occasionally require major revisions or often require minor revisions;
- Inconsistently applies technical knowledge to work assignments;
- Employee shows a lack of adherence to required procedures, instructions, and/or formats on work assignments;
- Occasionally employee is reluctant to adapt to changes in priorities, procedures or program direction which may contribute to the negative impact on program performance, productivity, morale, organizational effectiveness and/or customer satisfaction. Needs improvement.

Level 1: Achieved Unsatisfactory Results (UR)

Undeniably unacceptable performance; consistently does not meet Level 3 (AE) performance requirements. Repeat observations of performance indicate negative consequences in key outcomes (e.g., quality, timeliness, results, customer satisfaction, etc.) as described in the annual performance plan. The employee fails to meet expectations. Immediate improvement is essential for job retention. Examples include:

- Consistently fails to meet assigned deadlines;
- Work assignments often require major revisions;
- Fails to apply adequate technical knowledge to completion of work assignments;
- Frequently fails to adhere to required procedures, instructions and/or formats in completing work assignments; and/or
- Frequently fails to adapt to changes in priorities, procedures or program direction.

EMPLOYEE'S NAME *(Last, First, MI)*	APPRAISAL PERIOD From:	To:

Performance Plan

All elements of the performance plan are critical and must support the HHS Strategic Plan.

All employees will be rated on the Customer Experience Element (Part II.A. of the plan) and the Leadership Element (Part II.B of the plan), if applicable, and the Individual Performance Outcomes section (Part II.C. of the plan). The supervisor, along with input from the employee will develop and establish specific outcomes to support Agency strategic initiatives. These will be included as critical elements in the Individual Performance Outcomes section (Part II.C. of the plan).

The performance plan should be signed and dated by the supervisor and the employee in Part I.A. prior to implementation.

Progress Review

At approximately midpoint in the appraisal cycle, supervisors will conduct at least one progress review. While only one progress review is required, additional reviews are encouraged to maximize employee feedback. If performance on any element is less than Achieved Expected Results, the supervisor must provide written documentation. The supervisor and the employee should sign and date Part I.B. after a progress review is conducted. If the employee refuses to sign, the supervisor should annotate the form, "Employee declined to sign. Progress review conducted on [date]."

Performance Appraisal

The supervisor will assign a rating to each critical element (Customer Experience Element, the Leadership Element, if applicable, and the individual critical elements under the Individual Performance Outcomes). The rating level definitions will be assigned a numerical score in the chart below.

After rating and assigning a score to each critical element: the rating official will total the points and divide that by the number of critical elements to arrive at an average score (up to two decimal places). This score will be converted to a summary rating based on the following point values:

Critical Element Ratings	Points Assigned
Level 5: Achieved Outstanding Results (AO)	4.50 to 5.00
Level 4: Achieved More than Expected Results (AM)	3.60 to 4.49
Level 3: Achieved Expected Results (AE)	3.00 to 3.59
Level 2: Partially Achieved Expected Results (PA)	2.00 to 2.99
Level 1: Achieved Unsatisfactory Results (UR)	1.00 to 1.99

Exceptions to the mathematical formula:

If an employee receives Partially Achieved Expected Results (PA) on one or more critical elements regardless of the average point score, he/she cannot receive a summary rating higher than Achieved Expected Results (AE). A summary rating of Achieved Unsatisfactory Results (UR) must be assigned to any employee who is rated Achieved Unsatisfactory Results (UR) on any critical element.

If required by the OPDIV/STAFFDIV Head, the supervisor will submit the rating to the reviewing official for concurrence. The supervisor will conduct a performance discussion with the employee. The supervisor and employee should sign and date Part I.C. The employee will be provided with a copy of the complete final rating of record. If the employee refuses to sign, the supervisor should annotate the form, "Employee declined to sign. Rating discussed and copy provided on [date]."

A copy will be provided to the employee and the original forwarded to the designated individual within the OPDIV/STAFFDIV.

APPENDIX 30-3: HHS Performance Plan Reference Guide

Department and Health and Human Services HHS

Performance Plan

All elements of the performance plan are critical and must support the organization's goals and ultimately the HHS Strategic Plan. The elements must be related to the employee's duties and responsibilities.

All employees will be rated on the Customer Experience critical element. The supervisor, along with the input from the employee will develop and establish specific outcomes to support Agency strategic initiatives to be included as critical elements in the Individual Performance Outcomes.

Each objective should include at least one accompanying metric that is quantifiable and results- based, and each metric should contain a specific target result to be achieved and clearly distinguish at the Achieved More than Expected Results performance level.

The performance plan should be signed and dated by the supervisor and the employee in Part I.A. prior to implementation.

Progress Review

Supervisors will conduct at least one progress review, at approximately the midpoint in the appraisal cycle. While only one progress review is required, additional reviews are encouraged to maximize employee feedback. The supervisor must provide written documentation if performance on any element is less than Achieved Expected Results. The supervisor and the employee should sign and date Part 1.B. after a progress review is conducted. If the employee refuses to sign, the supervisor should annotate the form, "Employee declined to sign. Progress review conducted on [date]."

Performance Appraisal

The supervisor will assign a rating to each critical element (Administrative Requirements and the individual critical elements under the Program Work Plan). The rating level definitions will be assigned a numerical score as follows:

Critical Element Ratings	Points Assigned
Level 5: Achieved Outstanding Results (AO)	5.00
Level 4: Achieved More than Expected Results (AM)	4.00
Level 3: Achieved Expected Results (AE)	3.00
Level 2: Partially Achieved Expected Results (PA)	2.00
Level 1: Achieved Unsatisfactory Results (UR)	1.00

After rating and assigning a score to each critical element, the rating official will total the points and divide by the number of critical elements, to arrive at an average score (up to one decimal place). This score will be converted to a summary rating based on the following point values:

Critical Element Ratings	Points Assigned
Level 5: Achieved Outstanding Results (AO)	4.50 to 5.00
Level 4: Achieved More than Expected Results (AM)	3.60 to 4.49
Level 3: Achieved Expected Results (AE)	3.00 to 3.59
Level 2: Partially Achieved Expected Results (PA)	2.00 to 2.99
Level 1: Achieved Unsatisfactory Results (UR)	1.00 to 1.99

Exceptions to the mathematical formula:

If an employee receives Partially Achieved Expected Results on one or more critical elements, the employee cannot receive a summary rating of higher than Achieved Expected Results, regardless of the average point score. A summary rating of Achieved Unsatisfactory Results on any critical element.

If required by the OPDIV/STAFFDIV Head, the supervisor will submit the taking to the reviewing official for concurrence. The supervisor will conduct a performance discussion with the employee. The supervisor and the employee should sign and date Part 1C. The employee will be provided with a copy of the complete final rating of record. If the employee refuses to sign, the supervisor should annotate the form, “Employee declined to sign. Rating discussed and copy provided on [date].”

A copy will be provided to the employee and the original forwarded to the designated individual within the OPDIV/STAFFDIV.

APPENDIX 30-4: GUIDE FOR NON-STANDARD SITUATIONS

Department and Health and Human Services HHS

Performance Actions for Non-Standard Situations

Situation	Performance Plan	Action to be taken
For whatever reason, employee did not have a plan at any time during the entire appraisal period, or did not perform under a plan for ninety (90) calendar days, such as an employee returning from long-term training.	Establish plan immediately.	Refer to Article 30 Section 9
Employee moves from one position A to another position B within ninety (90) calendar days of end of appraisal period.	Establish plan for new position under option (2).	(1) If employee was in position A for at least ninety (90) calendar days, rate employee prior to the position change. This rating will become the final rating of record for the appraisal period. (2) If employee was not in position A for at least ninety (90) calendar days, or was not under a plan for ninety (90) calendar days in position A, the employee will not be rated on position A. If there are thirty (30) calendar days remaining in the appraisal period in position B, create a plan for position B and extend the rating period to meet the 90 day minimum period to provide a rating. Refer to Article 30 Section 9.
Within ninety (90) days of the end of the appraisal period, employee is hired from outside the federal government.	A plan should be established as soon practicable.	If a plan cannot be established before the end of the appraisal period , the supervisor should confirm the employee will be on a performance plan within 30 days of entry to meet CBA provisions. If not practicable to establish the plan within the thirty (30) calendar days which remain in the appraisal period, the supervisor should establish a plan for the following year.
Employee changes positions within the Department during the appraisal period.	Establish plan for new position.	If the old plan has been in effect for at least ninety (90) calendar days at the time of each position change, rate the employee. The rating of record for the appraisal period must consider all ratings made during the entire appraisal period. Refer to Article 30 Section 10.
Employee is detailed or temporarily assigned to another position in the Department, and the time in that position is expected to be at least 90 days by the end of the appraisal period.	Establish plan for detailed position or new position	If a plan had been in place for at least ninety (90) calendar days, rate at time of position change. Also rate at end of temporary assignment (or detail) if it lasted at least ninety (90) calendar days. Consider all ratings made during the appraisal period in preparing the annual summary rating

Continued		
Employee is detailed or assigned outside the Department and the time in the outside organization is expected to be at least ninety (90) calendar days.	Make a reasonable effort to see that a plan is given to the employee while at the outside entity.	If a plan had been in effect for at least ninety (90) calendar days, rate at time of position change. Also, the rating official will make a reasonable effort to obtain performance information from that outside assignment, especially if employee was not on a Departmental plan for at least ninety (90) calendar days during the appraisal period. At a minimum, the rating official will request a memorandum describing the assignments performed by the employee and an assessment of how well the employee performed the assignments. The rating official will consider all ratings made during the appraisal period in preparing the rating of record.
Before the end of the appraisal period, the employee goes on long-term training and does not return by the end of the appraisal period.	N/A.	If a plan had been in effect for at least ninety (90) calendar days, rate at time employee goes on training based on established plan.
Employee transfers from the Department to a new department after serving under a plan for at least ninety (90) calendar days.	N/A.	Rate the employee and submit rating as required by OpDiv/StaffDiv.

APPENDIX 45-1: OPTIONAL GRIEVANCE FORM

NTEU NEGOTIATED GRIEVANCE FORM - ARTICLE 45 (Optional)

Part 1: INITIATE GRIEVANCE A45§6

(May be completed by employee/Union to initiate grievance process or to submit a revised grievance) Please complete Part 1 and Part 2 of this form, and return it to the Designated Management Official (DMO). In order for the Grievance to be considered, Part 1 and Parts 2 must be completed upon submission for the DMO. **Please note, signing of Part 2 indicates you are affirmatively electing the Negotiated Grievance Procedure, as opposted to any other procedure that may be available (e.g.,EEO). You may contact your Union representative for information on your filing options.** Once the form is submitted to the DMO will provide a receipted copy of the form to the grievant, Union and the Employee and Labor Relations Specialist.

Do you request to consult with a union representative concerning this issue? (You may consult with your Union representative at any time) Yes _____ No _____

Representative Name (if any) A45§6A2 | Union representative Contact Phone | Representative Email

Request a meeting to discuss your grievance. Yes _____ No _____

Date Submitted A45§6A1

Grivant(s) Name or Identification of the employees covered by the grievance if known A45§6A2 | Grievant(s) Signature | Grievant contact Number, if applicable

Work organization and location of the employee(s) covered by the grievance, if known A45§6A3

BRIEFLY DESCRIBE THE INCIDENT CAUSING THE GRIEVANCE (must contain sufficient detail to identify the basis of the grievance, including referent to the Article(s) violated, reference to any practice law, rule or regulation alleged to be violated, misinterpreted or misapplied: detail to describe (What happened, Who was involved, where it happened, the time which is happened, and witnesses if any.) If more space is needed, use separate sheet of paper and check SEE ATTACHMENT.) A45§6A4

Date, If known, when the issue or incident out of which the grievance arose occurred: A45§6A5

Date when the grievant became aware of the matter, issue or incident giving rise to the grievance occurred A45§6A

Management Official(s) if known, responsible for the issue or incident given rise to the grievance occurred. A45§6A7

The specific relief sought by the employee(s) and the Union, or by the Employer. (must be personal to the employee) A45§6A8 Indicate if attachment are included. _____

Attachments Provided Yes _____ No _____

Part 2

It is understood by the parties that upon initiation of discussion of the grievance at Step 1, the employee has affirmatively elected to use the Negotiated Grievance Procedure versus any other available statutory procedure.

Grievant/ Representative Signature | Date Signed

APPENDIX 58-1: STAFF DIVISIONS AT THE OS HR CENTER LEVEL

Offices considered to be Staff Divisions for the purposes of Article 58

- Assistant Secretary for Administration (ASA)
- Assistant Secretary for Planning and Evaluation (ASPE)
- Departmental Appeals Board (DAB)
- Office of the National Coordinator for Health Information Technology (ONC)
- Assistant Secretary for Global Affairs (OGA)
- Assistant Secretary for Public Affairs (ASPA)
- Office of Chief Information Office (OCIO)
- Office of the Assistant Secretary for Health Organization (OASH)
- Office of the Assistant Secretary for Financial Resources (ASFR)
- Office of General Counsel (OGC)
- Office of Civil Rights (OCR)
- Immediate Office of the Secretary (IOS)
- Administration for Children and Families (ACF)
- Office of Medicare Hearings and Appeals (OMHA)
- Office of the Assistant Secretary for Legislation (ASL)