Department of Health and Human Services
and
National Treasury Employees Union

CONSOLIDATED COLLECTIVE BARGAINING AGREEMENT

Effective October 1, 2010
(Revised March 6, 2014)

TABLE OF CONTENTS
HHS & NTEU CBA/ARTICLES

1	COVERAGE	1
2	CONTRACT DURATION AND TERMINATION	3
3	MID-TERM BARGAINING	5
4	EFFECT OF LAW REGULATION	11
5	EMPLOYEE RIGHTS AND RESPONSIBILITIES	12
6	WITHDRAWN	----
7	UNION RIGHTS	23
8	DUES WITHHOLDING	26
9	UNION ACCESS TO EMPLOYER SERVICES	31
10	UNION REPRESENTATIVES/OFFICIAL TIME	35
11	PAY AND BENEFITS	43
12	NOTICES TO EMPLOYEES	45
13	NEW EMPLOYEE ORIENTATION	46
14	PERSONNEL RECORDS	48
15	ANNUAL LEAVE	50
16	SICK LEAVE	53
17	LEAVE WITHOUT PAY	58
18	FAMILY LEAVE	61
19	OTHER LEAVE PROVISIONS	65
20	EXCUSED ABSENCE/ADMINISTRATIVE LEAVE	67
21	LEAVE SHARING	70
22	OVERTIME, COMPENSATORY TIME, HOLIDAYS	74
23	WAIVER OF OVERPAYMENT	80
24	WITHDRAWN	----
25	AWS/HOURS OF WORK	83
26	TELEWORK	94
27	AWARDS	101
28	WITHDRAWN	----
29	WITHIN GRADE INCREASES	109
30	PERFORMANCE MANAGEMENT APPRAISAL PROGRAM	112
31	ACTIONS BASED ON UNACCEPTABLE PERFORMANCE	123
32	POSITION CLASSIFICATION	129
33	ASSIGNMENT OF WORK	132
34	DETAILS & TEMPORARY PROMOTIONS	133
35	REASSIGNMENTS	136
36	MERIT PROMOTIONS	139
37	PROBATIONARY EMPLOYEES	151
38	EMPLOYEES WITH TEMPORARY DISABILING CONDITIONS	153
39	TEMPORARY AND TERM EMPLOYMENT	155
40	PART TIME EMPLOYMENT AND JOB SHARING	158
41	TRAINING	162

42	TRAVEL	166
43	ADVERSE ACTIONS	178
44	DISCIPLINARY ACTIONS	183
45	GRIEVANCE PROCEDURES	187
46	ARBITRATION	196
47	EXPEDITED ARBITRATION	201
48	EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION	203
49	EMPLOYEE ASSISTANCE PROGRAM	205
50	HEALTH AND SAFETY	207
51	DOCUMENTATION OF MEDICAL STATUS	213
52	PARKING	217
53	PUBLIC TRANSPORTATION SUBSIDIES	218
54	REDUCTION-IN-FORCE	220
55	OUTSIDE EMPLOYMENT AND ACTIVITIES	221
56	RETIREMENT/RESIGNATION	222
57	SECURITY ISSUES	223
58	WITHDRAWN	----
59	PEER REVIEW	225
60	WITHDRAWN	----
61	WITHDRAWN	----
62	WITHDRAWN	----
63	WITHDRAWN	----
64	WITHDRAWN	----
65	LABOR-MANAGEMENT RELATIONS COMMITTEES	227
66	A-76 STUDIES	228
67	DIGNITY, MORALE AND WORK ENVIRONMENT	230
68	TOBACCO FREE HHS	231

APPENDIX 1-5-1	GENERAL NOTICE
APPENDIX 1-5-3	STATEMENT OF RIGHTS AND OBLIGATIONS
APPENDIX 1-5-4	WARNING AND WAIVER OF RIGHTS FORM
APPENDIX 1-5-6	STATEMENT OF RIGHTS AND OBLIGATIONS/KALKINES
APPENDIX 1-5-7	MERIT SYSTEM PRINCIPLES
APPENDIX 2	OFFICIAL TIME FORM
APPENDIX 3	ALTERNATE WORK SCHEDULE APPLICATION
APPENDIX 3.1	TELEWORK ENHANCEMENT ACT
APPENDIX 3.2	TELEWORK FORM
APPENDIX 4	PMAP POLICY
APPENDIX 5	PMAP FORM – HHS-704B – 5 TIER
APPENDIX 6	FDA FOREIGN INSPECTION PROGRAM
APPENDIX 7	FDA MANDATORY FOREIGN INSPECTION ASSIGNMENTS

ARTICLE 1

COVERAGE

This Agreement will apply to: Department of Health and Human Services, all professional and nonprofessional general schedule and wage grade employees of the Office of the Secretary and Administration on Aging; all professional and nonprofessional employees of the Department of Health and Human Services, Administration for Children and Families; all professional and nonprofessional employees of the United States Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics in the Washington, D.C. metropolitan area; all professional and nonprofessional employees of the U.S. Department of Health and Human Services, Food and Drug Administration, nationwide; all professional and nonprofessional employees of the Department of Health and Human Services, Health Resources and Services Administration, all professional and nonprofessional General Schedule and Wage grade employees of the Indian Health Service, Engineering Services, Department of Health and Human Services; and all professional and nonprofessional employees of the Department of Health and Human Services, 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 Division of National Hansens Disease Program at Baton Rouge, 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
  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, either party may initiate bargaining to re-negotiate over any negotiability disputes. This shall also include the right to re-open and renegotiate any provisions that were part of an agreement that led directly to the language that the Agency Head has disapproved. The Union also has the right to file a negotiability appeal with the FLRA and the right to re-open and re-negotiate those provisions should the FLRA find that they were negotiable.

SECTION 2

A. This Agreement shall remain in full force and effect until three (3) years from its effective date. It shall be automatically renewed from year to year thereafter unless reopened or terminated pursuant to the provisions of subsections B and C below. In addition, either Party may reopen up to Four (4) articles of this contract during the thirty (30) calendar days surrounding the 19th month anniversary of this Agreement.

B. Either Party may give written notice to the other Party, between sixty (60) calendar days and one hundred five (105) calendar days prior to the initial expiration date and each anniversary date thereafter, of its intention to reopen and amend or modify the Agreement.

C. If either party gives notice of intent to terminate, all negotiated conditions of employment contained in this Agreement continue in full force and effect until a successor agreement is in place, with the exception of any permissive subjects of bargaining. If either party elects to terminate any permissive subjects of bargaining contained within this Agreement, 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, regulation, or decree, or Executive Order, the entire Agreement will not be invalidated.

SECTION 5

Neither party surrenders no rights other than those specifically governed and enunciated by this Agreement.

ARTICLE 3

MID-TERM BARGAINING

SECTION 1

This Article covers the negotiations that flow from changes in conditions of employment that affect employees in the bargaining unit and that, pursuant to applicable law, create a mandatory obligation to bargain.

The following provisions will guide the procedures for negotiating mid-term matters. The parties recognize that each has a responsibility to consider the other's issues and to make an honest attempt to find acceptable solutions. Except where specifically noted otherwise, Section 2 procedures govern both local and national mid-term matters.

SECTION 2

When the Employer wishes to implement changes in personnel policies, practices and working conditions, the Employer will provide the Union advance notice of the proposed changes in conditions of employment.

A. Local

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 Headquarters, Regional or District Office, 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;

2. When the proposed changes affect employees in Districts or offices within the jurisdiction of more than one chapter, but within only one Region, each chapter president will be served notice prior to negotiations. However, the Union will designate one principal representative to respond on its behalf.

3. Notices concerning a local change shall be provided at least twenty-one (21) calendar days in advance of the implementation of the proposed changes, taking into consideration the nature and scope of the proposed changes and the need for timely implementation.

B. National

1. When the Employer's proposed changes are national in nature, that is, they would take place in more than one Region (with Departmental and OPDIV Headquarters

being treated as Regions for this purpose), or more than one OpDiv, the notice shall be provided to the President of NTEU.

2. Notice of national changes shall be provided at least thirty (30) calendar days in advance of the proposed changes.

C. Service may be by certified return receipt mail, e-mail, hand delivery or facsimile. If the Employer uses an electronic method of service; it will use at least two (2) methods of delivery to ensure receipt. 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 five (5) work 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. The Employer shall hold the briefing no later than fourteen (14) calendar days after the Union requests a briefing.

E. Within ten (10) work days of submission of a request to negotiate, or the date of a briefing (whichever is later), the Union will submit its proposals. Reasonable extensions of time for submitting proposals will be granted.

F. Unless the parties agree otherwise, negotiations over mid-term changes shall commence no later than fifteen (15) workdays after the parties' exchange of proposals.

SECTION 3 - Union Initiated Bargaining

1. When the Union notifies the Employer of its intention to initiate mid-term bargaining, it shall serve notice on the appropriate management official designated by the Employer.

2. Service may be by certified return receipt mail, e-mail, or facsimile.

3. The parties shall follow the timeframes outlined above in Sections 2 A and B, depending on whether the Union-initiated change is local or national in scope.

SECTION 4

The parties agree that the following ground rules will be incorporated into this Agreement.

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.

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. The cost of the services of the mediator, if any, shall be shared equally by the parties.

A. Procedures Governing Negotiations

1. The Union is entitled to have four (4) bargaining unit members present and on the official team for national bargaining. For all other bargaining, the Union is entitled to have three (3) bargaining unit members present and on official time. There is no limit on the number of professional staff members on the Union team, generally not to exceed two NTEU staff members. A designee for each party may be appointed to serve as a Chief Negotiator. When possible, party changing negotiators will notify the other Chief Negotiator. The parties will 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.

2. By mutual agreement, the Parties may use alternatives to face-to-face meetings.

3. In accordance with 5 U.S.C. §71 and consistent with this Article and Article 10 of this Agreement, official time will be allotted to employees representing the Union at the bargaining table in the negotiating of a collective bargaining agreement. Observers will not be allowed official time during any of these proceedings.

4. Place of Negotiating Sessions. Local negotiations will be held at a site arranged for by the Employer. 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. For national negotiations, the parties shall provide a site for mid-term bargaining on an alternate basis (unless mutually agreed otherwise) when face-to-face negotiations are held.

5. Negotiations will be conducted at times and dates mutually agreed to by the parties.

6. 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.

7. 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.

8. Interim Agreement. During negotiations, the Chief Negotiator for each party will signify agreement on each section by initialing the agreed-upon section. The Chief Negotiator for each party will retain his/her copies and initial the other party's copy. This will not preclude the parties from reconsidering or revising any agreed upon section by mutual consent.

9. 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.

10. 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. 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.

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

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

13. Each MOU will contain a provision indicating an effective date and an expiration date. Any MOU will be subject to re-opening upon expiration or renewal of the national collective bargaining contract (this Agreement).

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.

The mediation procedure described above shall not preclude the parties from agreeing on any issues or from entering into complete agreement without the assistance of the mediator. If the mediator declares the Parties at impasse, the Parties may, upon mutual agreement, jointly contact the designated mediator/advisory arbitrator who is next on the Arbitration panel under Article 46.

The Parties shall share equally the cost of any mediation/advisory arbitration proceedings.
If the Parties cannot reach agreement and opt not to use the process outlined above, 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.

If mutually agreed, on a case-by-case basis, the Parties may choose to proceed with implementation, subject to the Union's right to reopen no later than the last working day of the final week of the ninth full month after the date of notice. This period may be extended by mutual agreement. Nothing herein shall be deemed to waive the Union's right to file an unfair labor practice charge in the event that such implementation occurs without mutual agreement.

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 within the commuting area will be paid by the Employer;

B. The Union employee representatives involved in bargaining will be reimbursed for travel and per diem expenses as follows:

In national bargaining involving Department-wide changes, 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. This provision notwithstanding, MOU's and past practices that are inconsistent with this Agreement are extinguished upon the effective date of this Agreement.

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 that will constitute a local or national issue consistent with the new organization.

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 1 C 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.

SECTION 2

A. In accordance with 5 U.S.C. section 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 OIG and OIA forms shall be used exclusively in conjunction with this article.

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 his/her 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 an employee who is the subject of a criminal investigation is in custody by the Employer, she/he shall be informed of his/her 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 his/her rights and the consequences of refusing to answer the questions posed to him/her 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 an employee to answer under such circumstances, the Employer representative shall inform the employee that his/her statements concerning the allegations during the interview cannot and will not be used against him 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 Employer and 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 his/her supervisor or management official, if any participant reasonably believes that a physical confrontation or verbal abuse is imminent, s/he 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. Section 2301 (b), Merit System Principles, and 5 U.S.C. Section 2302(b), Prohibited Personnel Practices, are hereby incorporated into this Article. Attachment (5-7) enumerates 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. A supervisor ill not solicit pledges or contributions from an individual employee under his/her 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 his/her need to contact a Union representative. When an employee wishes to request permission to leave the work site to contact a Union representative, he/she must inform his/her 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, s/he must give the supervisor a telephone number at which s/he 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 his/her 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 governed 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:

1. the Employer's method of conducting business;

2. the rights of other employees and the public;

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

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

5. commonly accepted standards of good taste; and

6. 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 work spaces.

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 exercises its right to search an employee's possessions at the work site in a non-criminal matter, the employee will be allowed to be present during the search 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 him/her that the Employer went through his/her 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 Employee is in a concurrence chain (including situations where the employee would be the originator of the document), s/he will not be required to concur on any approval document with which s/he professionally disagrees.

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:

1. It is important for supervisors and employees to understand clearly their rights and responsibilities about the use of Union representatives; and

2. 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.

SECTION 22

A. Service of process (subpoenas, summons/complaints, etc.) on employees in their personal capacity, where the suit does not relate to the employee’s official duties, should not be effectuated on federal property during duty hours.

B. Service of process (subpoenas, summons/complaints, etc.) on employees in their official capacity, or in their personal capacity if the suit relates to their official duties, should be effectuated consistent with the Department's regulations found at 45 C.F.R. Part 4.

SECTION 23

The Employer will make appropriate arrangements for employees to testify in their official capacity at a hearing before a third party adjudicator. Employees called to testify by the Union, who are approved by such an adjudicator as relevant and material witnesses for the proceeding, will be made available to testify.

SECTION 24

Employees are expected to dress neatly, professionally and in a manner that is appropriate for their assigned duties.

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 the employee concerning any grievance, or any personnel policy or practices or matters affecting the general working conditions of employees in the unit.

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(s);

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 Union in writing of any scheduled formal meeting one calendar week in advance of the meeting or on the day the meeting is scheduled, whichever period is shorter, but in no case shall notice be fewer than two (2) workdays in advance of the meeting, except in emergency situations. Notice in each chapter shall go to the representative(s) designated by the Union. The local Chapter may designate a union mailbox to receive such notifications. In the absence of such written description, notice shall go to the chapter president. If available, the notice shall include an agenda and a copy of any written materials that will be distributed at 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 with him or her further or in private, the employee upon supervisory approval, may come to the Union office or other area to meet with the Union representative.

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.

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) work days, the Union will have the option of either postponing or amending any filing and/or other deadlines relating to the request.

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:

- Adverse actions such as removals, demotions, etc.
- EEO complaints
- Unacceptable performance actions such as removal or demotion
- Workers compensation cases
- 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 members 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, s/he 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 administrative 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, employees may use annual leave, leave without pay, earned credit hours, earned compensatory time, or any combination thereof.

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:

- Be a member in good standing of the Union;
- Be an employee of the bargaining unit covered by this Agreement;
- Have voluntarily completed Standard Form 1187 (SF- 1187), "Request and Authorization for a Voluntary Allotment of Compensation for Payment of Employee Organization Dues"; and
- 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 http://www.opm.gov/forms/html/sf.asp;

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, 1750 H Street, NW, Washington, DC 20006, 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, his or her 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:

- When an employee ceases to be a member in good standing of the Union
- If the Union loses exclusive recognition for the covered unit
- If the employee is reassigned or promoted from the unit for which the Union has been accorded exclusive recognition
- When an employee timely revokes her/his allotment pursuant to the provisions of this Article,
- 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 his/her 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:

1. Names
2. Grade and Step
3. Position Title
4. OPDIV
5. Branch
6. Group or Division
7. Unit
8. Post of Duty City
9. Post of Duty State
10. Employees Work Status (such as permanent, intermittent, seasonal, etc.)
11. Years of Service
12. Service Computation Date
13. CSRS or FERS

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 insure that all materials being produced 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 the Employer's labor relations program. The Union is not authorized to these mail systems for internal Union business (including but not limited to the solicitation of membership, election of union officials, and collection of dues) as set forth in 5 U.S.C. §7131(b). The Employer accepts no responsibility for lost, damaged, opened or misrouted mail. In no case will the costs be more than nominal.

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 a hardcopy of this Agreement to each current bargaining unit employee represented by NTEU and will provide one hundred (100) copies 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 all other chapters. The printed Agreement will contain an alphabetized index and a table of contents.

B. The Employer will also provide to National NTEU 25 copies of the Agreement on CD in the most current Microsoft Word version.

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

D. The Employer will reissue a hardcopy of only those articles that change as a result of any midterm bargaining outlined in Article 2 as a supplement. The Employer will distribute a hardcopy of the supplement in the same manner as it distributed the

original Agreement.

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 Union shall also have the right to retain all existing computer/internet access rights, telephone lines, and voicemail boxes.

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.

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 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 offices 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.

E. Union representatives will be given access to copy equipment, computers and fax machines 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 representational 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. Conference rooms or any other Employer space may not be used for any

non-representational activities (e.g., internal union business activities).

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. Where the Employer's IT supports Wi-Fi, the Employer will provide Wi-Fi cards for these laptops.

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. Union transmissions (including electronic mail) are subject to the same standards that apply to all users. The Union may use broadcast e-mail (i.e., 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 concerning general representational matters related to the Employer's labor relations program. Union broadcast e-mails are subject to the same content requirements and must meet the same standards as material posted on bulletin boards.

   The Union agrees to furnish the Employer (or the Employer's designated representative) with broadcast e-mails (and any attachments) for compliance review at least one (1) day before they are sent to employees.

SECTION 8

A. The Employer will provide the Union with one-third (1/3) of the bulletin board 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 or libelous material. All postings will clearly identify the Union as the source of the material.

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 work flow of the Employer. Employees are advised not to read the material during work time.

E. The Union agrees to furnish a copy of any material posted or distributed to the Employer or designee, normally at least one (1) workday in advance.

SECTION 9

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

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.

SECTION 2

A. Each NTEU Chapter may designate one (1) Union steward for every forty (40) bargaining unit employees or major fraction (51%) thereof. This calculation notwithstanding, each Regional Office, District Office/Laboratory, and Field Office will be entitled to two (2) stewards. Chapter Presidents are in addition to the 1:40 ratio or minimum of two stewards.

B. The Union has the right to appoint any BUE to act as an assistant steward solely for the purpose of covering a formal meeting in any location. The assistant 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 assistant 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. Assistant stewards (also known as "ad hoc" stewards) are not included in the 1:40 ratio.

C. The Union has the right to appoint stewards from any Operating Division. Stewards are authorized to perform any representation 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 §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:

1. Access to agency facilities on the same basis as in the terms of the 2011 Settlement of ULP charge WA-CA-11-0336 which terms are:

   a) 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.

   b) 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 applicable conduct rules and/or rules of behavior at the respective HHS facilities. It is the responsibility of NTEU to ensure that any and all of their representatives are aware of HHS facility codes of conduct and rules of behavior.

   c) Non-employee Union representatives will adhere to and be bound by the provisions of the NTEU/HHS Consolidated CBA 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 Consolidated CBA, the Agency may exercise its right to address such alleged actions under the parties CBA or the Federal Service Labor-Management Relations Statute.

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

2. Access to agency email and other services provided to the Union under Article 9 if they have completed required background investigations and other applicable security procedures.

The Agency may revoke these grants for abuse or other valid business reason.

SECTION 3

A. The Union agrees to provide the Servicing Human Resources Center Labor Relations Officer with a written listing of its Union representative(s) along with a description of their individual Union assignments no later than four (4) weeks after the effective date of this Agreement. The Union will also notify the Employer's designated contact person in writing of other Union representatives who may request official time, along with a general description of their individual Union assignments. Changes will be submitted to the Servicing Human Resources Center Labor Relations Officer generally not less than two

(2) workdays prior to the assumption of representational responsibilities by any new representatives, except for assistant stewards (or ad hoc) identified in 2B and 2C above. The Employer will not approve such official time until those written notices are received by the Servicing Human Resources Center Labor Relations Officer. The Employer will not unduly delay approval.

B. No Union representative will be disadvantaged in the assessment of his/her performance based in his/her 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.

SECTION 4

A. Union representatives must request official time and receive approval in advance consistent with workload requirements, except when unforeseeable circumstances do not allow for advance approval. Official time requests will be granted unless they substantially hinder the accomplishment of essential workload requirements

B. The Union representative will request authorization to use official time from his or her supervisor on an official time request form (see Amended Appendix 2). Where possible, this request will be submitted at least twenty-four (24) hours in advance. The Union representative will indicate the general nature of the representational activity he/she wishes 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 he/she 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

C. All advance requests for official time are understood to be estimates. If the estimate for official time is less than that actually needed, the Union representative must notify his/her supervisor prior to exceeding the estimate. Normally, such extensions, if reasonable, 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.

SECTION 5

A. The Chapter Presidents for Chapter 212, 254 and 282, as well as two other positions in Chapter 282 will be granted 100% official time. One other Chapter President designated by the Union will be granted 50% official time, i.e. 50% of the employee's work schedule, not counting holidays, leave taken, etc.

B. Chapter Presidents and Vice Presidents or Chief Stewards will not exceed, on an annual basis, official time in excess of fifty percent (50%) of their available duty time. The Agency may grant exceptions based on demonstrated need.

C. All other representatives will generally not exceed, on an annual basis, official time in excess of 33% of their available duty time. The Agency may grant exceptions based on demonstrated need.

D. By mutual agreement, the parties may change these percentages.

E. 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 his/her position. Such employees will be give an reasonable period of time to re-acclimate themselves to their former duties.

SECTION 6

A. Time spent attending Agency established teams or workgroups, such as PWS, 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 Section 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. 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, to 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);

2. meetings to discuss or present unfair labor practice charges or unit clarification petitions;

3. meetings to present appeals in connection with statutory or regulatory appeal procedures in which the Union is designated as the representative;

4. oral reply meetings if the Union is representing the employee;

5. any meeting for the purpose of presenting reconsideration replies in connection with the denial of within-grade increases;

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;

7. attendance at an examination of an employee who reasonably believes he or she may be the subject of a disciplinary or adverse action and the employee has requested representation pursuant to 5 USC 7114(a)(2)(B);

8. grievance meetings and arbitration hearings;

9. meetings of committees on which Union representatives are authorized membership pursuant to this Agreement;

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

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

12. attendance and participation at any new employee orientation session outlined in Article 13;

13. to attend OSHA meetings consistent with regulation;

14. to conduct training or activities on labor relations issues for employees not to exceed

four hours quarterly (non-cumulative);

15. to conduct contract training for employees as outlined in Article 13;

16. to meet with members of Congress and their staffs on matters relating to bargaining unit conditions of employment;

17. attendance at Employer-recognized activities to which the Union has been invited;

18. to participate in jointly sponsored training primarily to further the interest of the government by improving labor-management relationships;

19. discussions of possible grievances with an employee;

20. conferring with affected employees about matters for which remedial relief is available under the terms of this Agreement;

21. informal consultations between the Employer and the Union;

22. preparation of reports, forms, and documents required by law or regulation concerning the proper operation and administration of a labor organization; and

23. to prepare for, if necessary, and travel to any of the activities listed above

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." The time authorized for this purpose shall not exceed 60 hours per representative in the first year of the agreement and 48 hours per year thereafter. The employer shall not pay any costs, including travel or training costs, for training provided by other professional agencies.

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 proceedings. 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

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

A. T hey 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 on the Form attached to this article as Appendix 2.

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. Where not otherwise covered by this Agreement, the Employer will pay travel as follows:

    1. the Employer will pay 50 % of all reasonable travel and per diem expenses for one employee representative per chapter in local bargaining where more than one district and/or chapter is involved.

    2. in local bargaining involving only one chapter, the Employer will pay for 50% of all

reasonable travel and per diem expenses 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.

For all other representation matters, the Employer will pay 50 % of all reasonable travel and per diem expenses for one employee representative per chapter.

C. The parties agree on the desirability of utilizing available technology to reduce travel costs for both the Agency and the Union, when it is practical and effective to do so. To that end:

1. Arbitration Hearings

   a. Beginning October 1, 2014, each party may, during each fiscal year, designate a maximum of three grievance arbitration hearings to be conducted in whole or in part by video conference.

   b. In order for a grievance arbitration be designated for video conferencing, the arbitrator, the grievant and the Union and Employer representatives must be physically present at the same site. There must be video conferencing equipment available at that site. Technical assistants need not be physically present at the hearing, but must be at a location where they can observe the hearing and be able to communicate in private (telephone, email, IM, etc.) with the appropriate representative. Witnesses need not be physically present at the hearing, but must be where they can testify by video or, if approved by the arbitrator, by telephone conference call.

   c. Any of these requirements may be modified by mutual consent.

2. Grievance Step Meetings

   a. Beginning October 1, 2014, each party may, during each fiscal year, designate a maximum of five grievance step meetings to be conducted in whole or in part by video conference.

   b. In order for a grievance step meeting to be designated for video conference, the grievant and the Union representative must be physically present at the same site. There must be video conferencing equipment available at that site. The management representative, if not at that site, must be accessible by video. Other persons needed for the meeting need not be physically present, but may participate by video or telephone, as appropriate.

   c. Any of these requirements may be modified by mutual consent.

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 (4") 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:

- Difficulty of hiring employees in a series;
- Attrition/retention rates;
- Reasons such employees leave the Agency;
- Priority level of the work performed; and
- 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:

1. the number of awards requested by eligible employees;

2. the number of awards granted;

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

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

SECTION 5

OPDIVs that currently have existing Student Loan Reimbursement programs and data disclosure requirements will remain in effect as of the date of this agreement.

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) to 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.

B. 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 and at least one representative per Chapter will be authorized to be present on official time. The Union will be provided a reasonable amount of advanced notice of the scheduled orientation. The Union will be afforded an opportunity to make a presentation to the employees during their orientation for up to twenty (20) minutes. If more than one chapter is entitled to attend the NEW, the Union is still only entitled twenty (20) minutes total. The representatives will determine how to allocate the twenty (20) minutes 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.

C. 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 up to twenty (20) minutes to meet with the employee(s) during these first two weeks.

SECTION 2

The Employer will include hardcopy of this Agreement in the Entrance on Duty (EOD) 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. At the Union's option, it may conduct a two-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 tie 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 EOD package, to provide the employee a package of material provided by the Union. The package may contain:

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 week 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 for presentation in orientation session 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.

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 her/his fixed tour of duty or, for an employee working a flexible tour of duty, no later than her/his normal starting time or the start of core hours if s/he does 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 an employee has not received advance approval for leave but is not able to

report to work for personal reasons, the employee must, by no later than his/her normal starting time or the start of core hours, whichever is earlier, speak directly to her/his leave-approving official (his/her 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 that s/he had 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:

- non-repetitive, non-routine circumstances exist;
- the employee is eligible to earn annual leave;
- 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
- 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 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 or 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/leavc/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

4. 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 his or her 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, an employee may not leave the work site to seek health unit services unless he or she has 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 he or she has 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 his/her retirement account to reimburse the Employer for the advance should he or she 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

D. 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 needs 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 employee's ability to perform his/her current job or to achieve and perform another job with the Employer to which the employee can reasonably aspire. Examples of some of the factors that are to be considered when reviewing an employee's request are:

- Significant staffing requirements and workload;
- The amount of advance notice;
- The costs of any temporary backfill during employee absence that would exceed the costs of otherwise employing the employee on leave;
- The likelihood of the employee remaining with the Employer;
- The likelihood of potential employee development with and without training;
- 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:

- increased job ability;
- protection or improvement of employee's health;
- retention of a desirable employee; or
- 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 that she/he has been re-elected. 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 his/her 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. The employee will notify the Employer as soon as possible in advance if she/he 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:

   http://www.opm.gov/oca/leave/HTML/factindx.sap, and from the servicing Human Resources Center, http://intranet.hhs.gov.rockvillehreenter/.

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 section 630.1207, the Employer may require that a request for leave under subsections A.3. or A.4. above be supported by written medical certification written by a health care provider. The following procedure will be followed:

   1. The employee will provide the written documentation as provided in 5 CFR

section 630.1207(b). 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 Employer may not require any personal or confidential information in the written medical certification other than that required by regulations.

2. 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.

3. 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.

4. 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.

5. 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.

6. If the opinion of the second health care provider differs from the original certification provided under subsection D.2. 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 D.2. 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 section 630.1207 are applicable to leave used under the FMLA.

F. The employee is responsible for notifying the supervisor of his/her 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 leave pending final written medical certification.

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.

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.

An employee who is called for court service should present the court order, subpoena, or summons to her or his 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

Excused absence (sometimes called "administrative leave") is an absence from duty which is administratively authorized without loss of pay and without charge to leave.

SECTION 2

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

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

A. When it becomes necessary to delay the opening of, or not to open an office because of hazardous weather or other emergency conditions, the Employer, when applicable, will make a reasonable effort to inform employees through appropriate communications media.

B. If the decision to close the workplace or office occurs during the workday, the notice of specific release will be communicated through supervisory channels.

C. If hazardous weather or other emergency conditions occur during the workday and an administrative order to close the workplace has not been issued, the Employer may grant excused absence for all or part of the workday if the employee provides the supervisor with acceptable written justification that a reasonable effort was made to get to work, but severe weather or other emergency conditions prevented him or her from doing so. The Employer's decision will be fair and equitable. If the employee has a disability, his or her disability must be taken into account in determining what constitutes a reasonable effort. If the supervisor denies a written request for excused absence, upon request, the denial will be in writing.

SECTION 5

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:

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

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

- The absence will clearly enhance the professional development or skills of the employee in his or her current position; or

- 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

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 s/he is tardy. The Employer's decision will be fair and equitable.

ARTICLE 21

LEAVE SHARING

SECTION 1

An employee without available paid leave may request to become a donated leave recipient for a specific medical emergency involving him/herself 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.

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

The employee must use up all of his/her accrued annual and sick leave, if appropriate, before being donated leave.

SECTION 2

The employee must submit a written request for donations of leave to his/her immediate supervisor. If the employee is unable to submit an application a family member or coworker may submit the application on his/her 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.

SECTION 3

A. 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.

B. 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.

SECTION 4

A. 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 Donation 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 his/her behalf) will be notified promptly by the Employer of what else is needed to complete the application.

B. 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.

SECTION 5

A. 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.

B. 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.

C. 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 his/her 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.

SECTION 6

At the approved donated leave recipient's request, or with his/her 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.

SECTION 7

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 8

Once an employee is using transferred leave, he or she continues 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 accumulation stops, even if the medical emergency still exists.

SECTION 9

Upon termination of a medical emergency, unused annual leave shall be restored to the donor.

SECTION 10

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 11

The parties recognize that an HHS Leave Bank may be a valuable resource for all employees. If the Employer establishes a Leave Bank, it will notify the Union and bargain in accordance with law, rule, and regulation.

ARTICLE 22

OVERTIME, COMPENSATORY TIME, HOLIDAYS

SECTION 1

Overtime work consists of hours of work that are officially ordered in advance and in excess of 8 hours in a day or 40 hours in a week, but do not include hours that are worked voluntarily, including credit hours, or hours that an employee is "suffered or permitted" to work that are not officially ordered in advance. 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 an employee undergoes a personnel action, notify the employee on the SF50 as to whether he or she is exempt or non-exempt for the purposes of the Fair Labor Standards Act;

SECTION 3

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.

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.

SECTION 3A

Subject to Paragraph C 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.

SECTION 3B

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.

SECTION 3C

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

SECTION 3D

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.

SECTION 3E

An employee who is ordered to work overtime will be relieved of the assignment if s/he finds a qualified and willing replacement acceptable to, and approved in advance by, the supervisor. An employee who finds a replacement will be treated on the rotation as if s/he performed the overtime assignment.

SECTION 3F

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 6A

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.

SECTION 6B

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.

SECTION 6C

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).

SECTION 6D

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

SECTION 7A

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.

SECTION 7B

An employee involuntarily assigned to work on a holiday may be relieved if s/he finds a qualified and willing replacement acceptable to, and approved in advance by, the supervisor.

SECTION 7C

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 8A

Irregular or occasional overtime work performed by an employee on a day when work was not scheduled for him or her, or for which he or she is required to return to his or her place of employment, is deemed at least two (2) hours in duration for the purposes of premium pay, either in money or compensatory time off.

SECTION 8B

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 an employee for deciding not to provide his or her 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 10A

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.

SECTION 10B

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.

SECTION 10C

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.

SECTION 10D

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.

SECTION 10E

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.

SECTION 1OF

Consistent with 5 C.F.R. § 550.1407(a)(1), an employee must use accrued compensatory time off by the end of the 26th pay period after the pay period during which it was credited. If an employee fails to use the compensatory time, he or she 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. Each employee will be notified of his or her 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, his/her 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 his or her 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 25

AWS/HOURS OF WORK

SECTION 1

A. The HHS Alternate Work Schedules Program is designed to enable staff 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 where the establishment of the schedule will not interfere with the ability of the organization to meet its work- load and programmatic objectives effectively.

C. Specific job requirements may not allow for the same degree of personal choice for all employees.

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 his or her workday, unless otherwise approved by the supervisor.

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

D. Basic Work Requirement - The number of hours, excluding overtime hours, an employee is required to work or otherwise account for by 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. Those hours within the flexible time bands of a FWS that, with advance supervisory approval, an employee elects to work in excess of his/her 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 an employee must complete his/her 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 employee's workday beyond the time in which s/he 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.

SECTION 3

A. Participation

Employee participation in AWS is 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 leave restriction.

2. The employee is not on a Performance Improvement Plan.

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

4. The employee has not received any adverse action 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 his/her established tour of duty to accommodate the establishment of a new tour of duty for another employee.

SECTION 4

Program Criteria

HHS OpDivs

Work days:	Monday-Friday
Flexible bands:	6AM - 930AM (arrival band) Monday - Friday 3PM – 7 PM (departure band) Monday-Thursday 230PM – 7PM (departure band) Friday
Flexible band for Credit hours only:	5 AM – 9 PM Monday - Sunday
Lunch band:	11AM – 2PM
Core hours:	930AM – 3PM (Monday – Thursday) 930AM – 230PM (Friday)
Credit hours:	3 per day; 8 on Saturdays and Sundays

FDA

Work days:	Monday-Saturday
Flexible bands:	5AM - 10AM (arrival band) Tuesday - Thursday

3PM – 9 PM (departure band) Tuesday-Thursday
5AM – 1030AM (arrival band) Monday, Friday, Saturday
230PM – 9PM (departure band) Monday, Friday, Saturday

Flexible Band for Credit hours only:	5AM – 9PM Monday – Sunday
Lunch band:	11AM – 2PM
Core hours:	10AM – 3PM (Tuesday – Thursday) 1030AM – 230PM (Monday, Friday, Saturday)
Credit hours:	8 per day

SECTION 5

A. Authorized Flexible Schedules

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. 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.

C. Maxiflex Schedule. This schedule allows employees to earn credit hours and vary their daily arrival times within the established flexible bands. A maxiflex schedule may contain core hours on fewer than 10 workdays in the biweekly period. 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. 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.

1. 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.

2. 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.

3. 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.

4. "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. 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 (Flexitime or Maxiflex) to indicate their intended arrival and/or departure time.

SECTION 6

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. Compressed Work Schedules
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. The following CWS are available to employees.

1. 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 at that location. 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. 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, an employee on CWS may switch his/her 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 his/her "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

A. Credit Hours
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. The use of credit hours must be approved in advance.

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 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. The same procedures for requesting and approving credit hours in the office will apply when the employee is at the temporary duty location.

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.

SECTION 8

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 3, 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. Approved requests will be implemented as soon as possible, but not later than the beginning of the first full pay period following approval.

B. In approving or denying AWS requests, the Employer will consider interference with the

ability of the organization to meet effectively its workload, programmatic objectives and physical office coverage.

C. Normally, such requests will be approved or denied within five (5) workdays of receipt. A request is deemed denied if the Employer has not responded within fifteen (15) workdays 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

A. Request for Permanent Changes to AWS

Individual employees desiring to change their existing AWS will submit an application (Appendix 3) 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) 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, an employee on a compressed of Maxiflex schedule may request to vary his/her 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.

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.). If a modification is necessary, the Employer will explain the specific reasons necessitating the modifications, and identify the modifications that would be acceptable. If a permanent change in schedule is required, the employee will be provided these reasons in writing.

SECTION 10

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 resolution can be found, approval shall be based on employee seniority determined by the service computation date.

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 his/her 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 his/her 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. An employee who fails to comply with the requirements and provisions of his/her 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

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.

D. An employee working a Flexitime or Maxiflex 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).

G. As soon as an employee is transferred into or otherwise becomes part of the bargaining unit he or she 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

When it is impracticable to prescribe either a regular tour of duty or a tour of duty for employees under the AWS/Maxiflex schedules listed in Section 4 above, the Employer may establish a first forty tour of duty and will do so fairly and equitably. Positions that are appropriate for a first forty include, but are not limited to, FDA Inspectors, Investigators, Laboratory Analysts, and employees reviewing an activity funded (in whole or in part) by a user fee. As with AWS/Maxiflex schedules, an employee must obtain supervisory approval to work a first forty tour of duty. Modifications and/or termination of a first forty tour are subject to the provisions of this Article.

ARTICLE 26

TELEWORK

SECTION 1

Telework is a program that permits employees to work at home or at other approved locations remote to the conventional office site. For purposes of this Agreement, the terms telework, teleworking, "Flexible Workplace Arrangements Program" or "FWAP", "flexiplace" and "telecommuting" are synonymous and include working at home or in satellite office sites or other approved alternative work sites.

SECTION 2

The Parties anticipate that this program will result in increased productivity, improvements in employee morale, job satisfaction, and reduced absenteeism. Participation in telework is not an entitlement nor is it an accommodation for dependent/family care. The Employer will identify barriers to implementing telework and take action to increase the opportunities for employees in suitable positions to participate in the program.

SECTION 3

Situations appropriate for telework depend on the specific nature and content of the job, rather than just the job series and title.

A. Telework arrangements may be used when there is recurring opportunity to perform work at an alternate site. This type of arrangement is regular and recurring. 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.

B. 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, such tasks require uninterrupted concentration and result in measurable work outputs or products.

C. Telework arrangements may be appropriate to accommodate an employee with a

temporary or permanent illness or disability, if the job can be accomplished at an alternate site, and the employee is capable of performing the job at home or at a telecommuting center but cannot commute to and/or from work on a daily basis. Such requests should be handled in accordance with this Article and Article 38.

SECTION 4

A. 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.

B. The Parties agree that specific individual participation in telework must be considered on a case by case basis. The decision will not be made in an arbitrary and capricious manner. The Employer will administer the telework program in a fair and equitable manner.

C. Pursuant to the Telework Enhancement Act (Appendix 3.1) employees that have been officially disciplined for being absent without permission for more than 5 days in any calendar year or for viewing, downloading, or exchanging pornography, including child pornography, on a Federal Government computer or while performing official Federal Government duties may not participate in the telework program.

D. Each employee must meet the following criteria to be considered eligible to participate in the telework program.

1. The employee's latest rating of record is "fully successful" or better, and there is no reasonable cause to believe this level of performance will drop;

2. The employee is not on leave restriction;

3. The employee is not on a performance improvement plan (PIP);

4. 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;

5. The employee has demonstrated the ability to initiate his/her own work, to work without direct supervisory oversight, to recognize when supervisory or other assistance is needed on a project;

6. The employee has received telework training or has been teleworking since December 10, 2010;

7. For employee applying for telework for the first time in an OPDIV/STAFFDIV, the employee has held her/his current position for at least three (3) months, unless otherwise agreed to by the supervisor; and

8. The employee's fully successful 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);

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;

E. Teleworking employees must use HHS approved technologies and methods to access all HHS networks and systems. When employees have been provided with government furnished equipment for use at the alternate duty station, they will be required to use that equipment while teleworking. If there are insufficient funds, employees participating in the telework program and using their primary personal residence (or any other approved site not fully-equipped with these items) may be required to provide at their own cost all equipment, supplies, and/or services necessary for working at the alternate duty station. The Employer may provide underutilized computers, furniture, or equipment for use by employees.

F. The Employer intends to implement an electronic system to maintain telework data. The union will be provided notice and an opportunity to bargain changes to conditions of employment resulting from the new system to the extent required by law and Article 3 of this Agreement. Upon implementation of the electronic system, employees' requests to telework shall be submitted to their supervisor electronically. Employees shall continue to request telework according to the established procedures of their offices until the electronic system is implemented. The Employer shall act on requests telework within ten (10) workdays of receiving the request. If the request is disapproved or modified, the employee will be notified in writing stating the reasons for the disapproval. Approval of an employee's request to telework must come in the form of a written telework agreement (Appendix 3.2) between the employee and supervisor, regardless of whether telework is routine (i.e., regularly scheduled and recurring), or episodic. Employees currently teleworking at that the time of this agreement must enter into a new written telework agreement that updates the terms of their agreement within thirty (30) calendar days.

SECTION 5

A. 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 will apply.

B. 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).

SECTION 6

A. Participation in the telework program is voluntary. However, the Employer may require employees to work at an alternate site in case of emergency situations. For example, telework-ready employees (i.e. employees with a signed telework agreement) are required to work at their approved alternate duty station during emergencies (e.g., Federal offices are closed, Federal offices are on delayed arrival, the Agency is operating under a Continuity of Operations Plan, etc.). On a case-by-case basis, a telework-ready employee may request and the Employer may provide excused absence for a part or all of the day during an emergency and/or inclement weather situations if the employees telework site is negatively impacted by the emergency (e.g., disruption of electricity or internet access, loss of heat, etc.) or if the employee's duties are such that he or she cannot continue to work without contact with the regular worksite, or under other extenuating circumstances related to the emergency that impede the employees ability to perform telework. If excused absence is not granted, telework-ready employees must be prepared to telework for the entire workday, or take unscheduled leave, or a combination of both for the entire workday. Employees may also request LWOP if an employee does not have available paid leave or other paid time off (e.g., earned compensatory time off) to his or her credit and is impacted by the emergency.

B. 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. Employees who work approved flexible work schedules and vary their start times are required to inform their supervisors, prior to commencement of their tours of duty, of their start and end times for those days they work at an alternate site pursuant to this article.

C. The official duty station of an employee participating in the telework program is the conventional work site for purposes of travel reimbursement, etc.

D. Employees on a regular and recurring telework arrangement are required to report to the official duty station according to the schedule determined by the Employer. In addition, the Employer reserves the right to require more frequent days at the conventional work site for situations deemed appropriate by the supervisor either planned or unplanned, due to special circumstances, including, but not limited to, office assignments, meetings,

absence of other employees, emergency situations, or training classes. Any regular AWS off days shall not be counted against telework days. Employees may attend these unplanned meetings via telephone unless physical presence is required.

E. The Employer will make reasonable efforts to provide alternative methods, such as teleconferencing, use of fax and e-mail, and/or other methods to avoid unplanned situations requiring the employee to report to the conventional work site. However, when situations occur that require the employee to return to the conventional office, travel to and from the office is normal commuting time and as such is not considered hours of duty.

F. As a minimum level of accessibility, the employees in the program are expected to be as available to managers, co-workers and customers by telephone, E-mail, voice mail or other communications media during their scheduled daily tours of duty as when working at the official duty station.

G. Overtime and credit hours worked must be approved in advance by an authorized official For employees on flexible schedules, work that is ordered and approved in advance which is in excess of eight (8) hours per day, forty (40) hours per week, or eighty (80) hours per pay period, is considered overtime work. For employees on compressed schedules, work that is ordered and approved in advance which is in excess of the number of hours worked daily on the compressed schedule is considered overtime work. 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.

H. Policies and practices for requesting and using leave remain unchanged, except as provided in the applicable articles of this Agreement.

I. For purposes of timekeeping, participants will sign a certification 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.

J. The Employer has the right to be provided with reasonable assurance that employees are working at alternate sites when scheduled.

K. An employee may switch his/her scheduled telework day(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.

SECTION 7

A. 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.

B. Telework home sites must have adequate workspace, lighting, residential telephone service, power, smoke alarms and adequate security.

C. 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 one (1) workday's notice in advance of the inspection and the Union shall have a right to be present.

D. 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.

E. Employees must protect all government records and data against unauthorized disclosure, access, mutilation, obliteration and destruction.

F. 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

A. The Employer may terminate, temporarily terminate or modify an employee's participation in the program for cause, such as:

1. Failure to continue to meet the criteria listed in Section 4 above;

2. Failure to adhere to the provisions of the Agreement and/or of this Article;

3. Failure to accurately and truthfully report time worked;

4. Organizational exigencies that impact on the mission of the Employer, and require the employee to perform work at the official duty station;

5. For misconduct in connection with the employee's obligations under the flexible work place program; and

Upon temporarily suspending or modifying an employee's telework agreement/plan, the supervisor will notify the employee at least seven (7) days in advance of the change.

C. 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 he/she 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.

SECTION 9

A. Employees participating in the telework program will not be excused from work because workers at the official duty station are dismissed or not required to work due to an emergency if the emergency does not impact the work being performed at the alternative work site. If an emergency occurs at the telework work site that impacts on the employee's ability to perform official duties, the employee will immediately notify the Employer. The Employer will direct the employee to another work site, grant excused absence, or allow the employee to request appropriate leave, e g , annual leave or LWOP.

B. 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.

C. The employee is covered under the Federal Employees Compensation Act if injured in the course of performing official duties at the alternative 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 Telework arrangements (agreements) are between the employee and their current supervisor. When employees are detailed or permanently assigned to another organizational unit of the Employer and under another supervisor, the employee and supervisor will need to discuss the continuation and/or necessary modifications to the existing telework agreement.

SECTION 10

The Employer will provide the Union with copies of any reports on telework usage provided to OPM. If not provided in the report to OPM, the Employer will also 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).

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 and other organizational level award ceremonies.

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, Regional Office, etc.); for FDA Headquarters, pools will be established at the centers level. Once these awards pools are established, the Employer will notify the Union. By December 31 of each year, the Agency will notify NTEU of where the awards pools will be for the appropriate rating cycles.

G. The awards unit pools will be based upon a percentage of bargaining unit salaries as of the beginning 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 Employer will notify the Union as soon as funding levels for awards pools (both performance and incentive awards) have been determined, and will provide sufficient data to demonstrate the proper calculation and allocation of these awards pools.

SECTION 2 - PERFORMANCE AWARDS PROGRAM

A. Performance awards will be based upon the employee's overall final rating of record.

1. Employees whose summary rating is 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.

2. Employees whose performance is Achieved More than Expected Results may be eligible for a performance award, at the discretion of the Employer, up to 4% 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 is Achieved Expected Results may be eligible for a performance award, at the discretion of the Employer, of up to 3.0%, 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. Employees may request to convert the cash award amount into time-off equivalent, not to exceed an aggregate calendar year total of 40 hours time off. Any remaining balance will be paid out in cash.

C. Employees will not receive both a QSI and a cash award for the same performance.

D. Employees who receive an Achieved Outstanding Results rating may be eligible for a QSI.

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. 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:

- non-recurring contribution either within or outside of job responsibilities;
- scientific achievement;
- act of heroism;
- high quality contribution involving a difficult or important project or assignment;
- special initiative and skill in completing an assignment or project before the deadline;
- initiative and creativity in making improvements in a product, activity, program, service; or current practice;
- 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;

- contribution to the well-being of the community (non-monetary);
- performance that contributes to protecting and promoting the health of the American people;
- influencing/guiding others toward achieving organizational goals;
- advancement of team goals toward HHS mission; supporting team and individual team members; supporting organizational units; and
- recognition of an employee or group's disclosure of fraud, waste or abuse resulting in tangible or intangible benefits to the government.

C. Incentive Award committees will notify all employees, through Employee Bulletins or other appropriate forms, of incentive awards committee meetings at least fourteen (14) days in advance of the meeting. Such notification will contain a brief explanation of the incentive awards criteria and a description of the procedures for submitting nominations for incentive awards.

D. The Employer agrees it will establish no quotas or predetermined distribution rates for the size and number of incentive awards.

E. The following criteria apply to special act or service awards:

1. 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.

2. Normally, the period of performance for a special act or service award will not exceed 120 days.

F. Peers and supervisors may nominate employees or groups for incentive awards; Employees may nominate themselves for incentive awards. Nominators must submit their nominations to the local committee with jurisdiction over the nominee's organization.

G. 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.

H. Employees will be notified of the approval of any award, and may be issued a certificate.

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 a joint 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 § B below. Approval will be based on reasonable and relevant criteria applied uniformly to all similarly situation employees.

B. In accordance with applicable regulations:

1. A time off award may not be converted to a cash payment.

   a. Full-time employees may not be granted more than 80 hours of time off during a single leave year.

   b. 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.

2.

   a. For full-time employees, time off awards are limited to a maximum of 40 hours for a single contribution.

   b. The maximum time off award for a single contribution for part-time employees or employees with an uncommon tour of duty is one-half the maximum amount of time that could be granted under Section 4B1(b) 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 Headquarters committees will be established at the centers level. There will be an equal number of bargaining unit members and management representatives on each team. The local chapters will appoint the BU members of these Committees. The Committees shall continue to operate under existing procedures. Any committee may modify their procedures at any time.

2. The award pool will be divided between performance awards and incentive/suggestion awards. In no event will there be less than 15% of the funds from the established awards pool reserved for incentive/suggestion awards. The Committees may recommend a higher percentage to be reserved.

3. These Incentive Award Committees shall meet quarterly to make recommendations, unless the parties agree that a quarterly meeting is not necessary. Those bargaining unit employees on the committees will be released from duty, absent a workload disruption. Dates of Committee meetings will be scheduled in advance and notice will be provided to the appropriate Chapter President If the Chapter President cannot appoint BU members in a timely manner, the award nominations will be referred to the deciding official without a committee recommendation Meetings may be rescheduled if determined necessary by the deciding official

B. Incentive Awards

1. Awards handled by the committees will be time off awards, suggestion awards, special act awards and informal recognition items.

2. 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);

   e. Recommend time off awards in lieu of cash if budget shortfall restricts use of monetary awards or any other legitimate, performance based reason;

3. 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.

4. 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.

5. 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.

6. Employees may not receive more than one reward or recognition item for the same special act or service.

7. No Committee member may participate in the review and discussion of any nomination for which s/he is the nominator or nominee, or for which s/he has a familial or blood relationship or any other relationship that gives rise to a conflict of interest.

8. 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.

9. 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

1. Labor-management performance awards committees shall be established at appropriate levels of the organizations (OPDIV, STAFFDIV, Office, etc.). Existing incentive awards committees may assume this function if the incentive awards committee determines it is in the best interests of the parties. Generally these committees are established at the awards pool level but may be established at a higher level (OPDIV/SATFFDIV). Nothing shall preclude the establishment of a higher level committee having overarching responsibility to oversee subordinate committees within an OPDIV/STAFFDIV. 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.

   Each committee shall meet prior to January 31 of each year to discuss procedures which will be used to make their recommendation to the Deciding Official.

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 scores and the awards budget 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. make 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, de pending 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 his/her 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 his/her 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

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, Hyattsville, Maryland, 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

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.

C. The Employer agrees to provide the Union with other relevant and necessary data and information concerning awards, as requested.

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 B 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 his/her 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 his or her performance in order to receive a WIGI;

D. Inform the employee about his or her 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 his or her decision as soon as possible, but in no case later than ten (10) work days following receipt of Union comments.

SECTION 5

A. When an employee receives a negative determination, he or she 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 his or her 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 document (Appendix 4) issued August 19, 2013. 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. The Employer and Union agree that the effectiveness of this program will be evaluated within six (6) months from the end of the performance period by a joint labor-management workgroup. There will be equal numbers of NTEU representatives and management officials.

SECTION 2

The objectives of the PMAP are to:

- Improve employee and organizational performance by defining critical aspects of employee performance and assessing results achieved;
- Communication and clarify organizational goals and objectives to employees;
- Facilitate evaluation of employee performance;
- Encourage communication between supervisors and employees;
- Identify good employee performance for recognition;

- Address deficient performance effectively through such things as increased communication, coaching, training and if necessary, through appropriate personnel actions; and

- Provide uniform and consistent evaluation of performance for all covered employees.

SECTION 3

The PMAP covers all NTEU bargaining unit employees covered by this Collective Bargaining 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 established period of time for which performance will be reviewed and a rating of record will be prepared. 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 the employee about his/her 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

and is generally conducted midway through the appraisal period

H. Rating Official means the official responsible for informing the employee of the critical elements of his/her 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. When the Agency creates a new performance plan for employees, the Union will be provided notice and may make recommendations and present supporting evidence pertaining thereto. 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.

B. 1. 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 his/her performance plan for the appraisal period. Supervisors shall clearly communicate expectations and metrics. The following is a list of actions that supervisors shall follow:

- Communicate to employees their strengths and encourage the development of necessary skills to overcome weaknesses;
- Active partnering in performance management to reinforce positive manager-employee relationship;
- Provide equitable performance expectations;
- Submit constructive feedback and improvement strategies;

- Discuss and identify, where appropriate, supervisor support of employees development and professional growth;
- Development of objective performance measures that reflect job requirements;
- Provide an atmosphere that allows for two-way communication;
- Provide and encourage constructive feedback;
- When applicable, discuss individual goals or Individual Development Plan.

2. 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 his/her 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 his/her expectations to help the employee understand the requirements of the plan. The employee is responsible for ensuring that he/she has 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. An employee will not be evaluated on any aspect of his/her performance plan until the employee receives 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/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. 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. 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.

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.

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 his or her performance is only "Achieved Expected Results".

SECTION 6

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. If the Employer changes any of the aspects (for example, any addition, removal or alteration of a performance aspect or measure) of a CJE requirement, it will serve notice on NTEU of such a change and bargain to the extent required by law.

B. Performance Standards

1. Performance standards define what is successful performance on the element. The PMAP performance plan identifies performance measures at each of the 5 ratings levels. (See example PMAP performance plan attached as Appendix 5 of this agreement).

2. To the extent possible standards should be:

   - Objective. Free from personal feelings or opinions that might bias the rating of actual performance;

   - Explicit. Clearly written and free from ambiguities;

   - Observable or measurable. Specify discernable conditions, characteristics, and allow for differentiating between levels of performance; and

   - 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 face to face 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 mid-year 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 a 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 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:

    - Employee's accomplishments;

    - Performance standards remaining to be accomplished and any barriers that may impede their accomplishment;

    - Revisions to the plan which may reflect changes in work assignments or program initiatives, deficiencies in performance and required improvements; and

    - Training and developmental needs.

5. During the mid-year 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. The supervisor and the employee will sign and retain a copy of the progress review documentation. If the employee declines to sign and date the form, the supervisor shall note that the employee declined to sign, citing the date the employee was given a copy.

B Modifying Performance Plans

1. Performance elements and measures may be changed as necessary during the rating period. Changes to the original performance plan shall be initialed and dated 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. 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. 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. 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.

2. There are five (5) levels for rating performance on each element:

   Level 5: Achieved Outstanding Results (AO): 5 points

   Level 4: Achieved More than Expected Results (AM): 4 points

   Level 3: Achieved Expected Results (AE): 3 points

   Level 2: Partially Achieved Expected Results: 2 points

   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 has not been observed

B. 1. The Employer has determined that the following method shall be used to translate the composite element rating into a final rating:

   Level 5: Achieved Outstanding Results (AO): 4.5 – 5 points

   Level 4: Achieved More than Expected Results (AM): 3.6 – 4.49 points

   Level 3: Achieved Expected Results (AE): 3.0 – 3.59

   Level 2: Partially Achieved Expected Results (PA): 2.0 -2.9 points

   Level 1: Achieved Unsatisfactory Results (UR): 1 to 1.9 points

2. Final ratings shall be derived after rating and assigning a score to each critical element. The rating official will explain the basis for score assigned 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 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.

3. When the employee's final rating is below "Achieved Expected Results", the rating official shall prepare a written explanation describing the specific areas in which the employee failed. 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.

4. The Employer has determined that the system does not require a second level review of the rating. However, at the discretion of the OPDIV Head, 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. However, 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 an opportunity to respond to the rating in writing. The supervisor shall provide the appraisal, the appropriate documentation and any written response prepared by the employee for a second level review. If the second level review establishes that a rating of Achieved Unsatisfactory Results is appropriate, the final rating of Achieved Unsatisfactory Results will be prepared. A second level review is required for all Achieved Unsatisfactory Results ratings.

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 rating (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 administrative 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. An employee, who disagrees with his/her numerical score and wishes to file a grievance, may do so in accordance the negotiated grievance 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 he/ she has 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 reach, 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 at least ninety (90) days 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 his/her position, he/she shall provide a written assessment about his/her employee's 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. An employee who prepares 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 his or her immediate supervisor by no later than the last workday of his or her annual appraisal cycle.

SECTION 13

The annual performance appraisal provides invaluable information to supervisors regarding an employee's need for additional training or coaching, and provides the employee with realistic feedback on how well he or she has performed during the rating cycle, as compared to the critical job elements for his or her 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 new PMAP: an employee's summary rating score (when available), location, grade/series, any RNOGAD data, and any awards/QSIs. The information will be provided no later than August 31 each year.

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 UNACCEPTABLE PERFORMANCE

SECTION 1

This Article applies to all members of the bargaining unit who have completed a probationary or trial period. No employee will have an action, under 5 CFR 432, proposed against him or her that relies on a performance plan under which he or she has 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 his/her 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 an employee requests a change to lower grade due to his or her 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 his/her performance, the type of assistance the Employer will provide, and instructions on ways the employee can be expected to raise his/her 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 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 s/he 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 s/he is 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 his or her 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, an employee raises as a defense that he or she is suffering from a disability, the employee 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 the employee covered by Subsection A, above, the employee may elect to use his or her available sick leave prior to retiring, to the extent allowed by law, rule or regulation.

ARTICLE 32

POSITION CLASSIFICATION

SECTION 1

A. Each employee in the unit normally will be provided with a description of his/her 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

An employee who believes that his or her 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 his or her title, series, or grade be reconsidered, he or she 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 his or her supervisor. If the employee is not satisfied with this reconsideration, he or she may appeal according to Paragraph B or C below;

B. Formally appeal the title, series or grade to the Office of Human Resources and Management Services, 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 employee does not agree with this decision, he or she 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 employee is not satisfied with OPM's decision, he or she has 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) work days 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 2 B above and the employee's position description. Nothing will prevent the Employer from assigning new work to employees.

B. An employee 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, he/she 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 & 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 employee continues to encumber the bargaining unit position from which s/he was 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 his or her regular duties and grade at the end of the assignment. An employee must meet the qualification standards and other legal and regulatory requirements, such as time in grade for the higher-grade level before he or she 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) 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:

1. the Employer will provide necessary orientation to the employee at the beginning of any detail;

2. the Employer will provide to an employee who has been on detail to a different work area, the time reasonably necessary to re-familiarize her/himself with the position to which s/he is returning; and

3. 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.

4. 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.

5. 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 an employee obtains while on a detail or temporary promotion will be credited as experience either in the employee's current position or the position to which s/he is detailed, whichever is more advantageous to the employee, subject to qualification rules and principles.

ARTICLE 35

REASSIGNMENTS

SECTION 1

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. A reassignment is a permanent assignment of an employee from one bargaining unit position to another bargaining unit position without promotion, demotion or break in service. Reassignments will be carried out in accordance with applicable law, government-wide rule or regulations and this Article. 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.).

D. The Employer will provide notice of Employer-directed reassignments concurrent with notice to employees.

E. 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 2

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) day notice on the 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 the employer to consider their submission prior to 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 3

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 4

The Employer agrees that when an employee has been reassigned due to the abolishment of his or her position, he or she will be given priority consideration if that position is reestablished within one (1) year. To receive priority consideration, the employee must timely apply for the position and clearly indicate that he or she 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 5

When an involuntary 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 6

A. Involuntary Reassignments

When the Employer determines that an involuntary reassignment of an employee is necessary, the Employer will use the following procedures:

1. The Employer will identify position, as opposed to employees, from which the reassignment will come;

2. the employee 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 7

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

SECTION 1

It is agreed that all promotions 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.

SECTION 2

A. When merit promotion procedures are to be used, it is understood that this Article applies to all promotion actions to bargaining unit positions not specifically excluded in Section 2.B. below. Examples of personnel actions covered are:

1. Filling a position by promotion;

2. Temporary promotions in excess of 120 days;

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 ("a position with more promotion potential" is one in which the Employer may make promotions, without further competition, to the highest grade in the career ladder);

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;

6. Selection for training which employees are required to take before they may become eligible for promotion to a specific higher-graded position; and

7. Selection for a detail to a higher grade or position with higher promotion potential for more than 120 days.

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

less;

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 a student participating in the Student Career Experience Program;

8. Promotion, through exercise of his/her 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

1 l. Selection from the re-employment priority list;

SECTION 3A

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.

SECTION 3B

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 4A

All positions which are filled through the competitive promotion 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 servicing Intranet and the Internet at (http://www.usajobs.opm.gov) via mandatory

posting of vacancies through the Office of Personnel Management (OPM) Federal Job Opportunities Bulletin (FJOB). A copy of any announcement may be obtained by contacting the servicing HRC. Employees will also have the option of being notified via email of future vacancies posted through the automated staffing system.

SECTION 4B

Vacancy announcements will be open for a minimum of ten (10) workdays for bargaining unit positions which must be filled in accordance with the competitive procedures covered in this Article.

SECTION 4C

At a minimum, every vacancy announcement will contain:

1. Announcement number;
2. Opening and closing dates;
3. Position title, series, grade, and the number of positions to be filled;
4. Organizational and geographic location;
5. Any known promotion/career-ladder potential;
6. Applicable area of consideration;
7. Summary of major duties, including an estimate of the amount of travel, if applicable;
8. Summary of minimum qualification standards to be applied, along with any selective placement factors;
9. Evaluation methods and criteria to the extent appropriate;
10. Procedures for applying;
11. Statement of equal employment opportunity; and
12. Bargaining unit status.

SECTION 4D

Vacancy announcements will be posted in all locations within the same commuting area where computer access is not available. The Employer agrees to address concerns raised by the Union regarding computer access.

SECTION 5A

Employees who wish to be considered for a posted vacancy must apply by submitting information and/or documents required in the vacancy announcement. If an appraisal is required by the vacancy announcement, an employee may submit a statement that s/he is challenging the appraisal. An employee may also include a rebuttal statement regarding the most current performance appraisal.

SECTION 5B

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.

SECTION 5C

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 issuing HRC prior to the closing date for assistance. Reasonable accommodations will be made for good cause. Employees may request, and be granted, assistance with automated staffing system. Such assistance will be on duty time.

SECTION 5D

Employees on extended periods of absence (i.e., on detail, travel, military, leave) will be given automatic consideration for specific kinds of jobs during that period of extended absence provided the employee:

1. Submits written notification to the HRC prior to departure which specifies the anticipated duration of the absence and specific series, grade level(s), program or office, and tour of duty for which consideration is sought; and

2. Submits a current SF-171, OF-612, or resume and performance appraisal in triplicate for HRC.

SECTION 6A

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.

SECTION 6B

Candidates will be evaluated against basic eligibility requirements, selective placement factors, and other appropriate criteria established for the position.

SECTION 6C

The servicing HRC will determine which applicants meet the established minimum qualifications for the position at each announced grade.

SECTION 7A

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 as 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.

SECTION 7B

An employee who applies for a position and is not found eligible will be notified after the establishment of a roster or a BQ list if the employee supplied an email address during the application process.

SECTION 7C

Candidates using the automated staffing system will be evaluated 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 8A

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.

SECTION 8B

All candidates for promotion will be rated and ranked consistent with law, rule, regulation and this agreement.

SECTION 8C

Performance appraisals of record may be used as a supporting document to demonstrate ability to perform the KSAs.

SECTION 8D

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 7.A. Scores may also be adjusted on the basis of information arising from an interview with the applicant. A complete record of any adjustments made on the basis of an interview, 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 database, a copy of which is available for the affected employee's review.

SECTION 8E

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.

SECTION 8F

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 9A1

Selection Process

Priority Consideration. Candidates will be referred to the selecting official as described below:

> If an employee was erroneously omitted from the "best-qualified" list or otherwise was not given proper consideration, he/she will receive one priority consideration for the next appropriate vacancy. 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 the employee is not required to compete with other employees for promotion; her/his 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. An employee who received priority consideration and is not selected will be given, upon request, a written explanation of why he/she was not selected for the position.

SECTION 9A2

CTAP/ICTAP Procedures

If the position remains open after any priority consideration candidates are referred and considered, the HRC will issue the certificate of eligibles and follow the procedures in this Article. After all required steps have been taken, the HRC will identify any applicants who are entitled to placement under the HHS Career Transition Assistance Plan (CTAP) or the Interagency Career Transition Assistance Plan (ICTAP). If any such applicant exists, the HRC will determine if s/he is "well-qualified" as defined in 5 C.F.R. § 330.604(k). Any "well-qualified" CTAP or ICTAP applicant will be selected for and offered the position before any other best-qualified candidates are referred to the selecting official. For purposes of this Article, a CTAP/ICTAP-eligible employee will be considered "well-qualified" if s/he attains a score at or above the cut-off for placement on the best-qualified list.

SECTION 9A3a

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, as follows:

Based upon the results of the evaluation of the candidates by the QRP or HRC, the top five (5) bargaining unit candidates will be submitted to the selecting official. The list of bargaining unit employees will be before the selecting official for at least two (2) workdays prior to forwarding any non-unit applicants.

SECTION 9A3b

The full best-qualified list will be referred to the selecting official with applicants' names listed in alphabetical order.

SECTION 9A3c

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.

SECTION 9A3d

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.

SECTION 9A3e

When any bargaining unit candidate identified on the "best qualified" list is given the opportunity to be interview by the selecting official, then all "best qualified" candidates identified on that list who are members of the bargaining unit will have an opportunity to be interviewed.

SECTION 9B

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. This does not preclude the consideration of existing abuse of leave and its effect on the employee's ability to perform the requirements of the position.

SECTION 9C

The selecting official will make the decision to select or not to select as soon as possible.

SECTION 9D

Alternate or additional selections may be made from a properly-issued best-qualified list within ninety (90) days from the issue date of the promotion certificate 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 crediting plan criteria.

SECTION 10

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 11A

To the maximum extent possible, applicants applying for bargaining unit positions through the automated staffing system will be notified via email of the results of their application after a selection is made.

SECTION 11B

Unsuccessful applicants may consult and/or obtain advice from, their servicing HRC specialists concerning specific qualifications needed for desired positions and/or a first-line supervisor concerning ways to enhance one's qualifications for positions under his/her supervision. This does not bar the use of the HHS Work Life Center where available to employees.

SECTION 11C

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 an employee is promoted to a position in the bargaining unit and subsequently, within a year, is demoted for inability to perform at the higher level, the Employer agrees to make reasonable efforts to return the employee to a position equivalent to the one he/she held before the promotion occurred, whenever practical.

SECTION 12

The Employer will maintain required records in merit promotion files for at least two (2) years.

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.

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.

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 13

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 14

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:

- an employee's performance demonstrates the potential or ability, as determined by the supervisor, to perform the duties at the next higher grade level;
- The current performance appraisal rating is at the "fully successful" level or higher.
- The employee meets minimum time in grade and qualification requirements;

- there is available work of the higher grade level; and

- 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 an employee is placed in a lower graded position as a result of a reclassification, the employee is entitled to grade retention if the position from which he or she is 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 a result of re-classification when the employee does not meet the eligibility requirements for grade retention.

2. An employee's entitlement to pay retention will not terminate if he/she does not apply for a vacancy announcement. However, in accordance with 5 CFR 536.308, if the employee declines a reasonable offer of a position, he/she will lose pay retention entitlement. The requirement for the automatic rating and ranking of retained-pay employees extends for one (1) year.

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 his or her 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 employee will receive a copy of the termination SF-50, Notification of Personnel Action form, if he/she provides a valid forwarding address.

C. If the probationary employee believes that her or his termination is based on discrimination, the employee may pursue established Equal Employment Opportunity (EEO) complaint procedures.

ARTICLE 38

EMPLOYEES WITH TEMPORARY DISABLING 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 his/her 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 EMPLOYMENT

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 EMPLOYMENT 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 provided in subsection 4B below.

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 maybe 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

An employee may make a written request to work part-time. When an employee requests to work part-time, s/he will submit a written certification to the supervisor indicating that:

- the request is voluntary;

- the employee understands that s/he has no right to return to full-time work;
- and s/he has investigated and understands 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 provided in the Federal Employees Part-Time Career Employment Act of 1978 (PTCA), and subsection 3E below:

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. Subsection 6A 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

A part-time employee will receive holiday pay only if s/he is 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

An employee who accepts a part-time position or schedule has no automatic right to change to full-time work, whether or not s/he 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 his/her seniority, after which time s/he reverts 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 an employee uses his or her seniority to claim a training assignment, s/he 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 his or her current job or a job he or she 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. An employee who is unable to attend training for which he/she has been authorized will inform his/her supervisor or applicable training coordinator 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, 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. 1 (a) 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:

(i) 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 (b) the travel:

(i) involves the performance of work while traveling,

(ii) is incident to travel that involves the performance of work while traveling,

(iii) is carried out under arduous conditions,

(iv) results from an event which could not be scheduled or controlled administratively, including travel by an employee to such an event and the return of such employee from such event to her or his 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 an employee to alter his/her normal duty hours on the preceding workday in order to take advantage of common carrier departures, which would otherwise re- quire 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 his/her 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-work days will be reimbursed for travel expenses not to exceed the amount reimbursable had employees remained at the temporary duty station. The employee will notify his or her supervisor if s/he returns 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 effective- ness 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:

1. Foreign inspections will be fairly and equitably assigned to units and among qualified employees.

2. 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.

3. 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.

4. 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.

5. 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.

6. 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.

7. Contingent upon management approval, assigned employees may switch their scheduled foreign inspection assignment with an appropriately qualified counterpart within their unit.

8. 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.

9. 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.

10. 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.

11. Employees must complete the FDA/ORA International Inspections on-line web course or other available training prior to performing their first foreign inspection.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. Cell phones, blackberries with cell phone capability, or calling cards will be available for at least one member of an inspection team.

18. The FDA will support and promote the foreign inspectional program as a viable mechanism for meeting the Agency's obligations through incentives such as:

    a. 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.

b. 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.

c. 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:

i. limited to actual expenses, not to exceed $5.00 times the number of consecutive nights of travel on official business;

ii. applicable only when the employee is authorized to be on travel for one or more consecutive nights; and

iii. 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.

G. 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 his/her 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. An employee will be given ten (10) calendar days from the date s/he receives 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 his/her designee.

D. The employee will have the right to be represented in the preparation and presentation of his/ her reply. If the employee elects to have a representative, s/he must inform the deciding official, in writing, of the representative's name. The employee and his/her 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 her/his 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 requests 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 s/he is 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, s/he 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 his/her 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 he/she is no longer a threat to safety, the

Agency mission, or to Government property;

2. Placing the employee on leave with his/her consent;

3. Carrying the employee on appropriate leave (annual, sick, leave without pay, or absence without leave) if he or she 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 he/she 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 his/her designee.

C. The employee and his/her 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 his/her 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 his/her 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 s/he 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 he/she is 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, s/he may elect to challenge the action in only *one* of the following ways:

1. Through the negotiated grievance procedures of this Agreement;

2. A formal complaint of discrimination filed under the administrative EEO process; or

3. 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

A. The purpose of this Article is to provide a mutually acceptable and orderly method for the prompt and equitable resolution of grievances filed by employees or the Parties. The procedures outlined herein constitute the exclusive administrative procedure

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 his/her 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

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 the Agreement; or

b. Any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.

B. At the election of either party, 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.

SECTION 3

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;

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. Complaints concerning veteran's preference;

7. Separation or termination of an employee serving a probationary or trial period; return of an employee serving a supervisory or managerial probation to a non-supervisory or non-managerial position; termination of an employee during a trial period; the termination of an employee (including staff fellows or visiting scientists) serving on a temporary or time limited appointment; the termination of an employee in the Student Educational Employment Program, including STEP and SCEP; or temporary employees and/or employees serving a probationary or trial period. However, if any of the actions mentioned in this paragraph are alleged to have been taken for discriminatory reasons prohibited by statute, those issues may be grieved pursuant to Section 4B of this Article;

8. 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;

9. 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;

10. Ratings on individual performance elements and performance measures However, ratings on individual performance elements and/or performance measures are subject to review through the grievance procedure when an employee grieves a final rating of record pursuant to Article 30 (Performance Assessment);

11. Progress reviews, a counseling session or the issuance of a performance improvement plan (PIP)

12. All other matters made non-grievable by any provision of this Agreement;

13. Any claimed violation of Subchapter III of Chapter 73 of Title 5 (relating to prohibited political activities);

14. Order to divest;

15. Non-selection from among a group of properly ranked and certified

candidates; 16. Any specific matter raised in an on-going unfair labor

practice charge; or

17. An action terminating a temporary promotion.

SECTION 4

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, 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. An employee shall be deemed to have exercised his/her 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, 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

A. Employees must use the grievance procedures set forth in this Article for filing and processing grievances concerning issues relating to this Agreement.

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 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 nullified and not capable of being processed further. 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

F. Grievances may be initiated by an employee, by the Union for itself, or on behalf of an

employee, 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 is raised, the grievance will continue to be processed. The issue of timeliness 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 is not valid, the grievant or the Union may, within five (5) workdays, revise the grievance to attempt to cure the problem. 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 Section 5G.

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

A grievance shall be submitted in writing (electronic transmission is sufficient) shall include the following:

- Date submitted;
- Identification of the employee(s) covered by the grievance, and the union representative if any;
- Work organization and location of the employee(s) covered by the grievance;
- Sufficient detail to identify the basis of the grievance, including reference to the Article(s) and Section(s) of the Agreement, and general reference to any practice, law, rule or regulation alleged to be violated, misinterpreted or misapplied;
- The date, if known, when the issue or incident out of which the grievance arose occurred;
- The date when the grievant(s) became aware of the matter, issue or incident giving rise to the grievance occurred;
- The management official(s) if known, responsible for the issue or action; and
- The specific personal relief sought by the employee(s) and the Union, or by the

Employer.

Grievances that do not include the information required by this section shall be treated in accordance with Section 5H of this Article.

If the Union is filing a grievance on behalf of an employee by e-mail, the Union's e-mail message must clearly state that the Union is filing the grievance on behalf of the employee or employees concerned.

If the grievance is first transmitted via email, the effective date of the filing shall be the date the Union transmitted the electronic copy.

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

SECTION 7

1. Step 1 of the Grievance Process:

   A grievance must be submitted in writing to the immediate supervisor within thirty (30) calendar days after the matter, issue or incident out of which the grievance arose, or thirty (30) calendar days after the date the aggrieved became aware or should have become aware of the matter, issue or incident giving rise to the grievance. Either party may request, within ten (10) workdays of the submission of the grievance, that a grievance meeting be held. If requested, a meeting will be held within ten (10) workdays of the request. The Employer will provide a written response within ten (10) workdays of the meeting, or, if no meeting was requested, within ten (10) workdays of the filing of the grievance.

   Any grievance not submitted in writing within the time period will not be considered timely unless the Parties mutually agree in writing to waive the time limits. Issues not raised at Step I of the grievance may not be raised by either party at any subsequent stage or in arbitration unless mutually agreed in writing by the parties, unless the issues were not known at the time of Step 1.

2. Within ten (10) workdays of receiving the decision, the aggrieved may appeal the decision to the Step 2 Deciding Official, who must be at least one level of management higher than the Step I Deciding Official. Either party may request, within ten (10) workdays of the appeal to Step 2, that a grievance meeting be held. If requested, a meeting will be held within ten (10) workdays of the request. The Step 2 Deciding Official will provide a written response within ten (10) workdays of the meeting; or, if no meeting was requested, within ten (10) workdays of the appeal to Step 2.

3. If the grievant is dissatisfied with the decision of the Step 2 Deciding Official, the grievant may appeal to the Step 3 Deciding Official designated by the Employer within ten (10) workdays of receipt of the Step 2 decision. The Step 3 Deciding Official must be at least

one level of management higher than the Step 2 Deciding Official.

Either party may request, within ten (10) workdays of the appeal to Step 3, that a grievance meeting be held. If requested, a meeting will be held within ten (10) workdays of receipt of the request. The Step 3 Deciding Official will provide a written response within twenty (20) workdays of the meeting, or, if no meeting was held, within twenty (20) workdays of the appeal to Step 3. This will be the final grievance decision, subject to arbitration at the election of the Union Arbitration must be invoked within thirty (30) 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.

SECTION 8

A. Employer Grievances

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 ten (10) workdays of the submission of the grievance, that a grievance meeting be held. If requested, a meeting will be held within ten (10) workdays 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 twenty (20) workdays of the meeting, or if no meeting was requested, within twenty (20) workdays 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 (21) calendar days of receipt of the Union's decision Failure on the part of the Union to issue a decision within twenty (20) workdays will be deemed a denial of the grievance, and the Employer may invoke no later than forty five (45) calendar days from the date on which the Union's decision was due.

C. Institutional Grievances

Grievances against the Employer concerning the Union's institutional rights, not presented by or on behalf of an employee or group of employees, will be filed with the designated management official within thirty (30) calendar days of the time the Union became aware, or should have become aware, of the matter grieved. The designated management official will submit each such grievance to the proper official with authority to resolve the grievance, who shall not be the official responsible for the matter grieved and provide the union with his/her name. Either party may request, within ten (10)

workdays of the submission of the grievance, that a grievance meeting be held. If requested, a meeting will be held within fourteen (14) calendar days at the local office of the Employer. The Union may have the same number of representatives from the bargaining unit present on official time as management representatives. The Employer will provide a written decision within twenty (20) workdays of the meeting, or, if no meeting was requested, within twenty (20) workdays of the submission of the grievance. This will be a final grievance decision, subject to arbitration at the election of the Union.

D. National Grievances
The Union may file a national grievance over issues affecting bargaining unit employees covered by this Agreement from more than one chapter by filing the grievance with the designated management official within thirty (30) calendar days of the time the Union became aware, or should have become aware, of the matter grieved. The management official will submit it to the proper official with authority to resolve the grievance, who shall not be the official responsible for the matter grieved, and provide the Union with the name of that official. Either party may request, within ten (10) workdays of the submission of the grievance, that a grievance meeting be held. If requested, a meeting will be held within fourteen (14) calendar days at headquarters offices of the Employer The Union shall have the right to have two (2) bargaining unit employees participate and attend any such meeting on official time. The Employer will provide a written decision within twenty (20) workdays of the meeting, or, if no meeting was held, within twenty (20) workdays of the submission of the grievance. This will be a final grievance decision, subject to arbitration at the election of the Union. The Union must invoke arbitration within thirty (30) calendar days of receipt of the Employer's decision. If the Employer fails to issue a decision within the required time limits, the Union may, at its option, treat this as a denial of the grievance at that step, at which point the Union may elect to appeal to arbitration.

SECTION 9

A. 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 Union will make a concerted effort to ensure that initial information requests are submitted within ten (10) days from the filing of the grievance.

B. Pursuant to 5 USC 7114(b)(4), the requesting party shall include the reasons that the information is necessary.

C. If the Employer has not provided the information before the scheduled grievance meeting and the Employer has not otherwise denied the request, the Union has the option of postponing the meeting until the information is provided, or until the Employer denies the request, without waiving any timeframes, or proceeding despite failure to provide the information.

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 10

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 and aspects of settlement discussions will not be used as evidence or referred to if the grievance is not resolved by this process.

SECTION 11

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

A. Any unresolved grievances processed under Article 45, Grievance Procedures, may be appealed to binding arbitration upon written notification by the Union or by the Employer, as appropriate, unless otherwise provided in this Agreement. Arbitration must be invoked within thirty (30) calendar days after of the receipt of the final decision in the grievance procedure by the designated NTEU representative. If no final decision is issued, the 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 designated management official, if filed by the Union, or on the National President of the NTEU, if filed by the Employer. Invocation notices may be transmitted via email, facsimile, hand delivery, first class mail, or by any other commercial delivery. Arbitration is deemed to be invoked upon email or fax transmittal, hand delivery, or date of postmark, if mailed, to the appropriate party.

SECTION 2

A. The Parties will establish a permanent panel of arbitrators for hearing arbitration appeals filed by the Union or the Employer. There will be two panels - East of the Mississippi and West of the Mississippi. There will be eight (8) arbitrators for the East panel (4 of which must be from the DC area) and six (6) arbitrators on the West panel The selection of arbitrators will be made within thirty (30) calendar days of the effective date of this Agreement. For the East panel, the Parties will request two lists of twelve (12) arbitrators affiliated with the National Academy of Arbitrators and with 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' Eastern Region, and the other shall consist of arbitrators located in the Washington, DC area. For the West panel, the Parties will request two lists of fourteen (14) arbitrators affiliated with the National Academy of Arbitrators and with 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' Western Region.

B. 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 and the arbitrator. Thereafter, no additional cases will be assigned to that arbitrator; however, he/she will hear and decide any case already assigned.

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.

D. Cases will be assigned to the designated arbitrators on a rotating basis; to be determined by the date arbitration is invoked.

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. 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 unilateral authority to schedule the hearing.

SECTION 4

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 national grievances, the hearing will be held alternately on 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.

SECTION 5

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 participate in the arbitration proceeding without loss of pay.

SECTION 6

A verbatim transcript of the arbitration shall be made, (unless mutually waived). The cost of the transcript will be shared equally.

SECTION 7

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

By mutual agreement, the Parties may arrange for a pre-hearing conference, with or without the Arbitrator, to consider possible settlement and/or means to expedite the hearing. For example, they may agree to reduce the issue(s) to writing, stipulate to facts, outline intended offers of proof, authenticate proposed exhibits, or determine the need for a transcript.

SECTION 9

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

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

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. The Parties may mutually agree otherwise, however, in highly complex cases which would involve several days of hearings.

SECTION 12

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

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

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.

The Arbitrator's fees and expenses (including travel and per diem), and the transcript costs, shall be shared equally by the Parties.

SECTION 15

A. The Arbitrator will strive to issue a decision within thirty (30) 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 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 must submit a copy of the decision to the Employer and the Union.

SECTION 16

A. 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 in any arbitration to establish that the rating was proper.

B. In all cases in which an employee challenges a final rating of record in a performance appraisal, the evidentiary standard shall be substantial evidence.

SECTION 17

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.

ARTICLE 47

EXPEDITED ARBITRATION

SECTION 1

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:

- Travel Issues
- Dues withholding
- Denials of annual leave, sick leave or leave without pay, use credit hours
- Denials of requests for official time
- Bulletin board posting and literature distribution
- Merit promotion issues (as long as there are no retroactive implications)
- Any other matters mutually agreed upon by the parties

SECTION 2

Where compensatory damages are claimed in a grievance alleging discrimination or reprisal under EEO laws, this expedited arbitration process may not be used.

SECTION 3

The same panel of arbitrators will be used for expedited arbitration as are selected under standard arbitration. An arbitrator under this article shall be selected based on his/her proximity to the location of where the expedited arbitration will occur. The arbitrator's rotation in the panel will be adjusted accordingly. The parties may mutually agree to the selection of any arbitrator located within the commuting area where the grievance will be heard, regardless of whether the arbitrator is on the panel established by the parties.

SECTION 4

All other procedures as outlined in Article 46, Arbitration, will govern, except as follows:

A. 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.

B. Post hearing briefs shall not be filed.

C. 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.

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. Under current policy, EEO complaints based upon sexual orientation may be pursued through the administrative process within the Department; current law does not permit that basis for discrimination to be pursued outside the employing Federal agency.

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 the employee informs his/her 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 the employee chooses to inform his/her 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 he/she 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 he/she 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. Each employee has a responsibility for his/her 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, an employee may decline to perform assigned tasks in the usual work area when s/he has 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 his/her 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 him/herself available for work under appropriate working conditions in another work area. If these procedures are strictly followed, the employee will continue to be paid as long as s/he remains available to, and does 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 the employee informs his/her 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 employee must first give permission to the Employer to publicize his/her 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 work stations 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

A. 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.

B. 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

A. Employer drug testing will be carried out in accordance with all applicable laws and government-wide rules and regulations.

B. Test results will be protected under the provisions of the Privacy Act of 1974, 5 U.S.C. section 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 an employee requests a change in duty status, assignment, or working conditions, or any other benefit, special treatment, or accommodation based on medical reasons, the employee will submit a request in writing to his/her 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, an employee is entitled to at least seven (7) calendar days' advance written notice that s/he is to take a fitness-for-duty examination or psychiatric examination. In the event that the employee is requested to set up an appointment, s/he 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 the employee an opportunity to provide acceptable supporting documentation from his/her 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 the employee has submitted to the Employer from his/her 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. 1. 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. 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 his/her position. However, if the employee asserts that medical reasons contributed to his/her 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 TRANSPORTATION SUBISIDIES

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.

SECTION 2

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. The Employer will offer a monthly benefit to employees equal to their actual qualifying monthly commuting costs, but not to exceed the maximum amount authorized by applicable laws, Executive Orders and regulations governing public transportation benefits for federal employees. The Employer agrees that it will notify the Union should budgetary issues adversely affect the monthly benefit.

SECTION 3

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:

A. The employee must submit an application form provided by the Employer.

B. 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.

C. The employee certifies that the use of public transportation constitutes a minimum of 80% of their commuting costs.

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.

SECTION 4

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 her/his residence and the official duty station.

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. Other relevant information locally available and applicable.

D. Local telephone numbers of public transportation offices where additional information can be obtained.

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:

1. Provide consultative or professional services, including service as an expert witness;

2. 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);

3. 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 his or her financial holdings, the Employer will provide the employee with written confirmation of its order that he/she divest, 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. The employee may request an expedited review of his/her 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 his/her position, the Employer will make reasonable, good-faith efforts to place him/her in a vacant position available to be filled for which s/he is suitable and qualified, to reassign the employee temporarily, to detail the employee and/or adjust his or her 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 59

PEER REVIEW

The following rules apply to the operation of the various FDA peer review processes:

- By the end of the first week of January and July of each year, the Employer will provide the Union with a list of current Peer Review Programs, including the name of the program, the name of the organization in which the program operates, the date(s) on which persons will be evaluated for peer review, the contact person for each program and the materials to be submitted to be considered for peer review.

- An employee will be given a peer review so long as he or she has the minimum qualifications necessary for promotion to the next grade or category, i.e., an employee may self-nominate for peer review.

- Employees who nominate themselves for Peer Review need only clearly state such in the cover memorandum transmitted with their materials to the Peer Review Committee Chair. No transmittal cover sheets will be distributed other than to the Committee Chair and Executive Secretary. They will not be shared with any other member of the Peer Review Committee.

- The preparation of materials by employees who nominate themselves for peer review will follow the same method of preparation as any other peer review nominee.

- Peer Review Committees shall evaluate all peer review nominations in the same manner.

- An employee will be allowed to nominate three (3) persons for membership on the committee and the Employer will generally select, absent just case, one (1) of the three (3) nominees for the committee to serve as Principal Reviewer for the employee's case and as a regular member of the committee for evaluating the other cases before the committee, so long as they are qualified.

- A record will be kept of the proceedings that will contain among other things a list of the factors considered, the determinations as to each factor, and an analysis of the employee level of work measured against the standard and the final decision. For example, if an employee's level of independence did not meet the grade level criteria, an explanation will be provided. Furthermore, no records in the case file will be destroyed after the meeting. Personal notes of the committee members are excluded from this provision.

- The employee may submit any materials within reason and they will be included in the file that is put before the review committee. However, in order for the review to go forward, the employee must submit the documents minimally required for a review by the Agency.

- Employees will be given an opportunity to appear before a peer review committee to make summary statements generally not longer than thirty (30) minutes and answer any questions.

- An employee will be promoted in a timely manner upon successful completion of the review process, normally at the end of the next full pay period.

- Unsuccessful candidates may ask for an explanation in writing as to why their candidacy was unsuccessful and specific ways to improve their chances in the future. The Peer Review Committee will provide a detailed response to such inquiries normally within twenty (20) workdays of receiving the request.

ARTICLE 65

LABOR-MANAGEMENT RELATIONS COMMITTEES

1. All current Labor-Management Relations Committees, Cooperation Councils, or similar committees/groups established prior to this Agreement will continue to operate under existing procedures.

2. The following will continue to be used as guiding principles and objectives in achieving this cooperative relationship:

    - Building strong relationships nationally and locally between the key leaders of each party;

    - Exchanging information;

    - 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;

    - Attempting to resolve problems informally in an effort to avoid protracted and costly negotiations or grievances.

3. By mutual agreement, the parties may establish additional LMRCs and Cooperation Councils.

ARTICLE 66

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 67

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.

- Employees, supervisors, management officials, and union representatives will treat each other and members of the public with courtesy, dignity and respect.

- 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.

- 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.

- 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.

- 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.

- At no time will the act of an employee making a complaint or exercising his/her 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 68

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 re currently two programs offered, one for CDC employees and on 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
- Send an email to aengelstad@psc.gov.

APPENDIX 1 – 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

APPENDIX 1 – 5-3

Food and Drug Administration
Office of Internal Affairs

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 FDA and the duties you perform for FDA. 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 my 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

_____.

_____ _____
Signature of Employee Date

_____
Printed Name of Employee

_____ _____
Witness Signature Date

_____
Printed Name of Witness

_____ _____
Witness Signature Date

_____
Printed Name of Witness

APPENDIX 1 – 5-4

U.S. FOOD AND DRUG ADMINISTRATION
Office of Internal Affairs

WARNING AND WAIVER OF RIGHTS FORM

You must understand your rights before we ask you any questions.

1. You have the right to remain silent.

2. Any you say can be used against you in court.

3. You have the right to consult with an attorney and to have him/her present during questioning.

4. If you cannot afford an attorney, one will be appointed to represent you prior to any questioning.

I have read this statement of my rights and it has been read to me, and I understand what my rights are.

Date _____ _____
Signature

Time _____

Waiver

I do not want an attorney at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or force of any kind has been used against me. I hereby voluntarily and intentionally waive my right to remain silent and my right to have an attorney at this time. I am willing to make a statement and answer questions.

_____ _____
Date/Time Signature

_____ _____
Witness Witness

DHHS, OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

WARNING AND WAIVER FORM

YOU MUST UNDERSTAND YOUR RIGHTS BEFORE YOU ARE ASKED ANY QUESTIONS OR BEFORE YOU MAKE ANY STATEMENTS.

WARNING

YOU HAVE A RIGHT TO REMAIN SILENT.

ANYTHING YOU SAY CAN BE USED AGAINST YOU IN COURT.

YOU HAVE A RIGHT TO TALK TO A LAWYER FOR ADVICE BEFORE YOU ARE ASKED ANY QUESTIONS AND TO HAVE A LAWYER WITH YOU DURING QUESTIONING.

IF YOU CANNOT AFFORD A LAWYER, ONE WILL BE APPOINTED FOR YOU BEFORE ANY QUESTIONING IF YOU WISH.

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 TALK TO A LAWYER.

WAIVER

I have read this statement of my rights and/or it has been read to me and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

Date	Time	Signature of Interviewee

I certify that I explained the above statement of rights to _____ and that the waiver was voluntarily executed.

Date	Time	Signature of Special Agent

Signature of Witness

Form OI-5 (Dec/2002)

APPENDIX 1 – 5-6

Food and Drug Administration
Office of Internal Affairs
STATEMENT OF RIGHTS AND OBLIGATIONS
(KALKINES RIGHTS)

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 FDA and the duties you perform for FDA. 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. However, neither your answers nor any information or evidence which is gained as a result of such answers can be used against you in any criminal proceedings, except that you may be subject to a criminal prosecution for any false answer that you may give. You may be subject to discharge if you refuse to answer or fail to respond truthfully to any relevant questions*.

Receipt by Employee

I have been given the above statement of rights and obligations at the beginning of the interview held on _____.

_____	_____
Signature of Employee	Date
_____	_____
Witness Signature	Date
_____	_____
Witness Signature	Date

APPENDIX 1 – 5-7

5 U.S.C. § 2301 (b) Merit system Principles:

(a) This section shall apply to—

(1) an Executive agency; and

(2) 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.

5 U.S.C. § 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

220

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) 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) 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) a 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; or

(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) a 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;

(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;
(B) testifying for or otherwise lawfully assisting any individual in the exercise of any right referred to in subparagraph (A);
(C) cooperating with or disclosing information to the Inspector General of an agency, or the Special Counsel, in accordance with applicable provisions of law; or
(D) for [11] refusing to obey an order that would require the individual to violate a law;

(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; or

(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.

This subsection shall not be construed to authorize the withholding of information from the Congress or the taking of any personnel action against an employee who discloses information to the Congress.

APPENDIX 2

NTEU HHS Official Time Form

Attachment__

NTEU/DHHS OFFICIAL TIME FORM **OFFICIAL TIME SPENT ON UNION ACTIVITIES**

Name of Union Representative NTEU Chapter # OPDIV/Organization Name of Supervisor

*Nature of Business: [See category description on reverse side]

Date	Estimated Time From: am/pm	Estimated Time To: am/pm	Total Estimated Time	Actual Time From: am/pm	Actual Time To: am/pm	Total Time Actual Used	Activity (A,B or C) (identify all that apply)	Location(s) of Meeting(s) Manager(s) meeting with

Union Representative's Signature:_____ Date:_____

☐ Approved ☐ Disapproved Supervisor's Signature:_____ Date:_____

Reason(s) for Disapproval: _____

_____

Distribution: Original to Labor Relations Officer
Copy kept by Supervisor & Union Representative

Representational Function of Official Time (Activity):
Nature of Business:

A.	**Negotiations:** **Includes time used by union representative for, or in preparation for:** • All negotiations with the Employer occurring during the term of the CBA (including briefings). • To prepare for, if necessary, and travel to any of the activities listed above.
B.	**Dispute Resolution:** • Any statutory appeal proceeding or other forum in which the Union is representing an employee or the Union pursuant to its obligations under relevant contract provisions, regulations or law; • 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); • meetings to discuss or present unfair labor practices charges or unit clarification petitions; • meetings to present appeals in connection with statutory or regulatory appeal procedures in which the Union is designated as the representative; • oral reply meetings if the Union is representing the employee; • any meeting for the purpose of presenting reconsideration replies in connection with the denial of within-grade increases; • 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; • grievance meetings and arbitration hearings; • EEO complaint settlements, administrative and/or court hearings if a complaint is processed under the negotiated procedure; • Discussions of possible grievances with an employee; • Conferring with affected employees about matters for which remedial is available under the terms of this Agreement; • To prepare for, if necessary, and travel to any of the activities listed above.
C.	**General Labor-Management Relationship** • Attendance at an examination of an employee who reasonably believes he or she 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); • meetings or committees on which the Union representatives are authorized membership pursuant to this Agreement; • attendance and participation at any new employee orientation session outlined in Article 13; • to attend OSHA meetings consistent with regulation; • to conduct training or activities on labor relations issues for employees not to exceed four (4) hours quarterly (non-cumulative); • to conduct training for employees as outlined in Article 13; • to meet with members of Congress and their staffs on matters relating to bargaining unit conditions of employment; • attendance at Employer-recognized activities to which the Union has been invited; • to participate in jointly sponsored training primarily to further the interest of the government by improving labor-management relationships; • Informal consultations between the Employer and the Union; • Preparation of reports, forms, and documents required by law or regulation concerning the proper operation and administration of a labor organization; and • To prepare for, if necessary, and travel to any of the activities listed above.

APPENDIX 3

Alternate Work Schedule Application Form

ALTERNATIVE WORK SCHEDULE (AWS) APPLICATION

(See program criteria on reverse side detailed in Article 25, Section 4)

NAME (please print): _____

I REQUEST FOR THE FOLLOWING WORK SCHEDULE **(Please check one)**:

❑ **FLEXITOUR** (Pursuant to Article 25 § 5A) Once selected arrival and departure times are fixed (8 hours a day, 40 hours a week, and 80 hours biweekly).

ARRIVAL TIME: _____ a.m. DEPARTURE TIME: _____ p.m.

❑ **FLEXITIME** (Pursuant to Article 25 § 5B) This schedule allows employees to vary their daily arrival and departure times within the established flexible bands. The basic work week requirement is eight hours per day, forty hours per week, and eighty hours in a biweekly pay period.

❑ **MAXIFLEX SCHEDULE** (Pursuant to Article 25 § 5C) This schedule allows employees to earn credit hours and to vary their daily arrival times within the established flexible bands. A Maxiflex schedule may contain core hours on fewer than 10 workdays in the biweekly period. 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 limits established for the organization. Employees specify, with supervisory approval, which day(s) they will work and the number of hours per workday.

1) Employees on Maxiflex will count all Federal holidays as eight (8) hours towards the 80-hour pay period.
2) 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, employee will be allowed to schedule the holiday as an eight (8) hour day.
3) 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.

❑ **COMPRESSED WORK SCHEDULES (CWS)** (check one of the following compressed work schedules). Once selected arrival and departure time is fixed.

❑ **5-4/9 Plan** DAY OFF: _____ WEEK 1 ___ WEEK 2____

9 HOUR DAY ARRIVAL TIME: a.m.
8 HOUR DAY: _____: WEEK 1____ WEEK 2 ____
8 HOUR DAY ARRIVAL TIME: _____ a.m.

❑ **4-10 Plan** DAY OFF: _____ IN WEEK 1
DAY OFF: _____ IN WEEK 2

10 HOUR DAY ARRIVAL TIME: _____ a.m.

See **Article 25** – AWS/Hours of Work – DHHS – NTEU CBA Mid-Term Supplement for more details.

I have read and understand the provisions of Article 25 of the Collective Bargaining Agreement between HHS and NTEU.

Employee Signature: _____ Date: _____

Approved Disapprove I Effective date: _____

Approved with condition(s)/modification(s) _____

Approving Official signature: _____

Reason(s) for disapproval: _____

The following language duplicates Article 25, Section 4:

Program Criteria

HHS OpDivs

Work days: Monday-Friday

Flexible bands:	6AM - 930AM (arrival band) Monday - Friday 3PM – 7 PM (departure band) Monday-Thursday 230PM – 7PM (departure band) Friday
Flexible band for	
Credit hours only:	5 AM – 9 PM Monday - Sunday
Lunch band:	11AM – 2PM
Core hours:	930AM – 3PM (Monday – Thursday) 930AM – 230PM (Friday)
Credit hours:	3 per day; 8 on Saturdays and Sundays

FDA

Work days:	Monday-Saturday
Flexible bands:	5AM - 10AM (arrival band) Tuesday - Thursday 3PM – 9 PM (departure band) Tuesday-Thursday 5AM – 1030AM (arrival band) Monday, Friday, Saturday 230PM – 9PM (departure band) Monday, Friday, Saturday
Flexible Band for:	
Credit hours only:	5AM – 9PM Monday – Sunday
Lunch band:	11AM – 2PM
Core hours:	10AM – 3PM (Tuesday – Thursday) 1030AM – 230PM (Monday, Friday, Saturday)
Credit hours:	8 per day

APPENDIX 3.1

Telework Enhancement Act 2010

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,

SECTION 1. SHORT TITLE.

Telework Enhancement Act of 2010.
5 USC 101 note.

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.

Deadline.

"(f) POLICY GUIDANCE ON PURCHASING COMPUTER SYSTEMS.—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—

"(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 3.2

Article 26 Telework Form

U.S. Department of Health and Human Services

Telework Agreement

This Telework Agreement between _____(Supervisor/OPDIV) and _____ (Employee) describes the terms and conditions of participation in the Telework Program. Employee participation is voluntary, and employee will adhere to the applicable guidelines and policies.

- ☐ Employee has successfully completed telework training or is exempted by the head of the agency, as provided in the Telework Enhancement Act of 2010 (the Act).
- ☐ Employee has completed annual information technology security training and privacy awareness training, administered at the agency level, and understands his/her responsibilities in safeguarding work-related information.
- ☐ Employee has a valid virtual private network (VPN) account.

The employee's government-furnished workstation ID (e.g., HHS123456) is:

HHS _ _ _ _ _ _

Type of Telework Arrangement Approved (check all that apply)

- ☐ Regular, recurring telework*
- ☐ Situational/ad-hoc/episodic telework**
- ☐ Medical arrangement to accommodate an employee with a temporary or permanent illness or disability

*Participation in Regular telework also includes an employee's compliance with Episodic telework requirements for emergencies.

**Episodic telework: Approval enables the employee to participate in the Telework Program on a situational, occasional, or ad-hoc basis. However, the employee must obtain advance supervisory approval for each episodic telework situation. Episodic telework includes the requirement for employees to telework in emergencies.

Alternate Duty Station and Availability

The Employee's Alternate Duty Station (ADS) is located at:

_____.

- ☐ ADS is a residence.

- For employees who are on 100% telework, outside of the geographic location of their official duty station (ODS), the employee's ADS will serve as their ODS.

The employee can be contacted at the ADS work site by:

- ☐ Phone at _____
- ☐ Alternate phone (cell, SmartPhone, Blackberry etc.): _____
- ☐ Fax number:_____

- On ADS workdays, employee must be as accessible via telephone and email and be available to managers, co-workers and customers during their scheduled tour of duty as when working at the conventional work site. 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 the employee. *Telework Enhancement Act Sec. 6502(B)(3).* Performance standards for teleworking employees are the same as performance standards for non-teleworking employees.

Schedule

Employee is approved to report to the official duty station i.e. conventional work site (ODS) and alternate duty station (ADS) on the days shown on chart below.

Pay Period Week 1	ODS	ADS	AWS Day Off	Pay Period Week 2	ODS	ADS	AWS Day Off
Monday				Monday			
Tuesday				Tuesday			
Wednesday				Wednesday			
Thursday				Thursday			
Friday				Friday			

- On ADS workdays, if the employee is on a flexible work schedule, employee is required to notify supervisor of start time of her/his workday prior to the beginning of the tour of duty.
- Teleworking employees are required to report to the official duty station according to the schedule determined by the Employer. In addition, the Employer reserves the right to require more frequent days at the conventional work site for situations deemed appropriate by the supervisor either planned or unplanned, due to special circumstances, including but not limited to, office assignments, meetings, absence of other employees, emergency situations, or training classes. The Employer will make reasonable efforts to provide alternative methods (e.g., teleconferencing, etc.), to avoid unplanned situations requiring the employee to report to the conventional work site.
- Time and attendance procedures are the same at the ADS as at the conventional work site. Requests to use leave, compensatory time or credit hours must be made in accordance with established office procedures, Department policies, and collective bargaining agreements, including obtaining supervisory approval prior to using leave or credit hours.
- Any request to earn credit time must be approved in advance, in accordance with established office procedures, Department policies, and collective bargaining agreements. Any overtime or compensatory time must be ordered and approved by the Employer in advance. The Department will not compensate unapproved overtime work.

- The employee agrees not to engage in non-work activities while in official duty status at the ADS. This includes such activities as child care, elder care, and the conduct of other personal or family business.
- The Standards of Ethical Conduct for Employees of the Executive Branch, supplemental Department standards (5 CFR Part 5501), and applicable agency standards (e.g. FDA, NIH) continue to apply to employees at the ADS.
- Employees who participate in the Telework Program may be required to share office space, including "hoteling" or desk sharing, with their co-workers at the official duty station.

Expectations for Emergency Telework

Employees are *telework-ready* when they have a current written telework agreement in place. Telework-ready employees will be required to perform unscheduled telework during emergencies (e.g., closures due to inclement weather, power outages, water main breaks, etc.). These telework requirements apply to all telework-ready employees; they are not limited to employees scheduled to telework on the day of the emergency. They also apply to all telework-ready employees regardless if they are on a regular or episodic telework arrangement. Supervisors may approve exceptions on a case-by-case basis in unusual circumstances or for personal hardships.

Equipment and other expenses

- The employee agrees to ensure the protection of all Government-Furnished Equipment (e.g., laptop computer, software, Blackberry, etc.) from theft, damage, and/or inappropriate use. The employee must notify the Employer of any theft or damage to Government-furnished equipment and malfunctions of such equipment. The Employer is responsible for the routine maintenance and repair of all Government-furnished computer hardware and software used at the ADS. The Employer is not obligated to repair or replace privately-owned equipment that is lost or damaged.
- If the teleworker prefers to use personal computer equipment for official Government purposes while at the ADS, prior approval from the Employer must be obtained and the equipment must meet all Employer requirements and specifications. The teleworker is responsible for installing, servicing, and maintaining personal computer equipment and for checking for viruses on any software added or data files imported.
- The Employer is not responsible for any operating costs that are associated with the use of an employee's residence as an approved ADS worksite (e.g., home maintenance, insurance, utilities, etc.)

Information Security

- The employee agrees to adhere to all Federal, Department and Agency requirements for assuring this his/her systems and information are safe and secure from unauthorized access that might lead to the alteration, damage, or destruction of automated resources and data, unintended release of data, and/or denial of service. This includes ensuring that any equipment

and software used to remotely access the Employer's network are configured to the Employer's standards.

- 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.
- The employee agrees to ensure the secure storage of files, removal and non-recovery of temporary files created, and appropriate destruction of extraneous material printed when remotely accessing the Employer's or Department non-public network.
- The employee will safeguard sensitive, Privacy Act or proprietary information that is accessed from the ADS. Sensitive, Privacy Act or proprietary information includes, but is not limited to, individually identifiable information such as names, addresses, social security numbers, health insurance claim numbers of Agency beneficiaries, medical or other personal Agency beneficiary or patient information, personnel information, and individually identifiable financial information.
- The employee will apply approved safeguards to protect Government/Employer records and information from unauthorized disclosure or damage and will comply with all statutory requirements for records protection.
- Employees must protect all government records and data against unauthorized disclosure, access, mutilation, obliteration and destruction.

Safety

- The employee agrees to provide a work area adequate for the performance of official duties, which includes adequate and safe provision of electricity, internet and phone connectivity, lighting, security for government documents and data. This includes, but is not limited to, assuring that the home's internet and electrical system is adequate for the use of Government-furnished equipment, safeguarding Government-owned equipment from children and pets, and providing smoke detectors.
- Employee should immediately report and manager should immediately investigate any reports of accidents or injuries on the job.
- For employees whose residence is the approved ADS, the employee is responsible for ensuring that all applicable building and safety codes are met. As part of this telework agreement, the employee has completed a Self-Certification Safety Checklist certifying to the safety and adequacy of his/her residence as an approved ADS worksite.
- The Employer has the right to inspect the ADS, including a residence, at any time to ensure its suitability: The Employer will provide not less than one (1) workday's notice in advance of the inspection and the Union shall have a right to be present. The employee agrees to permit the Employer to conduct periodic home inspections of the employee's residence as an approved ADS worksite during the employee's normal working hours to ensure proper maintenance of Government-owned equipment, worksite conformance with safety standards and other specifications within this agreement and the collective bargaining agreement between HHS and the Union.

- The Employer is not liable for damages to an employee's personal or real property during the course of performance of official duties or while using Government-owned equipment at the employee's approved ADS, except to the extent the Employer is held liable for claims arising under the Federal Tort Claims Act or Military Personnel and Civilian Employees Claims Act.

Termination/Modification

Participation in the Telework program can be suspended or terminated, as appropriate, for failure to comply with or meet the provisions of this Agreement, or for other good and sufficient reasons, such as:

- Failure to meet and maintain the eligibility requirements,
- Failure to accurately and truthfully report time worked,
- Organizational exigencies that impact on the mission of the Employer, and require the employee to perform work at the official duty station,
- Misconduct in connection with the employee's obligations under the telework program.

Temporary suspension or modification

The supervisor will notify the employee at least seven (7) days in advance of temporarily suspending or modifying an employee's telework agreement/plan.

Cancelled or terminated

If a telework agreement is cancelled or terminated, within the first sixty (60) days of the employee's return to the conventional workplace the employer will make reasonable efforts to return the employee to the same or comparable work situation the employee 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.

Other Terms and Conditions

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

Signatures

We hereby certify that I have read and understand this Agreement and agree to adhere to all requirements.

_____	_____
Employee Name & Organization	Date
_____	_____
Manager Name & Organization	Date

APPENDIX 4

PMAP Policy

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

Non-SES Performance Management Appraisal Program (PMAP)

Revised August 19, 2013

BACKGROUND

Title 5, United States Code, Chapter 43, requires that each agency establish one or more Performance Management Appraisal Programs (PMAP). The Department of Health and Human Services' (HHS) goal is to design and implement a performance management system which supports individual, team and organizational effectiveness.

The Office of Personnel Management (OPM) approved the Department to transition from a 4-tier to a 5-tier performance management system. This decision was based on information received from performance data and employee feedback from several Department-wide non-Senior Executive Service (SES) PMAP review sessions. The spring 2011 Department-wide employee survey results favoring the implementation of a 5-tier performance system was a key factor used in making the decision to change systems. The new performance management system has the same rating levels as the Department's Senior Executive Service (SES) performance management rating system. By aligning the SES and non-SES performance systems, HHS can clearly cascade performance goals and standards across the organization.

This PMAP is the framework of Department-wide policies and parameters established for planning, monitoring, developing, evaluating, and rewarding individual performance. The resulting performance information will be used in making personnel decisions.

This 5-tier PMAP establishes an effective, efficient performance appraisal process that will enable managers and supervisors to:

- Communicate organizational goals and objectives to employees;
- Link performance requirements to HHS and OPDIV/STAFFDIV[1] strategic planning initiatives;
- Promote individual and/or team accountability for accomplishing organizational goals;
- Effectively address the training needs of each employee;
- Monitor progress and provide formal employee feedback;
- Use appropriate measures of performance as the basis for recognizing and rewarding individual accomplishments;
- Use the results of the performance appraisal as a basis for appropriate personnel actions; and,
- Assess and improve individual and organizational performance.

This document supersedes current OPDIV/STAFFDIV performance management program guidance for non-SES managers, supervisors and employees. Any administrative actions already initiated when this system becomes effective shall continue to be processed consistent with the procedures and requirements of the system/program in effect when the action was initiated.

[1] For purposes of this document, the term OPDIV/STAFFDIV will be used to refer to both HHS Operating Divisions and Staff Divisions.

I. PURPOSE AND AUTHORITY

This guide establishes the Department of Health and Human Services policies and procedures for planning, monitoring, developing, appraising, and recognizing the performance of all non-SES managers, supervisors, and employees.

As an overarching policy, the PMAP is designed to facilitate the execution of basic management and supervisory responsibilities and communicate or clarify organizational goals and objectives. The purpose of performance management is to improve individual, team, and organizational effectiveness. The policies and procedures contained in this document provide a mechanism for communicating organizational goals and expected outcomes, identifying individual and/or team accountability, providing formal feedback, and documenting individual and team performance. It is one component of the ongoing process of performance management, which also includes frequent informal feedback sessions, recognition and awards, coaching, skills development, and appropriate corrective action.

Authorities:

- 5 U.S.C. Chapter 43 and Performance Appraisal 5 CFR, Part 430 5 U.S.C. 4303 and 4305 and 5 CFR 432.104 Unacceptable Performance
- 5 U.S.C. Chapter 45 and Awards 5 CFR, Part 451
- 5 U.S.C. 5335 and 5304, and Within-Grade Increases 5 CFR, Part 531, Subpart D
- 5 U.S.C. 5336 and Quality Step Increases 5 CFR, Part 531, Subpart E
- 5 U.S.C. 3502 and 5 CFR 351.504 Reduction-in-Force
- 5 U.S.C. 552a, 5 CFR 293.404 Records of Employee Performance and 5 CFR 293.405
- 5 CFR 432.104 Unacceptable Performance

II. COVERAGE AND DEFINITIONS

Coverage: This Performance Management Appraisal Program covers all HHS employees, non-SES managers, supervisors, and team leaders.[2] The following are ***not*** covered under this system:

1. A member of the Senior Executive Service;

[2] For purposes of coverage of this Guide, the term "team leader" encompasses only those employees who have official position descriptions identifying them as team leaders.

2. An employee appointed to the excepted service under Schedule A 213.3102(o) whose appointment is limited to 1 year or less;
3. A fellow appointed under Section 207(g) of the Public Health Service Act, as amended;
4. An expert or consultant;
5. A member of an advisory committee;
6. A person serving under an appointment in the excepted service having a time limit of less than 90 days;
7. A member of the HHS uniformed service, i.e., a PHS Commissioned Corps Officer;
8. A resident, intern, or other student employee who receives a stipend under section 5352 of 5 U.S.C.;
9. An employee on detail to a public international organization;
10. An employee in a position for which employment is not reasonably expected to exceed 90 calendar days in a consecutive 12-month period;
11. An employee outside the United States who is paid in accordance with local native prevailing wage rates for the area in which employed;
12. An Administrative Law Judge appointed under Section 3105 of Title 5, U.S. Code;
13. An individual appointed by the President; and,
14. An individual who (a) is serving in a position under a temporary appointment for less than one year (b) agrees to serve without a performance evaluation, and (c) will not be considered for a reappointment or for an increase in pay based in whole or in part on performance.

Definitions:

Appraisal - The process under which performance is reviewed and evaluated.

Appraisal Period - The established period of time for which an employee's performance will be reviewed and a rating of record prepared. The appraisal period covers the Calendar Year (January 1 through December 31). In HHS, the minimum appraisal period is 90 days. An employee must perform work under a performance plan in place for a minimum of 90 calendar days to receive a rating.

Critical Element - 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. All elements in the performance plan are critical.

HHS-704B - The standard performance plan (located at http://intranet.hhs.gov/forms/HHS/HHS-704B.pdf) used to document all of the written performance elements that an employee is expected to accomplish during the appraisal period. See performance plan definition below.

Performance - An employee's accomplishment of assigned work as specified in the critical elements of the employee's position.

Performance Management Appraisal Program (PMAP) - The framework of Department-wide policies and parameters established for planning, monitoring, developing, evaluating, and rewarding individual performance. The resulting performance information will be used in making personnel decisions.

Performance Award - A performance-based, lump sum cash payment to an individual employee based on the employee's rating of record. A performance award does not increase base pay.

Performance Awards Budget - The amount of money allocated by the Department/OPDIV/STAFFDIV for distribution as performance awards to covered employees.

Performance Plan - All of the written performance elements and standards that an employee is expected to accomplish during the appraisal period. These objectives are linked to specific program and management outcomes and are linked to the Department's and OPDIV/STAFFDIV's strategic plans. These objectives are derived from the OPDIV/STAFFDIV Head's performance plan and are cascaded, as appropriate, to all employees. A performance plan must include all critical elements and their performance standards.

Performance Rating - The written appraisal of performance compared to the performance standards for each critical element on which there have been an opportunity to perform for the minimum period (i.e., 90 calendar days). A performance rating includes the assignment of a summary rating level.

Performance Standard - A statement of the performance threshold, requirement, or expectation for an element that must be met to be appraised at a particular level of performance. A performance standard may focus on, for example, factors such as quality, quantity, timeliness, and manner of performance.

Progress Review - 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 and is generally conducted midway through the appraisal period. Ratings are not assigned for progress reviews.

Quality Step Increase (QSI) - A permanent increase in basic pay, equivalent to one step within the grade.

Rating Official - The official who is responsible for informing the employee of the critical elements of his/her position, establishing performance requirements, providing feedback, appraising performance, and assigning the summary rating. The rating official is ordinarily the employee's

immediate supervisor.

Rating of Record - The performance rating, sometimes referred to as the final rating, is prepared at the end of an appraisal period for performance throughout the entire appraisal period. In most cases, a summary rating (see definition below) will become the rating of record.

Reviewing Official - An official having review and approval authority above the rating official. Reviewing officials are ordinarily at a level higher than the rating official.

Strategic Planning Initiatives – The goals and objectives that drive HHS work and initiatives. For example, Department and agency goals, agency strategic plans, annual performance plans, organizational work plans, Presidential initiatives, and other future-focused related initiatives.

Summary Rating - Combining the written appraisals of each critical element (on which there has been an opportunity to perform for the minimum period, i.e., 90 calendar days) in order 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.

Time Off Award - An award granted to an employee, which allows the employee to take time off from work, with pay and without charge to annual leave.

III. RFORMANCE LEVELS

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;
- 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.

IV. . PLANNING AND COMMUNICATING PERFORMANCE

An individual employee performance plan is established annually for each employee. The HHS Employee Performance Plan (located at http://intranet.hhs.gov/forms/HHS/HHS-704B.pdf) is the form used for all covered employees.

At the beginning of the appraisal period, the rating official and the employee shall discuss the organization's desired program and management outcomes as well as the individual performance objectives toward which the employee should be focusing his/her efforts. The employee will be held accountable for his/her performance during the upcoming appraisal period. The discussion should also focus on the development of performance metrics that are quantifiable and results-based for each individual performance objective. Performance objectives should clearly define expectations and differentiate within the performance levels. The performance metrics should define what is expected at the Achieved Expected Results Level.

In developing the performance plan, the rating official shall review and consider the HHS Strategic Plan, OPDIV/STAFFDIV objectives, and any other important goals and measures, such as those identified by customers/stakeholders. Each rating official will ensure that broad HHS and OPDIV/STAFFDIV goals have been explained and cascaded to subordinate staff throughout his/her portion of the organization. These cascaded goals will impact organizational activity as well as individual performance expectations.

Each employee should actively participate in developing his/her performance plan for the appraisal period. The final authority for establishing the performance plan rests with the rating official. Written performance plans are provided to the employee within 30 days of the beginning of the appraisal period, which runs from January 1 to December 31. If an employee enters a position after the start of the appraisal cycle, a performance plan must be established within 30 days of the date the employee enters on duty. This system does not require a second level review of the performance plan. However, at the discretion of the OPDIV/STAFFDIV Head, a second level review may be conducted. The supervisor and the employee will sign and keep a copy of the performance plan.

A tip for establishing the performance plan is to use the term **SMART**:

- **Specific**: Goals and expectations are clearly stated and direct.
- **Measurable**: Outcomes are being achieved in comparison to a standard.
- **Attainable**: Goals or results/outcomes must be achievable and realistic.
- **Relevant**: Goals have a bearing on the overall direction of the organization, including the HHS Strategic Plan.
- **Timely**: Results are measured in terms of deadlines, due dates, schedules, or cycles.

The HHS Employee Performance Plan

The HHS performance plan has two categories of critical elements: (1) Administrative Requirements and (2) Individual Performance Outcomes, which include specific individual management and program outcomes that will contribute to the success of the OPDIV/STAFFDIV's and Department's strategic plans. The Administrative Requirements (Part II.A. of the Performance Plan) will constitute one critical element. Each outcome/result in the Individual Performance Outcomes section (Part II.A. of the Performance Plan) will be a critical element. It is expected that there will be between three (3) and five (5) outcomes/results listed for each employee in the Performance Outcomes section. However, an employee's plan will have a maximum of five (5) outcomes/results.

Administrative Requirements:

The Administrative Requirements critical element describes successful performance in responsibilities that are common to most supervisory and non-supervisory employees. The areas listed below are covered by this critical element. Supervisors should determine which of these areas apply to each position under his/her supervision. Not every position will include responsibility for every one of these areas.

Performance Management - Performance management includes the process by which an employee is involved in improving organizational effectiveness in the accomplishment of agency mission and goals. For supervisors and team leaders, performance management encompasses planning work and setting expectations, continually monitoring performance, developing the capacity to perform, periodically evaluating and/or rating performance, rewarding excellent performance, and addressing poor performance.

Employee Development - Includes management and employee efforts to enhance individual or staff performance, as well as obtaining skills, knowledge, and abilities for projected assignments, and/or potential future career advancement.

Workforce Activity - Includes planning, organizing, assigning, and/or performing work; allocating resources (if supervisory); adjusting to change; and participating in improvements leading to attainment of organizational goals.

Customer Service - Includes responsiveness to customers as defined by Department and OPDIV/STAFFDIV expectations and standards.

Recovering Improper Payments - Applies only to staff having recovery responsibilities related to grants, procurement, and financial payments.

Individual Performance Outcomes

This critical element category identifies the key individual performance outcomes and specific end-

results that contribute to the success of HHS and the OPDIV/STAFFDIV. These results-oriented outcomes should be consistent with strategic planning initiatives, such as the HHS Strategic Plan and OPDIV/STAFFDIV program goals and objectives. Managers should limit the number of outcomes to the most important aspects of the employee's position, usually three to five.

Performance plans must include one or more outcomes outlined in the HHS Strategic Plan. This cascade approach should ensure that performance plans for all employees support the organizational goals of the agency. The "cascade" element should be identified in the following way under the appropriate outcome in the performance plan: "This element also relates to and supports objectives in the HHS Strategic Plan, specifically [cite the specific objective]."

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. Metrics should address significant program outcomes and improvements such as: enhanced quality of services and healthcare, new knowledge and insight from research, increased level of performance, and/or improvements in customer satisfaction. All objectives must be achievable 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. Data sources for all metrics must exist currently, or must be on schedule to be available in time to meet the reporting deadline. For metrics that are expressed as comparisons to past performance (e.g., "increase production by 10%"), baseline data must be available.

These requirements must be aligned and directly contribute to the Department's goals and priorities established by the HHS Strategic Plan, Annual Plan, approved budget, and/or OPDIV/STAFFDIV goals and objectives.

V. MONITORING PERFORMANCE

Progress Reviews

There should be continuous feedback between the employee and his/her supervisor. At a minimum, one formal progress review shall be held between the supervisor and the employee, at approximately midpoint in the rating cycle. While only one progress review is required, additional reviews are encouraged to maximize employee feedback. Ratings are not assigned for progress reviews. A written narrative is not required, unless performance is less than Achieved Expected Results. Along with providing an interim assessment of performance, this provides an opportunity for supervisors to discuss and document evolving priorities or other organizational changes impacting employee work assignments.

The supervisor will:

- Discuss, and, as appropriate, document areas needing improvement;

- Discuss with the employee and document any changes to performance goals that may be necessitated by such factors as new program requirements, changes in resource levels, etc;

- Consider any guidance provided by the Assistant Secretary for Administration (ASA) and/or the OPDIV/STAFFDIV Head;

- When appropriate, obtain employee performance feedback from other agency managers and staff. Examples may include: the employee was part of a workgroup headed by another agency manager or staff lead, or the employee was on a rotational assignment or a detail; and

- Provide written documentation if performance on any element is less than Achieved Expected Results, including specific deficiencies and steps needed to bring performance to Achieved Expected Results. This will include reference to unsuccessful efforts made during the performance period, if they occurred. (See Section VII for required action if the employee's performance is determined to be Achieved Unsatisfactory Results).

The supervisor and the employee will sign and retain a copy of the progress review. Section IV of the HHS-704B (performance plan) can be used to document the employee's progress.

Employee Assistance for Less than Achieved Expected Results (AE) Performance

If an employee is rated below the Achieved Expected Results level on any element, the supervisor will provide assistance. Assistance may include, but is not limited to, formal training, on-the-job training, counseling, mentoring, and closer supervision. Assistance may also be provided to employees with higher ratings who seek help to improve or enhance their performance.

VI. RATING PERFORMANCE AT THE END OF THE APPRAISAL PERIOD

At the conclusion of the appraisal cycle the OPDIV/STAFFDIV, in consultation with the ASA Office of Human Resources (OHR), will issue guidance and timelines for the completion of the annual employee evaluations and the submission of performance award nominations. Appraisal process guidance issued by the OPDIV/STAFFDIV will be consistent with all policies, procedures, and requirements set forth in these instructions and will not place limits on the number of ratings issued at any given level. The OPDIV/STAFFDIV appraisal process guidance will be communicated to all OPDIV/STAFFDIV staff.

Between January 1 and February 15 of each year, the rating official will meet with the employee to discuss the rating of record and, if applicable, any needed improvement assistance.

Summary Rating

The rating official provides his/her own assessment of the employee's performance during the rating

period under the written performance plan and requirements. The rating official rates each element performed for the minimum period (90 calendar days) unless the employee did not have a reasonable opportunity to perform a particular element for the minimum period. If the preceding is the case, the element will be marked "Not Applicable."

A written narrative may be prepared, but is not required, for Achieved Expected Results, Achieved More Than Expected Results, and Achieved Outstanding Results ratings in support of the rating of record. For ratings below Achieved Expected Results, the rating official must prepare a written assessment of an employee's overall performance. This should include identifying specific performance deficiencies. Section IV of the HHS-704B (performance plan) will be used for this purpose. If an employee's performance is Achieved Unsatisfactory Results, the supervisor must, at a minimum, give written notice to the employee of his/her failure to demonstrate acceptable performance. In addition, the supervisor must give the employee an opportunity to demonstrate acceptable performance under a Performance Improvement Plan (PIP). Supervisors will consult with the servicing Human Resources Center or respective Labor and Employee Relations Office for assistance in dealing with unacceptable performance. See Section VII below for further information.

This system does not require a second level review of the rating. However, at the discretion of the OPDIV/STAFFDIV Head, the rating official may submit the rating to the reviewing official for concurrence prior to providing the rating to the employee. If the summary rating is Achieved Unsatisfactory Results, a second level review is required prior to issuing a final rating to the employee.

When the appraisal form is presented to the employee, the rating official will conduct a performance discussion. The employee will be asked to sign and date the appraisal form. The employee's signature does not mean that the employee agrees with its content. In those instances where the employee declines to sign the appraisal form upon receipt of the rating of record, the rating official will indicate such in the appropriate section of the form. The employee will be provided with a copy of the complete final summary rating.

Method for Deriving Summary Ratings

Each employee's performance will be appraised by the rating official, at least annually, based on a comparison of actual performance with the written critical elements and standards in the employee's plan.

The guidance below will be followed in determining an overall summary rating:

A rating will be assigned to each critical element (Administrative Requirements and the individual critical elements under the Individual Performance Outcomes). This rating will be based upon the extent to which the employee's performance met one of the rating level definitions (Achieved Outstanding Results, Achieved More Than Expected Results, Achieved Expected Results, Partially Achieved Expected Results, and Achieved Unsatisfactory Results).

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 using 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 a Partially Achieved Expected Results rating on one or more critical elements, he/she cannot receive a summary rating of higher than Achieved Expected Results, regardless of the average point score. A summary rating of Achieved Unsatisfactory Results must be assigned to any employee who is rated Achieved Unsatisfactory Results on any critical element.

Rating of Record

A summary rating prepared at the end of the appraisal period will become the rating of record. A summary rating may also be prepared prior to the end of the appraisal cycle. For example, when the employee is reassigned to another position or when the supervisor leaves his/her position. This summary rating will be considered by the rating official in preparing an end-of-the-cycle rating of record. If there are less than 90 days prior to the end of the appraisal cycle, this summary rating will become the rating of record.

Extending the Appraisal Period

If an employee has performed for more than 45 days under a performance plan but less than 90 days prior to the end of the appraisal cycle, the rating period will be extended. For example, if a performance plan is established for an employee on November 1, there would be more than 45 days left in the appraisal cycle, which ends on December 31. In this case, the appraisal period would be extended until January 31, to allow for a full 90 day period on which to base the appraisal.

The rating period will not be extended if the employee has performed less than 45 days under a performance plan prior to the end of the appraisal cycle. For example, if a performance plan is established after November 15, there would be less than 45 days prior to the end of the appraisal cycle, December 31. In this case, the employee would not receive a rating for that cycle.

If the employee was issued a summary rating for another position within HHS, or under another supervisor within HHS earlier in the performance year, the summary rating will become the rating of record. This applies to the employee who has not worked under a performance plan in the new position for at least 90 days.

See Exhibit 2 of this Guide for additional information on ratings for non-standard situations.

Disagreement with the Rating

Employees are encouraged to discuss disagreements with the supervisor/rating official and the reviewing official (if required by the OPDIV/STAFFDIV Head) in an attempt to resolve the issue informally. If the employee disagrees with the rating of record, the rating official must advise the employee of his/her right to respond in writing to the rating. This response will be attached to the rating form, but it will not change the rating assigned by the rating official. An employee may also file a grievance through the HHS or OPDIV/STAFFDIV grievance procedures, as applicable. An employee may pursue EEO complaint procedures, if he/she believes the rating is based on prohibited discrimination. An employee has the option of requesting a second level review by their reviewing official. The reviewing official may make recommendations to the rating official to change or modify the employee's rating levels; however, the final determination rests with the rating official.

VII. USING PERFORMANCE RESULTS

Impact of Performance Outcomes and Results

Successful individual employee accomplishments and contributions enable organizations to meet their goals. These achievements will be considered when determining and assigning final ratings, conferring recognition and rewards, identifying potential training needs, and planning future assignments.

Actions Based on Achieved Outstanding Results, Achieved More than Expected Results, or Achieved Expected Results Performance

Performance awards are an integral part of the performance appraisal process. As such, they are linked to the rating of record, and submitted and considered for approval only at the conclusion of the rating period. Employees whose summary rating is Achieved Outstanding Results will receive a performance award payment up to 5% of salary, including locality payment or special rate supplement. This award is based on the salary as of the last day of the rating period (December 31), subject to funds availability within the OPDIV/STAFFDIV[3]. If an employee departs HHS prior to

12/31, s/he is not eligible for an award. Employees receiving an Achieved Outstanding Results rating are also eligible for a Quality Step Increase (QSI). Employees will not receive both a QSI and a cash award for the same performance. Employees will also not receive both a QSI and a time-off award for the same performance. Only General Schedule (GS) employees are eligible to receive QSIs. QSIs shall only be awarded based on an employee receiving the highest rating of record (Achieved Outstanding Results) for the previous rating cycle and not for mid-cycle performance accomplishments. Further, a QSI may not be granted to an employee who has received a QSI within the preceding 52 consecutive calendar weeks. QSIs are not automatic and are awarded at management's discretion.

Employees whose performance is Achieved More than Expected Results may be eligible for a performance award, at the discretion of the OPDIV/STAFFDIV, up to 4% of salary. Also, employees whose performance is Achieved Expected Results may be eligible for a performance award, at the discretion of the OPDIV/STAFFDIV, up to 3% of salary. However, all employees rated Achieved Outstanding Results must be paid **"in full"** first.

In order to receive a QSI, employees must receive a rating of Achieved Outstanding Results. Employees who receive Partially Achieved Expected Results or Achieved Unsatisfactory Results ratings are not eligible for performance rating-based cash awards or QSIs.

OPDIV/STAFFDIVs may also exercise existing authorities to provide employee recognition for short-term accomplishments using other award types, including, but not limited to, Special Act/Special Service Awards, and Time-Off Awards, as appropriate.

Actions Based on Partially Achieved Expected Results Performance

The Partially Achieved Expected Results level describes performance that is adequate for retention in the position. Supervisors are strongly encouraged to closely monitor an employee who is rated Partially Achieved Expected Results and to offer any assistance needed to bring the employee's performance to the Achieved Expected Results Level. Employees who receive a Partially Achieved Expected Results rating are not eligible to receive a within-grade increase. Supervisors should consult with the servicing Human Resources Center Labor and Employee Relations Office for assistance in dealing with Partially Achieved Expected Results performance.

Actions Based on Achieved Unsatisfactory Results Performance

If performance on any critical element is determined to be Achieved Unsatisfactory Results at any time during the rating period, the supervisor will provide assistance to help the employee improve performance to an acceptable (Partially Achieved Expected Results) level. The supervisor must, at a minimum, give written notice to the employee of his or her failure to demonstrate acceptable performance and give the employee an opportunity to demonstrate acceptable performance under a Performance Improvement Plan (PIP). This written notification must include:

[3] The locality payment or special rate supplement as well as funds availability apply to both the Achieved More than Expected Results and Achieved Expected Results performance ratings.

1. The specific element(s) on which the employee's performance is determined to be Achieved Unsatisfactory Results, including specific examples of how the employee's performance fails to meet this level of performance;

2. The performance requirement(s) that must be met;

3. The specific assistance that will be provided to help the employee improve performance;

4. The specific period of time the employee will be given to demonstrate acceptable performance; and

5. Notification that actions may be initiated to reassign, reduce in grade, or remove the employee if performance does not improve to the Partially Achieved Expected Results level.

Supervisors will consult with the servicing Human Resources Center Labor and Employee Relations Office for assistance in dealing with unacceptable performance.

VIII. RAINING

Every rating official should be trained in the practical application of the PMAP to ensure its effective administration. Training on developing performance plans, conducting progress reviews, assigning ratings, and using appraisals as a key factor in making other management decisions, will be provided to managers and supervisors. Training will be designed to assure that the performance management process operates effectively. Information sessions will also be held for employees on key aspects of the performance management process. Rating officials are expected to explain the system to subordinate employees in a manner that should enable them to understand the specific aspects of their performance plan and the supervisor's performance expectations.

IX. 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, and will not be under the control of, the Department or any of its OPDIV/STAFFDIVs. Such notes are not subject to the Privacy Act as long as they remain solely for the personal use of the supervisor, are not provided to any other person, are not used for any other purposes, and 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 Office of Personnel Management regulations. Performance records must be retained for five years and transferred with the employee's Official Personnel File when the employee transfers to a new organization in HHS or to another agency.

X. MONITORING AND EVALUATING THE PROGRAM

OHR has responsibility for the ongoing review of the operation of performance management (including performance awards) throughout the Department. Each OPDIV/STAFFDIV has the responsibility for monitoring and evaluating its own performance management program (including performance awards) within the framework of the HHS guidelines.

EXHIBIT I

HHS PERFORMANCE PLAN REFERENCE GUIDE

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 Administrative Requirements critical element (Part II.A. of the plan). The supervisor, along with 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 section (Part II.A. of the plan).

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 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 (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, he/she cannot receive a summary rating of higher than Achieved Expected Results, regardless of the average point score. A summary rating of Achieved Unsatisfactory Results will be assigned to any employee who is rated Achieved Unsatisfactory Results 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.

EXHIBIT 2

GUIDE 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 90 days, e.g., employee returning from long-term training.	Establish plan immediately.	If there are more than 45 days left in the appraisal cycle, extend the rating period. If there are less than 45 days, the employee will not receive a rating for that cycle.
Employee moves from one position (A) to another position (B) within 90 days of end of appraisal period.	Establish plan for new position under option (2).	(1) If employee was in position A for at least 90 days, rate employee prior to the position change. This rating will become the final rating of record for the appraisal period; or (2) If employee was not in position A for at least 90 days, or was not under a plan for 90 days in position A, extend the rating period to allow for 90 days in position B and rate the employee at that time if there are more than 45 days left in the appraisal cycle.
Within 90 days of the end of the appraisal period, employee is hired from outside the Government.	Establish plan.	If there are more than 45 days left in the appraisal cycle, extend the appraisal period until the 90 day minimum rating period is reached; then rate employee based on the plan for that period. If less than 45 days, the employee will not receive a rating until the next cycle.
Employee changes positions within HHS during the appraisal period.	Establish plan for new position.	If the plan has been in effect for at least 90 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.
Employee is detailed or temporarily assigned to another position in HHS, and the time in that position is	Establish plan for detailed position or new position.	If a plan had been in place for at least 90 days, rate at time of position change. Also rate at end of temporary assignment (or detail) if it lasted at least 90 days. Consider all ratings made

expected to be at least 90 days by the end of the appraisal period.		during the appraisal period in preparing the annual summary rating.
Employee is detailed or assigned outside HHS and the time in the outside organization or agency is expected to be at least 90 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 90 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 HHS plan for at least 90 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 HHS 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 a 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 90 days, rate at time employee goes on training based on established plan.
Employee transfers from HHS to a new agency after serving under a plan for at least 90 days.	N/A.	Rate the employee and submit rating as required by OPDIV/STAFFDIV.

APPENDIX 5

PMAP Document 5-Tier

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.]

B. Progress Review - *Written narrative required if performance on any element is less than Achieved Expected Results.*

RATING OFFICIAL'S SIGNATURE	DATE
EMPLOYEE'S SIGNATURE	DATE

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
REVIEWING OFFICIAL'S SIGNATURE *(If required by OPDIV/STAFFDIV Head and required if rating is Achieved Unsatisfactory Results)*	DATE
EMPLOYEE'S SIGNATURE	DATE

HHS- 704B (11/12) PAGE 1 EF

EMPLOYEE'S NAME *(Last, First, MI)*	APPRAISAL PERIOD From: To:

The following guidance will be followed in determining an overall summary rating:
A rating will be assigned to each critical element (Administrative Requirements (Part A. of this Section) and the individual critical elements under the Individual Performance Outcomes (Part B. 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.

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

NOTE: Performance plans must include one or more outcomes *that include or track back to the HHS Strategic Plan.*

A. *ADMINISTRATIVE REQUIREMENTS - CRITICAL ELEMENT*

NOTE: The supervisor should determine, by marking the appropriate boxes, which aspects of this critical element apply to the employee's job duties and responsibilities.

For Managers/Supervisors & Team Leaders**

- ☒ Actively engages in the hiring process with their assigned human resources specialist(s) from start to finish of on-boarding. This includes ensuring the established hiring process timelines are met.
- ☒ Communicates program and management goals to staff, identifies targeted results/outcomes, and timeframes. Allocates and adjusts resources in response to workload and priority changes.
- ☒ Plans, organizes, and assigns unit work.
- ☒ Establishes employee performance plans, and completes required reviews and final ratings.
- ☒ Appropriately recognizes and rewards employee performance.
- ☒ Assesses employees' individual developmental needs, and provides developmental opportunities to staff.
- ☒ Ensures employee awareness of, and compliance with, requirements relative to ethics, financial disclosure, avoiding conflicts of interest, standards of ethical conduct, political activity, and procurement integrity.
- ☒ Demonstrates support for EEO/diversity and employee work life quality, fostering a cooperative work environment where diverse opinions are solicited and respected.
- ☒ Seeks resolution of workplace conflicts at earliest stage.
- ☒ Where applicable, ensures that HHS, OPDIV/STAFFDIV, and program goals and requirements for correcting grant, procurement, and finance system weaknesses are achieved or exceeded.
- ☒ Other aspects *(describe)*:

** To be applied only to Team Leaders who have official position descriptions identifying them as team leaders.*

(Summary Rating Elements, continued)

EMPLOYEE'S NAME *(Last, First, MI)*	APPRAISAL PERIOD From: To:

II. CRITICAL ELEMENTS

A. *ADMINISTRATIVE REQUIREMENTS - CRITICAL ELEMENT*

NOTE: The supervisor should determine, by marking the appropriate boxes, which aspects of this critical element apply to the employee's job duties and responsibilities.

For All Staff

☒ Provides responsive service to internal/external customers that support customer and program requirements.

☒ Participates with supervisor to establish individual performance plans, and provides self-assessments if required.

☒ Identifies and communicates individual developmental needs consistent with the agency mission; assists coworkers by mentoring, advising, or guiding them in understanding work assignments as appropriate.

☒ Actively identifies, communicates, and implements quality improvements that ensure attainment of workforce goals.

☒ When applicable, identifies and addresses weaknesses in grant system(s), procurement systems, and finance offices to ensure recovery of improper payments and to reduce the number of improper payments made by the Department.

☒ Other aspects *(describe)*:

ELEMENT	RATING
Administrative Requirements	☐ AO(5) ☐ AM(4) ☐ AE(3) ☐ PA(2) ☐ UR(1)

B. *INDIVIDUAL PERFORMANCE OUTCOMES - CRITICAL ELEMENT*

ELEMENT	RATING
1.	☐ 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
2.	☐ AO(5) ☐ AM(4) ☐ AE(3) ☐ PA(2) ☐ UR(1)

Description:

ELEMENT	RATING
3.	☐ 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
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)

HHS- 704B (11/12) Page 5 of 10

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 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)

EMPLOYEE'S NAME *(Last, First, MI)*	APPRAISAL PERIOD From: To:

IV. WRITTEN NARRATIVE

For progress review and/or summary rating. Optional, unless performance is below Level 3: Achieved Expected Results (AE)

(Summary Rating Elements, continued)

EMPLOYEE'S NAME *(Last, First, MI)*	APPRAISAL PERIOD From: To:

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;
- Work assignments occasionally require major revisions or often require minor revisions;

EMPLOYEE'S NAME *(Last, First, MI)*	APPRAISAL PERIOD From: To:

- 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 Administrative Requirements critical element (Part II.A. 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.B. 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 (Administrative Requirements 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 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 6

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service
Food and Drug Administration

Memorandum

CC: N. Rogers
R Hacket

Date September 29, 2003

From John M. Taylor, III
Associate Commissioner for Regulatory Affairs

Subject Voluntary Foreign Inspection Program Improvement - FDA/NTEU MOU

To Barbara Sheehy
National Rep - NTEU Signed 10/16/03

Enclosed is the outline of my review and consideration of the recommendations submitted to my attention by the joint FDA (ORA)/NTEU Voluntary Foreign Inspection workgroup (VFI). In addition, I would like to acknowledge my appreciation of the collaborative effort of the workgroup in their deliberations under what can be considered a difficult situation given the logistical factors encountered in bringing the group together. As reference, my charge to the workgroup (as required under our current MOU) was as follows:

To develop options (incentives) for consideration that would:

- Improve the voluntary foreign inspection program;
- Increase participation in the program by a greater number of employees;
- Encourage and promote the program as a viable mechanism to accomplish the Agency's foreign inspection commitments; and
- Expand training options that support the program

After careful consideration and consultation with ORA senior managers, my decision regarding each recommendation is outlined in the chart below.

Voluntary Foreign Inspection Workgroup Recommendations	ACRA's Decision
#1. Employees will be given a total of $300 of incentive pay for each standard foreign inspection trip. 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.	Approved, ORM to coordinate with ORO/DFI
Note: Work products must be fit for use in accordance with IOM requirements. Incentive awards will be issued twice per year (mid year and end of year).	Accepted - For the purposes of this memorandum and agreement the standard foreign inspection trip is considered to be 3 weeks in length.
Note: NTEU and FDA will need to sign an MOU agreeing that this pay will not be a part of the CBA Awards Program.	

#2. Employees will be given the option to use a total of six hours per trip of FWAP to be used before the foreign inspection trip in order to prepare for the trip. (e.g. used for such things as money exchange.)	Approved
#3. Solicitation of volunteers for the foreign inspection program will go to all employees. The employee responses to the survey will go to the District coordination point. Management will decide if employees are qualified and subsequently prepare a consolidated list of volunteers to DFI. The district will make the volunteer list available to employees within the district. DFI will consolidate the district responses and prepare a National list of volunteers. The national volunteer list will be the first consideration for identifying individuals for foreign inspections. DFI will make a name request to the employee's home district management. If a requested person is subsequently not available, and if another volunteer in that district can not be identified, the district initially contacted will refer to the national volunteer list as they work to identify a traveler within that region. The region will have the option to look for volunteers within their region or from the national list. *Note: Any employee under a PIP or administrative action will not be qualified for the National volunteer list.*	Approved Accepted
#4. Develop and establish a module in ORAU to complement the foreign inspection cadre training course.	Approved, ORA/DHRD action required
#5. Employees will be allowed to utilize an AWS and/or participate in the FWAP program for the first week upon return from the foreign inspection trip.	Approved, supervisory implementation necessary.
#6. Establish a pilot for FY04 for Foreign Inspection GS-13 position for CSO/Analyst.	Approved, ORM action required
#7. An evaluation of implemented recommendations (new features) after 12 months.	Approved, initial date 10/1/03 to 9/30/04, DFI tasked with coordination with NTEU

Current Procedures and/or Changes to operations
#1. 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 must be requested and approved in advance.
#2. Annual leave may be approved at two days per week not to exceed a total of five days per trip, *provided that there is no additional cost to the government.*

It is the decision of this office, in keeping with the recommendations of the VFI workgroup, that the accepted and approved incentives are applicable ONLY to qualified GS-11/12/13 members of the foreign inspection cadre and excludes employees who are participating in the GS-13 Pilot Program for Foreign Inspections.

APPENDIX 7

MEMORANDUM OF UNDERSTANDING (MOU)
BETWEEN
THE FOOD AND DRUG ADMINISTRATION (FDA)
AND
THE NATIONAL TREASURY EMPLOYEES UNION (NTEU)
REGARDING
MANDATORY FOREIGN INSPECTION ASSIGNMENTS

FDA and NTEU agree that they are committed to treating domestic and foreign inspection assignments equally and that foreign inspections are part of the overall Agency work plan. Accordingly, the Parties agree to the following:

1) The FDA will rotate inspections fairly and equitably among similarly qualified employees.

2) In order to encourage volunteers for foreign inspections, the FDA will announce a call for volunteers on a semi-annual basis to participate on international inspections. This national volunteer list will identify traveler, area of expertise, and country and time preferences for travel. This list will be the first consideration for identifying employees to conduct foreign inspections.

   If management does not select a volunteer for an inspection from the national survey, inspection assignments will be issued on a regional basis at which time the region will work to identify a qualified volunteer by disclosing the assignment request to all qualified employees within the region.

   If no volunteers who apply for the inspections are selected or if no volunteers apply, then FDA will make every reasonable effort to assign the inspections on the regional/district level using the following assignment process:

   a) To any qualified GS-13 employee;
   b) To any qualified GS-12 employee;
   c) To any another qualified employee.

   All assignments listed above will be made on the basis of regional inverse seniority based upon HHS Entry On Duty date (EOD). Once an employee is chosen for (and performs) the inspection, the employee's name then goes to the bottom of the inverse seniority list based on grade.

In the event that the Agency adopts a PD containing a specific percentage of time to be spent in the international arena, qualified employees on this PD will be considered by management prior to a), above.

3) From October 1, 2003 to September 30, 2004, qualified employees GS-12 or below will not be assigned to perform a foreign inspection trip more than once per year.

4) All volunteers and assigned employees may switch their scheduled foreign inspection assignment with an appropriately qualified counterpart within their region, contingent upon management approval.

5) Hardship Exemptions: If an employee who is assigned to perform a foreign inspection is unable to accomplish the work assignment due to an emergency or unforeseen circumstance, they should notify both District management and DFI immediately. Employees may be excused from foreign inspection assignments by management upon a showing that they have valid extenuating circumstances present that would not allow them to perform the assignment. Valid extenuating circumstances are, primarily, conditions outside the control of the employee which would preclude them from being able to travel abroad without some economic or personal harm otherwise occurring. The request for an exemption should be made in writing within five (5) workdays of receipt of the foreign inspection assignment. The circumstances surrounding an employees inability to conduct the foreign inspection will be reviewed on a case-by-case basis and management will make the final decision on the employee's work assignment. Any management denials of such requests will be provided in writing to the employee within five (5) workdays of the request. All denials are grievable through the negotiated grievance procedure.

6) From October 1, 2003 to September 30, 2004, for qualified employees GS-12 or below who did not volunteer for the inspection assignment, foreign inspections will normally be limited to a period of no more than two weeks.

7) Employees will always be provided with contact information for an alternate or back-up trip coordinator to handle any necessary travel or inspection changes when the primary coordinator cannot be reached. However, in the absence of access to a travel planner, employees may make their own travel arrangements.

8) 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.

9) The FDA will provide non-volunteers assigned to conduct foreign inspections as much advance notice as possible, but normally no less than eight (8) weeks prior to the assignment.

2

The FDA will normally provide non-volunteers assigned to conduct foreign inspections with advance notice of ten (10) calendar days of their full travel schedule, including information regarding any dangerous conditions in-country as defined by the State Department.

All affected employees will be given the opportunity to attend the FDA/ORA International Inspections Course, preferably prior to performing their first foreign inspection.

The FDA will provide all employees that perform foreign inspections with travel services, medical insurance coverage, and/or emergency transportation/evacuation insurance coverage.

13) 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.

14) 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 must be requested and approved in advance.

15) Employees will be expected to complete the write-up of reports normally not later than thirty (30) calendar days after they return from conducting the foreign inspection.

16) In order to guarantee the safety of FDA employees and consistent with existing FDA policy, two (2) employees will normally be assigned as a team on any foreign inspection trips to countries given travel advisories or warnings by the State Department and other countries as determined by management. The team will include at least one (1) employee who has prior experience in foreign inspections.

Translators will be provided for employees while performing inspections abroad whenever there is no designated English-speaking company representative available at the firm being inspected.

18) As a resource, the FDA will provide, upon request, the name(s) and contact information of employee(s) who have conducted foreign inspection(s) in a particular country of interest.

19) Cell phones that connect internationally will be provided to all employee teams performing a foreign inspection for the duration of their time abroad. In the event that

3

a cell phone is unavailable that is compatible with the country in which the foreign inspection is being performed, an international calling card will be provided to the inspection team.

20) The FDA will request that the firms being inspected in countries given travel advisories or warnings by the State Department and other countries as determined by management, provide a driver and/or a company contact for employee(s) assigned to inspect the firm. Management will continue to make reasonable efforts to ensure that strict security practices are adopted for all employees in these types of countries, including providing a contact that may be reached at all times in case of emergencies.

In accordance with government rule and regulation, employees will be allowed to process ATM transactions on their expense vouchers in order for them to avoid carrying massive amounts of traveler checks or cash at any one time. This authorization will be stated on all foreign travel orders.

22) DFI does not routinely schedule inspections in countries that have an associated State Department warning. The State Department warning is used as a signal that such requests for inspection need to be further evaluated on a case-by-case basis. During this assessment, FDA weighs concerns about the safety of its investigators against the public health benefits to US citizens of having access to the product being inspected. For routine inspections, FDA has historically made decisions on the side of caution for the safety of its investigators. For products that are innovative breakthrough products or are considered medically necessary, FDA generally errs on the side of public health benefit and requests volunteers to conduct the inspections. FDA has applied this policy uniformly to avoid establishing precedents for one country that could not be consistently fulfilled in other countries for which we have similar concerns about travel. The Agency will normally only use volunteers to conduct inspections in countries that have an associated State Department warning.

23) A lack of experience with foreign inspections will be considered when the performance of any employee on such inspections is evaluated.

24) Management will hold formal 7114 meetings with all affected FDA employees regarding the changes to the foreign inspection program and this MOU. A representative from each appropriate NTEU chapter will be notified in advance of the meetings and afforded the opportunity to attend.

25) This MOU will become effective upon the signature by both parties. The MOU will expire upon the expiration of the current FDA/NTEU collective bargaining agreement (CBA), or on the effective date of its successor, whichever occurs first. The Parties recognize that this MOU will remain in effect during the interim between the expiration of the current CBA and the effective date of any successor agreement.

4

For the FDA:

Diana Kolaitis
RFDD, Northeast Region
Chief Negotiator

Execution Date: June 11, 2003

For the NTEU.

Daniel P. DiJames
National Negotiator

5