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## **PREAMBLE**

*The Congress finds that experience in both the private and public employment indicates that the statutory protection of the right of the employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them, safeguards the public interest, contributes to the effective conduct of public business, and facilitates and encourages the amicable settlement of disputes between employees and the employer involving conditions of employment; and*

*The public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the government; and*

*The Employer and Union enter into this Agreement with every intention to deal with each other in good faith and to be governed by honesty, reason and mutual respect. The Employer and the Union recognize that a mutual commitment to cooperation promotes both the efficiency of the Employer's operations and the well-being of its employees; and*

*The Employer and the Union hereby agree as follows:*

**Article 1**  
**RECOGNITION AND COVERAGE**

**Section 1**

The Employer recognizes the Union as the exclusive representative of the following employees:

All nonprofessional and professional employees employed by the U.S. Securities and Exchange Commission, but excluding all management officials, supervisors, and employees described in 5 U.S.C. 7112(b)(2), (3), (4), (6), and (7).

**Section 2**

The term "employee," when used in this Agreement, refers only to bargaining unit employees, unless otherwise stated.

**Section 3**

During the term of this Agreement, the Employer agrees that all new employees employed in the unit described in Section 1 above, will be automatically covered under the terms and conditions of this Agreement.

**Section 4**

Nothing in this article shall be construed as a waiver of any Employer or Union right.

**Article 2**  
**EFFECT OF LAW AND REGULATION**

**Section 1**

In the administration of all matters covered by this Agreement, the Parties are governed by:

- 1) existing or future laws;
- 2) the Employer's rules and regulations in effect upon the effective date of this Agreement, unless contrary to the terms of this Agreement or government-wide rules or regulations;
- 3) government-wide rules or regulations in effect upon the effective date of this Agreement; and
- 4) government-wide rules or regulations issued after the effective date of this Agreement that are not in conflict with this Agreement.

**Section 2**

Should any conflict arise between the terms of this Agreement and any Employer rule or regulation issued after the effective date of this Agreement, the terms of this Agreement will supersede and govern unless specifically indicated otherwise.

**Section 3**

Nothing in this Article shall constitute a waiver of the Union's right to negotiate over the Employer's rules and regulations, to the extent permitted by law.

### **Article 3**

## **EMPLOYEE RIGHTS**

### **Section 1**

Each employee shall have the right to form, join, or assist the Union, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee will be protected in the exercise of such right. Except as otherwise provided under this Agreement, such right includes 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 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. The initiation of a grievance in good faith by an employee will not reflect adversely on his or her standing with his or her supervisor or the Employer. An employee who has relevant information and who conveys that information, concerning any matter for which remedial relief is available under this Agreement, will be assured freedom from restraint, interference, coercion, discrimination, intimidation, or reprisal. Nothing in this Section, however, abrogates the right of the Agency to conduct investigations concerning employee misconduct.
- B. The Employer will not impose any restraint, interference, coercion, discrimination, or reprisal against any employee in the exercise of his or her right to designate a Union steward for the purpose of representing to the Employer any matter of concern or dissatisfaction, or of representing the employee before any Government agency or official other than the Employer. If the designation of a particular Union steward in a particular matter raises an actual or apparent conflict of interest, then the Parties will follow all laws, rules, regulations, and case law regarding that steward's participation in the matter (5 U.S.C. § 7120(e)).

### **Section 3**

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

### **Section 4**

The Employer recognizes and respects the dignity of each employee in the formulation and implementation of personnel policies and practices and conditions of work. The rights and protections established in 5 U.S.C. § 2301(b), Merit Systems Principles, and 5 U.S.C. § 2302(b), Prohibited Personnel Practices are hereby incorporated into this Article (see Attachment 1).

### **Section 5**

An employee must follow supervisory orders, directions and assignments.

- A. Unless an employee fails to meet his or her performance standards, he or she will not be adversely affected by the Employer as a result of carrying out the lawful orders, directions or assignments of a supervisor, or attempting in good faith to carry out such lawful orders, directions or assignments.
- B. If an employee disputes the legality of his or her supervisor's order, direction or assignment based on the employee's belief that it violates a law, rule, regulation or published Code of Ethics/Professional Responsibility:
  - 1. The employee will discuss the dispute/difference and the basis for it with his or her supervisor with the intent of resolving the dispute/difference.
  - 2. The employee may seek review of the dispute by his or her next level supervisor, who will assess the matter and inform the employee of his or her determination regarding the dispute.
  - 3. If the employee continues to dispute the legality of his or her supervisor's order, direction or assignment, the supervisor will give the order, direction or assignment to the employee in writing. The employee will comply with the supervisor's order, direction or assignment and, if the employee carries out the order, direction or assignment in the manner prescribed by the supervisor, the Employer will assume full responsibility for that order,

direction or assignment, to the extent permitted by law, rule or regulation. At such time as the employee has complied with the supervisor's order, direction or assignment, he or she may file a grievance, complaint or appeal, as appropriate to seek a remedy to any alleged violation to his or her rights.

4. In addition, any employee who holds a professional license that he or she uses in the performance of his or her duties at SEC (i.e., Attorneys, CPAs, Certified Fraud Examiners, etc.) may consult with the body responsible for the enforcement of the Code of Ethics/Professional Responsibility in the State or Jurisdiction in which he or she is licensed for guidance, and, upon receipt, provide such guidance to the supervisor. Prior to the receipt of such guidance, the professional shall not be required to sign any disputed document, or otherwise carry out the disputed order, direction or assignment. If the guidance provided indicates that the disputed order, direction or assignment would violate an applicable ethical rule or rule of professional responsibility, the employee shall not be required to take any such action with respect to that order, direction or assignment. The employee shall immediately notify his or her supervisor that he or she cannot comply with the order, direction or assignment.
- C. An employee who has questions concerning an interpretation or application of standards of professional conduct in which he or she has a direct personal interest is encouraged to raise his or her questions with the SEC's Ethics Office.
  - D. If after an employee follows the steps set forth in Section 5.B. above, the supervisor continues to disagree with the guidance provided to the employee by the body responsible for the enforcement of the Code of Ethics/Professional Responsibility in the State or Jurisdiction in which the employee is licensed, the supervisor may, with the participation and input of the employee, consult with that body. If the guidance provided by that body indicates that the disputed order, direction or assignment would violate an applicable ethical rule or rule of professional responsibility, the employee shall not be required to take any such action with respect to that order, direction or assignment.

## **Section 6**

An employee is entitled to a reasonable amount of duty time for meetings for representational purposes with his or her NTEU representative. An employee who wishes to meet with a Union representative to discuss representational matters will request permission from his or her supervisor prior to leaving his or her immediate work area. The employee is not required to disclose to his or her supervisor why he or she

wishes to contact an NTEU representative. Rather, the employee need only inform his or her supervisor of the general nature of the meeting (e.g. "to talk to my Union representative") and the meeting's expected duration. The supervisor shall grant the employee's request absent a significant staffing or workload problem caused by the employee's absence. If the request is denied, the supervisor will identify the time period, normally within one business day, when the employee may meet with his or her Union representative. If the employee requests it the Employer may extend any relevant filing deadline by the period of the delay. The employee will notify his or her supervisor upon return to his or her immediate work area. Nothing in this Section abrogates an employee's right to union representation.

## **Section 7**

A. An employee is entitled to representation by the NTEU at any examination of the employee by a representative of the Agency in connection with an investigation if:

1. the employee reasonably believes that the examination may result in disciplinary action against the employee; and
2. the employee requests NTEU representation.

If the particular NTEU representative requested by the employee is not available, the Employer will consider an employee's request to postpone the meeting for a reasonable amount of time, normally no more than one business day. A longer postponement may be granted in exceptional circumstances.

B. The role of the NTEU representative during such an examination is to:

- assist the employee in clarifying the facts or surfacing other facts that may impact on the matter;
- suggest other individuals who may have knowledge of the facts;
- if he or she chooses, write down each question and response;
- if he or she chooses, write down the examiner's name; and
- advise the employee.

The NTEU representative may not disrupt the examination and may not answer for the employee.

To the maximum extent possible, such an examination will be conducted in a private room.

- C. At the time that an employee is initially contacted to schedule such an examination, the employee will be provided with the general subject of the examination. The employee also will be told whether he or she is the subject of the investigation or is being interviewed as a third-party witness, or whether, based on all available information, the Employer is unable to make a determination as to the employee's status. The employee will further be advised that his or her status could change at any time during the course of the investigation.

As part of its responsibilities in this area, the Employer will provide the annual statutory Weingarten notice twice a year.

- D. At the outset of an interview of an employee who is the subject of an investigation regarding possible criminal conduct, the employee will be provided with one of the following warnings:

1. When the interview is non-custodial, at the beginning of the interview, the Employer will give the employee the following warning:

“You are being asked to provide certain information in connection with an official inquiry regarding possible misconduct. The matter under investigation may involve violations of law, that could result in criminal prosecution of responsible individuals. This is a request for your voluntary cooperation. You may terminate this interview and leave at any time for any reason. You have the right to remain silent if your answers may tend to incriminate you. Anything you say may be used as evidence against you in an administrative disciplinary proceeding and/or criminal or civil proceedings. If you refuse to answer the questions posed to you because the answers may tend to incriminate you, you cannot be discharged for remaining silent. You have the right to have legal counsel advise you and may confer with counsel before answering any questions or making any statements. You are requested to discuss your testimony or statements only with your attorney or other necessary advisors.”

2. When the Employer chooses to request authority from the Department of Justice, and then receives authority from the Department, to interview a subject with foreseeable criminal exposure under an express or implied threat that the employee will be discharged if the employee refuses to

cooperate in the investigation, the Employer will give the employee a written statement of the Kalkines warning at the beginning of the interview advising the employee that he or she is granted immunity from prosecution for matters disclosed in the interview. This warning shall state:

“This is an official administrative inquiry regarding possible misconduct. The purpose of this interview is to obtain information that will assist in determining whether administrative action is warranted. You will be asked specific questions regarding the performance of your official duties and/or conduct that may affect your capacity to carry out those duties. You have a duty to reply to the questions you are asked and to provide a statement if requested to do so. If you do not answer, or reply fully and truthfully, or if you do not provide a statement as requested, you may be subject to disciplinary action, including removal. Neither your answers nor any information or evidence gained because of your answers or statements can be used against you in a criminal proceeding. However you may be subject to criminal prosecution if you knowingly and willfully provide a false statement or false information in your answers. In addition, your answers or statements and any information or evidence resulting from your answers or statements may be used in a disciplinary proceeding that could result in disciplinary action, including removal. You have the right to have legal counsel advise you and may confer with counsel before answering any questions or making any statements. You are requested to discuss your testimony or statements only with your attorney or other necessary advisors.”

3. The Employer will provide *Miranda* warnings if and when appropriate.
- E. When an employee is given a warning under Subsection D, he or she will be given this warning in writing. The Employer may require the employee to sign the acknowledgement indicating receipt and understanding of the warning. Employees will be given a copy of the written warning for their own records. The employee's signature on the acknowledgement will indicate only that the employee actually received and understands the warning, and does not constitute an admission of any wrongdoing by the employee.
  - F. The Employer recognizes that interviews of employees by the Agency's investigative officials generally should be limited to matters of official interest to the Agency and, accordingly, will not address private matters outside the scope of the investigation except where necessary (for example, when such matters are brought up at the employee's request).

## Attachment 1

### 5 U.S.C. Section 2301 – Merit system principles

- (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.

**5 U.S.C. Section 2302 – Prohibited personnel practices**

(b) Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority –

- (1) discriminate for or against any employee or applicant for employment –
  - (A) on the basis of race, color, religion, sex, or national origin, as prohibited under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16);
  - (B) on the basis of age, as prohibited under sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a);
  - (C) on the basis of sex, as prohibited under section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d));
  - (D) on the basis of handicapping condition, as prohibited under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791); or
  - (E) on the basis of marital status or political affiliation, as prohibited under any law, rule, or regulation;
- (2) solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of –
  - (A) an evaluation of the work performance, ability, aptitude, or general qualifications of such individual; or

- (B) an evaluation of the character, loyalty, or suitability of such individual;
- (3) coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity;
  - (4) deceive or willfully obstruct any person with respect to such person's right to compete for employment;
  - (5) influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment;
  - (6) grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment;
  - (7) appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in section 3110(a)(3) of this title) 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 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; or
- (11)(A) knowingly take, recommend, or approve any personnel action if the taking of such action would violate a veterans' preference requirement; or
- (B) knowingly fail to take, recommend, or approve any personnel action if the failure to take such action would violate a veterans' preference requirement;
- (12) take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in section 2301 of this title; or

- (13) Implement or enforce any nondisclosure policy, form, or agreement, if such policy, form, or agreement does not contain the following statement: “These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health and safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.”

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. For purposes of paragraph (8), (i) any presumption relating to the performance of a duty by an employee whose conduct is the subject of a disclosure as defined under subsection (a)(2)(D) may be rebutted by substantial evidence, and (ii) a determination as to whether an employee or applicant reasonably believes that such employee or applicant has disclosed information that evidences any violation of law, rule, regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health and safety shall be made by determining whether a disinterested observer with knowledge of the essential facts known to and readily ascertainable by the employee or applicant could reasonably conclude that the actions of the Government evidence such violations, mismanagement, waste, abuse or danger.

## **Article 4 UNION RIGHTS**

### **Section 1**

The NTEU is the exclusive representative of the employees in the bargaining unit and is entitled to act for, and represent the interests of, all employees in the bargaining unit.

The NTEU shall have the right to present its views, either orally or in writing, to the Employer on any matter of concern regarding personnel policies and practices and matters affecting working conditions.

### **Section 2**

The NTEU has the right to attend and send a representative of its own choosing to any formal discussion between the Employer and one or more employees in the bargaining unit or their representatives concerning any grievance or any personnel policy or practice or other general conditions of employment. Advance notification will be given to the Chapter President, or other individual designated in writing by the NTEU, as soon as the formal discussion is scheduled. That notice will include the date, time, location and purpose of the formal discussion. This advance notice will be given unless the Employer is unable to do so because of an emergency.

The NTEU will strive to give advance notice to the Employer that an NTEU representative will be present at the formal discussion. If the NTEU gives advance notice to the Employer that an NTEU representative will be present, the Employer representative conducting the formal discussion will acknowledge the NTEU representative. If the NTEU does not give such advance notice, an NTEU representative at a formal discussion who wishes to speak will be expected to identify himself/herself as an NTEU representative before asking questions or making any statement on behalf of the NTEU.

The NTEU representative may ask questions and present a brief statement before the end of the formal discussion outlining the NTEU's position concerning the issues addressed at the formal discussion. The NTEU representative cannot use his/her attendance to disrupt the formal discussion or to undermine the Employer's position at the formal discussion. If that occurs, the Employer retains the right to terminate the formal discussion.

Should the NTEU choose to hold a meeting immediately following any formal discussion

that addresses a significant reorganization, a relocation covered by Section 2 of Article 40 (Office Relocations and Openings) or agency-wide conditions of employment, an employee who has not yet taken his/her break may choose to take his/her break to attend the NTEU's meeting to discuss these issues.

### **Section 3**

The Employer retains the right to hold informal meetings with an employee without the presence of an NTEU representative. Informal meetings may include counseling sessions and informal discussions between an employee and his/her supervisors regarding the employee's performance, work assignments and procedures, application of established office policies and practices, for example leave practices and requests, and discussions of a personal nature. It is not intended that this language will limit the Union's right to attend formal discussions under 5 U.S.C. § 7114(a)(2)(A) or an examination of an employee under 5 U.S.C. § 7114(a)(2)(B).

### **Section 4**

The NTEU may refuse to represent employees in proposed disciplinary actions and in statutory appeals (for example, adverse actions, unacceptable performance actions, Equal Employment Opportunity complaints and RIF appeals).

**Article 5**  
**EMPLOYER RIGHTS**

**Section 1**

In accordance with the provisions contained in 5 U.S.C. § 7106, Management Rights, the Employer retains the right, consistent with applicable laws and regulations:

- (1) to determine the mission, budget, organization, number of employees, and internal security practices of the agency; and
- (2) in accordance with applicable laws –
  - (A) to hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or to take other disciplinary action against such employees;
  - (B) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which the agency's operations shall be conducted;
  - (C) with respect to filling positions, to make selections for appointments from –
    - (i) among properly ranked and certified candidates for promotions; or
    - (ii) any other appropriate source; and
  - (D) to take whatever actions may be necessary to carry out the agency mission during emergencies.

## Section 2

Nothing in this Article shall preclude the Employer and the Union from negotiating –

- (1) at the election of the Employer, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;
- (2) procedures which management officials of the Employer will observe in exercising any authority under 5 U.S.C. § 7106; or
- (3) appropriate arrangements for employees adversely affected by the exercise of any authority under 5 U.S.C. § 7106 by such management officials.

**Article 6**  
**MID-TERM BARGAINING**

**Section 1**

- A. Whenever the Employer proposes a national change (i.e., nationwide or agency-wide) to a personnel policy, practice, or matter affecting working conditions not covered by this Agreement, the Employer will provide reasonable advance written notice of the proposed change to the Union National President (or his or her designee) and a concurrent copy to the Chapter President.
- B. Whenever the Employer proposes a local change (i.e., affecting only one Regional office, or Headquarters only) to a personnel policy, practice, or matter affecting working conditions not covered by this Agreement, the Employer will provide reasonable advance written notice of the proposed change to the local Union representative designated by the Union and a concurrent copy to the Chapter President.
- C. The Union may submit written proposals to the Employer after receiving notice from the Employer. Such proposals shall be submitted within twenty-one (21) calendar days for a proposed national or agency-wide change, and within fifteen (15) calendar days for a proposed local change. The Union's proposals will relate to the proposed changes and will not address extraneous matters. However, if the Union receives new information regarding the proposed change, it may submit new proposals concerning that information.
- D. If the Union submits written proposals, the Parties will meet at a mutually agreeable time and place to begin negotiations within fourteen (14) calendar days of the Employer's receipt of the Union's proposals. Negotiations will be conducted during the regular business days and hours of the office where the negotiations are taking place, unless otherwise agreed to by the Parties.
- E. In accordance with 5 U.S.C. § 7131, the Union will be authorized a number of representatives on official time for the conduct of negotiations equal to the number of the Employer's representatives throughout the bargaining process (through impasse proceedings). It is understood that the presence of any NTEU National staff member(s) will not contribute to the calculation of the number of representatives on the Union's Negotiating Team. Additionally, it is understood that the presence of any SEC General Counsel staff will not contribute to the calculation of the number of representatives on the SEC's Negotiating Team. When negotiating over a national change, the Employer will provide

videoconferencing, when available, to enable such employees to participate in negotiations. In accordance with 5 U.S.C. § 7117, the Parties will bargain in good faith and make every effort in order to reach agreement as expeditiously as possible. If the Union has not submitted written proposals within the time period prescribed above, the Employer may implement the change as proposed.

- F. The Parties may agree to reasonable extensions of time under this Article provided that the total time does not cause an unreasonable delay or impede the Employer from exercising its management rights.
- G. Except as permitted by law, the Employer will not implement the proposed change prior to completing bargaining. If the Employer implements a change prior to the completion of bargaining, bargaining will continue and the resulting agreement will be implemented as agreed upon.

## **Section 2**

To the extent permitted by law, the Union may initiate mid-term bargaining by proposing negotiable changes in conditions of employment during the term of this Agreement concerning matters not covered by this or any other agreement between the Parties, and provided that such matters do not relate to matters over which the Union has waived its right to bargain during the negotiation of this Agreement.

## **Article 7 WORK SCHEDULES**

### **Section 1 – Official Business Hours**

- A. The Employer's official business hours are the Employer's designated hours of availability to the public. During official business hours, the Employer must provide to the public sufficient office coverage in each Division/Office/Regional Office.
- B. At Headquarters Offices, the official business hours are 9:00 a.m. to 5:30 p.m., Monday-Friday. At the Employer's other Offices, the official business hours are Monday-Friday and as follows:
- New York, Boston, Philadelphia, Miami, Atlanta: 9:00 a.m.–5:30 p.m. EST,
  - Chicago: 8:45 a.m.–5:15 p.m. CST,
  - Fort Worth: 8:30 a.m.–5:00 p.m. CST,
  - Denver and Salt Lake City: 8:00 a.m.–4:30 p.m. MST, and
  - Los Angeles and San Francisco: 8:30 a.m.–5:00 p.m. PST.
- C. An employee will default to a schedule conforming to the official business hours of his or her Office unless a different work schedule is requested and approved in accordance with this Article.

### **Section 2 – Core Hours**

- A. The Employer's core hours are the established duty hours within a specified tour of duty during which every full-time employee (who is not on an approved absence) is required to be at work.
- B. At the Employer's Headquarters and Regional Offices, the core hours during which every full-time employee must be scheduled to work are 10:00 a.m. to 3:00 p.m., in the office's respective time zone, Monday-Friday.
- C. All full-time work schedules, and part-time work schedules in which an employee works more than six hours on a given day, must include an unpaid lunch break extending the employee's hours of work by thirty (30) minutes.

### **Section 3 – Flexible Hours/Bands**

- A. The Employer's flexible hours or bands are the established duty hours within which an employee may request to schedule his or her arrival and departure times, so as to create a set tour of duty that varies from his or her Office's official business hours.
- B. At the Employer's Headquarters and Regional Offices, the flexible bands are 6:30 a.m. to 10:00 a.m. local time, and 3:00 p.m. to 10:00 p.m. local time, Monday-Friday.
- C. An employee working a flexible schedule described below in Section 5.A. may report at set times during his or her Office's morning flexible band so long as the employee's hours of work are consistent with working his or her Office's designated core hours. An employee working a compressed schedule described below in Section 5.B. may report at set times during his or her Office's morning flexible band, and leave during the Office's afternoon flexible band, so long as the employee's tour of duty ends no later than 8:30 p.m.

### **Section 4 – Work Schedules: Generally**

- A. The term "Work Schedule" shall mean any of the following: a Flexible Work Schedule (Flexitour) as described in Section 5.A., a Compressed 5-4/9 or 4-10 schedule as described in Section 5.B., or a SEC-flex schedule as described in Section 5.C.
- B. The parties recognize that flexibility in work schedules may assist employees in balancing work and other responsibilities; however, the Employer shall give priority to its mission, staffing and workload considerations in considering work schedule requests.
- C. An employee's participation in any particular Work Schedule is not an entitlement. The Employer will grant or deny such request in accordance with the terms of this Article.
- D. The Employer will implement its Work Schedule programs in a way that will not interfere with maintaining uninterrupted functional coverage during each Office's official business hours. The responsibilities assigned to certain employees may require them to be present during all of their Office's official business hours. Before excluding or removing a position from a particular tour of duty, the Employer will notify the Union, and will provide the Union an opportunity to bargain as permitted by law.

- E. If the Employer approves an employee's request for a specific Work Schedule, that schedule shall remain the employee's work schedule, unless and until changed in accordance with this Article.

## **Section 5 – Work Schedules: Available Schedules**

A. Flexible Work Schedule ("Flexitour") with Credit Hours.

1. A full-time employee on this Work Schedule has an 80-hour bi-weekly basic work requirement, and fulfills that requirement by working eight hours a day, Monday-Friday. The employee must be present for work (or account for time away from work with approved leave or credit hours) during all of his or her Office's designated core hours, but may request set arrival and departure times within the established flexible bands.
2. A part-time employee on this Work Schedule has a 32-to-64-hour bi-weekly basic work requirement. To fulfill that requirement, he or she may work up to eight (8) hours a day, Monday-Friday. The employee may request set arrival and departure times within the established flexible bands consistent with being present for work during a significant portion of his or her Office's designated core hours.
3. While a full-time employee on this Work Schedule may report at set times during his or her morning flexible band, the employee's hours of work must be consistent with working his or her Office's designated core hours.
4. In a given week or pay-period, an employee on this Work Schedule may request that the Employer approve additional hours to his or her basic work requirement (credit hours) to allow him or her to be absent an equal number of hours with no loss of basic pay.

B. Compressed "5-4/9" or "4-10" Work Schedule.

1. A full-time employee on this Work Schedule will fulfill his or her 80-hour basic work requirement in a bi-weekly period over nine (9) workdays (on a Compressed 5-4/9 schedule) or (8) workdays (on a Compressed 4-10 schedule), Monday-Friday. An employee on a Compressed 5-4/9 schedule works nine (9) hours on eight (8) of the workdays, and eight (8) hours the other workday. The same day in each pay-period must be elected as the non-workday. An employee on a Compressed 4-10 schedule works four (4) ten-hour days each week. The same day in each week must be elected as the non-workday. The employee must be present for work during his or her Office's designated core hours on scheduled

workdays, but may request set arrival and departure times within the established flexible bands.

2. A part-time employee on this Work Schedule may fulfill his or her 32-to-64-hour basic work requirement in fewer than ten (10) workdays, and may request to work more than eight (8) hours (up to ten (10) hours) on any given day(s) of his or her approved work schedule.
3. While an employee on this Work Schedule may report at set times during his or her Office's morning flexible band, his or her tour of duty must end no later than 7:30 p.m. for 5-4/9 schedules and 8:30 p.m. for 4-10 schedules.
4. An employee working a Compressed 5-4/9 or 4-10 schedule may not earn or use credit hours.

C. SEC-flex Work Schedule with Credit Hours.

1. A full-time employee on a SEC-flex schedule may designate a set, recurring work schedule in which he or she fulfills his or her 80-hour basic work requirement in a bi-weekly period over fewer than ten (10) workdays, but not less than eight (8) workdays. Within his or her set, recurring work schedule, an employee may (1) vary the number of hours worked from day to day or the number of hours each week to equal eighty (80) hours in a bi-weekly pay period and (2) vary arrival and departure times on a daily basis during the established flexible hours; provided that the established work schedule remains fixed unless amended by the parties in accordance with this Article.
2. Approved SEC-flex schedules:
  - a) must meet the basic work requirement (reflect eighty (80) hours) per biweekly pay period (excluding credit hours);
  - b) are limited to a maximum of ten (10) hours per day toward meeting the basic work requirement, Monday through Friday. However, in any individual day, an employee may work up to the lesser of (i) four (4) additional credit hours under Section 12 or (ii) the number of credit hours that, when added to the employee's regular tour of duty hours on the specific day, do not exceed 12 hours;
  - c) may vary arrival and departure work times consistent with Section 3 of this Article, consistent with the duties and requirements of the

position;

- d) must reflect the core hours plus the flexible hours to be worked each workday the employee is scheduled to work;
- e) require employees to schedule and work the core hours on at least eight (8) of the ten (10) workdays in each biweekly pay period;
- f) may not include non-core workdays (i.e., Saturday or Sunday) in the 80 hour biweekly work requirement; and
- g) permit employees to earn a maximum of ten (10) credit hours on non-core workdays (i.e., Saturday and/or Sunday), holidays, and other non-workdays, to the extent permitted by law.

## **Section 6 – Procedures for Requesting Flexitour Schedule**

- A. An employee wishing to work a Flexitour Schedule under Section 5.A will submit in writing his or her first, second, and third choices for work schedules to his or her supervisor.
- B. The Employer will respond to a complete Flexitour request within 14 calendar days. In the event of denial, upon the employee's request, the Employer will provide the employee with reasons for the denial in writing.
- C. In determining whether to grant or deny an employee's request for a Flexitour Schedule, the Employer's decision will be based on whether:
  - 1) the proposed schedule interferes with the ability to meet workload and programmatic objectives;
  - 2) the position requires the employee to be present during all of the Office's official business hours;
  - 3) the employee is on a performance improvement plan or has significant performance weakness communicated to the employee in writing;
  - 4) the employee has significant documented time or attendance issues (including leave restrictions) communicated to the employee, orally or in writing, in the preceding six (6) months;
  - 5) the employee is undergoing training in a new job;

- 6) the employee is serving a probationary period; or
  - 7) the employee has received any disciplinary or adverse action in the preceding twelve (12) months that reasonably calls into question the employee's ability to perform his or her job while working a flexible work schedule.
- D. A Division/Office/Regional Office may adopt and rely on numerical staffing requirements (such as minimum percentages of staff scheduled for work throughout each workday) to ensure that adequate coverage for office responsibilities is available, but must first comply with any legal bargaining obligation. Thereafter, the Employer may deny a request for a Flexitour Schedule based on the need to maintain such minimum coverage requirements.
- E. If multiple employees in the same work unit (the applicable section or group within a division or office) request similar Flexitour Schedules, and not all can be accommodated by the Employer, such pending Flexitour Schedule requests will be determined by the Employer based on grade and Agency seniority.

## **Section 7 – Procedures for Requesting a Compressed 5-4/9 or 4-10 Schedule or SEC-flex Schedule**

### **A. Eligibility Requirements**

1. An employee is eligible to request approval of a Compressed 5-4/9 or 4-10 schedule under Section 5.B. or a SEC-flex Schedule under Section 5.C. if he or she:
  - a) is not on a performance improvement plan and does not have any significant performance weaknesses communicated to the employee in writing, has a most recent performance rating of acceptable and there is no reasonable cause to believe that his or her level of performance will drop; and
  - b) the employee is not under leave restriction; and
  - c) does not have significant documented time or attendance issues communicated to the employee, orally or in writing, in the preceding six (6) months.

## B. Approval Process

1. An eligible full-time employee applying to work a Compressed 5-4/9 or 4-10 schedule will submit to his or her supervisor, in writing, his or her first, second and third choices for work schedules, regular day(s) off, and "eight-hour day for a Compressed 5-4/9 schedule." Employees applying to work a SEC-flex schedule will submit their request in writing to his or her supervisor. Due to the unique nature of the SEC-flex schedule allowing employees to start and end at different times each work day, employees should understand that the initially requested SEC-flex schedule may need to be discussed in detail with his or her supervisor and may require amendment and revision prior to approval. An eligible part-time employee will also submit his or her choices, as appropriate.
2. The Employer may determine that the responsibilities of specific employees in certain positions require those employees to be present during specific weekdays during each pay-period. The Employer will attempt to accommodate employee choices of regular day off and/or arrival and departure times. A decision not to accommodate an employee's choice of regular day off and/or arrival and departure times may be based on the fact that the responsibilities of specific individual employees in certain positions require those employees to be present on particular days of the week or times of the day.
3. An employee who has responsibilities that are typically performed on a specified day of the workweek may not request to be off on that day.
4. The Employer will respond to a completed request for a Compressed 5-4/9 or 4-10 schedules or a SEC-flex schedule within fourteen (14) calendar days of receipt. In the event of denial, upon the employee's request, the Employer will provide the employee with reasons for the denial in writing.
5. The Employer's decision to grant or deny an employee's request will be based on whether:
  - a. the proposed schedule interferes with the ability to meet workload and programmatic objectives;
  - b. the position requires the employee to be present during all of the Office's official business hours;
  - c. the employee is on a performance improvement plan or has significant performance weakness communicated to the employee

in writing;

- d. the employee has significant documented time or attendance issues (including leave restrictions) communicated to the employee, orally or in writing, in the preceding six (6) months;
  - e. the employee is undergoing training in a new job;
  - f. the employee is serving a probationary period;
  - g. the employee has received any disciplinary or adverse action in the preceding twelve (12) months that reasonably calls into question the employee's ability to perform his or her job while working a compressed or SEC-flex work schedule.
6. A Division/Office/Regional Office may adopt and rely on numerical staffing requirements (such as minimum percentages of staff scheduled for work throughout each workday) to ensure that adequate coverage for office responsibilities is available, but must first comply with any legal bargaining obligation. Thereafter, the Employer may deny a request for a Work Schedule based on the need to maintain such minimum coverage requirements.
7. If multiple employees in the same branch request similar compressed work schedules (5-4/9, 4-10) or SEC-flex and not all can be accommodated by the Employer, such pending work schedule requests will be determined by the Employer based on grade and Agency seniority.
8. Any employee allowed to work a Compressed 4-10 work schedule or an SEC- flex work schedule will be subject to a one year trial period. During this trial period, the Employer may require an employee on a Compressed 4-10 work schedule or an SEC- flex work schedule to return to a Flexitour Schedule with credit hours or a Compressed 5-4/9 work schedule for any reason set forth in 2, 3, 5 and/or 6 above, provided the employee is given two (2) weeks advance written notice. Thereafter, with two (2) weeks advance written notice, such employee may be required to return to a Flexitour Schedule with credit hours or a Compressed 5-4/9 schedule, for any of the reasons set forth in Section 9 below.

## **Section 8 – Employee-Initiated Changes**

- A. An employee may submit a written request to work a different schedule at any time. If approved, the new schedule will begin with the next full pay-period after approval.

- B. On an *ad hoc* basis, an employee may request to change his or her Work Schedule in accordance with this Article, or change his or her non-workday to another workday in the same pay period, as long as the change does not interfere with the Employer's mission or workload requirement. In the event of denial, the Employer will provide the employee with the reasons for denial.
- C. An employee may submit a written request to change his or her regular, established compressed or SEC-flex schedule once each calendar quarter. The employee must provide at least fourteen (14) calendar days notice of the proposed change. If approved, the employee's new regular schedule will begin with the next full pay-period after approval. In the event of denial, upon request by the employee, the Employer will provide the employee with reasons for the denial in writing within fourteen (14) calendar days of the request.

In exceptional circumstances, an employee may submit a written request for a change to his or her work schedule more than once each quarter. The Employer will consider such requests in accordance with mission, staffing, and workload requirements.

## **Section 9 – Employer-Initiated Changes**

- A. The Employer may change an employee's Work Schedule or his or her regular day off for thirty (30) days or fewer because of mission, staffing or workload requirements. The Employer may consider an employee's request under this provision. The Employer will strive to give the employee at least one (1) week notice of such a temporary change.
- B. Except in the case of unforeseen contingencies, an employee working an approved Work Schedule will not be expected to forego a regularly scheduled day off. If an employee must forego his or her regularly scheduled day off, it will be rescheduled for another workday(s) in the same pay-period.
- C. The Employer may suspend or terminate an employee's Work Schedule if the Employer finds that:
  - 1. the employee's continued participation is inconsistent with the requirements of this Article;
  - 2. the employee's performance has declined significantly (for example, where the employee fails to meet established deadlines or fails to progress satisfactorily on assignments but excluding insignificant fluctuations or declines in performance);

3. the employee fails truthfully to report time worked, or fails to comply with the requirements and provisions of this Article;
  4. the employee has significant documented time or attendance issues (including leave restrictions) communicated to the employee, orally or in writing, in the preceding six (6) months; or
  5. adequate coverage for office responsibilities is not available.
- D. Where possible, the Employer will give an employee fourteen (14) calendar days advanced notice of a suspension or termination of the employee's Work Schedule.
- E. The suspension or termination of an employee's approved Work Schedule pursuant to this section is not a disciplinary action.

### **Section 10 – Changes Due to Travel or Training**

An employee on an approved Work Schedule will revert to a conforming schedule during a pay-period in which he or she is on travel status or on official business outside of his or her official duty station (including training), unless he or she can reach an alternative agreement with the Employer. Such an alternative arrangement may not increase the cost of the travel, official business, or training to the Employer, nor may it violate any rule, regulation or statute, or this or any other Article of the Agreement.

### **Section 11 – Changes Due to Promotion, Reassignment or Detail**

If an employee is promoted to a new position, reassigned or detailed, he or she must request approval from his or her new supervisor of the employee's previously elected Work Schedule, or must submit a request to the new supervisor for a new schedule. Such requests will be granted or denied pursuant to Sections 6 and 7 of this Article.

### **Section 12 – Credit Hours (Flexitour or SEC-flex Schedules Only)**

- A. An employee on a Flexitour or SEC-flex Schedule may earn and use credit hours to accommodate appointments or other personal needs without using leave.
- B. An employee may not use credit hours to create or increase entitlement to overtime pay.
- C. An employee may request to use credit hours to take off an entire day or days of

work. However, an employee may not earn or use credit hours to create a *de facto* regular and recurring change in his or her approved tour of duty. An employee seeking to establish a schedule with a regularly scheduled day-off (either the same day of the pay-period or on different days every pay-period) must request to change his or her work schedule to a Compressed 5-4/9 or 4-10 work schedule or SEC-flex work schedule provided for by this Article.

- D. An employee's request to earn credit hours must normally be approved in advance by the employee's supervisor. Such requests and approvals normally will be processed through the time and attendance system, although email or other forms of documented communication also may be used. The Employer may, in its sole discretion approve credit hours retroactively. In the event of denial, the Employer will provide the employee with the reasons for the denial. At the employee's request, the reasons for the denial shall be in writing. The Employer's decision regarding an employee's request to earn credit hours will be based on whether there is sufficient work available to keep the employee productively occupied during the entire period for which credit hours are requested, and whether that work can be performed at the requested time. An employee may not save work that otherwise could be completed during the regular tour of duty in order to earn credit hours.
- E. An employee's request to use credit hours must be approved in advance by the employee's supervisor. Such requests and approvals normally will be processed through the time and attendance system, although email or other forms of documented communication also may be used. In the event of a denial, upon request by the employee, the Employer will provide the reasons for the denial in writing. The Employer will approve an employee's written request to use credit hours already earned unless the employee's absence would have an adverse effect on staffing, workload and mission requirements.
- F. An employee may request to earn up to four (4) credit hours per workday, and up to ten (10) hours on a non-workday weekend between 6:30a.m. – 10:00 p.m., subject to the other requirements of this Article. An employee may not earn credit hours during an excused absence. An employee may not earn credit hours during a holiday, except as permitted by law.
- G. An employee may request to earn credit hours in 15-minute increments, subject to a 30-minute minimum. An employee may request to use credit hours in 15-minute increments.
- H. A full-time employee may earn up to twenty-four (24) credit hours in a pay-period. The number of credit hours a part-time employee may earn is equal to not more than 25% of the hours in the employee's normal bi-weekly schedule.

- I. A full-time employee may carry over up to twenty-four (24) credit hours from one pay-period to the next. The number of hours a part-time employee may carry over is equal to the number of hours worked per pay-period divided by four (4).
- J. An employee will not be compensated for excess credit hours that cannot be carried over. An employee must use any earned credit hours before beginning a Compressed 5-4/9 or 4/10 work schedule.
- K. Although an employee may request to work credit hours on weekends, and at early and late times on workdays, the Parties recognize that building services (e.g., heating, air conditioning, ventilation) may not be available during such times. Therefore, an employee who earns credit hours during these times may do so at his or her own inconvenience and/or at his or her approved telework location.
- L. An employee may request telework on a weekend day so the employee may earn credit hours. Employer approval of such an arrangement must be based on Section 12.D. The request must be made in advance of the weekend telework day requested. In the event of denial, the Employer will provide the employee with the reasons for the denial. At the employee's request, the reasons for the denial shall be in writing.
- M. An employee working an approved telework schedule on a given day(s) may earn credit hours at his or her approved alternate work site on that day/those days, and on non-workdays (including holidays, to the extent permitted by law).
- N. An employee may not earn credit hours during his or her lunch break.
- O. An employee may earn credit hours while on travel status en route to/from the TDY in accordance with Article 12 of this Agreement. Under this Section, an employee on travel status may earn credit hours at a temporary duty station only when the employee's written request to earn credit hours has been approved in advance and in writing by the employee's supervisor.

### **Section 13 – Pay/Leave**

- A. An employee working a Compressed 5-4/9 or 4-10 work schedule is entitled to basic pay for the number of hours of the work schedule that fall on a holiday. When a legal holiday falls on a workday, the employee will be excused with pay and without charge to leave for the number of duty hours scheduled that day.
- B. When a legal holiday falls on a scheduled regular day off, an employee working a Compressed 5-4/9 or 4-10 work schedule is entitled to an “in lieu of holiday.”

An “in lieu of holiday” is the same as a legal public holiday for pay and leave purposes. The number of hours of paid holiday leave granted on an “in lieu of holiday” is the number of hours the employee would otherwise have worked that day. “In lieu of holidays” always will be the workday proceeding the normal holiday, unless a holiday falls on a Monday, in which case the “in lieu of holiday” will be the following workday. No “in lieu of holiday” will be granted when administrative leave is approved because of bad weather or other emergency conditions on an employee's regular day off.

- C. An employee on a SEC-flex work schedule will only earn eight (8) hours holiday pay on a holiday. This is set by law (5 U.S.C. §6124). Such employee will either have to take appropriate leave (including credit hours earned) for the 9<sup>th</sup> or 10<sup>th</sup> hour or the employee may adjust his or her work schedule for that pay period only to work the additional hour(s). Such additional hour(s) must be completed during the regular or credit hour tour of duty hours in that pay period.
- D. When an employee is absent from the job other than for a holiday, he or she will be charged with leave equal in hours to the scheduled length of his or her work day.
- E. Implementation of this Article will in no way change current leave practices except as otherwise provided for by this Agreement.
- F. An employee is not entitled to night differential pay if he or she voluntarily works a flexitour or SEC-flex work schedule extending beyond 6:00p.m. (e.g., 10:00 a.m.-6:30 p.m.).

#### **Section 14 – Lunch**

An employee's lunch break normally should be taken between 11:00 a.m. and 3:00 p.m. An employee may not save any part of his or her lunch break so as to shorten his or her workday, or to extend subsequent lunch periods.

#### **Section 15 – Time Reporting**

The Employer will not require employees to sign in or sign out while working approved Work Schedules or earning/using credit hours. Instead, the Employer will use its time and attendance system to record, certify, and report time and attendance.

The Employer may impose additional time reporting requirements on an employee who consistently arrives late and/or leaves early after being warned by the Employer to correct the problem. If the problem is not corrected, the Employer will inform the employee in writing of the additional requirements.

## **Section 16 – Reports**

Within ninety (90) days of the end of each fiscal year, the Employer will report to the NTEU the following information for all bargaining unit employees:

1. Division/Office/Regional Office;
2. position/series;
3. grade;
4. type of compressed, SEC-flex, or non-conforming flexitour work schedule.

In addition, the Employer will provide the Union with other information in accordance with Section 7114 of the Labor Management Relations Statute.

## **Section 17**

The SEC-flex work schedule will take effect ninety (90) days after the effective date of this agreement in order for the Employer to brief and train its managers and supervisors on how the new work schedule should work.

On or before that date, the parties will establish a joint labor-management monitoring team to monitor the implementation of the new SEC-flex work schedule, collect and analyze data, determine metrics for evaluating the work schedule, and make recommendations to the Employer concerning the schedule. There shall be an equal number of union and management team members. NTEU shall select the union representatives.

Any modification or termination of the SEC-flex schedule will be done consistent with applicable statutes, including the Federal Employees Flexible and Compressed Work Schedules Act (5 U.S.C. § 6120, *et seq.*)

## **Article 8**

### **PART-TIME EMPLOYMENT**

#### **Section 1**

- A. The Employer recognizes the principles of the Federal Employees Part-Time Career Employment Act of 1978, 5 U.S.C. §§ 3401-3408, which provides for increased part-time career employment opportunities in the Federal service, and the Employer will comply with the requirements of the Act and the implementing regulations, 5 C.F.R. § 340, *et seq.* The Employer will provide the Union with copies of all reports to OPM required under 5 C.F.R. § 340, *et seq.*
- B. The Employer and the Union acknowledge that employees may desire to request part-time employment for reasons such as family responsibilities, education, medical conditions and gradual transition to retirement.

#### **Section 2**

An employee wishing to work part-time will submit a written request to his or her immediate supervisor. The employee's request will indicate the preferred schedule (no fewer than sixteen (16) and no more than thirty-two (32) hours per week), and duration, and also may include a general reason for the requested part-time employment.

#### **Section 3**

Employee requests to work a part-time schedule will be decided in a fair manner, and will not be unreasonably denied. The Employer's decision will be based on budgetary, staffing, workload, mission and other legitimate business reasons. The Employer will respond in writing within fourteen (14) calendar days of receipt. In the event of denial, the Employer will provide the employee with reasons for the denial in writing.

#### **Section 4**

- A. An employee approved for a part-time schedule for a period of three (3) months or less may return to full-time employment at the conclusion of the approved period of part-time employment. The Employer will give special consideration to an employee's request for pre-approval of his or her return to

a full-time schedule from a period of part-time employment of more than three (3) months to complete course work within a semester.

- B. Employee requests to return to a full-time schedule from a period of part-time employment of more than three (3) months will be decided in a fair manner, and will not be unreasonably denied. The Employer's decision will be based on budgetary, staffing, workload, mission and other legitimate business reasons.
- C. Employee requests will be handled in a fair manner, and the Employer will not unreasonably deny such requests. The Employer will respond in writing within fourteen (14) calendar days of receipt. In the event of denial, the Employer will provide the employee with reasons for the denial in writing.
- D. With four (4) weeks advanced written notice, full-time employees who have been given permission to work a part-time schedule, may be required to return to a full-time schedule if the arrangement interferes with the Employer's ability to meet budget, mission, staffing or workload requirements.

## **Section 5**

The Employer will not abolish any position occupied by an employee in order to make the duties of such position available to be performed on a part-time basis.

## **Section 6**

An employee who is employed on a full-time basis will not be required to accept part-time employment as a condition of continued employment.

## **Section 7**

An employee's part-time status will not preclude him or her from consideration for career ladder promotions, in accordance with Article 15 (Career Ladder Promotions).

## **Section 8**

An employee's part-time status will not preclude him or her from consideration for merit promotion to a position requiring a full-time schedule. The Employer may condition a merit promotion upon return to a full-time schedule.

## **Section 9**

- A. In accordance with law, rule, regulations and OPM guidance, part-time employees shall earn a full year of service for each calendar year worked (regardless of schedule) for the purpose of computing dates for the following:
- Retirement eligibility;
  - Career tenure;
  - Completion of probationary period;
  - Pay increases;
  - Change in leave category; and
  - Time-in-grade restrictions on advancement.
- B. Before an employee is assigned to a part-time position, the Employer will brief the employee on the impact of this assignment on the following: health and life insurance, promotion, pay issues, leave, retirement, and reductions in force.

## **Section 10**

A part-time employee is entitled to a holiday when the holiday falls on a day when he or she would otherwise be required to work or take leave, excluding overtime work. Part-time employees who are excused from work on a holiday receive their rate of basic pay for the hours they are regularly scheduled to work on that day. 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 full-time employees, the agency may grant paid excused absence to part-time employees who are otherwise scheduled to work on that day.

## **Article 9 ASSIGNMENT OF WORK**

### **Section 1**

The Employer will assign work in accordance with applicable laws, rules, and regulations and the Employer's needs and operational goals.

### **Section 2**

Work assignments will be consistent with an employee's position description, and if the Employer assigns other work, it normally shall have a reasonable relationship to the employee's official position description. If it becomes necessary to assign work that is not reasonably related to the employee's official position description and it is of a recurring nature, the employee's position description shall be amended to reflect such work assignments. The phrase "other duties as assigned" in a position description will not be used regularly to assign work where the work is not reasonably related to the employee's position description.

In assigning work to an employee, the Employer will consider such factors as workload, manageability of workload, employee qualifications and experience, relationship of the assignment to existing work assignments, time limits, emergencies, or any unique factors related to the task to be accomplished.

The Employer will not assign or deny work assignments to reward or penalize an employee, but in accordance with the factors described above.

If an employee is directed or required to work beyond normal duty hours to complete assigned work or meet deadlines, the Employer and the employee will comply with Article 10 (Overtime and Compensatory Time).

### **Section 3**

An employee may request a meeting with his/her immediate supervisor to discuss the employee's request for a workload adjustment. If the immediate supervisor agrees that a change is appropriate, he/she will make a reasonable effort to adjust work assignments, prioritize work assignments, and/or adjust time frames. The Employer also may consider whether overtime should be ordered and approved to meet the employee's workload.

**Article 10**  
**OVERTIME AND COMPENSATORY TIME**

**Section 1**

- A. An employee will be compensated for overtime work in accordance with all applicable laws, rules, regulations, and this Article.
- B. The Employer will not expect or require an employee to donate time in lieu of proper compensation for overtime work.

**Section 2**

- A. An employee exempt from the Fair Labor Standards Act (FLSA) who is officially ordered, or approved, normally in advance and in writing, by the Employer to perform overtime work on a given day will receive appropriate compensation for the time worked in excess of the employee's established schedule on that day. Where approval cannot reasonably be obtained in advance, the Employer will approve an employee's request for overtime compensation after the hours have been worked if the Employer determines that the overtime worked would have been ordered or required. In such cases, the employee must request the overtime compensation as soon as practicable, but in no event later than two (2) business days from the date of the overtime worked.
- B. An employee covered by the FLSA will receive overtime compensation consistent with the FLSA.

**Section 3**

- A. Compensatory time off is approved time off with pay in lieu of overtime pay for overtime worked.
- B. Except as required by law, an FLSA exempt employee with a rate of basic pay above the rate of GS 10-Step 10 will receive compensatory time off in lieu of overtime pay or overtime worked. The Employer will not require compensatory time off in lieu of FLSA mandated overtime pay.

## Section 4

Overtime pay/compensatory time off can be earned and used in 15-minute increments.

## Section 5

- A. When overtime is required on a specific ongoing work assignment (such as continuing work on a legal brief, rulemaking, enforcement investigation, inspection or reviewing/examining a filing), the Employer generally will assign overtime to the specific employees who have been working on that assignment.
- B. When overtime is required on an assignment that is not of an ongoing nature as described above in Section 5(A), overtime will be assigned to employees determined by the Employer to be best qualified to perform the work necessary to be completed. In making this determination, the Employer will consider the following:
- 1) Knowledge, skills and ability of the employees (e.g. specific knowledge or experience needed to adequately perform the overtime work); and
  - 2) 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).
- C. Except where overtime must be worked by a specific employee or employees pursuant to the Employer's determination made pursuant to Sections 5(A) or 5(B), the following procedures will apply:
- 1) When overtime is required, the Employer first will determine which employees within the work unit where the assignment is to be completed are qualified to do the overtime assignment. The Employer then will seek volunteers from that group of employees.
  - 2) If the method described above in Subsection C(1) results in more volunteers than needed, the Employer will make the overtime assignment(s) from that group on a rotational basis starting with the employee with the greatest amount of Agency seniority.
  - 3) If the method described above in Subsection C(1) does not result in sufficient qualified volunteers, the Employer will make the overtime assignment(s) from that group on a rotational basis starting with the employee with the least amount of Agency seniority.

- 4) With respect to an employee assigned to overtime work pursuant to this Subsection 5(C), the Employer will consider a request by an employee to be excused from the overtime assignment where the employee has found a qualified replacement (one from the group of qualified employees initially determined by the Employer) who is available and willing to work.

## **Section 6**

The Employer will provide an employee with as much advance notice of an overtime assignment as possible. If the need for overtime can be reasonably foreseen, the Employer will normally provide notice of at least three (3) calendar days. With respect to overtime assignments to be worked on legal holidays, the Employer will strive to provide at least five (5) calendar days advance notice.

## **Section 7**

The Employer will seek to avoid overtime assignments that result in an employee working excessively long periods without a day off.

## **Section 8**

The Employer will maintain appropriate records regarding overtime. On an annual basis, the Employer will provide the Union's Chapter President data on overtime hours worked, broken down by grade, series, title, and Division/Office/Regional Office.

## **Section 9**

With respect to compensatory time off that has been earned, an employee's maximum carry over balance from one pay-period to the next may not exceed eighty (80) hours.

## **Section 10**

With respect to compensatory time off that has been earned, an employee must use his/her compensatory time within twenty-six pay periods from the date that the compensatory time off was earned. An employee must use compensatory time before charging absences to annual leave, except when the employee has annual leave that would be forfeited and it is pay period eighteen (18) or later in the leave year. In the event that an employee does not use his/her compensatory time within twenty-six pay periods, the Employer will pay FLSA non-exempt employees overtime for the forfeited

compensatory time at the overtime rate in effect during the pay period in which the overtime work was completed. If an FLSA exempt employee does not use compensatory time within twenty-six pay periods, the compensatory time will be forfeited.

## **Section 11**

Compensatory time off for travel will be provided to employees pursuant to the provisions contained in Article 12 (Travel) of this Agreement.

## **Article 11**

### **TELEWORK PROGRAM**

#### **Section 1**

- A. The Parties recognize that telework arrangements may: (a) protect environmental quality and conserve energy by reducing traffic congestion and vehicle emissions; (b) improve employees' work lives by allowing a better balance of work and family responsibilities and reduce work-related stress; (c) improve the Employer's ability to recruit and retain a high-quality workforce in a competitive job market; and (d) provide for continuity of operations during emergencies. In recognizing the benefits, both parties also acknowledge the need of the Commission to accomplish its mission. Eligible employees may participate in the telework program to the maximum extent possible without diminished employee performance (Public Law 106-346, 359 of October 23, 2000 and Public Law 111-292 of December 9, 2010).
- B. Telework is subject to approval by the Employer and is not an employee entitlement. The Employer will grant or deny an employee's request to participate in the Program consistent with law, regulations, and the provisions of this article. Moreover, while telework should provide greater options to employees seeking to balance their work and family demands, telework may not be used for dependent or family care, nor may it be used to conduct other personal business while the employee is in official duty status at an approved alternative work site.
- C. Participation in the telework program is voluntary, and an employee may choose to discontinue a telework arrangement at any time.
- D. Participants in the telework program will receive the same treatment/opportunities as non-teleworking employees in regards to work assignments, awards and recognition, development opportunities and promotions.

#### **Section 2**

For purposes of this Article, terms contained herein have been defined:

- 1. Alternative Worksite – A location in the employee's home, designated by the employee as the location they will use to perform their official SEC duties, or another location approved by the SEC (e.g., telework center).

2. Official Duty Station – An employee's Official Duty Station is the Official Duty Station as defined by applicable Office of Personnel Management (OPM) regulations, particularly 5 C.F.R. § 531.605.
3. Telework – (Also referred to as telecommuting, flexi work, flexible workplace, and flexi place) Performance of official duties at an alternative work site (i.e., home or other satellite work location).
4. Teleworker – An employee (i.e., permanent, part-time, temporary) who works at an Alternative Worksite (i.e., home, telework center, or other satellite work location) either on an occasional and/or recurring schedule with a written agreement.
5. Telework Agreement – A written agreement, completed and signed by an employee and appropriate official(s) in his or her mission area/agency/staff office that outlines the terms and conditions of the telework arrangement.

### Section 3

- A. All employees may request a telework arrangement.
- B. The following telework arrangements are available:
  1. *Ad Hoc* or Episodic – Approved telework performed when an employee's work assignments, or part of his/her work assignments, can be performed remotely for a portion of the day or week. *Ad hoc* telework may be recurring for short periods of time. For example, an employee may have a special project that warrants the use of *ad hoc* telework on the same day or days for a number of consecutive or non-consecutive weeks. If the Employer approves an employee's request for a recurring telework arrangement, the employee is automatically approved for an *ad hoc* telework arrangement. Prior supervisory approval is required for each and every *ad hoc* occurrence. An *ad hoc* telework arrangement normally will last for one, two or three days but may be for up to five days under exceptional circumstances.
  2. Recurring – A recurring telework arrangement can be up to five days per week. If the Employer approves an employee's request for a regular, recurring telework arrangement, the employee's telework schedule will remain fixed, unless and until changed in accordance with this Article.

3. Temporary Medical – Approved *ad hoc* or recurring telework performed for a period not to exceed 160 hours due to a documented medical condition of the employee or family member that temporarily prevents the employee from performing their duties in the traditional office.
  4. Reasonable Accommodation – Approved *ad hoc* or recurring telework performed to enable a disabled employee to perform the full range of their official duties. All requests for reasonable accommodations must be approved by the Employer's Disability Officer in OHR.
  5. Continuity of Operations Plan (COOP) – *Ad hoc* or recurring telework performed to ensure that the Agency can continue to perform mission essential functions during a wide range of emergencies, including localized acts of nature, accidents, and technological or attack-related emergencies.
- C. Termination of Expanded Telework Trial Program. From the effective date of this agreement, employees on a trial expanded telework schedule will automatically be approved for their respective telework schedule under the Expanded Telework Trial Program. Employees may continue using the Employer-provided equipment, but they are now subject to the requirements under this Article.

#### **Section 4 (Eligible Positions)**

- A. Positions most suitable for telework include specific work activities that are portable and can be performed as effectively and efficiently outside the office. Face-to-face contact with other employees and clients is predictable or contact can be efficiently managed through telephone or email communications. Access to necessary reference materials is available through photocopying, faxing, or electronic transfer of documents, and will not violate any law, regulation or policy.
- B. Work suitable for telework depends on the nature and job content, rather than job series or title, type of appointment, or work schedule. Jobs not entirely suited for telework may contain duties that can be performed at an Alternative Worksite either on a regularly scheduled or *ad hoc* basis.
- C. Tasks and functions (positions) generally suited for telework include, but are not limited to:
  1. Writing;
  2. Policy development;

3. Research;
4. Analysis (e.g. investigating, program analysis, financial analysis);
5. Report writing;
6. Telephone-intensive tasks;
7. Computer-oriented tasks; and,
8. Data processing in cases where the security of data can be adequately assured.

### **Section 5-1 (Eligible Employee)**

- A. An employee may be eligible for a telework arrangement if:
- 1) the employee's work does not require frequent face-to-face interaction with supervisors, co-workers, or others. If the employee's work does require frequent face-to-face interaction, the Employer will consider whether the use of telephone and/or e-mail communications, or adjustments to employees' schedules, is an appropriate substitute;
  - 2) the employee does not require specialized equipment or reference materials that are only available at the Official Duty Station, or access to specialized equipment or reference materials can be grouped and scheduled when the employee is at the Official Duty Station;
  - 3) the employee can function independently, without frequent or close oversight or supervisory consultation; and
  - 4) the employee's work does not require frequent access to confidential or sensitive data or information which is not attainable from home, for example, personnel and/or payroll records; non-public (SEC restricted) information; or information protected from unauthorized disclosure by the Privacy Act of 1974 and its implementing regulations. However, the Employer will consider whether the security of data or information (including sensitive and Privacy Act material), can be adequately assured.
- B. An employee that does not meet the criteria in Section 5-1.A above may still be eligible to request *ad hoc* telework under Section 3.B.1 and 3.B.5 if there are sufficient work assignments that can be performed at an Alternative Worksite without diminishing the employee's performance or agency operations.

## **Section 5-2 (Transition from Trial to Permanent Expanded Telework)**

- A. The Expanded Telework Trial Program, under which employees telework for 3, 4 or 5 days per week, will be made permanent.
- B. Current participants will remain in the program on their current telework schedules, or may separately apply to increase the number of telework days.
- C. No more than 25% of bargaining unit employees may participate in expanded telework, in any Regional Office, Division, or Office, except that there will be no participation cap in the Division of Corporation Finance. As an initial selection process if the cap is reached in any office, selections will be based on seniority among applicants who meet the eligibility criteria. Thereafter, qualified applicants will be selected on a first come, first served basis as slots are available.
- D. In order to participate in 3-day telework the employee must have previously been on 2-day telework for one year; to participate in 4-day telework the employee must have previously been on 3-day telework for one year; and to participate in 5-day telework the employee must have previously been on 4-day telework for one year.
- E. Either party may elect to reopen Article 11 for negotiation for a period of thirty days after this term agreement has been in effect for two years.
- F. All 3, 4, or 5-day teleworkers may be required by the SEC to share spaces with one other expanded teleworker, except for Union Stewards. The Union will conduct the selection process for shared work space, with input from the Employer. An employee may elect to hotel rather than share work space. An employee who ends his or her participation in recurring 3, 4 or 5 day telework is not guaranteed to return immediately to a dedicated office or work space.

## **Section 6 (Decision to Grant or Deny a Telework Request)**

- A. The supervisor's decision to grant or deny an employee's request for an *ad hoc* or recurring telework arrangement will be based on the nature and content of the employee's job, whether the arrangement interferes with the Employer's ability to meet mission, staffing and workload requirements and whether the employee's request is otherwise consistent with this article.
- B. A supervisor may deny a request for a particular telework schedule based on the business need to maintain minimum coverage requirements.
- C. In deciding whether to grant or deny a telework request, the supervisor will

consider the following factors:

1. The employee has demonstrated self-motivation, independence, and dependability in accomplishing work assignments;
  2. The employee can work effectively in an isolated environment; and
  3. The employee has good time management skills
- D. The Employer may limit or exclude an otherwise eligible employee's participation in a telework arrangement if he or she:
1. is on a performance improvement plan (PIP) or has significant performance weaknesses previously communicated to the employee;
  2. has documented time or attendance issues previously communicated to the employee in the prior six (6) months;
  3. has received any disciplinary or adverse action in the preceding twelve (12) months;
  4. is undergoing training in a new job, or is serving a probationary period;
  5. has work that requires him or her to be at his or her Official Duty Station in order to accomplish his or her duties (e.g., answering office telephones, receiving visitors, sorting or delivering mail, making copies of or binding documents, or providing on-site computer support); or,
  6. is requesting a recurring telework arrangement and he or she proposes an alternative work site so far away from the official duty station that reporting to the official duty station would be impractical.
- E. The Employer may suspend or terminate an employee's telework arrangement if the Employer finds that:
1. the employee fails to adhere to the provisions of his or her Telework Agreement;
  2. the employee's continued participation in the telework arrangement is inconsistent with this article;
  3. the employee's performance has declined (for example, where the employee fails to meet established deadlines or fails to progress satisfactorily on assignments, but not insignificant fluctuations or declines in performance);
  4. the employee fails to truthfully report time worked; or
  5. the Employer receives and communicates to the employee verifiable information from co-workers, the public, or others, indicating dissatisfaction with the employee's availability while performing telework assignments.

Under these circumstances, the Employer will give an advance notice of a

suspension or termination of the employee's telework arrangement. The employee will have an opportunity to meet with the Employer to discuss the reason(s) for suspension or termination. To the extent possible, the Employer will provide the employee with this opportunity to be heard prior to implementing a final action. On request, the Employer will provide the employee with the reason(s) for the suspension or termination in writing. An employee who has his or her telework arrangement terminated may reapply for a telework arrangement six (6) months from the date of termination.

- F. The Employer will respond to a properly submitted request for a recurring or *ad hoc* telework arrangement within fourteen (14) calendar days. Denial of a recurring or *ad hoc* telework arrangement will, upon request, be provided to the employee in writing, specifying the reason(s) for denial.
- G. If multiple employees in the same branch request similar telework arrangements and not all can be accommodated by the Employer, such requests will be evaluated by the Employer based on grade and Agency seniority.
- H. The granting or denial of requests to telework shall be made in a fair and equitable manner.
- I. The Employer will consider an employee's request to use a telecommuting center, subject to budgetary considerations, and consistent with this article.

### **Section 7 (Training)**

- A. Any employee considering participation in the Telework Program is required to complete telework training prior to submitting a "Telework Request and Agreement Form" and an Alternative Worksite Safety Checklist. The respective supervisor must also complete the telework training prior to the employee teleworking. The telework training can be found via the Employer's online training system.
- B. Certifications of training completion must be attached to a Telework Request and Agreement Form.

### **Section 8 (Telework Agreement)**

- A. An employee requesting to work a telework arrangement will submit a signed "Telework Request and Agreement Form" to his or her supervisor. The telework agreement documents the terms and conditions of participation in the telework program. The agreement must be signed by both parties prior to the start of

teleworking.

- B. If employees have an approved agreement for recurring telework, they may also *ad hoc* telework, with advance supervisory approval, without submitting an *ad hoc* telework agreement.
- C. Employees may be required to re-certify their telework agreement on an annual basis to ensure that all information is accurate and up to date.
- D. Consistent with this Article, a supervisor may elect to review telework agreements as the business need arises to insure compliance with this Article, and any modifications to the telework agreement may only be made pursuant to this Article. The supervisor will discuss the reasons for any modification to the telework agreement with the employee and, upon request, provide the reasons for such revision in writing to the employee.
- E. The employee must submit a new Telework Request when either of the following occurs:
  - 1. The employee is promoted, reassigned, or detailed to a different position;  
or
  - 2. The employee wishes to make any change to the original approved telework arrangement, such as the number of telework days, location of Alternative Worksite, etc.
- F. If an employee seeks to discontinue his or her established telework arrangement, he or she must notify his or her supervisor.
- G. An employee may submit a written request to change his or her recurring telework schedule once each calendar quarter. The Employer will respond to the, request within fourteen (14) calendar days. The Employer will grant such requests if consistent with mission, staffing and/or workload requirements. In the event of denial, upon request, the Employer will provide the employee with the reason(s) for the denial in writing.
- H. For a particular pay period, an employee may request to change his or her scheduled telework day to another day in the work week. Such request will be granted as long as the change does not unreasonably interfere with mission, staffing and/or workload requirements.

## **Section 9 (Maintaining a Safe Alternative Worksite)**

- A. If the Alternative Worksite is the employee's home, the employee must designate a room or location in their home for placement and use of the work materials. An employee will ensure that this alternative work site location is safe and has adequate workspace, lighting, ventilation, temperature controls, telephone service, power, smoke alarms, and security. As part of the telework approval process, the employee is required to complete and submit with the telework request form, the SEC Self-Certification Safety Checklist prior to teleworking.
- B. The Employer reserves the right to inspect the Alternative Worksite during an employee's regularly scheduled tour of duty or at another agreed upon time to ensure proper maintenance of government-owned property and conformance with safety standards. The Employer will give reasonable advance notice to the employee of an inspection, generally not less than two (2) workdays.
- C. A teleworker is covered by the applicable provisions of the Federal Employee's Compensation Act if injured while performing official duties at his or her approved alternative work site. An employee will notify his or her supervisor immediately of any such accident or injury and will complete any required forms. The Employer will investigate such an incident promptly.
- D. The Employer will not be liable for damages to a telework employee's personal or real property while the employee is working at an alternative work site, except to the extent the Employer is held liable under the Federal Tort Claims Act or the Military Personnel and Civilian Employees Claims Act.

## **Section 10 (Official Duty Station)**

For pay and travel purposes, the employee's official duty station shall be used.

## **Section 11 (Performance of Work)**

- A. Performance requirements for teleworking employees are the same as those for non-teleworking employees. Nothing in this Article shall affect the Employer's right to assign work or make reasonable requests to ascertain the status of work assignment(s) in accordance with applicable laws, rules, regulations, the Employer's needs, or operational goals. The employee will notify a member of the supervisory chain if and when lack of access to resources, documents, or data makes performing assigned duties while teleworking impracticable.
- B. A teleworking employee will be available at a specified Alternative Worksite to

supervisors, co-workers, and the public by telephone, voicemail, e-mail, and other communications media during his or her scheduled daily tour of duty.

Employees shall comply with supervisor direction regarding other contact requirements such as changes to voice mail messages, number of times daily required to check voice mail, email contact, etc. The parties recognize that the nature of telework may result in reasonable inquiries or communications to the teleworker not made to the staff as a whole.

C. The teleworking employee must forward their business telephone to an alternative telephone number so they are available to conduct business. The following are additional Call Forwarding provisions:

- 1) The Employer will take reasonable steps to ensure that the private residential or cellular telephone numbers of telework participants who have their calls forwarded will not be available to the public.
- 2) Employees are expected to forward their office telephone to their Alternative Worksite before their scheduled telework duty hours and turn off Call Forwarding at the end of their telework day.
- 3) Employees will be permitted to forward their calls to either a private residential telephone number or a cellular telephone number.
- 4) When office calls have been forwarded, the employee will answer the telephone at his or her Alternate Worksite in the same professional manner as he or she would at his or her Official Duty Station. However, employees will only be required to field these business phone calls while on duty. In the event that the employee misses a telephone call, he or she will return the call in a timely fashion. If only a single telephone line is available for both voice and data at the employee's alternative work site, or if the primary telephone at the employee's alternative work site is a cellular telephone, the teleworker is authorized to have the office line forwarded to a cellular telephone in an effort to ensure telephone communication is available while the teleworker is working online. Under these circumstances, the Employer will reimburse the teleworker for official telephone calls made to and from the cellular telephone.
- 5) The Employer will not preclude an employee from participating in telework arrangements because Call Forwarding is not available in his or her area.

D. An employee and his/her supervisor may meet to discuss any issues relating to the employee's performance while on telework. This discussion may include identifying any problems or obstacles, which may be interfering with the employee's ability to perform the required work under his/her telework arrangement.

## **Section 12 (Balancing Work and Family Needs)**

- A. Telework arrangements are for the performance of official duties and, while the arrangements give teleworkers flexibility, the work hours should not be treated as an opportunity to conduct personal business. Teleworkers must follow the SEC standards of ethical behavior, conduct, and confidentiality regardless of where the official duties are performed.
- B. Teleworking is not a substitute for childcare or dependent care. The teleworker must continue to make arrangements for child or dependent care to the same extent as if he or she was working at the traditional office. It is permissible for a caregiver to be present at the Alternative Worksite to take care of a dependent (newborn to non-school age and/or elderly person) while the teleworker is officially working.
- C. If a situation arises where the teleworker must attend to a dependent at the Alternative Worksite during scheduled duty hours, the teleworker shall immediately notify the supervisor and arrange to take leave, credit hour(s) or make other arrangements.

## **Section 13 (Time and Attendance)**

- A. Time spent working in a telework status must be accounted for and reported in the same manner as if the employee reported for duty at the Official Duty Station. Each hour of telework must be accurately recorded and identified as “telework” in the electronic Time and Attendance system and the appropriate telework indicator code must be entered.
- B. Normal procedures regarding the requesting and approval of leave, overtime, and credit hours applies when an employee is teleworking.

## **Section 14 (Work Schedules)**

- A. The work schedule (days and duty hours) at the telework site must be documented on the agreement signed by both the approving official and employee.
- B. A teleworking employee's work schedule may include any alternative work schedules allowed for by Article 7 of this Agreement. Employees may earn credit hours when teleworking, including weekends, subject to Article 7 and approval by the employee's supervisor.
- C. An approved teleworker may telework less than their regular scheduled tour of

duty with prior supervisory approval. This may occur when an employee works a portion of the work day in the office or is taking approved leave for a portion of his or her work day and requests to telework the remaining hours in the work day. Requests made on the same day will not be approved except in exceptional, unforeseen circumstances. The supervisor's decision to grant or deny an employee's request will be based on Section 6.A and 6.B. The Employer ordinarily will respond to such request, in writing, within seven (7) calendar days.

- D. The Employer reserves the right to direct an employee scheduled for telework to report to his or her Official Duty Station in circumstances deemed necessary by the Employer to meet mission, staffing and/or workload requirements such as: meetings, receiving work assignments, training, travel, absences of other employees, emergency situations, or other situations deemed necessary by the Employer to meet mission, staffing and/or workload requirements. The Employer will give the employee as much notice as possible of the need to report to the Official Duty Station.
- E. When the Employer directs the employee to report to his or her Official Duty Station (or to a temporary duty location, if applicable) on the employee's scheduled telecommuting day in a given week, the Employer will grant or deny an employee's request to work a different telecommuting day during that same week based on mission, staffing and/or workload requirements. In the event of denial, upon request, the Employer will provide the reasons for denial in writing.
- F. An employee may request to change his or her scheduled telecommuting day to another day in the work week as long as the change does not unreasonably interfere with mission, staffing and/or workload requirements. In the event of denial, upon request, the Employer will provide the employee with the reasons for denial in writing.
- G. There will be no "carryovers" of "missed" telework days from week-to-week.
- H. If an emergency occurs at the telework employee's Alternative Worksite that impacts on his or her ability to perform official duties, the employee will immediately notify the Employer. In such an emergency, the Employer may direct the employee to report to the Official Duty Station, or approve annual leave (or credit hours), administrative leave, or leave-without-pay.

## **Section 15 (Technology, Equipment and Supplies)**

- A. The Employer will consider an employee's request to use his or her own computer equipment to perform his or her official duties at the Alternative Worksite. The employee is responsible for maintenance and repair of personally owned

equipment.

- B. If the Employer determines that an employee requires a computer to perform his or her official duties, subject to budgetary considerations, the Employer will strive to provide a laptop computer to the employee when working at the approved Alternative Worksite. An employee must ensure that government-provided property is used only for approved purposes. The Employer will service the government equipment provided to an employee at the Official Duty Station.
- C. An employee must comply with all relevant information technology security measures, including password protection and data encryption, so that Privacy Act and other security standards are not compromised.
- D. Where there is a demonstrated need, the Employer will provide a teleworker participating in recurring telework arrangements with a phone card for making business-related long-distance telephone calls.
- E. The Employer will provide a teleworker on a recurring schedule with necessary and routine office supplies. Necessary and routine office supplies include pens, paper, paper clips, file folders, etc., but do not include such items such as furniture, fax machines, hole punchers, printer cartridges, etc.
- F. The Employer may provide underutilized computers or other equipment for use by teleworkers.
- G. The Employer will reimburse a teleworker for appropriate and authorized expenses incurred while conducting official duties at the approved Alternative Worksite, as provided for by law and regulations.
- H. The Employer will not be responsible for operating costs, home maintenance, insurance, or any other costs (e.g., utilities, internet service) associated with the use of an Alternative Worksite.

### **Section 16 (Protection of Government Records)**

- A. The teleworker is responsible for maintaining confidentiality and security at the alternate workplace, as the teleworker would at the Official Duty Station. The employee must protect the security and integrity of data, information, paper files, and access to agency computer systems against unauthorized disclosure, access, mutilation, obliteration, and destruction.
- B. Any compromise in the security and/or integrity of government records must be brought to the teleworking employee's supervisor immediately.

## Section 17 (Continuity of Operations in Weather or Emergency Conditions)

- A. Agency closures, due to weather, road conditions, or conditions at or around the official duty station do not normally affect the employee's ability to work at home or an Alternative Worksite. Therefore, the employee is expected to work their normal tour of duty on the days they are regularly scheduled to telework when the government has announced unscheduled leave/unscheduled telework, delayed arrival, early departure, or Federal offices are closed to the public. *Ad hoc* teleworkers may request and may be granted unscheduled telework during agency closures, weather, road conditions, special events that severely impact commuting or other emergency conditions to the extent they have access to necessary equipment, documents, and data. Weather-related conditions include inclement weather or forecasted inclement weather.
- B. Employees regularly scheduled to telework on a day that there is an agency closure will continue to work during these closures and will not normally be granted administrative leave. However, if the condition at the Official Duty Station impacts the ability to work at the Alternative Worksite (e.g., servers are shut down or where power outage forces the closures of an office and a power outage prevents a teleworker from completing his or her work at the alternative work site), employees at the Alternative Worksite will be treated in the same manner as those at the Official Duty Station.
- C. A supervisor may approve an employee's request to *ad hoc* telework for a full day or partial day in the event the government is open with the option of unscheduled leave/unscheduled telework or in the case of late opening or early departure. This may occur when an employee with a current SEC approved telework agreement is able to maintain business continuity but cannot safely commute to and from the Official Duty Station.
- D. When the SEC announces an early dismissal of employees for non-emergency conditions such as on the day prior to a Federal holiday, employees who telework will be excused.
- E. When an emergency affects only the Alternative Worksite for a major portion of the workday, the teleworker is expected to report to the Official Duty Station or request supervisory approval of annual leave, compensatory time, credit hours if on a flexible work schedule, or leave without pay.
- F. When an employee knows in advance of a situation that would preclude working at the Alternative Worksite, the employee must either come to the Official Duty Station or request leave.

## **Section 18 (Compensation for Travel)**

- A. If the Official Duty Station and the Alternative Worksite are different, and the two are within reasonable commuting distance, then travel between the Official Duty Station and the Alternative Worksite is considered local travel, and there is no reimbursement for travel expenses.
- B. If an employee must return to the Official Duty Station on a telework day, mileage is not reimbursed, but the time spent traveling must be credited as work time.
- C. If a teleworker is directed to travel to the Official Duty Station during his or her regularly scheduled basic tour of duty—for instance, for an unplanned meeting, or an emergency at the Official Duty Station—the teleworker's travel hours must be counted as hours worked.

## **Section 19 (Reporting)**

- A. There are a number of reporting requirements internally and externally to SEC for telework. The Employer will be responsible for preparing and submitting necessary information for reporting purposes.
- B. Within sixty (60) days of the Fiscal Year, the Employer will report to the NTEU the number of bargaining unit employees participating in the telework program broken down by Name, Division/Office/Regional Office, type of telework (e.g., recurring and *ad hoc*), days per pay period, and effective dates. In order to accurately collect this data, employees may be required to report the number of hours teleworked each pay-period.

## **Article 12**

### **TRAVEL**

#### **Section 1**

The Employer will adhere to applicable laws, rules and regulations related to travel.

#### **Section 2**

- A. For employees who are exempt under the Fair Labor Standards Act (FLSA), and in accordance with 5 C.F.R. § 550.112(g) and OPM policy guidance "Hours of Work for Travel," time spent in travel status away from an employee's Official Duty Station (ODS) is not hours of duty unless:
- 1) The time spent is within his or her regularly scheduled administrative workweek, including regularly scheduled overtime work; or
  - 2) The time spent:
    - involves the performance of actual work while traveling;
    - is incident to travel that involves the performance of work while traveling;
    - is carried out under such arduous and unusual conditions that the travel is inseparable from work; or
    - 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 the employee from such an event to his or her ODS.
- B. With respect to FLSA covered (non-exempt) employees, and in accordance with 5 C.F.R. § 551.422(a), time spent in travel status away from an employee's ODS shall be considered hours of duty if:
- an employee is required to travel during regular working hours;
  - an employee is required to drive a vehicle for the actual performance of his or her work (except as provided in 5 C.F.R. § 551.422(b)) or perform other work while traveling;
  - an employee is required to travel as a passenger on a one-day assignment away from the ODS; or
  - an employee is required to travel as a passenger on an overnight assignment away from the ODS, during hours on non-workdays that correspond to the employee's regular working hours.
- C. An employee's commuting time from home to work and vice versa, within his or her ODS, is never hours of work.

- D. The Employer will evaluate employees' travel-related requests such as to travel on a day prior to when attendance is required at a place, away from an employee's official station, where the employee is authorized to travel (TDY) based on staffing, workload, mission accomplishment, and budgetary considerations. In cases where the Employer denies an employee's travel related request, the responsible official shall advise the employee of his or her reasons for such denial. Upon the request of the employee, the Employer shall furnish a written statement of the reasons for the denial.
- E. To the extent practicable and in accordance with laws, rules and regulations, and this Article, the Employer will not direct an employee to remain overnight at a TDY and to travel the next day, if it is not a workday.
- F. Pursuant to 5 U.S.C. § 6101 (b)(2), to the maximum extent practicable, the Employer shall schedule the time to be spent by an employee in travel status away from his or her ODS within the regularly scheduled workweek of the employee. Pursuant to 5 C.F.R. § 610.123, when it is essential that an employee be required to travel on non-duty time and the employee is not eligible for overtime pay, the responsible official shall record his or her reasons for ordering travel at those hours and shall, upon request, furnish a copy of this statement to the employee.
- G. While in travel status en route to/from the TDY, an employee may request to earn up to:
- two (2) credit hours on his or her normally scheduled workday,
  - six (6) credit hours on a non-workday weekend, or
  - six (6) credit hours on a Federal holiday, if outside the hours corresponding to his or her hours of work on a regular workday.

As stated in Article 7 of this agreement, an employee may earn or use credit hours while in travel status, subject to supervisory approval in accordance with the procedures of Article 7 (Work Schedules). The Employer's decision regarding an employee's request will be based solely on whether the employee will perform productive and essential work while using a common/public carrier during the time requested and the Employer can verify the work performed.

### **Section 3**

- A. An employee who voluntarily returns home or to his or her ODS on a non-workday during a TDY assignment will be reimbursed for round-trip transportation and *per diem* or actual expenses, as appropriate, not to exceed the amount reimbursable had the employee remained at the TDY. An employee may not be able to obtain the government rate for transportation in these circumstances.

- B. An employee on a TDY assignment for more than seventeen (17) consecutive days may be authorized *per diem* or actual expense and round-trip transportation expense for periodic return travel on non-workdays to the employee's home or ODS. The Employer also may consider approving such reimbursements and expenses for travel on other bases in appropriate circumstances.

#### **Section 4**

- A. The Employer may authorize a rest period not to exceed twenty-four (24) hours at either an intermediate point or at the employee's destination if:
- either the employee's origin or destination point is outside the continental United States;
  - the employee's scheduled flight time, including stopovers, exceeds fourteen (14) hours;
  - travel is by a direct or usually traveled route; and
  - travel is by less than premium or first-class service.
- B. The employee should request the Employer's approval for the rest stop prior to the commencement of the trip. The request will not be authorized when an employee, for personal preference or convenience, elects to travel by an indirect route resulting in excess travel time.
- C. When a rest stop is authorized, the applicable *per diem* rate is the rate for the rest stop location.

#### **Section 5**

An employee who must leave a TDY assignment prior to its completion because of an incapacitating illness or injury which is not due to the employee's own misconduct is entitled to reimbursement for expenses of transportation to the employee's home, ODS, or regular place of business, as the case may be, and *per diem* or actual expenses, in accordance with applicable laws, rules and regulations, and this Article.

#### **Section 6**

- A. The Employer will reimburse an employee for *per diem* and/or actual and necessary expenses of official travel in accordance with applicable laws, rules and regulations, and this Article. An employee traveling on official business is expected to exercise the same care in incurring expenses as would a prudent person when traveling on personal business. Expenses that will be authorized and approved are confined to those actual and necessary to the transaction of official business.

- B. An employee is responsible for excess costs and additional expenses incurred for personal preference or convenience. This includes excess costs and additional expenses incurred when an employee travels on his or her own time.

## **Section 7**

- A. Receipts are required, irrespective of the amount of the expenditure, for all lodging expenses, common carrier transportation tickets, and long-distance telephone calls if the employee has not used a government-issued telephone card.
- B. For any authorized expenses costing over seventy-five (75) dollars, an employee must provide a receipt or a reason acceptable to the Employer explaining why the employee is unable to provide the necessary receipt.
- C. Consistent with government travel rules and regulations, the Employer will reimburse employees for reasonable personal service tips for baggage and taxicabs.

## **Section 8**

An employee using a government-issued telephone card may make one (1) long-distance personal call of reasonable duration per day. If an employee does not use a government-issued telephone card for such a call, he or she will be reimbursed for up to five (5) minutes or less in duration with a maximum reimbursement of five (5) dollars per day. When on temporary foreign travel, long-distance personal calls will be reimbursed for the first five (5) minutes per day only, or may be averaged for a total of thirty-five (35) minutes per week.

## **Section 9**

- A. Common carrier (air, rail, and bus) is considered the most advantageous method to perform official travel, and will be used whenever it is reasonably available. The Employer may authorize other methods of transportation only when:
- the use of common carrier would seriously interfere with the performance of official business or impose an undue hardship upon the traveler, or
  - the total cost by common carrier exceeds the cost by another method of transportation.

The Employer's determination that another method of transportation is more advantageous to the government than common carrier will not be made on the basis of personal preference or inconvenience to the traveler.

- B. When an automobile is authorized to be used for travel, the employee may elect to use his or her privately owned vehicle (POV). An employee will not be directed to furnish a POV for the Employer's convenience. Reimbursement for use of a POV will be made in accordance with government regulations and current policy and practice.
- C. An employee's use of a government-owned, leased, or rental vehicle is subject to applicable laws, rules and regulations. An employee's use of a government-furnished or government-contract lease or rental vehicle is limited to official business purposes. Except for reasonable meal trips, use of such vehicles for personal side-trips or errands is prohibited.

## **Section 10**

When consistent with staffing, workload, mission accomplishment, and budgetary considerations, a supervisor may rotate work assignments requiring travel to reduce burdens on affected employees.

## **Section 11**

If travel is expected to require an employee to be absent from his or her Official Duty Station for three (3) or more consecutive months, the Employer will strive to give the employee at least thirty (30) calendar days' notice of his or her departure date.

## **Section 12**

- A. For the purposes of computing meals and incidental expenses (M&IE) reimbursement allowances, official travel begins when the employee leaves the home, office, or other authorized point of departure and ends when the employee returns home, to the office, or other authorized point at the conclusion of the trip.
- B. In accordance with General Services Administration (GSA) regulations, employees will be reimbursed for full-day official travel. Except as noted below, the meals and incidental expenses (M&IE) allowance for a partial day of travel (the first and last day of travel) is a flat three-fourths (%) of the applicable M&IE.
- C. For travel of more than twelve (12) hours, but not exceeding twenty-four (24) hours, when lodging is required, employees will be reimbursed at three-fourths (%) of the applicable rate for one twenty-four (24) hour period, as well as lodging expenses.

- D. For travel of more than twelve (12) hours, but not exceeding twenty-four (24) hours, when lodging is not required, employees will be reimbursed at a flat three-fourths (%) of the applicable M&IE.
- E. Payment of *per diem* allowance for travel of twelve (12) hours or fewer is prohibited.

### **Section 13 - Compensatory Time Off for Travel**

- A. Compensatory time off for travel is earned by an employee for time spent in a travel status away from the employee's ODS when such time is not otherwise compensable.
- B. In accordance with 5 C.F.R. § 550.1404(b), time in travel status includes the time an employee actually spends traveling between his or her official duty station and a temporary duty station (TDY) or between two temporary duty stations, and the usual waiting time that precedes and/or interrupts such travel subject to the following exclusions:
  - If an employee experiences an extended (i.e., not usual) waiting time between actual periods of travel during which the employee is free to rest, sleep, or otherwise use the time for his or her own purposes, the extended waiting time is not creditable as time in a travel status.
- C. For purposes of this Article, "usual waiting time" is defined as ninety (90) minutes prior to the originally scheduled departure time for domestic flights and three (3) hours prior to the originally scheduled departure time for international flights. Any waiting time beyond this usual waiting time will be considered "extended" and is not creditable as time in a travel status.
- D. Employees must complete SEC Form Worksheet for Determining Amount of Compensatory Time for Travel. The completed worksheet must be submitted with the Travel Voucher and must be consistent with all time claimed thereon. Upon submission of the requisite documentation, the Employer will approve, deny, or modify an employee's earning request for compensatory time off for travel within a reasonable period of time, but no later than fourteen (14) calendar days from the date of receipt of the submission.
- E. Eligible compensatory time off for travel will be credited and used in increments of fifteen (15) minutes.
- F. In order to use compensatory time for travel earned, an employee must submit a written request through the SEC's electronic time management system. This request must be approved in advance and in writing by the employee's supervisor.

The Employer will approve an employee's written request to use compensatory time for travel already earned unless the employee's absence will have an adverse effect on staffing, workload, and/or mission requirements. If an employee's request is denied, the Employer and the employee will attempt to agree upon an alternative time for the employee to use the earned time.

- G. Employees must use accrued compensatory time off for travel by the end of the twenty-sixth (26th) pay period after the pay period during which it was earned. Unused compensatory time off for travel will be held in abeyance for an employee who separates, or is placed in a leave without pay status, and later returns following: (1) separation or leave without pay to perform service in the uniformed services and a return to service through the exercise of a reemployment right; or (2) separation or leave without pay due to an on-the-job injury with entitlement to injury compensation under 5 U.S.C. Chapter 81. The employee must use all of the compensatory time off held in abeyance by the end of the twenty-sixth (26th) pay period following the pay period in which the employee returns to duty, or such compensatory time off will be forfeited. The Employer will notify the employee that his or her accrued compensatory time off for travel may be forfeited, at least two (2) pay periods prior to forfeiture.
- H. As provided in 5 C.F.R. § 550.1408, an employee may not receive payment under any circumstances for any unused compensatory time off he or she earned under this Article.

**Article 13**  
**PERFORMANCE APPRAISAL SYSTEM**

**Section 1**

The Employer's Performance Appraisal System is the systematic process by which the Employer involves a permanent employee in maximizing his/her contribution to the accomplishment of Agency mission and goals. It encourages communication between an employee and his/her supervisor, provides a mechanism to evaluate employee performance, identifies an employee's strengths and weaknesses, and provides a mechanism to address deficient performance effectively.

**Section 2**

- A. The Employer will establish a performance evaluation plan (Plan) for each employee. The Plan will consist of critical elements, which are aspects of the employee's work where acceptable performance is essential to his/her position. Each element will have a performance standard that, at a minimum, states the expectations or requirements established by the Employer that must be met by the employee in order for his/her performance to be rated as acceptable in that element. An employee's performance will be rated in each element of his/her Plan. If an employee's performance is unacceptable in any one critical element, the overall rating will be unacceptable.
  
- B. Elements and standards must be reasonably related to the duties set forth in the employee's position description. Pursuant to 5 U.S.C. 4302(b)(1), the Employer will establish performance standards which will, to the maximum extent feasible, permit the accurate evaluation of job performance on the basis of objective criteria related to the job in question for each employee or position under the performance appraisal system. Written performance appraisals will be based on a comparison of the employee's performance on his/her work throughout the entire rating period for the employee to the elements and standards of his/her position. An employee should discuss in a timely manner with his/her supervisor the factors the employee believes have affected his/her performance, such as the use of approved official time for representational functions, the authorized performance of collateral duties, lack of customary training, or unavailability of required resources. The Employer will take into account any mitigating impact of such factors when evaluating the employee's performance.

- C. Prior to making changes to any performance plans, the Union will be provided at least fourteen (14) calendar days to comment on the proposed plans before they are finalized by the Employer. The NTEU also retains the right to negotiate over changes to employee performance plans, as permitted by law. An employee will not be held accountable or responsible for any changes to the elements and standards under his/her performance plans until they are received by the employee.

### **Section 3**

The appraisal period will be from May 1 to April 30 the following year, unless adjusted due to individual circumstances.

### **Section 4**

A Plan normally will be delivered to an employee within thirty (30) days of the beginning of each appraisal period. If an employee permanently changes positions during the appraisal period, he/she normally will receive a new Plan for the new position within thirty (30) days of the assignment to the new position. The Employer and the employee will sign and date the Plan. The employee's signature only acknowledges receipt and discussion of the Plan.

The Employer will advise the employee in writing of any computerized tracking systems used to monitor his/her performance (reports identifying the number of tasks performed or the amount of time it took to perform those tasks). Unless an employee has access to these reports, at least semiannually the Employer will provide the employee copies of his/her reports.

### **Section 5**

An employee will be given at least one progress review during the appraisal period, during which the Employer will provide oral or written feedback on the elements and describe how the employee's work product compares with the performance standards. Absent a significant business reason, the Employer will provide this progress review within forty five (45) days of the mid-point of the employee's appraisal period. The Employer will not give the employee a rating of record (the written performance appraisal) at this time.

When the Employer identifies deficient performance, the Employer will identify for the employee specific examples of the deficient performance and what the employee must do to improve performance to an acceptable level. Such notice should take place as soon as

possible after the deficient performance is identified, normally not less than thirty (30) days prior to giving the employee an unacceptable rating. The Employer may, however, give an employee an unacceptable rating if the employee's performance during the thirty (30) day period prior to rating is so unacceptable that the Employer must take more immediate action.

## **Section 6**

- A. Normally, within sixty (60) days after the end of the appraisal period, each employee will receive a written performance appraisal from his/her immediate supervisor (rating official) that will be based on his/her performance compared to the standard for each element. At a minimum, the written performance appraisal will indicate whether the employee's performance was acceptable or unacceptable in each element. The appraisal also will include a brief narrative summary of the employee's achievements and areas for improvement and/or growth in the coming rating period.
- B. Performance appraisals will be made in a fair and non-discriminatory manner.
- C. An employee may receive a written performance appraisal up to ninety (90) days before the conclusion of the appraisal period if:
  - the employee changes positions or separates from the Employer within ninety (90) days before the end of the appraisal period; or
  - the rating official departs within ninety (90) days before the end of the appraisal period.
- D. If an employee changes positions or is assigned to a new supervisor at any time during the appraisal period, other than within ninety (90) days before the end of the appraisal period, the Employer should include, in the written performance appraisal at the end of the rating period, information about the employee's performance provided by the previous supervisor.
- E. An employee must be under his/her current Plan for at least one hundred twenty (120) days before receiving a written performance appraisal.
- F. The performance of collateral duties or the use of approved official time for Union representational functions will not be considered as a negative factor when evaluating an employee against his/her performance standards. An employee performing such collateral duties or Union representational functions will be provided an annual evaluation/performance rating if he/she has spent five hundred twenty (520) hours or more on normal duties assigned by an Agency supervisor during the appraisal period.

- G. The Employer and employee will sign and date the written performance appraisal. The employee's signature acknowledges receipt and discussion of the appraisal and does not necessarily signify the employee's agreement. An employee may attach a written response to his/her written performance appraisal.

**Article 14**  
**EMPLOYEE RECOGNITION PROGRAM**

**Section 1**

- A. The Employee Recognition Program is designed to motivate employees and recognize employee contributions with monetary and non-monetary awards.
- B. There is no entitlement to any monetary or non-monetary award. All awards are subject to budgetary considerations and are made at the discretion of the Employer. Nevertheless, in considering whether or not to grant an award covered by this Article, the Employer will act in a fair and non-discriminatory manner. An employee may grieve the Employer's decision regarding an award covered by this Article in accordance with Article 32 (Grievance), except where such a grievance is expressly excluded by that Article.
- C. Employees may be nominated for awards at any time, including at the time of their annual performance appraisal.
- D. The Employer will determine how much of its budget will be allocated to the Employee Recognition Program and how the budgeted amount will be allocated among the Divisions, Offices and Regional Offices. The Employer will determine how much of its budget will be allocated to the Special Act awards for bargaining unit employees as described in Section 2.

**Section 2**

- A. The Employer may grant a Special Act award to an employee in situations in which the employee:
  - makes a highly exceptional or unusually outstanding contribution that is beyond his/her normal job responsibilities and performance standards;
  - in the face of unusual obstacles or pressures, displays special skills or initiative in completing assignments before deadlines, or in handling additional assignments while maintaining his/her regular workload;
  - uses notable initiative or creativity in improving a product, activity, program or service; or
  - performs a one-time, short-term assignment in an exemplary manner.
- B. Such awards will be commensurate with the nature of the work and may be in the form of cash or paid time-off.

- C. A Time-Off Award for a full-time employee will not exceed forty (40) hours for any single event. A full-time employee will not receive Time-Off Awards exceeding eighty (80) hours in any leave year. The preceding numbers will be pro-rated for part-time employees.
- D. An employee must use a Time-Off Award within one (1) year of the effective date of the award. If an employee leaves the Agency before using a Time-Off Award, it will expire. A Time-Off Award cannot be converted to cash.

### **Section 3**

- A. The Employer may grant an award to an employee who has made a written suggestion that results in tangible or intangible benefits to the Agency and contributes to the economy, efficiency or effectiveness of government. The suggestion must identify a specific problem or organizational challenge and the employee's proposed solution.
- B. A suggestion addressing matters that fall within the employee's normal responsibilities is not eligible for an award under this Section.

### **Section 4**

- A. Each Fiscal Year, the Employer will report to the Union the total amount of awards paid to bargaining unit employees. This report will contain the date of each award, the type and amount of each award, and the recipient's position, grade and Division/Office.
- B. The Employer will provide the Union with other information in accordance with Section 7114 of the Labor Management Relations Statute.

**Article 15**  
**CAREER LADDER PROMOTIONS**

**Section 1**

While promotions within career-ladders are neither automatic nor mandatory, career advancement is the intent and expectation in the career-ladder system.

**Section 2**

- A. A career ladder is a series of positions of increasing difficulty in the same line of work through which an employee may progress from the entry level to the full performance level.
- B. The full performance level is the highest grade level to which an employee may be promoted non-competitively within a career ladder.

**Section 3**

- A. An employee is eligible for a career-ladder promotion provided all of the following conditions have been met:
  - 1. the employee has demonstrated the ability to perform the higher grade level duties;
  - 2. the employee has completed at least one (1) year in the current grade;
  - 3. there is sufficient work at the higher grade level position;
  - 4. sufficient funds are available; and
  - 5. the employee's current written performance appraisal is acceptable.
- B. The Employer normally will complete its review and approval of an employee's eligibility for a career-ladder promotion on or before the thirtieth (30<sup>th</sup>) day after the employee has completed one (1) year in his or her current grade. If the review and approval are delayed beyond the thirtieth (30<sup>th</sup>) day, and it is determined that the employee qualified for a career ladder promotion, the promotion will be effective retroactively as permitted by law, rules, and regulations to the earliest date that the employee met the foregoing conditions, as determined by the Employer. If the Employer determines that the requirements in paragraph A. above have not been met, an employee not promoted will be notified of the reason(s) for the decision. Upon the employee's written request, the reasons will

be provided in writing.

- C. No later than six (6) months after the notification in Subsection B. above, the Employer will conduct another review of whether an eligible employee meets the requirements in Subsection A. above. If it is determined that the employee should receive a career-ladder promotion, the promotion will be effective no later than thirty (30) days after the review. An employee not promoted will be notified of the reason(s) for the decision. Upon the employee's written request, the reasons will be provided in writing.
  
- D. The employer will conduct subsequent reviews at six-month intervals, and promote or notify the employee, consistent with Subsection C. above. An employee not promoted will be notified of the reason(s) for the decision. Upon the employee's written request, the reasons will be provided in writing.

**Article 16**  
**MERIT PROMOTION PROCEDURES**

**Section 1**

The Employer's policy is to provide a fair and systematic approach for the identification, evaluation, and competitive selection of employees for promotion to bargaining unit positions on the basis of merit principles. Actions taken under this Article shall be made without regard to race, color, sex, national origin, marital status, age, religion, sexual orientation, labor organization affiliation or non-affiliation, or non-disqualifying disability and shall be based solely on job-related criteria.

The purpose of this Article is to insure selection of the most qualified candidates for vacant positions. The procedures in this Article do not apply to the Agency's hiring of new employees except where required by law, rule, or regulation; rather the Article deals primarily with internal merit employment. Nevertheless, Article 17 (Reassignments), provides procedures the Employer will follow to enable current employees to be considered for vacant positions.

Under the terms of this Article, the Employer is not required to fill a vacant position with a current employee. But it does provide for promotions to be made fairly, and for promotion practices that will support the Agency's efforts to select the best qualified persons in any given instance.

The Employer may choose the method of filling a vacant position so long as civil merit procedures and the terms of this Agreement are followed. In many cases, current employees may fill vacant positions. They are frequently among the best qualified. They are familiar with the work, and the selecting official often knows their abilities.

**Section 2**

The provisions of this Article apply only to competitive merit promotions to bargaining unit positions that are also:

1. promotions to positions that have higher promotion potential;
2. temporary promotions or details to higher graded positions for more than one hundred twenty (120) days;
3. reassignments, details, or demotions or changes to lower grade, to positions that have known higher promotion potential except as permitted by reduction-in-force regulations;
4. transfers-in of federal employees to positions with higher promotion potential than

- the ones currently occupied; or
5. reinstatement of former career or career conditional employees to permanent or temporary positions with higher potential than the positions previously held.

### **Section 3**

The provisions of this Article do not apply to any other competitive merit promotions, including with respect to the following categories:

1. career ladder promotions;
2. promotions resulting from an employee's position that has been reclassified at a higher grade because of an accretion of duties, as long as the duties are included into the higher level position and there are no other employees to whom the higher level duties could be assigned;
3. temporary promotions made permanent without further competition if the temporary promotions were originally made under a competitive merit posting that provided for such promotion;
4. temporary promotions or details to higher graded positions for 120 days or less;
5. promotions that result from application of new classification standards or the correction of a classification action;
6. interns;
7. summer employees; and
8. student temporary employees.

### **Section 4**

When the area of consideration for competitive merit promotions is not limited to Agency employees, bargaining unit employees will be simultaneously considered with other applicants. Eligible bargaining unit employees seeking reassignment to a vacant posted position also may be considered for the vacancy pursuant to Article 17 (Reassignments).

### **Section 5**

Prior to filling a position through an action described in Section 2 and excluding actions described in Section 3 of this Article, announcements of competitive merit promotions will be available on a designated section of the Agency's Intranet and will contain or link to the following information:

1. the announcement number;
2. the title, occupational series, grade, organization and location of the position;
3. career ladder;

4. area of consideration;
5. a brief description of the duties and responsibilities of the position and an indication where additional information may be obtained;
6. whether the position is a full or part time position;
7. whether one or multiple positions are available;
8. required minimum qualifications, including selective placement factors;
9. quality ranking factors;
10. a list of any evaluative methods which may be used by the rating panel or official, such as interviews and tests;
11. application procedures and where to submit applications;
12. opening and closing dates for acceptance of applications;
13. statement of equal employment opportunity; and
14. whether moving expenses will be paid.

Amended announcements will indicate that they have been modified.

## **Section 6**

Competitive merit promotion announcements will be open for a minimum of ten (10) business days.

## **Section 7**

The area of consideration is the area in which an active search of candidates is made. The minimum area of consideration is that area in which it can be reasonably expected that a sufficient number of qualified employees will be located. When bargaining unit positions are filled under the provisions of this Article, the minimum area of consideration is Agency-wide, unless it is determined that a sufficient number of qualified applicants will be found within a more limited area of consideration.

## **Section 8**

An employee interested in a competitive merit promotion must submit all necessary application materials identified in the competitive merit promotion announcement by the specified closing date.

Applications may be withdrawn at any time. If an employee wishes to withdraw his/her application for a competitive merit promotion, he/she must submit a written withdrawal to the same place he/she submitted his/her application.

## Section 9

Applicants meeting the required minimum qualifications for the competitive merit promotion will be rated and ranked.

## Section 10

- A. The Employer will appoint a rating panel comprised of three members to evaluate the qualifications of the applicants for the competitive merit promotion. All rating panel members will be of the same or higher grade as the full performance level of the position to be filled through the competitive merit promotion. The selecting official will not be a member of the rating panel. Alternatively, the Employer may appoint a rating official to perform the evaluation.

The rating panel or rating official will evaluate eligible applicants against the quality ranking criteria established for the position. The rating panel or rating official may request guidance from OHR in carrying out its responsibilities.

The rating panel or rating official will provide a fair and objective assessment of each applicant's qualifications for the position applied for. The rating panel's or rating official's evaluations will be based solely on the evaluation criteria established by the Employer for the competitive merit promotion, and will be based on the application materials provided by the applicants. The rating panel or rating official will not consider any material other than the applicants' application materials in its evaluation. The rating panel or rating official will apply the evaluation criteria to each applicant in as uniform and consistent a manner as possible.

- B. The Employer will develop a rating system to be used by the rating panel or rating official in the evaluation of applicants, which shall be based on the applicant's ability to perform in the posted position. To the maximum extent possible, the rating system will be described in terms of observable, objective and measurable criteria.
- C. Applicants will be identified as well qualified or basically qualified. All well-qualified applicants ("the referred applicants") will be referred to the selecting official. The names of the referred applicants will be sent to the selecting official in alphabetical order on the "certificate." The application materials of the referred applicants will be sent with the certificate. If the competitive merit promotion position was posted at more than one grade, a separate certificate (developed in accordance with the above) will be issued for each grade.
- D. After a certificate is issued to the selecting official, he/she may establish a separate screening panel to interview applicants on the certificate. The selecting

official will not be a member of the screening panel. If the screening panel interviews one applicant on a particular certificate, all applicants on that particular certificate will be interviewed. If there is more than one certificate, the selecting official may direct the screening panel to interview applicants on one or more certificates. The screening panel may then make a written recommendation of certain applicants to the selecting official. If the screening panel makes a written recommendation of certain applicants, the selecting official may interview those applicants without interviewing others on the certificate. If the selecting official wishes to interview others on the certificate, all applicants on the certificate must be interviewed. If a screening panel is not established and the selecting official wishes to interview an applicant on a certificate, all applicants on the certificate will be interviewed. Whether or not a screening panel was established and recommendations made, the selecting official may select any applicant on the certificate.

## **Section 11**

An employee selected for a competitive merit promotion will be promoted and paid at the salary of the higher grade at the beginning of the first full pay period following the date of the selection on the certificate.

## **Section 12**

Each applicant who has not been selected for the competitive merit promotion will be notified, normally within 10 calendar days of the selection. However, in no event will the employee be formally notified later than twenty (20) calendar days after the date of the selection on the certificate.

Upon request, each applicant will be provided the following information within twenty (20) calendar days regarding his or her application for a competitive merit promotion under this Article:

1. Whether the employee met the required minimum qualifications;
2. Whether the employee was in the group from which the selection was made; and
3. The name of the person selected for the position.

If requested, an applicant on the certificate who is not selected for the competitive merit promotion will be provided with an explanation within seven calendar days why he/she was not selected.

The Employer will maintain the file on each promotion action covered by this Article for two years. Promotion files will be kept in accordance with regulatory requirements.

### **Section 13**

An employee's leave balances, request to use leave, or use of any type of approved leave may not be considered by rating panels, screening panels or selecting officials as a basis for selection or non-selection. However, this does not preclude the consideration of the employee's dependability if the employee has been on a leave restriction within the preceding 12 months.

An employee who is the subject of an investigation for misconduct will not be denied or have a promotion delayed unless it is necessary to protect the mission of the Employer. The fact that an employee has not previously applied for, accepted or resigned a prior competitive merit promotion may not be considered by rating panels, screening panels or selecting officials in the evaluation of candidates or as a basis for selection or non-selection.

### **Section 14**

If an employee was improperly omitted from a certificate, he/she will receive priority consideration for the next appropriate merit promotion vacancy for which he/she is qualified. An appropriate merit promotion vacancy is one in the same geographical location with the same title, occupational series, grade, and career ladder that has the same promotion opportunities as the position for which the employee received improper consideration. Priority consideration means that the employee's application will be submitted to the selecting official before the selecting official reviews the applications of any other qualified applicants. An employee is entitled to only one priority consideration under this Section.

If two or more employees are entitled to priority consideration for the same merit promotion, their names will be submitted to the selecting official in alphabetical order, accompanied by their application materials.

If a priority consideration applicant is not selected, the Employer will prepare a written statement of the reasons why. Upon request, a copy of this statement will be provided to the employee within twenty (20) calendar days.

## **Section 15**

Upon completion of the selection process, the following information will be submitted to the Chapter President:

1. Announcement number;
2. Whether one or multiple positions were posted;
3. Number of applicants referred to selecting official;
4. Name of selected applicant; and
5. Date of the selection.

## **Section 16**

On or before November 1 of each year, the Employer will provide the Chapter President with a report for the preceding fiscal year of the number of bargaining unit positions posted and the number of these positions filled by bargaining unit employees. This information will be listed by grades, series, and titles, and by Division/Office/Regional Office.

## **Article 17 REASSIGNMENTS**

### **Section 1**

The Employer has the right to reassign employees based upon legitimate management considerations. The Employer will consider assertions by the employee that the reassignment will cause undue personal hardship.

### **Section 2**

- A. Prior to filling a vacant position, the Employer will, in this order:
- seriously consider candidates for reassignment because of hardship as described below in Section 3; and
  - consider voluntary requests for reassignment as described below in Section 4.
- B. The employee must be qualified for any position to which he or she requests reassignment.

### **Section 3**

- A. The Employer agrees to seriously consider an employee's request for reassignment when the employee demonstrates that a significant hardship exists, including, but not limited to the following:
- a serious medical condition affecting a member of an employee's immediate family, as defined in the Family Medical Leave Act;
  - access to special education or a medical facility that is not available in the employee's current commuting area;
  - the employee's spouse or life partner has received either a job in a new location or military orders to relocate outside the employee's current commuting area; and,
  - the employee's hardship would be relieved by his or her reassignment.
- B. An employee desiring consideration for reassignment based upon significant hardship may submit a request to the Office of Human Resources. The employee must provide appropriate documentation concerning the situation or condition that gave rise to the significant hardship request along with his or her resume/application and most recent performance appraisal. The employee must indicate the specific bargaining unit position and Division/Office/Regional Office

to which he or she seeks reassignment.

- C. A request under this Section will be forwarded by the Office of Human Resources to the Division/Office/Regional Office specified in the reassignment request within one (1) week of receipt. The request will remain active for a period of six (6) months from the date that the employee's application package (as outlined above) is forwarded by the Office of Human Resources to the Division/Office/Regional Office specified in the reassignment request. After six (6) months, a request will no longer be in effect unless the employee has updated it.
- D. Nothing in this Article precludes an employee from applying for a position in response to a vacancy announcement.

#### **Section 4**

- A. The Employer will consider an employee's request for voluntary reassignments.
- B. If an employee requests voluntary reassignment, he or she must submit a current resume and most recent performance appraisal to the Office of Human Resources for each reassignment request. Each reassignment request must indicate the position(s) sought. While the Employer will continually accept reassignment requests throughout the year, it will only forward requests to the appropriate Divisions/Offices/Regional Offices three (3) times a year (as soon as possible after April 30<sup>th</sup>, August 31<sup>st</sup>, December 31<sup>st</sup>).
- C. For example, if a staff attorney in the Division of Market Regulation wishes to transfer to the Division of Enforcement at the Atlanta Regional Office, he or she would submit his or her resume to the Office of Human Resources indicating that he or she would like to be considered for a Division of Enforcement staff attorney position in the Atlanta Regional Office. If the resume is received on February 15<sup>th</sup>, it will be forwarded, as soon as possible after April 30<sup>th</sup>, to the Atlanta Regional Office along with all other resumes of excepted service employees who wish to be considered for positions in the Atlanta Regional Office received by the Office of Human Resources between January 1<sup>st</sup> and April 30<sup>th</sup>. The employees on this list will be considered for reassignment for a period of four (4) months after the Atlanta Regional Office receives the list. A staff attorney in the Division of Enforcement (Headquarters) requesting reassignment to the Division of Enforcement at the Atlanta Regional Office, would follow the same procedures. A staff attorney in the Division of Investment Management requesting reassignment to a different office within the Division of Investment Management would follow the same procedures. Each list will be under consideration for a period of four (4) months after receipt by the appropriate

Division/Office/Regional Office.

- D. Nothing in this Article precludes an employee from applying for a position in response to a vacancy announcement.

## **Section 5**

- A. In reviewing requests from employees who have requested voluntary reassignment because of hardship or otherwise, the Employer will consider reassignment requests as described in Section 2 of this Article. The Employer will consider requests for reassignment as described in Sections 3 and 4 of this Article prior to filling a position with a candidate from outside the bargaining unit. Nevertheless, nothing in this Article precludes the Employer from continually considering and interviewing external candidates for positions in the bargaining unit.
- B. While the selecting official will review reassignment requests as described above in Section 2 of this Article, the selecting official or the hiring committee is not precluded from beginning its consideration of employees on the voluntary reassignment list before making a final decision on whether to select or not select employees who have requested reassignment for hardship reasons. Furthermore, the selecting official or hiring committee is not precluded from beginning its consideration of candidates from other sources before making a decision on whether to select or not select employees who have requested voluntary reassignment. Nothing in this Article precludes the selecting official or hiring committee from selecting an employee from any of the active reassignment lists it has previously considered.
- C. If an employee has already been considered and not selected for a particular position, the same selecting official or hiring committee may reconsider him or her for the same position if another vacancy exists, but is not required to do so. Nevertheless, the Employer encourages the reconsideration of employees on these lists during the relevant four-month period, even those employees previously passed over for a particular vacancy. The Employer will seriously reconsider hardship reassignment requests in connection with each vacancy.
- D. The selecting official can interview all, some, or none of the employees on the voluntary reassignment lists. If the selecting official interviews fewer than all employees on a voluntary reassignment list, he or she must be able to articulate why he or she chose to interview that employee (or employees).
- E. When the voluntary reassignment lists expire, the Employer will notify each employee on the list that the list has expired, that he or she was not selected and

that he or she may resubmit a request for reassignment.

## **Section 6**

- A. Unless a reassignment is directed for a specific employee(s) for legitimate management considerations, the Employer will follow the following procedures prior to effecting an involuntary reassignment of an employee(s).
1. The Employer will determine which employees are qualified for the reassignment.
  2. The Employer will solicit volunteers from within the pool of qualified employees.
  3. If there are more volunteers than needed, the Employer will reassign the employee(s) with the greatest amount of Agency seniority.
  4. If there are not enough volunteers, the Employer will reassign the employee(s) with the least amount of Agency seniority.
- B. As soon as practicable, the Employer agrees to give an employee who will be involuntarily reassigned reasonable advance notice setting forth the reasons for the reassignment.

## **Section 7**

The provisions of this Article will not apply to any reassignment resulting from a major reorganization, restructuring or closing of Divisions/Offices/Regional Offices. In such cases, the Employer agrees to provide the Union with advance notice of an opportunity to bargain in accordance with the requirements of Article 40 (Office Relocations and Openings) and/or Article 6 (Mid-term Bargaining) of this Agreement.

## **Article 18 DETAILS**

### **Section 1**

A detail is defined as the temporary assignment of an employee to a different position or to a different set of job duties for a specified period with the employee returning to his/her regular duties at the end of the detail. The provisions of this Article apply only to details to bargaining unit positions, except for the provisions of Section 2(C), and Section 4, which applies to all details within the Agency. Details will be made in accordance with applicable laws, rules, regulations, and this Article.

### **Section 2**

- A. The Employer has the right to detail employees based upon staffing, mission, and workload requirements. The Employer agrees to reasonably consider assertions by an employee that the detail will cause or is causing undue personal hardship.
  
- B. Consistent with Section 1 and Section 2(A) of this Article, the Employer will follow the following procedures prior to effecting the detail of any employee:
  - 1) The Employer will specify the qualifications required for the detail and will provide them to the union if requested;
  - 2) The Employer will identify the pool of employees qualified for the detail;
  - 3) The Employer will solicit volunteers within the pool of qualified employees;
  - 4) The Employer will compare the knowledge, skills, and abilities required to perform the duties of the position to be filled;
  - 5) If there are more volunteers than needed, then the Employer may select the most qualified volunteer consistent with Subsection B (4) above. If volunteers are equally qualified, the employee(s) with the most seniority will be detailed; and
  - 6) If there are not enough volunteers, the least senior employee(s) will be detailed, unless there is another employee with superior qualifications whose detail would better serve the staffing, workload or mission requirements of the Employer.
  
- C. An employee will not be involuntarily detailed to a non-bargaining unit position within the Agency, unless necessary to meet the Employer's workload, staffing or mission requirements. In the event that an employee is involuntarily detailed to such a position, the Employer will promptly notify the Union of the detail and the reasons therefore.

### **Section 3**

Absent extraordinary circumstances, an employee will receive at least fourteen (14) calendar days advance notice of selection for an involuntary detail to a different official duty station. In all other cases, the employee will receive reasonable advance notice.

### **Section 4**

- A. An employee who is qualified for, and detailed to, a higher graded bargaining unit position for a period of more than thirty (30) consecutive calendar days will be temporarily promoted to the higher graded position effective with the beginning of the first (1<sup>st</sup>) full pay period after the detail begins and documented by a Standard Form 50, Notification of Personnel Action. The employee will be paid at the higher grade for the duration of the temporary promotion, the term of which will be no more than one hundred twenty (120) calendar days.
- B. Details for more than one hundred twenty (120) days to higher graded positions or positions with higher promotion potential must be competed in accordance with Article 16 (Merit Promotion Procedures) of this Agreement.
- C. Although there is no entitlement to an award, the Employer will consider giving an award to an employee detailed to a higher-graded position or assigned higher-graded duties but ineligible for a promotion.

### **Section 5**

Details of more than thirty (30) calendar days, and all temporary promotions, will be documented in the employee's Official Personnel Folder (OPF) in accordance with OPM regulations.

### **Section 6**

Employees detailed outside their permanent Official Duty Station are entitled to reimbursement of travel expenses in accordance with law, rules, and regulations.

## **Article 19 TRAINING**

### **Section 1**

- A. Training and development of employees is a matter of significant importance in carrying out the mission of the Agency. Training is intended to enable employees to perform their official duties at the maximum level of proficiency and prepare for advancement. In recognition of this, the Employer will, within budgetary constraints and workload considerations, make training available in accordance with merit systems principles and applicable laws, rules, regulations, and the provisions of this Article.
- B. The Employer is responsible for determining the training needs for employees, determining the kinds of training to be provided and facilities to be used, and selecting and assigning employees for training. The Employer will determine how training funds and opportunities can best be utilized to maximize the usefulness of such training for the Agency, consistent with the goal of providing appropriate training to employees.
- C. In accordance with 5 C.F.R. § 410.306, the Employer will maintain criteria for the fair and equitable selection and assignment of employees to training consistent with merit system principles specified in 5 U.S.C. § 2301(b)(1) and (2). The Employer will notify the Union within ten (10) business days of the establishment of any new criteria under this section, and bargain to the extent required by law.
- D. All training must be approved in advance. The Employer will reasonably consider an employee's requests for training that supports the Employer's goals by improving organizational performance at any level of the agency, including training that:
  - 1. Supports the agency's strategic plan and performance objectives;
  - 2. Improves an employee's current job performance;
  - 3. Allows for expansion or enhancement of an employee's current job;
  - 4. Enables the employee to perform needed or potentially needed duties outside the current job at the same level of responsibility (and grade); or
  - 5. Meets organizational needs in response to human resource plans regarding organizational and/or program changes.
- E. To request approval to attend such training, an employee will complete a Request for Training Form SEC-182.

## Section 2

- A. Employees are encouraged to participate in professional activities of their occupation. The Employer will approve an employee's written request for annual leave, leave without pay, earned credit hours and/or earned compensatory time to participate in training, professional meetings, professional development, conferences, or continuing education courses unless the employee's absence would have an adverse effect on staffing, workload or mission requirements. The Employer will reasonably consider, and may approve, an employee's request for duty time in appropriate circumstances for the activities described above, and will give serious consideration to requests where the training is directly related to the employee's official duties.
  
- B. The Employer, subject to the availability of funds, will continue to offer attorneys and accountants the opportunity to obtain job related mandatory continuing education credits, internally, online through service providers such as the following: Practising Law Institute, Checkpoint Learning, and West LegalEd Center. The Employer agrees to notify all attorneys and accountants, at least annually, that this service is available and how to obtain a password. To the extent possible, the Employer will seek continuing legal education accreditation for any continuing professional education courses it offers to these employees.

Additionally, employees may seek approval to attend outside course offerings, consistent with SEC policies.

- C. To the extent the Employer or OPM establish that employees must be members of particular professional societies and/or organizations (for example, attorneys and CPAs) in order to be employed in a SEC position, or as a practical matter SEC encourages employees to hold professional licenses and/or credentials (for example, Certified Fraud Examiners) that will be used in the performance of their job duties, the Employer will reimburse employees for their dues, up to a maximum of \$400 per year, subject to the availability of funds.
  
- D. Consistent with workload and staffing needs, if the employees identified in Paragraph C are required to take continuing education classes to maintain their professional licenses or credentials, they shall receive administrative or duty time each calendar year, up to the maximum number of continuing education hours required by their licensing jurisdiction (but normally not to exceed 16 hours), to attend such classes that are related to their official duties.

### **Section 3**

- A. The Employer will provide information about SEC-sponsored training or educational programs to employees. When a particular training opportunity is only offered to a particular office or group of employees, the Employer will provide the information about such opportunity to all employees in that group or office, consistent with the provisions of this Article. To the extent practicable, this information will be posted on the Employer's Intranet or via e-mail to the employees.
- B. To the extent practicable, the Employer also will provide information to employees about training and conferences from other sources that the Employer makes widely available to bargaining unit employees. This information normally will be posted on the Employer's Intranet.

### **Section 4**

- A. The Employer will maintain an Upward Mobility Program. The goal of the Upward Mobility Program is to provide opportunities for employees to advance so as to perform at their highest potential consistent with the needs of the Employer. Subject to these needs and available resources, an Upward Mobility Program will be designed to provide certain current SEC employees with the opportunity to expand their career and promotion potential through a systematic, planned approach for career progression.

The Agency agrees that the Upward Mobility Program can be enhanced by providing tailored guidance, mentoring, and training in instances where it may be beneficial to help employees pursue these opportunities. The program will be made consistent with the requirements of the position, the selectees' talents and aptitudes, subject to available resources.

- B. Within ninety (90) days of the effective date of this Agreement, the Employer and the Union will establish a joint committee for the purpose of making recommendations on program structure and operation and employee selection, with final decisions by the Employer.
- C. After implementation of the Upward Mobility Program, the Labor-Management Forum shall monitor the program and make recommendations for any modifications to the program. Additionally, the Forum shall recommend objective metrics for evaluating the effectiveness of the program.

- D. The Employer will post seven Upward Mobility opportunities in the first year of this agreement, seven in the second year, and six in the third year for existing employees in lower graded positions.

## **Article 20**

### **NEW EMPLOYEE ORIENTATION**

#### **Section 1**

During the Employer's new employee orientation (generally when new employees are sworn in), NTEU will provide to each new bargaining unit employee a package of material provided by NTEU, and the Employer will provide a copy of this Agreement to all employees. The content of the NTEU material or the presentation slides will not be libelous or connote Employer sponsorship of NTEU.

#### **Section 2**

- A. NTEU will be provided with a thirty (30) minute period during the Employer's initial employee orientation to address new bargaining unit employees. This time will take place during the same time and in the same location at which the Employer conducts its initial employee orientation session. Whenever possible, the time will be provided to NTEU immediately preceding a break. The Employer will introduce the NTEU representative(s) during such new employee orientation sessions.
- B. NTEU will have the right to discuss the Agreement, current labor/management issues, the laws and regulations on Federal sector labor relations, its internal structure, and any other subject that does not slander or libel a government official or connote Employer sponsorship of NTEU.
- C. NTEU will be provided by the Employer with advance notice of at least five (5) business days, whenever practicable, of the date, time, and location of each new employee orientation. At least one (1) business day before the employee's initial orientation, NTEU will provide the Employer with the name(s) of the NTEU representative(s) who will be attending the orientation.
- D. If a current employee outside of the bargaining unit moves permanently into a position in the bargaining unit, NTEU will be provided the opportunity to meet with the employee for up to twenty (20) minutes during the employee's first (1<sup>st</sup>) week of duty in the new position for the purposes described in this Article.

#### **Section 3**

During the first year of this Agreement, each employee will be entitled up to two (2) hours of duty time to attend an NTEU-sponsored training session to obtain contract training and to discuss questions concerning this Agreement and other negotiated

agreements. Within thirty (30) calendar days of a request, the Employer will provide an on-site meeting room for such sessions. Two (2) years from the effective date of this Agreement, and each succeeding twelve (12) months thereafter, each employee will be entitled to up to one (1) hour of duty time to attend an NTEU-sponsored training session to receive similar training.

**Article 21**  
**EQUAL EMPLOYMENT OPPORTUNITY**

**Section 1**

- A. The Employer and the Union recognize that discrimination prohibited by equal employment opportunity (EEO) law, including harassment, undermines the integrity of the employment relationship and adversely affects employee opportunities. All employees must be allowed to work in an environment free from discrimination. Therefore, the Parties agree to identify and work to eliminate any such occurrences.
- B. The Employer and the Union recognize that no employee may discriminate against others based on race, color, religion, sex, national origin, age (40 or more), sexual orientation, disability, or protected genetic information (as defined in Executive Order 13145, dated 02-08-2000).
- C. The Employer and the Union, in fulfilling their respective responsibilities, commit to providing each employee equal opportunity regardless of the employee's race, color, religion, sex, national origin, age (40 or more), sexual orientation, disability, or protected genetic information.
- D. The Employer and the Union, in fulfilling their respective and distinct responsibilities, will strive to bring about the informal resolution of complaints, wherever possible.

**Section 2**

The Employer's Equal Employment Opportunity Program shall be designed, implemented, and administered by the Employer in accordance with applicable laws, rules, regulations, and this Article.

**Section 3**

- A. The Employer and the Union shall maintain an EEO committee to discuss relevant equal employment opportunity issues of general applicability to employees, including those concerning minorities, women, and employees with disabilities. Such issues will not include the discussion of individual EEO complaints. The Union will designate its representatives, not to exceed the number designated by the Employer. The committee shall be co-chaired by an Employer representative and a Union representative. The Union and Employer co-chairs will alternate responsibility for scheduling mandatory meetings and will jointly be responsible

for setting the agendas and chairing the meetings. The committee shall meet within ninety (90) days of the effective date of this Agreement, and at least semi-annually thereafter. Upon agreement of the co-chairs, the committee may meet more frequently. The committee will make recommendations to the EEO Director for his or her consideration. A meeting of the EEO committee may be called by either the Union or the Employer.

- B. The Employer will provide the Union a summary of EEO-office activities on a quarterly basis.

#### **Section 4**

- A. Each year that this Agreement is in effect, the Employer will provide the Union with copies of the most recently filed annual EEO program reports required by the EEOC's Management Directive 715 ("MD-715").
- B. In accordance with the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), the Employer will post on its public web site information each Fiscal Year on the aggregate numbers and types of EEO discrimination complaints filed that year against the Employer. These reports shall not include information that would reveal the identities/positions of individuals.

#### **Section 5**

Each year of this Agreement, the Employer will provide each NTEU Chapter 293 steward not less than two (2) hours of administrative leave for training on EEO matters.

#### **Section 6**

Upon reasonable notice, the Employer will provide all EEO counselors with a private place to meet with an employee for counseling purposes.

#### **Section 7**

A claim involving discrimination based upon race, color, religion, sex, national origin, age (40 or more), sexual orientation, disability, or protected genetic information may, at the discretion of the employee, be raised either under the Employer's EEO administrative complaint process or through the grievance procedure provided in Article 32 (Grievance Procedure) of this Agreement, but not both. Pursuant to 5 U.S.C. § 7121(d), an employee will be deemed to have exercised his or her option to raise a matter either under the

Employer's EEO administrative complaint process or under the negotiated grievance procedure at such time as the employee timely files a formal complaint of discrimination or timely files a grievance in writing in accordance with the provisions of Article 32 of this Agreement, whichever event occurs first. Consultation with an EEO counselor does not constitute filing a formal EEO complaint.

## **Section 8**

- A. Any employee seeking to file an EEO administrative complaint, or any employee participating in the Employer's administrative complaint process, shall be free from restraint, coercion, interference, or reprisal.
- B. If a complaint is filed, the employee shall have the right to be accompanied, represented, and advised by a personally chosen representative when there is no apparent or actual conflict of interest. Both the employee and the employee's representative, if either is in an active duty status, shall be afforded a reasonable amount of Official Time for the initial preparation of the employee's complaint, as well as for each subsequent step of the complaint procedure. This time shall be requested in writing and approved prior to use.
- C. The Employer will carefully consider and process all complaints of discrimination filed through the EEO administrative complaint process or through the negotiated grievance procedure, and will do so justly and expeditiously.

## **Section 9**

The Employer recognizes its obligation under the Rehabilitation Act of 1973, as amended, to "reasonably accommodate" qualified employees and applicants with disabilities. It also recognizes its obligations under all other relevant EEO statutes.

**Article 22**  
**HEALTH AND SAFETY**

**Section 1**

The Employer will provide and maintain safe working conditions for all employees in accordance with the Occupational Safety and Health Act (OSHA) (Public Law 91-596) and implementing regulations, and other applicable laws, rules, and regulations.

**Section 2**

- A. In accordance with applicable laws, rules, and regulations regarding health and safety, the Employer will:
- assure compliance with all applicable OSHA standards, implementing regulations, and related rules and regulations;
  - investigate reports of unhealthy or unsafe working conditions;
  - provide appropriate and adequate health and safety training for employees as determined by the Employer;
  - conduct health and safety inspections of each of the Employer's facilities by third parties at least annually, and provide NTEU with the final results;
  - conduct a fire drill at least annually at each of the Employer's facilities; and
  - comply with all applicable laws, rules, and regulations regarding health and safety for mail handling, including those governing the use of x-ray machines and limiting radiation exposure of employees to recognized safety levels, and install dosimeters or similar equipment to measure radiation exposure.
- B. NTEU agrees to promptly notify the Employer of any safety and health concerns or possible compliance problems. NTEU maintains its right to directly contact appropriate public officials and organizations (e.g., OSHA) provided that the NTEU: (a) does not interfere with the Employer's efforts to correct any known health and safety concern, and (b) the NTEU promptly provides the Employer all of the same information it provided to the aforementioned public officials and organizations.
- C. The Union may request to schedule and arrange an additional health and/or safety inspection of a Division/Office/Regional Office. The Union will provide reasonable notice to the Employer and will bear all costs and expenses of the inspection. The Employer will not unreasonably deny such requests.

### **Section 3**

- A. The Employer will take appropriate action to ensure that employees are familiar with the proper means of leaving the building during a suspected fire, bomb threat or other emergency. Where a fire, bomb threat or other emergency in the building is reasonably suspected, the Employer will evacuate affected employees to safer areas. Under no circumstances will the Employer require an employee to remain at his or her workstation to search for a suspected bomb.
- B. The Employer shall provide emergency evacuation plans for its various locations covering the provisions for evacuating disabled employees (including any assistance animals) and assisting disabled employees if they must wait in a designated area before being evacuated. Employer facilities will be equipped with alarms that will assist deaf or hard of hearing employees. This includes open areas, hallways, and individual offices of eligible employees. The Employer also will provide appropriate signage for visually impaired employees.

### **Section 4**

- A. An employee should notify the Employer of any health and safety concerns observed in the workplace. An employee will not be subject to restraint, interference, coercion, discrimination or reprisal for reporting an unsafe or unhealthful working condition. An employee who believes he or she has been subject to an act or acts of reprisal for reporting unsafe or unhealthful working conditions has the right to seek redress through established grievance procedures in Article 32 of this Agreement.
- B. An employee will notify the Employer, by the most expeditious means available, of situations at the employee's workplace where there appears to be imminent danger. The term "imminent danger" means any conditions or practices in any of the Employer's facilities that could reasonably be expected to cause death or serious physical harm immediately or within such a short time that emergency steps must be taken. In such a situation, the employee will remove himself or herself from the dangerous location or cease to perform the dangerous task as directed by the Employer. If the situation does not allow for prior notification to the Employer, the employee should remove himself from the dangerous location or cease to perform the dangerous task, notify the Employer as soon as possible, and make himself or herself available for work as reasonably directed by the Employer.
- C. If the Employer or another Federal agency with appropriate jurisdiction determines there are significant unhealthy or unsafe working conditions present at a facility for fourteen (14) calendar days or longer such that employees are precluded from reporting to work at that facility, the Employer and the Union shall commence bargaining regarding temporary working arrangements pending return to the original facility or identification of an alternate facility. The Employer may direct employees to report to a temporary work site while bargaining is ongoing.

Absent unusual circumstances, such relocation shall not affect employees' regular work schedules. The Parties agree to suspend those provisions of this Agreement that would impede the rapid or temporary relocation of affected employees under these circumstances. The Employer will grant excused absence to affected employees in appropriate circumstances, including when the Employer or the employee is unable to provide an alternative work site.

## **Section 5**

When the Employer is informed that an employee has sustained an "on-the-job" injury, the Employer will inform the employee of the procedures for filing a claim for benefits under the Federal Employees Compensation Act. The employee must report the injury to their supervisor or designated official in the Office of Human Resources. Upon request, the Employer will provide the employee all necessary forms. If because of his or her injury, the employee is unable to complete the necessary forms, the Employer will provide appropriate assistance.

## **Section 6**

- A. The Employer will provide employees with access to a health facility for the treatment of minor injuries and conditions, the assessment of more serious conditions, and to assist emergency personnel with life threatening conditions.
- B. The Employer will offer cardiopulmonary resuscitation (CPR) and first aid training, including retraining, to employees if the scheduling of such training does not conflict with Employer's staffing, workload, and mission accomplishment, and is within budgetary constraints. The Employer will publish the names of those employees who are trained in CPR techniques, and who are willing to have their names published, on the Employer's electronic bulletin board. No employee, however, will be required to provide CPR or first aid assistance.

## **Section 7**

To the extent possible, the Employer will continue to arrange for or to provide flu shots and certain health screenings, including, but not limited to, those health screenings currently provided.

## **Section 8**

The Employer and the Union agree to discuss and address issues related to health and safety at meetings of the Labor-Management Relations Committee established pursuant to Article 41 of this Agreement. These issues will include, but not be limited to, accidents that have occurred and any revisions to regulations or policies relating to health and safety.

## **Section 9**

- A. The Employer will provide the Union with a list of hazardous chemicals that are used ordinarily in its facilities in accordance with applicable OSHA regulations. The Employer will promptly notify the Union of additions to this list.
- B. To the extent possible, the Employer will notify the Union and affected employees at least forty-eight (48) hours before these or any other hazardous chemicals are to be used in its facilities.

## **Section 10**

If an employee is injured while in travel status or at a temporary duty station, the Employer will to the extent possible and if requested:

- assist the employee in obtaining immediate medical assistance;
- assist the employee in obtaining transportation to the nearest medical facility;
- approve sick leave and *per diem* in accordance with applicable laws, rules and regulations; and
- contact the employee's designated emergency contact.

## **Section 11**

The Employer will inform employees of the safety procedures and requirements at all of its facilities. Employees who intentionally disrupt, interfere with, or fail to cooperate with these procedures, thereby jeopardizing the safety of others, may be subject to administrative action.

## **Section 12**

- A. The Employer will offer an Employee Assistance Program (EAP), cost-free to employees, to help employees effectively address and overcome problems such as alcohol and drug abuse, work and family pressures, and job stress which can adversely affect performance, conduct, reliability, and personal health.
- B. An employee with job performance problems, who is offered EAP services, bears the responsibility for returning his or her performance to an acceptable level and maintaining it at that level regardless of whether he or she uses the Program. An employee with conduct or reliability issues who is offered EAP services bears the responsibility for similarly resolving his or her issues regardless of whether he or she uses the Program.
- C. When using EAP services, an employee's privacy is protected by confidentiality laws and regulations and by professional ethical standards for counselors. Consistent with these laws, regulations, and standards, the details of an employee's discussions with a counselor may not be released to anyone, including the Employer, without the employee's written consent.

- D. The employee will request approval from his or her supervisor to meet with an EAP counselor during duty time. Generally, the Employer will grant such requests. However, under extraordinary circumstances, the Employer may ask the employee to schedule the meeting at a different time. The Employer and any other party involved will treat requests for meetings with EAP counselors as confidential.
- E. An employee's job security or promotion opportunities will not be jeopardized by a request for counseling or referral assistance through the EAP except as limited by applicable laws, rules, and regulations.
- F. When conducting an interview or counseling session with an employee who appears to be experiencing problems covered in this Section, the Employer should focus on the employee's work performance or conduct related problems and advise the employee regarding available counseling.

### **Section 13**

- A. Employees are encouraged to take advantage of fitness programs. During orientation, the Employer will inform new employees of the availability of fitness programs.
- B. Subject to budgetary constraints and space limitations, the Employer will provide, and will continue to provide, the normal and routine fitness center services currently offered. The Employer also will provide wellness programs, such as lunchtime speakers and certain fitness screenings, periodically for employees. If the Employer establishes new fitness centers, the Union will be given an opportunity to bargain as appropriate in accordance with Article 6 (Mid-term Bargaining) of this Agreement.

### **Section 14**

Subject to budgetary constraints, the Employer will maintain its current practice regarding the provision of appropriate equipment to employees designed to eliminate eyestrain, carpal tunnel syndrome, and related health concerns.

### **Section 15**

The agency will make reasonable efforts to address the needs of nursing mothers at each of its facilities by making available appropriate private space suitable for their use and by reasonably accommodating requests to schedule breaks during the work day necessary for lactation related purposes. If a specific room is not available, arrangements will be made for nursing mothers to use a vacant private room or conference room, with a locking door.

**Article 23**  
**PUBLIC TRANSPORTATION BENEFITS**

**Section 1**

- A. The Employer agrees to pay a public transportation benefit to those SEC employees who qualify and use public transportation or certified vanpools. The Employer will offer a direct benefit of up to the maximum permitted by law per month for each qualified employee, subject to available funding.
- B. Within sixty (60) days of the Department of Transportation's authorization of a government wide increase, the Employer will offer a direct benefit up to the new maximum amount for each qualified employee. If, due to budgetary considerations, the Employer cannot pay this amount, the direct benefit shall remain at the then current amount per month for each qualified employee and the parties agree to re-open negotiations on this Article.
- C. The amount of the benefit provided to each qualified employee is dependent on that employee's actual commuting costs each month and cannot exceed the actual costs incurred.

**Section 2**

Public transportation benefit applicants are required to complete form SEC - 2445 (Headquarters and Regional offices employees who receive monthly transit benefits) or form SEC - 2501 (Regional office employees with annual transit pass programs) prior to acceptance into this program. Applicants must certify that they use public transportation or certified vanpools for all or part of their commute on a regular basis. An application is required to enroll in the transit benefit program and a new application must be completed if an employee: (a) changes to a new local commuting area; (b) has a name change; (c) changes his or her home address; or (d) resumes his or her participation in the transit benefit program after a period of non-participation. Approved employees must complete a certification form (SEC - 2446, Transit Benefit Certification Form) each time they are issued a transportation benefit.

**Section 3**

An employee named on a worksite parking permit with the Agency or any other Federal agency is not eligible to receive the public transportation benefit.

**Article 24**  
**CHILD CARE SUBSIDY**

**Section 1**

The Employer will continue to offer a Child Care Subsidy Program (Program) in accordance with Public Law 107-67 and other applicable rules and regulations, and subject to budgetary considerations. The intent of the Program will be to make child care more affordable for lower income employees whose children are, or will be, enrolled in licensed child care facilities. The Employer will provide employees with information regarding the Program.

**Section 2**

A full-time or part-time employee who meets the following criteria may apply for a subsidy:

- total family income is less than \$68,001;
- a child or children under the age of thirteen (13) or a disabled child or children under the age of 18; and
- uses a home-based or center-based child care provider which is licensed or regulated by state and/or local authorities in the state or locality in which the provider operates.

**Section 3**

The Employer will use the employee's total family income in determining the amount of the employee's child care subsidy. The amount of the subsidy he or she receives cannot exceed the actual approved child care costs incurred by the employee. The subsidy will be reduced by the amount of any other child care subsidy received. When more than one parent works for the Federal government, child care subsidy cannot be awarded by more than one Federal agency.

The annual subsidy amount for an employee is determined as follows:

Total Family Income (\$)	% of Total Child Care Costs Paid by the Employer
\$38,000 and below	60
\$38,001-\$48,000	50
\$48,001-\$58,000	40
\$58,001-\$68,000	30

The foregoing total family income will be adjusted each year by a percentage equal to the percentage increase to Agency base salaries for that year; if, in any given year, base salary increases are not uniform throughout the Agency, then these total family income levels will be adjusted by a percentage equal to the average base salary increase for employees whose Agency salaries are \$68,000 or less (as increased by any base salary adjustments occurring after the effective date of this Agreement). If, due to budgetary limitations, there are insufficient funds to continue payments for all employees currently enrolled in the program, funds will be allocated based on the provisions of Section 4, below.

#### **Section 4**

- A. To apply for the subsidy, an employee must submit the Employer's Child Care Subsidy Program Application (SEC Form 2563) along with required documentation, including a form signed by the employee certifying that he/she meets each of the Program's eligibility requirements. The employee will update this information annually.
- B. An employee approved by the Employer for acceptance into the Program must submit a signed "Child Care Subsidy Agreement."
- C. Employees can apply at any time for the program. The Employer will provide child care subsidies to employees using the allocation table set forth above in Section 3, beginning with the qualified applicant with the lowest total family income and working up to those qualified applicants with a total family income of \$68,000 (as increased by any base salary adjustments occurring after the effective date of this Agreement), until all available funds are expended. If qualified employees applying for the subsidy have identical total family income, and funding for the program does not allow all such employees to receive the subsidy, the ties will be broken by awarding the child care subsidy to employees in order of earliest to most recent entrance-on-duty (EOD) date.
- D. Applications will be considered, subject to budgetary availability, on a first-come, first-served basis. If an employee is eligible for the subsidy and funds are not available, he/she will be placed on a waiting list until such time as funds become available.
- E. Employees selected for child care subsidy will be notified in writing by the Employer.

## **Section 5**

The Employer will issue the subsidy directly to the child care provider upon receipt of an invoice from the child care provider.

## **Section 6**

- A. If an employee changes his/her child care provider, he/she must notify the Employer of such by completing appropriate paperwork.
- B. If at any time an employee no longer meets the criteria specified in Section 2 of this Article, his/her participation in the Program will cease. An employee must notify the Employer when he or she is no longer eligible to participate in the Program.

## **Section 7**

An employee is responsible for determining the income tax consequences of the receipt of the child care subsidy.

## **Section 8**

During meetings of the Labor-Management Relations Committee, the Employer and the Union may discuss child care facilities at or near both Headquarters and Regional offices. However, the Union does not waive its right to negotiate over child care facilities, as permitted by law.

**Article 25**  
**STUDENT LOAN REPAYMENT PROGRAM**

**Section 1**

The Employer will establish a Student Loan Repayment Program in accordance with 5 C.F.R. § 537 and other applicable rules and regulations, and subject to the availability of funds. The Program's purpose is to attract or retain highly qualified professional, technical, and administrative individuals by assisting them in repaying their outstanding federally insured student loans. The Employer will tailor the Program to facilitate its recruitment and retention objectives.

There is no entitlement to participation in the Program. Repayment of student loans by the Employer is subject to budgetary considerations and is at the Employer's discretion. Nevertheless, when selecting employees to receive loan repayment benefits, the Employer will adhere to merit system principles and take into consideration the need to maintain a balanced workforce in which women and members of racial and ethnic minority groups are appropriately represented in government service.

The Parties will create a joint committee from each side that will meet at least annually to review the operations of the Agency's program, and to make recommendations to the Employer regarding how the program might be improved.

**Section 2**

At least twenty (20) percent of the funds allocated to this program in any given fiscal year will be reserved for the grant of student loan benefits to eligible employees in non-professional job series positions.

All nominations made pursuant to this Section must be supported by written justification, which shall refer to the relevant criteria. An employee's supervisor may nominate a particular employee for the Program, otherwise employees may nominate themselves for selection in the Program.

Employees, who meet the eligibility requirements in Section 5, may be selected who meet one or more of the following additional eligibility criteria:

- Contribution to the Agency's Mission - unusually high or unique qualifications contributing to the Agency's mission to protect investors and maintain the integrity of the securities markets;
- Customer Service - providing unusually high or unique quality service to internal

- and external customers;
- Leadership - unusually high or unique influence or guidance of others in achieving or surpassing the Agency's goals; or
- Teamwork - unusually high or unique efforts to advance team goals towards the Agency's mission, supporting the team and individual team members or supporting organizational units.

### **Section 3**

Each year, the Employer will consider whether it needs to address recruitment and retention issues in a particular job series and/or particular Division/Office/Regional Office(s) through the student loan program. As applicable, the Employer will notify the Union of its intent to offer student loan benefits to all employees within the target group(s), and the reasons therefor.

The Employer will offer a student loan benefit to an employee from the target group(s) who meets the eligibility requirements in Section 5.

### **Section 4**

In addition, and depending on budgetary considerations, the Employer may grant a student loan benefit to any other employee who meets the eligibility requirements in Section 5 as well as one or more of the following eligibility criteria:

- Contribution to the Agency's Mission - unusually high or unique qualifications contributing to the Agency's mission to protect investors and maintain the integrity of the securities markets;
- Customer Service - providing unusually high or unique quality service to internal and external customers;
- Leadership - unusually high or unique influence or guidance of others in achieving or surpassing Agency goals; or
- Teamwork - unusually high or unique efforts to advance team goals towards the Agency's mission, supporting the team and individual team members, or supporting organizational units.

All nominations made pursuant to this Section must be supported by written justification, which shall refer to the relevant criteria. An employee's supervisor may nominate a particular employee for the Program, otherwise employees may nominate themselves for selection in the Program.

### **Section 5**

To be eligible for participation in the Student Loan Repayment Program, an employee must have completed one year of service with the Employer, maintained an acceptable level of performance, and signed a service agreement, in which he/she agrees to:

1. complete three years of service with the Employer which will commence on the date of the first repayment;
2. complete one additional year of service with the Employer for each additional year of repayment received if the loan repayments continue beyond the first twelve months; and
3. reimburse the Employer for loan repayments under such circumstances as set forth in Section 3 below, 5 C.F.R. § 537.109, and other applicable laws, rules and regulations.

## **Section 6**

An employee who receives loan repayments and fails to complete the required service as set forth in Section 2 above because he/she is separated involuntarily for misconduct or unacceptable performance or leaves the Employer voluntarily, will be indebted to the Federal Government and must reimburse the Employer for the total amount of any student loan repayments he/she received, except that:

1. An employee who fails to complete the period of employment established under a service agreement because he/she leaves the Employer voluntarily to enter into the service of another federal agency will not be required to reimburse the Employer for the amount of any student loan repayment benefits he/she received.
2. A right of recovery of an employee's debt may be waived, in whole or in part, if an employee demonstrates to the Employer that recovery would be against equity and good conscience or against the public interest.
3. An employee who fails to complete the period of employment because he/she is involuntarily separated for reasons other than misconduct or performance will not be required to reimburse the Employer.

## **Section 7**

Subject to budgetary considerations, the amount of loan repayment paid by the Employer on behalf of an employee participating in the Program will be up to the maximum yearly limit provided by 5 C.F.R. §537.106(c) per employee, (less taxes due). Within these limits, the Employer may repay more than one eligible loan for a recipient.

With the exception of the twenty (20) percent of the student loan program budget allocated to employees in non-professional job positions, the Employer will determine how much of the program's budget will be allocated between the classes of eligible employees described in Sections 3 and 4.

If insufficient funds are allocated to the Program for all selected employees to receive the maximum yearly limit or the maximum amount they are eligible for, they will receive all repayment amounts allocated to the Program (including any funds reimbursed to the Employer under Section 6, any undistributed funds from the amount allocated pursuant to Section 2 or 3, or funds made available due to the withdrawal of a participant) on a pro rata basis.

## **Section 8**

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

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

## **Section 9**

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

## **Article 26**

### **ATTIRE**

#### **Section 1**

Employees will groom and attire themselves in at least a neat, clean manner that will promote public confidence in the Commission.

#### **Section 2**

Employees will wear business attire when conducting inspections, taking testimony or depositions, and when appearing in court. Employees will also wear business attire when meeting with external members of the bar and external members of the accounting profession, representatives from the securities industry, company officials, representatives from other government agencies, and members of Congress and their staff.

In any of the above situations, employees will not be required to wear business attire where a different attire standard has been established by those outside the Agency with whom the employees will be interacting.

#### **Section 3**

The attire Memorandum of Understanding dated December 11, 2009 is incorporated by reference herein and attached.

## **MEMORANDUM OF UNDERSTANDING**

Regarding  
Article 26 of the Collective Bargaining Agreement  
(Attire)

The Securities and Exchange Commission ("Commission") and the National Treasury Employees Union ("NTEU") enter into this Memorandum of Understanding ("MOU") to resolve a disagreement over the meaning of the language contained in Article 26 of the parties' Collective Bargaining Agreement ("CBA") and the grievance arbitration, SEC No. AR-08 007, invoked for arbitration on October 21, 2008 ("Grievance").

WHEREAS, Article 26 of the CBA provides:

### Section 1

Employees will groom and attire themselves in at least a neat, clean manner that will promote public confidence in the Commission.

### Section 2

Employees will wear business attire when conducting inspections, taking testimony or depositions, and when appearing in court. Employees will also wear business attire when meeting with external members of the bar and external members of the accounting profession, representatives from the securities industry, company officials, representatives from other government agencies, and members of Congress and their staff.

In any of the above situations, employees will not be required to wear business attire where a different standard has been established by those outside the Agency with whom the employees will be interacting.;

THEREFORE, the parties agree as follows:

1. Where the branch chief responsible for an examination determines

that contacting a registrant prior to an on-site examination will not jeopardize the examination (*i.e.* that it is an examination of which the registrant is already aware), the lead examiner may contact the registrant to determine the attire standard established for the highest ranking personnel at the registrant with which any of the examiners are reasonably likely to interact. "Reasonably likely to interact" shall mean that the lead examiner must conclude and reasonably foresee, based on the nature of the examination, previous experience and his or her inquiry of the registrant, that the examiner(s), more likely than not, will have more than incidental or casual interaction during the examination.

2. Regardless of the attire standards of the registrant, at all on-site examinations employees shall groom and attire themselves in a manner that promotes confidence in the Commission. This means that employees must, at the very least, wear business casual clothing, such as appropriate shirts, blouses, long pants, skirts and shoes. In no event shall employees wear attire that is any less than the standard established by the registrant for the highest ranking personnel at the registrant with which any of the examiners are reasonably likely to interact. Tee shirts, shorts, and sandals designed for non- professional settings are inappropriate.

3. NTEU agrees to withdraw the Grievance.

Executed this 11th day of December, 2009



Gregory Gilman  
NTEU Chapter 293 President



Commission

## **Article 27**

### **ANNUAL LEAVE**

#### **Section 1**

Employees will earn and use annual leave in accordance with applicable laws, rules, and regulations and this Article.

#### **Section 2**

An employee will submit annual leave requests via the electronic time and attendance system. An employee should submit his or her request for annual leave for periods of five (5) or more consecutive workdays normally at least ten (10) calendar days in advance of the requested leave. If the Employer expects that there will be a need to limit the number of employees on leave (or the length of their leave), the Employer will request leave plans from employees and set a deadline for those plans. Requests for annual leave will be approved or denied by the date the leave is needed, but no later than ten (10) work days after receipt of the request (or after the deadline if other employees are requested to submit requests for the same time). Annual leave may be requested and used in fifteen (15) minute increments.

#### **Section 3**

An employee will request the Employer's approval of the use of annual leave in advance of the requested leave. When the employee is unable to come to work and must request unscheduled annual leave, the employee must request his/her supervisor's approval of the annual leave as soon as practicable, normally within one hour after the employee's scheduled start time that day but no later than 10 a.m. If the employee is unable to contact his or her supervisor, he/she will leave a message regarding the unscheduled annual leave and will leave a phone number where he/she can be contacted. The employee will promptly submit a leave request in the electronic time and attendance system documenting his/her unscheduled annual leave upon his/her return to work.

#### **Section 4**

The Employer will approve an employee's request for annual leave unless the employee's absence would have an adverse effect on staffing, workload or mission requirements. Requests for annual leave will normally be processed by the Employer on a first received

basis. However, when the Employer has pending two or more requests for annual leave and determines that all cannot be granted due to staffing, workload or mission considerations and all other relevant factors are equal, the Employer will give preference to employees in order of Agency seniority.

### **Section 5**

The Employer will issue an annual memorandum to all employees advising them of the regulations concerning "use or lose" annual leave.

### **Section 6**

When an employee's annual leave balance has been exhausted, the Employer will consider an employee's written request for advanced annual leave.

### **Section 7**

An employee may submit a request to change previously approved annual leave to sick leave where sick leave is appropriate. The Employer's decision regarding an employee's request will be governed by relevant provisions of Article 28 (Sick Leave).

### **Section 8**

The Employer will not rescind previously approved annual leave unless circumstances exist that were not foreseen or could not reasonably have been foreseen at the time approval was given and the employee's absence would have a significant adverse effect on staffing, workload or mission requirements. Upon written request, the Employer will provide the employee with written reasons for the rescission.

### **Section 9**

The Employer will not deny requests for annual leave in lieu of discipline. The Employer will not consider the use of approved annual leave in preparing the employee's written performance appraisal.

**Article 28**  
**SICK LEAVE**

**Section 1**

Employees will earn and use sick leave in accordance with applicable laws, rules and regulations and this Article.

**Section 2**

- A. The Employer will grant accrued sick leave to an employee when the employee:
1. Receives medical, dental or optical examination or treatment;
  2. Is incapacitated for the performance of his or her duties because of physical or mental illness, injury, pregnancy or childbirth;
  3. Provides care for a family member who is incapacitated by a medical or mental condition or attends to a family member receiving medical, dental, or optical examination or treatment;
  4. Provides care for a family member with a serious health condition;
  5. Makes arrangements necessitated by the death of a family member or attends the funeral of a family member;
  6. Would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by his or her presence on the job because of exposure to a communicable disease; or
  7. Must be absent from duty for purposes related to the adoption of a child, including appointments with adoption agencies, social workers, and attorneys; court proceedings; required travel; and any other activities necessary to allow the adoption to proceed.
- B. For purposes of this Article, a family member is defined as:
- The employee's spouse, and parents thereof;
  - The employee's children, including adopted children, and spouses thereof;
  - The employee's parents, and spouses thereof;
  - The employee's brothers and sisters, and spouses thereof;
  - The employee's grandparents and grandchildren, and spouses thereof;
  - The employee's domestic partner and parents thereof, including domestic partners of any individual in this section 2B; and
  - Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.
- C. An employee may use up to one hundred and four (104) hours of sick leave each leave year for the purposes described in Section 2.A., paragraphs (3) and (5)

above. An employee may use up to 480 hours of sick leave each leave year for the purposes described in Section 2.A., paragraph (4) above. This paragraph will be applied proportionately in the case of a part-time employee.

D. For purposes of this Article, a serious health condition shall have the meaning set forth in 5 C.F.R. § 630.1202.

### **Section 3**

- A. An employee will submit sick leave requests via the electronic time and attendance system.
- B. Sick leave may be requested and approved in fifteen (15) minute increments.

### **Section 4**

When possible, an employee will request the Employer's approval of the use of sick leave in advance of the requested leave. When the employee is unable to come to work and must request unscheduled sick leave, the employee must request his or her supervisor's approval of the sick leave as soon as practicable, normally within one (1) hour after the employee's scheduled start time that day, but no later than 11 a.m., absent extenuating circumstances. If the employee is unable to contact his or her supervisor, he or she will leave a message regarding the unscheduled sick leave. The employee will promptly submit a request through the electronic time and attendance system for his or her unscheduled sick leave upon his or her return to work.

### **Section 5**

- A. For infrequent absences of short duration due to illness or injury, an employee's oral self-certification normally will be acceptable evidence of incapacitation.
- B. An employee requesting sick leave for absences of more than three (3) consecutive days may be required to document his or her request with a medical certificate or other administratively acceptable evidence. The Employer may decline to approve sick leave until the requested medical certificate or other administratively acceptable evidence is provided. If a medical certificate is required under this provision, it must include the following elements:
  - (1) the actual date(s) seen by the medical provider;
  - (2) probable duration of incapacity and/or return to work date;
  - (3) an affirmative statement by the medical provider that the employee is unable to work during the period of incapacity; and
  - (4) the certificate must be an original and must contain the employee's name and

the medical provider's name and address, and must be properly signed by the medical provider. Any medical documentation or evidence submitted by an employee shall be considered confidential and may only be discussed with other officials of the Employer subject to its Privacy Act obligations and any other applicable laws, and only for work related reasons on a need to know basis.

- C. An employee with a chronic or continuing condition may be asked to provide a medical certificate evidencing the condition periodically if the original certificate does not specify the expected duration of the employee's condition and the anticipated length of the employee's incapacitation.

## **Section 6**

The Employer may place restrictions on the employee's use of sick leave if it determines that there has been inappropriate use of sick leave. The Employer may impose such restrictions only when preceded by counseling the employee that such restrictions may be imposed if the identified abuse continues. An employee subsequently placed on sick leave restrictions will be notified of the restrictions in writing. This notice will include the basis for imposing the restrictions and will specify the length of time during which the restrictions will be in place. Normally, such leave restrictions will be in place for no more than six (6) months. At the end of the stated period, the Employer may terminate or renew the restrictions, depending on the employee's use of leave during the leave restriction period and on other specific facts and circumstances. The Employer's decision will be in writing.

## **Section 7**

When an employee's sick leave balance has been exhausted, the Employer may grant a written request for advanced sick leave when required by the exigencies of the situation, for the same reasons it grants sick leave to an employee, subject to the limitations below.

- (1) An agency may advance up to 240 hours (30 days) of sick leave to a full-time employee who is incapacitated for the performance of his or her duties by physical or mental illness, injury, pregnancy, or childbirth;
- (2) For a serious health condition of the employee or a family member;
- (3) When the employee would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by his or her presence on the job because of exposure to a communicable disease;
- (4) For purposes relating to the adoption of a child; or
- (5) For the care of a covered service member with a serious injury or illness, provided the employee is exercising his or her entitlement to FMLA leave to care for a covered service member.

An agency may advance up to 104 hours (13 days) of sick leave to a full-time employee-

- (1) When he or she receives medical, dental or optical examination or treatment;
- (2) To provide care for a family member who is incapacitated by a medical or mental condition or to attend to a family member receiving medical, dental, or optical examination or treatment;
- (3) To provide care for a family member who would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by that family member's presence in the community because of exposure to a communicable disease; or
- (4) To make arrangements necessitated by the death of a family member or to attend the funeral of a family member.

Employer may advance sick leave for any lawful purpose, when all of the following conditions are met:

- The employee has provided a medical certificate or other administratively acceptable evidence of the need for sick leave;
- Repayment can reasonably be expected;
- The employee's request does not exceed thirty (30) business days or 240 hours;
- There is no reason to believe the employee will not return to work and continue employment after having used the leave; and,
- The employee is not currently under a leave warning or leave restriction.

Advanced sick leave need not be taken on consecutive days.

## **Section 8**

The Employer will not consider the use of approved sick leave in preparing the employee's written performance appraisal.

**Article 29**  
**FAMILY LEAVE**

**Section 1—Leave Under the Family and Medical Leave Act of 1993 (FMLA)**

- A. An employee, who has completed at least twelve (12) months of Federal service and is not employed on an intermittent basis or a temporary appointment with a time limitation of one year or less, has the right, as established by the Family and Medical Leave Act and implementing regulations (5 C.F.R., Part 630, Subpart L), to twelve (12) administrative workweeks of unpaid leave during any twelve (12) month period for the following purposes:
1. The birth of a son or daughter of the employee and the care of such son or daughter;
  2. The placement of a son or daughter with the employee for adoption or foster care;
  3. The care of a spouse, son, daughter, or parent of the employee who has a serious health condition (as defined in 5 C.F.R. § 630.1202); or
  4. A serious health condition (as defined in 5 C.F.R. § 630.1202) of the employee that makes the employee unable to perform one or more of the essential functions of his or her position.

An employee may use leave under the FMLA intermittently or on a reduced leave schedule in accordance with applicable laws, rules and regulations.

- B. Consistent with applicable laws, rules and regulations, an employee may elect to substitute, for any unpaid leave under the FMLA, any of the following forms of paid leave: accrued or accumulated annual and/or sick leave, advanced annual and/or sick leave, and/or annual leave made available under the Voluntary Leave Transfer Program or the Leave Sharing Program. Compensatory time and credit hours may not be substituted for unpaid leave; however, an employee may use earned compensatory time off and credit hours in addition to the period of FMLA leave. The Employer may not deny an employee's right to substitute paid leave for any or all of the period of unpaid leave taken under the FMLA. The Employer may not require an employee to substitute paid leave for any or all of the period of unpaid leave taken under the FMLA.
- C. An employee who takes leave under the FMLA is entitled, upon return to the SEC, to be returned to the same position held by the employee when the FMLA leave commenced or an equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment.

- D. An employee who takes leave under the FMLA is entitled to maintain health benefits coverage. An employee on unpaid FMLA leave may pay the employee share of the premiums on a current basis or pay upon return to work.
- E. An employee must provide notice of his or her intent to take leave under the FMLA to his or her immediate supervisor at least thirty (30) calendar days before leave is to begin. If the need for the leave is not known thirty (30) calendar days before leave is to begin, the employee must provide notice as soon as possible after he or she learns of the need. If the need for leave is not foreseeable—e.g., a medical emergency or the unexpected availability of a child for adoption or foster care, and the employee cannot provide thirty (30) calendar days' notice of his or her need for leave, the employee shall provide notice within a reasonable period of time appropriate to the circumstances involved. If necessary, notice may be given by an employee's personal representative (e.g., a family member or other responsible party). If the need for leave is not foreseeable and the employee is unable, due to circumstances beyond his or her control, to provide notice of his or her need for leave, the leave may not be delayed or denied.
- F. The Employer may require that an employee's request for leave to be taken to care for an employee's spouse, son, daughter, or parent who has a serious health condition or for the serious health condition of the employee be supported by written medical certification issued by the health care provider of the spouse, son, daughter or parent of the employee or the health care provider of the employee as specified in 5 C.F.R. § 630.1207. If written medical certification is requested, an employee requesting FMLA may submit the U.S. Department of Labor (DOL) Form WH-380, Certification of Physician or Practitioner, to medically substantiate the serious health condition promptly to his or her immediate supervisor. If written medical certification is requested, the employee will provide the written medical certification no later than fifteen (15) calendar days after the date the Employer requests such certification in accordance with 5 C.F.R. § 630.1207(h). If this is not possible, despite the employee's diligent, good faith efforts, medical certification will be provided within a reasonable period, but no later than thirty (30) calendar days after the Employer requests such medical certification. The information on the medical certification shall relate only to the serious health condition for which the current need for family and medical leave exists. The agency may not require any personal or confidential information in the written medical certification other than that required by 5 C.F.R. § 630.1207(b). If an employee submits a completed medical certification signed by the health care provider, the agency may not request new information from the health care provider. However, a health care provider representing the agency, including a health care provider employed by the agency or under administrative oversight of the agency, may contact the health care provider who completed the medical certification, with the employee's permission, for purposes of clarifying the medical certification.

Also, in accordance with 5 C.F.R. § 630.1207:

1. If an employee submits a completed medical certification, signed by the health care provider, the Employer may not request new information from the health care provider. However, a health care provider representing the agency may contact the health care provider who completed the medical certification, with the employee's permission, for purposes of clarifying the medical certification. If the agency doubts the validity of the original certification provided, the agency may require, at the agency's expense, that the employee obtain the opinion of a second health care provider designated or approved by the agency concerning the information contained in the original certification. Any health care provider designated or approved by the agency shall not be employed by the agency or be under the administrative oversight of the agency. If the opinion of the second health care provider differs from the original certification provided under 5 C.F.R. § 630.1207(a), the agency may require, at the agency's expense, that the employee obtain the opinion of a third health care provider designated or approved jointly by the agency and the employee concerning the information certified under 5 C.F.R. § 630.1207(b). The opinion of the third health care provider shall be binding on the agency and the employee.
  2. If the employee is unable to provide the requested medical certification before leave begins, or if the Employer questions the validity of the original certification provided by the employee and the medical treatment requires the leave to begin, the Employer shall grant provisional leave pending final written medical certification.
- G. The Employer will treat as confidential any medical information given by an employee in support of a request for leave under the FMLA. The Employer may only disclose such information in accordance with the Privacy Act, Health Insurance Portability and Accountability Act of 1996 (HIPAA), and other applicable laws, rules and regulations.
- H. The Employer will inform employees of their entitlements and responsibilities under the FMLA at least annually.

## **Section 2—Sick Leave for Family Care or Bereavement Purposes**

- A. In accordance with applicable laws, rules and regulations, the Employer will grant accrued sick leave to an employee when the employee:
- 1) Provides care for a family member who is incapacitated by a medical or mental condition or attends to a family member receiving medical, dental, or optical examination or treatment;
  - 2) Provides care for a family member with a serious health condition;
  - 3) Makes arrangements necessitated by the death of a family member or attends the funeral of a family member;
  - 4) Must be absent from duty for purposes related to the adoption of a child, including appointments with adoption agencies, social workers, and attorneys; court proceedings; required travel; and any other activities necessary to allow the adoption to proceed.
- B. For purposes of this Article, family member is defined as:
- The employee's spouse, and parents thereof;
  - The employee's children, including adopted children, and spouses thereof;
  - The employee's parents;
  - The employee's brothers and sisters, and spouses thereof; and
  - Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.
- C. For purposes of this Article, a serious health condition shall have the meaning set forth in 5 C.F.R. § 630.1202.
- D. An employee may use up to one hundred four (104) hours of sick leave each leave year for the purposes described in Section 2.A. paragraphs (1) and (3) above. An employee may use up to 480 hours of sick leave each leave year for the purposes described in Section 2. A. paragraph (2) above. This paragraph will be applied proportionately in the case of a part-time employee.
- E. An employee may use up to four hundred eighty (480) hours of sick leave each leave year for the purposes described in Section 2. A. paragraph (2) above. If in the same leave year the employee previously has used any portion of the one hundred four (104) hours of sick leave permitted for the purposes described in Section 2.A. paragraphs (1) and (3) above, that amount will be subtracted from the four hundred eighty (480) hour entitlement. If in a leave year the employee has already used four hundred eighty (480) hours of sick leave for the purposes described above in Section 2.A. paragraph (2), he or she cannot use an additional one hundred four (104) hours of sick leave in the same leave year for the purposes described in Section 2.A. paragraphs (1) and (3) above. An employee is entitled to a total of four hundred eighty (480) hours of sick leave each year for all family care purposes, including sick leave substituted for unpaid leave under the FMLA.

- F. The Employer may require that an employee's request for leave to be taken to care for an employee's spouse, son, daughter, or parent who has a serious health condition be supported by written medical certification issued by the health care provider of the spouse, son, daughter or parent of the employee as specified in 5 C.F.R. § 630.1207. If written medical certification is requested, an employee requesting FMLA may submit the U.S. Department of Labor (DOL) Form WH-380, Certification of Physician or Practitioner, to medically substantiate the serious health condition promptly to his or her immediate supervisor. If written medical certification is requested, the employee will provide the written medical certification no later than fifteen (15) calendar days after the date the Employer requests such certification in accordance with 5 C.F.R. § 630.1207(h). If this is not possible, despite the employee's diligent, good faith efforts, medical certification will be provided within a reasonable period, but no later than thirty (30) days after the Employer requests such medical certification. The information on the medical certification shall relate only to the serious health condition for which the current need for family and medical leave exists. The agency may not require any personal or confidential information in the written medical certification other than that required by 5 C.F.R. § 630.1207(b). If an employee submits a completed medical certification signed by the health care provider, the agency may not request new information from the health care provider. However, a health care provider representing the agency, including a health care provider employed by the agency or under administrative oversight of the agency, may contact the health care provider who completed the medical certification, with the employee's permission, for purposes of clarifying the medical certification.
- G. When an employee's sick leave balance has been exhausted, the Employer will consider and may approve a written request for advanced sick leave when required by the exigencies of the situation for a serious disability or ailment of a family member or for purposes related to the adoption of a child and when all of the following conditions are met:
- The employee has provided acceptable documentation of the need for sick leave;
  - Repayment can reasonably be expected;
  - The employee's request is for a minimum of five (5) business days and does not exceed thirty (30) business days;
  - There is no reason to believe the employee will not return to work and continue employment after having used the leave; and
  - The employee is not currently under a leave warning or leave restriction.

### **Section 3—Leave for Maternity Reasons**

- A. Pregnancy will be treated like any other medical condition. The Employer will make a reasonable effort to accommodate a pregnant employee's request for a modification of duties or a temporary assignment when the request is supported by acceptable medical evidence.
- B. Leave for maternity reasons may be a combination of sick leave, annual leave, leave without pay, credit hours, and compensatory time earned consistent with applicable laws, rules and regulations.
- C. An employee who invokes the FMLA under this Section will be entitled to take up to twelve (12) administrative workweeks of unpaid leave during any time up until the child's first (1st) birthday and in accordance with Section 1 above.
- D. The Employer recognizes that an employee may request to take leave for maternity reasons beyond any entitlement, and the Employer will give fair and equitable consideration to such requests.

### **Section 4—Leave for Paternity Reasons**

- A. An employee who desires to take leave for paternity reasons may invoke the FMLA. An employee who invokes the FMLA under this Section will be entitled to take up to twelve (12) administrative workweeks of unpaid leave during any time up until the child's first (1st) birthday and in accordance with Section 1 above.
- B. Leave for paternity reasons may be a combination of sick leave, annual leave, leave without pay, credit hours, and compensatory time earned consistent with applicable laws, rules and regulations.
- C. The Employer recognizes that an employee may request to take leave for paternity reasons beyond any entitlement, and the Employer will give fair and equitable consideration to such requests.

## **Section 5—Other Family and Medical Leave**

- A. Absent a severe workload problem, the Employer will approve written requests by an employee to use paid or unpaid leave of up to twenty-four (24) hours per year, in accordance with law, Presidential Memorandum to Agency Heads (dated April 11, 1997) and OPM guidance:
1. To participate in school activities directly related to the educational advancement of a child (e.g., parent-teacher conferences, field trips or other related functions);
  2. To accompany a child to routine medical or dental appointments, exams and vaccinations; or
  3. To accompany an elderly relative to routine medical or dental appointments, or other professional services related to the care of the relative, such as providing for housing, meals, telephones, banking services and similar activities.
- B. The Employer will approve an employee's written request for such leave unless the employee's absence would have an adverse effect on staffing, workload or mission requirements.

## **Article 30**

### **Excused Absences/Administrative Leave**

#### **Section 1**

For purposes of this article, administrative leave is an excused absence from duty without loss of pay or charge to leave.

#### **Section 2**

When an excused absence is administratively granted because of weather conditions or other similar reasons, and the period of excused absence is preceded and/or followed by official work time, in order to be excused, the employee must be in an active duty status immediately before or after the period of the excused absence. Reasonable efforts will be made to promptly inform all employees. This provision does not apply to personnel designated in writing to report for work during emergency situations.

An employee has no entitlement to excused absence when the employee's duty station is open. However, if an employee is going to be unavoidably delayed or prevented from arriving to work due to an emergency situation, including severe weather conditions, natural disasters, and public emergencies, the Employer may grant the employee's request for a reasonable amount of excused absence. Such requests may be granted for a part or all of the employee's workday. The Employer may require the employee to submit reasonably acceptable documentation that the employee made reasonable efforts to reach work, but that emergency conditions prevented arrival or timely arrival. An emergency situation is one that is general rather than personal in scope and impact. The Employer will reasonably consider each employee's request for excused absence, based on factors such as distance, availability of transportation, and the success of other employees in similar situations.

An employee is obligated to contact his/her supervisor as early as practicable to explain his/her circumstances and provide an estimated time of arrival at work.

#### **Section 3**

An emergency employee is an employee who has been designated, in writing, by the head of his/her office to report for work and continue critical operations during early dismissal, delayed opening, and closure days. Designated emergency employees should be notified annually of such designation. If an emergency employee is in an approved leave status during all or part of the closure, that employee will normally be allowed to remain in an approved leave status.

When the Employer determines that an emergency employee will be designated from a pool of qualified bargaining unit employees, volunteers will be solicited from that pool. If there are an insufficient number of volunteers, selections of employees who are qualified for this assignment will normally be based on their proximity to the office. The Employer also will consider an employee's hardship request for exclusion from designation as an emergency employee.

#### **Section 4**

An employee may be granted, on a one-time basis, administrative leave up to three (3) days to sit for a professional examination where that examination is job-related. Additionally, administrative leave may be granted up to one day when travel is required to take the examination outside the metropolitan area of the employee's duty station.

Employees granted administrative leave under this Section are not entitled to reimbursement of travel expenses.

#### **Section 5**

- A. The Employer agrees to approve a leave of absence to one (1) employee elected to a position of national officer of the National Treasury Employees Union for the purpose of serving full-time in the elective position. Such a leave of absence will be for a period concurrent with the term of office of the elected official and will automatically be renewed by the Employer upon notification in writing from the elected official that he or she has been re-elected and wishes to continue in a leave of absence status. The Employer agrees to make every reasonable effort to grant the above referenced leave, consistent with the Employer's workload, staffing or mission requirements. If the request is denied, the Employer will notify the employee in writing of the reasons therefore.
- B. The Employer agrees to approve a leave of absence for one (1) employee for the purpose of serving in a full-time appointive position for the Union. The term of absence will not exceed twelve (12) months. The Employer agrees to make every reasonable effort to grant the request, consistent with the Employer's workload, staffing or mission requirements. If the request is not granted, the Employer will notify the employee and the National Office of NTEU, in writing, of the reasons why the request has been denied.
- C. The foregoing leave of absence is subject to the following conditions:
  - 1. It is served without pay.
  - 2. Subject to its right to assign work, the Employer will accomplish the following upon expiration of the leave:

- a. to the extent possible, place a returning employee in the position (same grade, series, group) he or she held at the time the leave began; or
- b. failing the above, the Employer will place the employee in a position for which he or she is qualified at the same grade held by the employee at the time he or she commenced the leave of absence.

**Article 31**  
**OTHER LEAVE/RELIGIOUS COMPENSATORY TIME**

**Section 1**

Full-time employees who are a member of the National Guard or a reserve component of the Armed Forces shall be entitled to military leave for active duty, active duty training, and inactive duty training at the rate of fifteen (15) days per fiscal year. Military leave that is not used in a fiscal year accumulates for use in the succeeding fiscal year. However, no more than fifteen (15) days may be carried over into the succeeding fiscal year. The total maximum accumulation for military leave is thirty (30) days in any fiscal year.

**Section 2**

An employee may use up to thirty (30) days of paid leave each calendar year to serve as an organ donor. Leave for organ donation is a separate category of leave that is in addition to annual leave and sick leave. For absences in excess of thirty (30) days, an employee may request accrued or advanced annual or sick leave or LWOP. An employee may use up to seven (7) days of paid leave each calendar year to serve as a bone marrow donor. Leave for bone marrow donation is a separate category of leave that is in addition to annual leave and sick leave. For absences in excess of seven days, an employee may request accrued or advanced annual or sick leave or LWOP.

**Section 3**

The Employer will approve an employee's request for leave (whether annual or leave without pay) or compensatory time for religious observance on a work day. Compensatory time for religious observance may be used before it is earned.

**Section 4**

To the extent that such modifications in work schedules do not interfere with the efficient accomplishment of the agency's mission, the agency shall in each instance afford an employee the opportunity to work compensatory overtime and shall in each instance grant compensatory time off 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. The employee may work such compensatory overtime before or after the grant of

compensatory time off. A grant of advanced compensatory time off for religious purposes should be repaid by the appropriate amount of compensatory overtime work within a reasonable amount of time, normally within three months of when the time was used but, in exceptional circumstances, up to six (6) months.

**Article 32**  
**GRIEVANCE PROCEDURE**

**Section 1**

The Employer recognizes that an employee may submit and seek resolution of grievances under the provisions of this Article. The Employer will not restrain, interfere with, coerce, discriminate against, intimidate or engage in any reprisal against an employee or Union representative for exercising rights under this Article. This Article is designed to provide a mutually acceptable means of resolving grievances at the lowest level possible, and the Employer and the Union agree to work toward this end in good faith.

**Section 2**

Except as provided below, a grievance may be initiated by employees, individually or jointly, by the Union itself, by the Union on behalf of one or more employees, or by the Employer. A grievance is defined as any complaint:

- a. by an employee concerning any matter relating to his or her employment;
- b. by the Union concerning any matter relating to the employment of an employee; or
- c. by an employee, the Employer, or the Union concerning:
  1. the effect of interpretation, or claim of breach, of this Agreement; or,
  2. any claimed violation, misinterpretation, or misapplication of any law, rule or regulation, or agency policy affecting conditions of employment.

**Section 3**

This Article will not apply to any grievance concerning:

- a. any claimed violation of 5 U.S.C., Chapter 73, Subchapter III (relating to prohibited political activities);
- b. retirement, life insurance or health insurance;
- c. a suspension or removal under 5 U.S.C. § 7532 (relating to national security matters);
- d. any examination, certification or appointment (5 U.S.C. § 7121 (c)(4));
- e. the classification of any position that does not result in the reduction of either grade or pay of any employee;
- f. the content of Agency ethics rules;
- g. the removal of a probationary, temporary or term employee;
- h. non-selection for promotion from a group of properly rated and ranked

candidates except for procedures to identify and rank such employees and if such action is alleged to have been taken for discriminatory reasons prohibited by statute, that issue may be grieved under this procedure;

- i. filling of supervisory positions or other positions outside the bargaining unit;
- j. non-disciplinary counselings, warnings, or notices of proposed actions. This is not intended to waive any rights the union may have under Article(s) 34, 35 and 36;
- k. non-adoption of a suggestion; or
- l. an appeal by an employee of a RIF action.

#### **Section 4**

- A. This grievance procedure will be the exclusive procedure available to employees, the Employer, and the Union for resolving any grievance in accordance with 5 U.S.C. § 7121, except as provided in Subsections 4(B), (C), and (D) of this Article.
- B. If a grievance also constitutes an unfair labor practice, the aggrieved party may seek redress under this Article or under the unfair labor practice procedure, but not both. An employee will be deemed to have exercised his or her option to raise a matter either under the appropriate statutory procedure or under this grievance procedure at such time as the employee timely files an unfair labor practice charge or timely files a grievance in writing in accordance with the provisions of this Article, whichever event occurs first.
- C. A grievance involving discrimination based upon race, color, religion, gender, national origin, age, handicapping condition, marital status, or political affiliation may at the discretion of the grievant, be raised either under the appropriate statutory procedure or under this grievance procedure, but not both.

Pursuant to 5 U.S.C. § 7121(d), an employee will be deemed to have exercised his or her option to raise a matter either under the appropriate statutory procedure or under this grievance procedure at such time as the employee timely files a formal complaint of discrimination or timely files a grievance in writing in accordance with the provisions of this Article, whichever event occurs first.

- D. An employee who receives a written decision letter effecting an adverse or unacceptable performance action may elect to challenge such action in only one of the following ways:
  1. By filing an appeal with the Merit Systems Protection Board (MSPB) in accordance with applicable law and regulation;
  2. Under this Agreement, and with the Union's concurrence, by appealing directly to binding arbitration within the time set forth in Article 33 (Arbitration) of this Agreement; or

3. By filing a formal complaint of discrimination under the administrative EEO process.

## **Section 5**

A grievant is entitled to be assisted by a Union representative in the submission of grievances, or may submit grievances without Union representation. No individual may serve as an employee's representative in the processing of a grievance under this procedure, unless such representative has been approved by the Union. If a grievant submits a grievance without Union representation, the Union will be given the opportunity to be present at all formal discussions of the grievance. To the extent possible, the Union will be given reasonable advance notice of such discussions. An employee does not have the right to take a matter to arbitration unless the Union is the invoking party.

## **Section 6**

When a grievance is initially filed or at the second step, upon mutual agreement, the following Alternative Dispute Resolution Process may be followed instead of the standard grievance process specified in Section 8 below. This Alternative Dispute Resolution Process will not exceed twenty (20) calendar days, unless extended upon mutual consent.

- The affected parties will meet with a mutually agreed upon mediator to attempt to resolve the matter. Mediators may come from any source mutually agreeable to the parties.
- The parties may mutually agree to other participants such as Union and Management representatives or subject matter experts.
- The parties will meet at mutually agreeable times to attempt to resolve the matter.
- If the matter is resolved, the grievance will be withdrawn.
- If the matter is not resolved, the grievance will continue through the standard grievance process.
- At any time, either party may choose to terminate this Alternative Dispute Resolution Process. The grievance will then continue through the standard grievance process.
- Settlement offers and discussions will not be used as evidence or referred to if the grievance is not resolved through this Alternative Dispute Resolution Process.

The time frames for the standard grievance process will be tolled during the Alternative Dispute Resolution Process.

## Section 7

Every grievance submitted by an employee pursuant to this Article must be in writing and should contain the following information:

1. the date submitted;
2. a description of the alleged violation in sufficient detail to identify the basis of the grievance;
3. references to the appropriate contractual provision(s) that are alleged to have been violated;
4. a statement of the personal remedy sought; and
5. the name and Division/Office/Regional Office of the grievant.

The Employer agrees that it will not deny a grievance solely due to an incorrect citation.

## Section 8

A grievance submitted by an employee will be processed as follows.

**Step 1.** A grievant must submit a written grievance to his or her immediate supervisor within twenty-one (21) calendar days of the event giving rise to the grievance or within twenty-one (21) calendar days of the time he or she may have been reasonably expected to have learned of the event. The supervisor shall schedule a meeting with the grievant and his or her Union representative at a mutually agreeable date and time within fifteen (15) calendar days following the date of the grievant's submission, unless it is mutually agreed that the meeting be waived or scheduled at a later date. The meeting may be conducted in person or by telephone. The supervisor will answer the grievance in writing within twenty-one (21) calendar days following the meeting or, if no meeting is held, within twenty-one (21) calendar days of the submission. If the grievance is denied, the reasons for denial will be in this written answer. A copy of the answer will be provided to the grievant and to the Union representative (if any).

If, because of the nature of the grievance, either the grievant, immediate supervisor of the grievant or the Union believes the immediate supervisor is not the appropriate Step 1 official, that party may contact OHR to discuss whether the immediate supervisor should hear the grievance. OHR will then designate the appropriate official to hear the Step 1 grievance.

**Step 2.** If the grievant is not satisfied with the Step 1 answer, the grievance may be submitted in writing to the grievant's Division/Office/Regional Office Head or designee no later than fifteen (15) calendar days following the date of the Step 1 answer or the day the answer was due. This submission will consist of the original written grievance and the Step 1 answer (if provided). A grievant may not raise new issues after Step 1. The Division/Office/Regional Office Head or designee may arrange for a meeting with the grievant and his or her Union representative, in person or by telephone, at a mutually agreeable time within fifteen (15) calendar days following the date of the grievant's submission. The Division/Office/Regional Office Head or designee will answer the grievance in writing within fifteen (15) calendar days following the meeting or, if no meeting is held, within fifteen (15) calendar days of the submission. If the grievance is denied, the reasons for denial will be in this written answer. A copy of the answer will be provided to the grievant and to the Union representative (if any).

Notwithstanding the foregoing, if the grievant's Division/Office/Regional Office Head was the reviewing official for the first step, this second step will be bypassed.

**Step 3 (optional).** If the Union is not satisfied with the Step 2 answer, the Union may submit the grievance in writing to the Employer's Chief Operating Officer or designee at the SEC Headquarters (located at 100 F Street NE, Washington, DC 20549) with a copy to the Assistant Director for employee and labor relations in OHR, in hard copy or via email, no later than fifteen (15) calendar days following receipt of the Step 2 answer or the day the answer was due. This submission will consist of the original written grievance and the Step 1 and Step 2 answers (if provided). The Chief Operating Officer or designee will answer the grievance in writing within twenty (20) calendar days of the submission. If the grievance is denied, the reasons for denial will be in this written answer. A copy of the answer will be provided to the grievant and to the Union representative.

**Step 4.** The Union, at the national level, may, within thirty (30) calendar days following receipt of the Step 2 or Step 3 answer (or Step 1 answer if Step 2 has been waived) or the day the answer was due, notify the Employer's Assistant Director for employee and labor relations in OHR via email and by certified mail (to 100 F Street, NE, Washington, DC 20549 (Mail Stop 3949)) that it desires the matter be submitted to arbitration in accordance with Article 33 (Arbitration) of this Agreement.

## **Section 9**

The Employer and the Union are strongly encouraged to resolve their concerns informally prior to submitting grievances under this Article.

## **Section 10**

In the case of a grievance that the Union, at the national level, may have against the Employer, or that the Employer may have against the Union, the grievant will submit the grievance to the other Party in writing within twenty-one (21) calendar days of the event giving rise to the grievance or within twenty-one (21) calendar days of the time the grievant may have been reasonably expected to have learned of the event. If the Union submits a grievance under this section, it shall be submitted in writing to the Employer's Assistant Director of OHR for Employee and Labor Relations via email or mail. If the Employer submits a grievance under this section, it shall be submitted in writing to the NTEU Chapter President via email or via the mail. In either case, the grievance will provide the following information:

1. the date submitted;
2. a description of the alleged violation in sufficient detail to identify the basis of the grievance;
3. references to the appropriate contractual provision(s), law, rule or regulation alleged to have been violated;
4. a statement of the remedy sought; and
5. the name of and contact information for the Employer/Union representative handling the matter.

Upon mutual consent, an Employer representative and a Union representative will meet within fifteen (15) calendar days of the submission of the grievance. The responding Party will answer the grievance in writing within twenty-one (21) calendar days following the date the grievance was received. If the grievant is not satisfied with the response, within thirty (30) calendar days following receipt of the response, the grievant may request the matter to be submitted to arbitration in accordance with Article 33 (Arbitration) of this Agreement.

## **Section 11**

Failure of the Employer or the Union to render a decision within any time limits specified in this Article will entitle the grievant to progress the grievance to the next step without a decision, unless an extension of time limits has been mutually agreed upon. Failure of a grievant to observe the time limits specified in this Article where no extension has been granted, will result in termination of the grievance. If the deadline for any action in this Article falls on a non-workday (e.g. Saturday, Sunday, or Holiday), the deadline will be extended to the next workday.

## **Section 12**

Where two or more employees file individual grievances involving the same facts and the same issues arising out of the same incident, and all grievants request the same relief, the Union or Employer may request that the grievances be consolidated and, upon mutual consent, the grievances will be processed together through the procedures set forth in this Article.

## **Section 13**

If the Employer believes that a grievance is not on a matter subject to the grievance procedure in this Agreement or is not subject to arbitration, the Employer will notify the Union in writing, stating the reasons for such determination.

## **Article 33**

### **ARBITRATION**

#### **Section 1**

- A. Any unresolved grievances processed under Article 32 (Grievance Procedure) of this Agreement, or any challenges to adverse or unacceptable performance actions, may, upon written notification by the Union or the Employer, be appealed to binding arbitration. The request for arbitration will be made within thirty (30) calendar days after receipt of the final decision in the grievance procedure or the written decision letter in an adverse or unacceptable performance action. If, in the case of an unresolved grievance, no final decision has been issued, the request will be made within thirty (30) calendar days from the date such decision should have been issued.
- B. If the Union makes a request for arbitration, it shall be in writing and served on the Assistant Director of OHR for Employee and Labor Relations via email and mail (to 100 F Street, NE, Washington, DC 20549 (Mail Stop 3949)). If the Employer makes a request for arbitration, it shall be in writing and served on the National President of NTEU, with a copy to the Chapter 293 President via email and mail.

#### **Section 2**

- A. The Parties already have established permanent panels for hearing arbitration appeals filed by the Union or the Employer under their previous agreements, and those panels shall be carried over to the current agreement.
- B. Either party may unilaterally remove one arbitrator from the panel during each twelve (12) month period of this agreement by giving notice to the other party and the arbitrator. The parties may also mutually agree to strike any arbitrator from the panel at any time. Upon receipt of that notice, no further cases will be assigned to that arbitrator, but the arbitrator will hear and decide any cases already assigned.
- C. Within thirty (30) days, or such other time as agreed upon by the parties, of the removal or other action creating a vacancy on the panel, the Parties shall attempt to agree upon a replacement. If the Parties cannot agree to a replacement within this timeframe, the Parties shall promptly and jointly

request from the FMCS, AAA or any other source a list of five (5) impartial persons qualified to act as arbitrators for each vacancy. The parties may agree to individual arbitrators without seeking lists.

- D. The cost of the list, if any, will be shared equally by the Parties. If the Parties cannot mutually agree upon a selection, the Parties will then alternately strike names of persons from the list until one (1) name remains. This person shall be the duly selected arbitrator to fill the vacancy. A coin flip will determine which Party will strike first.
- E. Within thirty (30) calendar days after receipt of a request for arbitration, the Parties will assign the case to the next arbitrator on the panel, on a rotational basis. The same panel of arbitrators will be used for expedited arbitration.

### **Section 3**

The arbitrator's fees and all of the arbitrator's expenses, including travel expenses, incurred under this procedure shall be borne equally by the Parties. Unless the parties agree otherwise, a verbatim transcript of the hearing will be made. If either Party desires a copy of the transcript, that party will bear the expense of the copies it obtains. The Parties will share equally the cost of the transcript, if any, supplied to the arbitrator.

### **Section 4**

- A. The arbitrator will hear the grievance as promptly as practicable, on a date and at a site, normally the Employer's premises, mutually agreeable to the Parties.
- B. Once the hearing date has been established, a Party unilaterally requesting that an arbitration hearing be postponed, delayed, or cancelled, for any reason that results in fees being charged by the arbitrator or the court reporter, will pay any and all fees associated with the requested change. The fact that one Party has no objection to the request of the other Party for postponement, delay, or cancellation of the arbitration hearing will not absolve the requesting Party from the paying of all the fees being charged.
- C. In any case where the Parties mutually agree to postpone, delay, or cancel an arbitration proceeding, the Parties will share equally the cost of any fees being charged by the arbitrator or the court reporter which are associated with the requested change.
- D. The Parties will exchange lists of potential hearing witnesses fifteen (15) calendar days prior to the scheduled hearing. The Employer will make

reasonable efforts to produce Agency employees as witnesses if requested by the Union. Each Party has the responsibility and obligation to produce its witnesses on the day of the hearing, and each Party will bear its own witnesses' expenses, including travel. Where practicable, the parties may mutually agree to allow witnesses to testify by telephone, video-conference or other electronic means. The grievant and all employees who are called as witnesses will be excused from duty to the extent necessary to participate in the arbitration hearing, without loss of pay or charge to annual leave.

- E. In determining whether to conduct an ex parte hearing, an arbitrator must consider relevant legal, contractual, and other pertinent circumstances. If the arbitrator concludes that an ex parte hearing is appropriate, the arbitrator will decide how the hearing will be conducted. The arbitrator must be certain, before proceeding ex parte, that the party refusing or failing to attend the hearing has been given adequate notice of the time, place and purposes of the hearing. Copies of any briefs and decisions will be served on the other party.
- F. The arbitrator shall submit his or her decision to the Employer and the Union advocate as soon as possible, but in no event later than thirty (30) calendar days following the close of the record before him or her, unless the Parties waive this requirement. The arbitrator's decision is final and binding.

## **Section 5**

- A. The arbitrator shall have the authority to make all arbitrability/grievability determinations. However, either party retains the right to file an appeal or exceptions to any decision rendered by the arbitrator regarding arbitrability/grievability.
- B. The arbitrator will confine himself/herself to the precise issue submitted for arbitration and will have no authority to determine any other issues not so submitted. If the Parties fail to agree on a joint submission of the issue for arbitration, each will present a separate submission, with a copy to the other Party, and the arbitrator will determine the issue(s) to be heard.

## **Section 6**

The Parties may, by mutual agreement, stipulate the facts and the issue in a particular case directly to an arbitrator for decision without a formal hearing.

## **Section 7**

- A. The decision of the arbitrator will be final and binding. However, either Party may file an exception to the arbitrator's decision with the Federal Labor Relations Authority (FLRA) in accordance with the FLRA's regulations.
- B. The arbitrator shall possess the authority to prescribe remedies to the extent provided under pertinent laws, rules, and regulations. An arbitrator has the authority to award reasonable attorney fees in accordance with applicable law.
- C. The jurisdiction, authority, and expressed opinions of the chosen arbitrator will be confined exclusively to the interpretation of the expressed provision or provisions of this Agreement at issue between the Parties. Arbitrators must follow laws, binding government-wide regulations, and applicable precedents. The arbitrator has no power to add to, subtract from, disregard, alter, or modify any terms of this Agreement or the Employer's policy and regulations.

## **Section 8**

- A. When the Parties settle the matter prior to an arbitration hearing and there are fees charged due to the cancellation of the hearing, both Parties will equally share the cost of any fees being charged.
- B. The Parties have the right to present and cross-examine witnesses and issue opening and closing statements.
- C. The arbitrator may exclude testimony or evidence that is determined to be irrelevant or unduly repetitious.
- D. Either Party may ask the arbitrator to draw an appropriate inference when either Party fails to present facts or witnesses that the arbitrator deems necessary and relevant.
- E. Testimony shall be under oath or affirmation.
- F. Either Party may introduce bargaining history at the hearing. By agreement, bargaining history also may be provided to the arbitrator by telephone or fax.

## Section 9

- A. A grievance concerning the following matters may be submitted for expedited arbitration:
- Dues withholding,
  - Denials of Official Time,
  - Improper maintenance of personnel records,
  - Denials of a work schedule or telework request,
  - Bulletin board postings or literature distribution by the union, or
  - Denials of an outside employment request.
- B. The request for expedited arbitration will be made within fifteen (15) calendar days after receipt of the final decision in the grievance procedure. If no final decision has been issued, the request will be made within fifteen (15) calendar days from the date such decision should have been issued. The arbitrator will be selected in the same manner as provided for in Section 2 above. An arbitrator unable to hear an expedited arbitration case within thirty (30) calendar days will be deemed unavailable and the Parties will select another arbitrator.
- C. The hearing will be conducted as soon as possible and will be informal in nature. The Parties may arrange for a pre-hearing conference with or without the arbitrator to consider means of expediting the hearing. The arbitrator will issue a decision as soon as possible, but no later than twenty (20) calendar days after the official closing of the hearing, unless otherwise agreed by the Parties. By mutual agreement, the arbitrator may issue a bench decision.

## **Article 34**

### **DISCIPLINARY ACTIONS**

#### **Section 1**

For purposes of this Article, disciplinary actions are written reprimands and suspensions for fourteen (14) calendar days or fewer.

#### **Section 2**

In effecting disciplinary actions, the Employer endorses the use of like penalties for like offenses and progressive discipline. The Employer will 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.

#### **Section 3**

When the Employer determines that discipline of an employee is appropriate, the Employer may consider informal actions before taking disciplinary action. However, the Employer need not take informal action before taking disciplinary action.

The Employer will take a disciplinary action for such cause as will promote the efficiency of the service.

#### **Section 4**

No advance notice is required for the issuance of a written reprimand. However, a written reprimand will state the specific reasons for the action and include a statement in the written reprimand advising the employee of his/her rights to challenge the written reprimand.

Written reprimands will be placed in the employee's Official Personnel Folder for no more than two (2) years from the date of issuance.

## Section 5

The Employer will follow these procedures when proposing and deciding to suspend an employee under this Article:

- A. Give the employee advance written notice stating the specific reasons for the proposed suspension. In cases where a disciplinary action is proposed for reasons of off-duty misconduct, the Employer's written notification also will contain a statement of the nexus between the off-duty misconduct and the efficiency of the service.
- B. Provide the employee with a copy of the information relied upon to support the proposed disciplinary action.
- C. Grant the employee a reasonable amount of duty time, up to four hours, to prepare his/her response to the proposed suspension. The Employer may consider a written request from the employee for additional duty time to prepare his/her response.
- D. Give the employee the opportunity to reply to the notice orally and/or in writing within seven calendar days from the date the employee receives notice of the proposed suspension. The Employer may consider a written request from the employee to extend the reply period.
- E. If the employee elects to make an oral reply, the Deciding Official, or his/her designee, will prepare a summary of the oral reply for the record. The Employer will provide a copy of this summary to the employee and the employee's representative and allow at least one day for comment and/or correction.
- F. Consider the employee's reply.
- G. Give the employee a written decision letter concerning the proposed suspension. Normally, the decision will be made by a management official of a higher level than the official who issued the notice of the proposed suspension. The decision letter will be issued prior to the effective date of the suspension, and will contain the Employer's findings with respect to each specification and charge made against the employee in the notice of proposed action and the dates of the suspension. The Employer also will include a statement in the decision letter advising the employee of the Union's right to challenge the suspension.

## **Section 6**

Upon request, an employee is entitled to representation at any examination by a representative of the Employer in connection with an investigation if the employee reasonably believes that the examination may result in disciplinary action against the employee.

## **Section 7**

An employee against whom a disciplinary action has been taken may grieve that action under Article 32 of this Agreement (Grievance Procedure). For actions effected after a second level management decision (suspensions), the grievance procedure may be bypassed and the Union may elect to proceed directly to arbitration in accordance with Article 33.

## **Section 8**

If a disciplinary action is canceled, all documentation relative to that action (or proposed action) in the employee's Official Personnel File will be destroyed, with confirmation of destruction sent to the employee. The Employer will not destroy any documentation required to be preserved under laws, rules, or regulations.

## **Article 35**

### **ADVERSE ACTIONS**

#### **Section 1**

For purposes of this Article, adverse actions are suspensions for more than fourteen (14) calendar days, removals (except for actions taken under Article 36 (Unacceptable Performance)), reductions in grade or pay (except for actions taken under Article 36 (Unacceptable Performance)), or furloughs of thirty (30) calendar days or fewer. The provisions of this Article do not apply to the removal of probationary or term employees. The Employer will take an adverse action for such cause as will promote the efficiency of the service.

#### **Section 2**

The Employer and the Union agree to the concept of progressive discipline. Every situation warranting discipline is different and in some instances, progressive discipline may not be appropriate. In deciding what action may be appropriate, the Employer will give due consideration to the relevance of any mitigating and/or aggravating circumstances, including those listed below. All of these factors may not be relevant in a particular case, and each case must be considered individually. Selection of the appropriate penalty requires a responsible balancing of the factors relevant to the particular case.

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 and inadvertent, or was committed maliciously or for gain, or was frequently repeated;
2. The employee's job level and type of employment including fiduciary role, contacts with the public, and prominence of the position;
3. The employee's past disciplinary record;
4. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
5. The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon the Employer'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. The notoriety of the offense or its impact upon the reputation of the Employer;
8. 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;
9. Potential for the employee's rehabilitation;
  10. 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 the others involved in the matter; and
  11. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

### **Section 3**

The Employer will follow these procedures when proposing and deciding to take adverse actions against an employee under this Article:

1. Give the employee at least thirty (30) calendar day advance written notice stating the specific reasons for the proposed adverse action. In cases where an adverse action is proposed for reasons of off-duty misconduct, the Employer's written notification also will contain a statement of the nexus between the off-duty misconduct and the efficiency of the service.
2. Provide the employee with a copy of any information relied upon to support the proposed adverse action.
3. Grant the employee a reasonable amount of duty time, normally no more than eight (8) hours, to prepare his/her response to the proposed adverse action. The Employer may consider a written request from the employee for additional duty time to prepare his/her response.
4. Give the employee the opportunity to reply to the notice orally and/or in writing within ten calendar days from the date the employee receives notice of the proposed adverse action. The Employer may consider a written request from the employee to extend the reply period unless the proposed action is being taken under the 'crime provision' (5 CFR §752.404), in which case a request for an extension of the reply period will not be considered.
5. If the employee elects to make an oral reply, the Deciding Official or his/her designee, will prepare a summary of the oral reply for the record. The Employer will provide a copy of this summary to the employee and the employee's representative and allow at least one day for comment and/or correction.
6. Consider the employee's reply.
7. Give the employee a written decision letter concerning the proposed adverse action. Normally, the decision will be made by a management official of a higher level than the official who issued the notice of the proposed adverse action. The decision letter will be issued prior to the effective date of the adverse action, and will contain the Employer's findings with respect to each specification made against the employee in the notice of proposed action. The Employer also will include a statement in the decision letter advising the employee of his/her or the Union's rights to challenge the adverse action.

#### **Section 4**

Upon request, an employee is entitled to representation at any examination by a representative of the Employer in connection with an investigation if the employee reasonably believes that the examination may result in disciplinary action against the employee.

#### **Section 5**

An employee against whom an adverse action has been taken may challenge that action in accordance with Article 32 (Grievance Procedure) of this Agreement. The grievance procedure may be bypassed and the Union may elect to proceed directly to arbitration in accordance with Article 33. This would not preclude the employee's option to appeal the adverse action directly to the Merit Systems Protection Board if arbitration is not invoked.

#### **Section 6**

If an adverse action is canceled, all documentation relative to that action (or proposed action) in the employee's Official Personnel File will be destroyed, with confirmation of destruction sent to the employee. The Employer will not destroy any documentation required to be preserved under laws, rules, or regulations.

**Article 36**  
**UNACCEPTABLE PERFORMANCE**

**Section 1**

For purposes of this Article, an action based on unacceptable performance is a reduction in grade or removal of an employee whose performance fails to meet established performance standards in one or more critical elements.

The provisions of this Article do not apply to the removal of probationary or term employees.

**Section 2**

- A. Before taking an action based on unacceptable performance, the Employer will notify the employee in writing of the critical element(s) for which performance is unacceptable, inform the employee of the performance requirement(s) or standard(s) that must be attained in order to demonstrate acceptable performance in his/her position and advise the employee what he/she must do to bring his/her performance up to an acceptable level. The Employer may give an employee such notice at any time during the performance appraisal cycle.
- B. For each critical element in which the employee's performance is unacceptable, the Employer will provide the employee a reasonable period of time (usually sixty (60) to one hundred twenty (120) calendar days, depending on the nature of the employee's duties) to demonstrate acceptable performance, commensurate with the duties and responsibilities of the employee's position. The Employer will inform the employee that, unless his/her performance improves to and is sustained at an acceptable level during such period of time, the Employer may reduce the employee's grade or remove him/her.
- C. The Employer also will inform the employee that, unless his/her performance in the identified critical element(s) is sustained at an acceptable level for at least one year from receipt of the written notice, the Employer may reduce the employee's grade or remove him/her.

### **Section 3**

When the employee improves identified unacceptable performance to an acceptable level within the improvement period, as specified in Section 2 B of this Article, but the employee's performance in the same critical element(s) again becomes unacceptable within one year of the initial notice, the Employer may initiate action to reduce the employee's grade or remove him/her as set forth in Section 4 of this Article without offering another performance improvement period.

### **Section 4**

The Employer will follow these procedures when proposing and deciding to take an action under this Article:

1. Give the employee a thirty (30) calendar day advance written notice of the proposed action. The notice will identify both the specific instances of unacceptable performance and the related critical elements and standards.
2. Provide the employee with a copy of any information relied upon to support the proposal.
3. Advise the employee of his/her right to representation.
4. Grant the employee a reasonable amount of duty time, normally no more than eight hours, to prepare his/her response to the proposed action. The Employer may consider a written request from the employee for additional duty time to prepare his/her response.
5. Give the employee the opportunity to reply to the notice orally and/or in writing within ten calendar days from the date the employee receives notice of the proposed action. The Employer may consider a written request to extend the reply period.
6. If the employee elects to make an oral reply, the Deciding Official, or his/her designee, will prepare a summary of the oral reply for the record. The Employer will provide a copy of this summary to the employee and the employee's representative and allow at least one day for comment and/or correction.
7. Consider the employee's reply.
8. Give the employee a written decision letter concerning the proposed action within thirty (30) calendar days after expiration of the advance notice period.

Normally, the written decision will be concurred in by an employee who is in a higher position than the person who proposed the action. The decision letter will be issued prior to the effective date of the action, and will contain the Employer's findings. The Employer also will include a statement in the decision letter advising the employee of his/her rights to challenge the unacceptable performance action.

An action taken against an employee under this Article must be supported by substantial evidence.

### **Section 5**

An employee against whom an action for unacceptable performance has been taken may challenge that action in accordance with Article 32 (Grievance Procedure) of this Agreement.

### **Section 6**

If an action for unacceptable performance is canceled, all documentation relative to that action (or proposed action) in the employee's Official Personnel File will be destroyed, with confirmation of destruction sent to the employee. The Employer will not destroy any documentation required to be preserved under laws, rules, or regulations.

**Article 37**  
**REDUCTION-IN-FORCE (RIF)**

**Section 1**

This Article applies to any Reduction-In-Force (RIF) conducted by the Employer during the term of this Agreement. Any RIF will be carried out in accordance with applicable laws, rules, and regulations. To the extent feasible, the Employer will give the Union at least thirty (30) calendar days advance written notice prior to the issuance of the general notice to employees.

**Section 2**

The Employer will provide the following information to the Union:

- 1) the reason for the actions to be taken;
- 2) the approximate number of employees who may be affected;
- 3) the types of positions that may be affected; and
- 4) the anticipated effective date that the actions will be taken.

**Section 3**

The Employer and the Union will negotiate, as appropriate, the procedures to be followed in the implementation of the RIF in accordance with Article 6 (Mid-term Bargaining).

**Article 38**  
**UNION ACCESS TO EMPLOYER SPACE, SERVICES AND**  
**BULLETIN BOARDS**

**Section 1**

The Union, upon appropriate advance request and approval, may use an Employer conference room or other meeting space, when available. Generally, such use must be for representational purposes. If meeting space is used for internal Union business, the meetings must be conducted during non-duty hours (including, during a lunch break). The Employer may rescind approval for the Union's use of meeting space if the Employer needs it. When requesting or reserving meeting space, the Union representative must indicate that the Union is sponsoring the meeting. The Union will exercise reasonable care and due consideration for the maintenance of the meeting space.

**Section 2**

The Employer will provide the Union with a window office of at least the same square footage of office space provided to an Associate Director under the SEC Space Management Program policy in effect at the Agency, and a conference room at the SEC's Washington, D.C. headquarters building. The Union also will be provided an office of approximately one hundred fifty (150) square feet at the New York Regional Office (NYRO). In all other locations, because of the need to conduct some business in private, the Employer will provide the Union access to vacant private space, subject to operational needs, upon reasonable notice and on an "as needed" basis.

Each Union office (Headquarters, NYRO) will ensure the Union privacy and will be equipped with a locking door, a desk, one four-drawer locking file cabinet, four office chairs, one bookcase, one table, one bulletin board, an ID telephone with voicemail and TTY, a computer with internet and Commission intranet access, and one laser printer.

In those Regional Offices where no Union office is provided, private offices occupied by employees who serve as Union representatives may be used in connection with Union representational activities. These private offices also will ensure privacy and security. At each of these Regional Offices, the Employer will provide the Union with one four-drawer-locking cabinet, and the cabinet at each Regional Office will be kept in a Union representative's office.

### **Section 3**

Union representatives may use the Employer's telephones, fax machines, and photocopiers in connection with representational activities for which official time is authorized for that representative(s) under Article 39 (Official Time). This use is subject to the operational priorities of the Employer and may be reviewed periodically by the Employer and the Labor-Management Relations Committee (LMRC). A Union representative, while on official time, may use the computer workstation assigned to him/her in connection with representational activities.

Employer equipment, including computers, printers, copying equipment, fax machines and telephones may not be used for internal Union business, except pursuant to the Employer's policy permitting employees to use such equipment for reasonable personal use (see memo to all employees entitled "Personal Use of Government Office Equipment"). Internal Union business includes, but is not limited to, the solicitation of membership, elections of Union officials, and collection of dues.

The Union may use the Employer's televisions and videocassette players for Union-sponsored local training and meetings with employees (excluding internal Union business) when such equipment is reasonably available and has been requested in advance. The Employer will reasonably consider the Union's request to use the Agency's videoconference equipment/facilities in connection with activities for which official time is authorized. In such cases where a request is granted, the Union will bear all costs associated with the use of such equipment/facilities.

### **Section 4**

The Employer will print at its own expense copies of the Agreement for distribution to all bargaining-unit employees. The Employer also will provide the Union with a total of three hundred (300) printed copies of the Agreement. The Employer also will provide the Union with an electronic copy of the Agreement on diskette. The Employer will provide copies of this Agreement in Braille or on audiotape if requested by a visually impaired employee.

### **Section 5**

The local Union chapter may receive representational correspondence concerning the labor relations program via U.S. Postal Service mail or private express mail addressed to the Union or the local chapter at any of the Employer's locations. The Union is not authorized to receive mail relating to internal Union business. The Employer also agrees to allow the Union to use the intra-agency mail system for distributing mail pertaining to Union representational matters. Other than for safety/security concerns, the Employer will not open mail addressed to the Union local chapter. The Employer accepts no responsibility for lost, damaged, returned, opened or misrouted mail.

## **Section 6**

The Union may use the Employer's e-mail system to communicate with the Employer, other Union representatives, an employee, or small groups of employees regarding representational matters, and to communicate with the Employer regarding the application/interpretation of the Agreement. The Union may communicate brief announcements of meeting times, agendas, special events, or other activities via the Employer's E-mail system to all bargaining unit employees (and not to other employees) regarding representational matters, but may not use the agency's e-mail system for announcements of internal union business (e.g. membership drives, fundraising events, elections). Announcements about internal union business activities, however, may be placed on Union bulletin boards and on the Union's web-site. Permissible e-mails also may provide notice that additional information about the representational matter appears on the Union's bulletin boards or on the Union's national or local web-sites. Further, and notwithstanding the provisions of Section 3, the Union also may use the Employer's e-mail system to communicate messages to dues-paying members of the Union.

## **Section 7**

The Employer will provide the Union with a quarterly list of bargaining unit employees on diskette that contains employees' names, grades/levels and steps, series, titles, assigned organizational code and adjusted base salary for all employees in the bargaining unit. The Employer also will provide a key for its organizational codes, identifying the code for each organizational component and location. The list will identify employees who are in dues withholding status and employees' work schedule (e.g. temporary, term, permanent, full-time or part-time). This list is for the Union's internal use only.

## **Section 8**

The Employer will provide NTEU with all operating policies and procedures applicable to bargaining unit employees, as well as any other Employer directives issued to all employees in the last two years regarding personnel policies or practices. In addition, the Employer will provide the Chapter President with reasonable access to a copy of the most recent edition of the Broida FLRA and MSPB books.

## **Section 9**

The Employer will provide to the Union exclusive use of one 2 ½' by 3 ½' uncovered bulletin board per floor where bargaining unit employees are located. The Employer and the Union shall mutually agree to the specific location of such bulletin boards. However, such bulletin boards are not permitted to be located in the elevator lobbies and are subject to any restrictions of building management.

The Union will title the designated bulletin boards with headers indicating that such bulletin boards are sponsored by the Union. Material will be posted on the bulletin boards directly by the Union at the Union's expense.

The Union's bulletin boards will not contain materials that reflect adversely on the integrity of the Employer, any individual, other labor organizations, government agencies, or activities of the federal government. The Union may post any material from the public media (e.g., newspaper articles or columns) that relate to the operations of the Agency or the labor-management relationship. If the Employer objects to any posted item, the Employer will remove the item and inform the Union promptly. The Union will not post materials in any other public or common space in the Employer's premises (e.g., on other bulletin boards) other than on the Union's designated bulletin boards.

## **Section 10**

Upon reasonable advance written notice to the Employer's Labor Relations Office, the Union may distribute printed material to bargaining unit employees in non-work areas of the Employer's premises provided that distribution is performed by an employee during his/her non-duty time, the distribution does not create a litter problem, work disturbance, or employee traffic problem, and the material being distributed is not libelous or scurrilous.

The Union will be permitted to distribute materials in employees' mailboxes subject to the following constraints:

1. Reasonable advance written notice of a planned distribution is given to the Employer's Labor Relations Office.
2. The distribution will be performed by employee(s) during his/her non-duty time and the distribution occurs on a weekday between 6:30 a.m. and 9:00 a.m. or between 5:30 p.m. and 8:00 p.m.
3. The distribution will not be performed in areas in which no bargaining unit employees are located.
4. The distribution does not create a litter problem or a work disturbance.
5. The distributed materials are not libelous or scurrilous.

All Union communications will clearly identify the Union as the source of the communication. Employees should not read the materials during duty time.

**Article 39**  
**UNION REPRESENTATIVES AND OFFICIAL TIME**

**Section 1**

- A. One (1) full-time position will be allotted to the Union. It can only be used for the Chapter President, Vice President, or the Chief Steward. The full-time position will not be charged against the bank. The person using a full-time position agrees to comply with all leave requirements when official time is not being used. The Union will provide the Employer advance notice before any change is made to this position. Where practicable, such notice will be provided at least thirty (30) calendar days prior to such change.
  
- B. The Chapter President may designate one (1) other bargaining unit employee who will be on official time up to fifty percent (50%) of his or her total work time, including bank time, non-bank time, and statutory time. The full-time Union representative will not be from the same Division/Office/Regional Office as the fifty percent (50%) representative. Additionally, no other steward will be on official time for more than twenty five percent (25%) of his or her total work time, including bank time, non-bank time, and statutory time. All of these percentages are based on a calendar year.
  
- C. Notwithstanding Sections 1A and 1B above, the Chapter President may designate one (1) other bargaining unit employee from any Division/Office/Regional Office to be on official time up to one hundred percent (100%) of his/her total work time. The two full-time Union representatives cannot be selected from the same Division/Office/Regional Office if the Division/Office/Regional Office has less than 50 full-time equivalents in the bargaining unit.

**Section 2**

- A. The Union will appoint stewards at a ratio of no more than one steward for every fifty (50) bargaining unit employees. The ratio of stewards in any particular Division/Office/Regional Office will not be greater than one for every forty (40) bargaining unit employees, except where there are fewer than forty (40) bargaining unit employees in the Division/Office/Regional Office. Where there are less than forty (40) bargaining unit employees in a Division/Office/Regional Office, the Union may appoint one (1) Union steward in that Division/Office/Regional Office.

- B. The Union will provide the Employer with the list of stewards within thirty (30) calendar days after the effective date of this Agreement. The Union will inform the Employer of any changes to that list at least five (5) business days prior to implementing the change.

### **Section 3**

- A. Before using official time, a Union steward will request permission from his or her immediate supervisor to use Official time to prepare for and carry out representational activities on behalf of other bargaining unit employees. The Union steward's request and the Employer's approval or denial of the request will be made on the Request for Official Time NTEU/SEC Nationwide Bargaining Unit form. The Employer will grant official time if it will not significantly impair the Employer's staffing, workload and mission requirements. If official time is denied for such reasons, the Employer will arrange for the Union steward to take the official time as soon as practicable. The decision to grant or deny official time will be made as quickly as possible.
- B. A Union Steward seeking to use more than eight (8) hours of bank time in a pay period must request approval, at least two (2) business days in advance, from his or her supervisor. The supervisor will respond to the request as soon as possible, normally within one (1) business day. Exceptions to the advanced notice requirement may be granted on a case-by-case basis.
- C. The Union steward will notify his or her supervisor upon concluding the identified representational activities and will indicate the actual time used on the Request for Official Time NTEU/SEC Nationwide Bargaining Unit form.

### **Section 4**

- A. The Union will be provided with a bank of hours for official time in connection with representational activities. The number of hours in the bank for each year will be equal to 2.25 hours per bargaining unit employee. Any hours not used will not be carried over from year to year. Official time for representational activities which will be charged against this bank includes, but is not limited to:
1. communications about matters covered under the Collective Bargaining Agreement with employee(s), NTEU union officials, and agency officials;
  2. preparing and investigating grievances, interviewing witnesses, preparing for arbitration, and meeting with NTEU National Staff Representatives in connection with representational activity;
  3. preparing to represent an employee in a statutory appeal process, including replies to the courts and/or administrative agencies such as MSPB, FMCS,

- FSIP, FLRA and/or EEOC;
  - 4. preparing to negotiate over mid-contract issues;
  - 5. preparing to participate in a FLRA investigation or hearing as a representative of the NTEU;
- B. Official time spent performing the following representational activities will not be charged against the bank:
- 1. formal discussions;
  - 2. grievance meetings;
  - 3. arbitration hearings;
  - 4. statutory appeals;
  - 5. oral replies to adverse actions and actions based on unacceptable performance;
  - 6. labor/management committee meetings;
  - 7. management-provided training for union representatives;
  - 8. participation in mid-term negotiations;
  - 9. participation in term negotiations; and
  - 10. leave bank coordinator-required duties.

## **Section 5**

- A. In addition, the Union will be provided with a bank of hours for official time for Union stewards to participate in NTEU sponsored and financed training programs that are designed to improve representational skills for the mutual benefit of the Union and the Employer. The number of hours in the bank for each year will be equal to 0.35 hours per bargaining unit employee. No Union steward may use more than twenty-four (24) hours to attend this training. Any hours not used will not be carried over from year to year. For purposes of this section, a year is defined as commencing on the date of execution of this agreement.
- B. The Union shall be entitled to up to five (5) representatives from the SEC to attend the NTEU Annual Legislative Conference each year on official time.
- C. For purposes of NTEU's Annual National Representative Training, the Employer will reimburse the reasonable and customary travel and *per diem* expenses incurred by Union representatives at the SEC to attend such training, up to a maximum total amount of \$30,000.00 per year. The administrative reimbursement procedure shall be in accordance with usual and customary reimbursements for SEC travel-related expenses.

## **Section 6**

A Union steward shall not use official time or duty time to conduct internal Union business.

## **Section 7**

The Employer will grant official time and pay travel and *per diem* expenses for one (1) Union representative to attend quarterly Labor Management Relations Committee meetings under Article 41 (Labor Management Relations Committee) of the Collective Bargaining Agreement.

## **Section 8**

The Employer recognizes that if an employee has served as a full-time Union representative pursuant to Section 1 for at least a year, a reasonable amount of time may be necessary for the employee to become reacquainted with his or her job and some training may be necessary.

**Article 40**  
**OFFICE RELOCATIONS AND OPENINGS**

**Section 1**

This Article applies to the physical move to different office space of full or partial Divisions/Offices/Regional Offices, or the opening of new office space. This Article applies only to moves of bargaining unit employees.

**Section 2**

- A. When the Employer has made a final decision to relocate a full Division/Office/Regional Office or all employees at a current location, or open office space in a new building, the Employer will provide written notice of the move/opening to the Union as soon as possible, generally not fewer than thirty (30) calendar days in advance of the projected moving/opening date. The notice will include relevant and necessary information the Employer may have pertaining to the configuration of the physical space contemplated in the move/opening (including a floor plan). Further, upon request, the Employer will provide the Union with a walk-through inspection of the physical space.
- B. The Union will have twenty-one (21) calendar days after notification in which to submit to the Employer its negotiable proposals concerning the move/opening. Within seven (7) calendar days thereafter, the Employer and Union will commence bargaining. If, under 5 U.S.C. §7106(a)(2)(D), the Employer is required to move to or open new space before concluding negotiations, the parties will continue negotiations and the Employer will implement any resulting agreements promptly.

**Section 3**

- A. When the Employer has made a final decision to relocate less than a full Division/Office/Regional Office and that relocation will have more than a *de minimis* impact on bargaining unit employees:
- the Employer will provide written notice to the Union of the move of ten (10) or fewer bargaining unit employees at least seven (7) calendar days in advance of the projected moving date; and
  - the Employer will provide written notice to the Union of the move of more than ten (10) bargaining unit employees at least

twenty-five (25) calendar days in advance of the projected moving date.

- B. The written notice will include relevant and necessary information the Employer may have pertaining to the configuration of the physical space contemplated in the move. Further, upon request, the Employer will provide the Union with a walk-through inspection of the physical space.
- C. The Union will have ten (10) calendar days after notification in which to submit to the Employer its negotiable proposals concerning the move. Within seven (7) calendar days thereafter, the Employer and the Union will commence bargaining. If, under 5 U.S.C. §7106(a)(2)(D), the Employer is required to move to or open new space before concluding negotiations, the parties will continue negotiations and the Employer will implement any resulting agreements promptly.

#### **Section 4**

The Employer will provide the following, as relevant and necessary, to the Union:

- The names of the unit employees who will be moved, and when they are scheduled to move;
- A description of the assistance that will be provided to employees, including those with disabilities, in preparing for the move; and
- A description of the provisions for supplying boxes and other supplies to employees for the purposes of packing personal items and/or otherwise assisting in preparation for the move.

**Article 41**  
**LABOR-MANAGEMENT RELATIONS COMMITTEE**

**Section 1**

- A. The parties agree to establish a Labor-Management Relations Committee (LMRC) to exchange information and to discuss matters of concern or interest to either of them in the broad area of personnel policy or practice. As stated in Section 8, Article 22 of this Agreement, the Employer and the Union agree to discuss and address issues related to health and safety in the LMRC meetings.
  
- B. The LMRC will meet quarterly and more often as mutually agreed. At least four (4) bargaining unit employees shall receive Official Time to participate in meetings. NTEU staff personnel may also participate in these meetings. Agenda items should normally be exchanged fourteen (14) days in advance of the meeting. Meetings will not be used as a forum for airing grievances or disputes relating to individual employees.

**Section 2**

Upon mutual agreement, the applicable time limits for filing grievances or bargaining proposals will be tolled in order for the parties to attempt to resolve the dispute through the LMRC.

**Article 42**  
**DUES WITHHOLDING**

**Section 1**

Eligible employees who are members of the Union may pay dues through the authorization of voluntary allotments from their compensation. To be eligible to make such voluntary allotments, an employee must:

1. Be an employee of the bargaining unit covered by this Agreement;
2. Be a member in good standing in the Union;
3. Have voluntarily completed Standard Form 1187 (SF-1187), ("Request and Authorization for Voluntary Allotment of Compensation for Payment of Employee Organization Dues"); and
4. 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 will:

- A. Inform and educate members of the voluntary nature of the system for the allotment of labor organization dues, including the conditions under which an employee may revoke the allotment;
- B. Provide SF-1187 forms and Standard Form 1188 (SF-1188) forms ("Cancellation of Payroll Deductions for Labor Organization Dues") and make them available to employees;
- C. Assure that each SF-1187 is properly completed and inform the designated official of the Employer of any changes;
- D. Inform the designated official of the Employer of any employee who has been expelled or ceases to be in good standing with the Union;
- E. Inform the designated official of the Employer of any changes in the dues amounts or the formula for membership dues (including tables by both dollar amount and percentage of salary being withdrawn for dues). Such changes may not be made more frequently than once every twelve months; and
- F. Provide the designated official of the Employer with the names and complete

mailing addresses and changes thereto of officials who are responsible for certifying SF-1187s and to whom dues withholding information should be submitted.

### **Section 3**

The Employer will:

- A. Deduct and process voluntary allotments of dues and changes in dues upon certification from the Union National President in accordance with this Article. Changes in the dues amounts will be made as soon as possible, but no later than three (3) full pay periods after notification by the Union;
- B. Withhold authorized dues on a bi-weekly basis at no cost to the Union or the employee;
- C. Start dues withholding no later than one (1) full pay period following receipt of a properly certified SF-1187;
- D. Notify the Union when an employee, who has submitted an SF-1187, is not eligible to enroll in the automatic dues withholding program because he/she is not an employee of the bargaining unit covered by this Agreement;
- E. Prepare 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 per pay period and directly to the Administrative Controller, National Treasury Employees Union, 1750 H Street, N.W., Washington, D.C. 20006.
  - 3) The Employer also will provide the following information, in CVS (Comma Delimited), via magnetic media or electronic file transfer:
    - Employees' names in alphabetical order by last name;
    - Social Security Numbers, if available (the Union has the responsibility for ensuring the confidentiality of this information);
    - Grade & Step;

- Division/Office;
- Adjusted Base Pay (including locality pay);
- Pay Plan;
- Total amount of dues withheld;
- Pay period;
- Pay period ending date;
- Duty city (four digit # field);
- Duty state (two digit # field);
- Duty county (three digit # field); and
- Identification of the labor organization, including the Union Chapter number.

#### **Section 4**

A. Allotments will be terminated no later than one (1) full pay period after the Employer learns that:

1. An employee ceases to be a member in good standing in the Union;
2. The Union loses exclusive recognition for the covered unit;
3. An employee is reassigned or promoted from the unit for which the Union has been accorded exclusive recognition; or
4. An employee is separated from employment with the Employer.

B. An employee cannot cancel a Union dues allotment until the dues allotment has been in effect for more than one (1) year. An employee submitting a properly executed SF-1188 during the first year will have his or her allotment terminated at the beginning of the pay period following the anniversary date. After the first year, the employee must submit a properly executed SF-1188 during pay period fifteen (15), and revocations will become effective during pay period nineteen (19). If an employee submits an SF-1188 during any pay period other than pay period 15, the SEC will email a copy to the President of Chapter 293 of the Union within one pay period, and will return the form to the employee with the following message:

*We received your SF-1188, Cancellation of Payroll Deductions for Labor Organization Dues. We cannot accept this form at this time, because it is required to be submitted during pay period 15 (see Article 42, Section 4 of the Collective Bargaining Agreement). You may resubmit the form during pay period 15.*

**Article 43**  
**LEAVE SHARING PROGRAM**

**Section 1**

- A. The Employer will establish a Leave Sharing Program (Program) to assist employees that are in need of additional leave as a result of a medical emergency. The Program will operate in accordance with 5 C.F.R. § 630, Subpart J.
- B. The Program will enable enrolled employees who have a medical emergency to use annual leave that has previously been donated to a "Bank" by their fellow co-workers.
- C. "Medical emergency" means a medical condition of an employee or a family member of such employee that is likely to require an employee's absence from duty for a prolonged period of time and to result in a substantial loss of income to the employee because of the unavailability of paid leave.
- D. "Family member" means 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.

**Section 2**

- A. The Union will designate Local Leave Bank Liaisons (Liaison) for each of the Commission's Regional and District Offices, and for Headquarters, in order to collect Leave Request Applications (Application) and Enrollment Forms from employees based in those respective offices. Once these designations are established, the Union will notify the employees of the identity of their respective Liaisons. The Liaisons will notify employees once their enrollment into the Program has been accepted.
- B. The Union will also designate a National Leave Bank Coordinator (Coordinator) who will be based at the Commission's Headquarters. This individual will receive Applications and Enrollment Forms from the Liaisons. The Coordinator will then forward the Applications and Enrollment Forms to the other members of the Leave Bank Board within

two (2) days from date of receipt. In addition, the Coordinator will also serve as the Liaison for Headquarters. Finally, the Coordinator will monitor (a) the number of hours available in the Leave Bank, (b) the number of enrollees in the Program, (c) the number of employees drawing from the Bank, (d) the amount of leave drawn from the Bank, (e) the number of Applications provided, (f) the number of Applications approved, and (g) the number of Applications rejected. The Coordinator may use Official Time to perform these duties, and such time will not be charged against the bank of hours for official time in accordance with Article 39 of this Agreement.

### **Section 3**

- A. The overall Program will be managed by a Leave Bank Board (Board). The Board will be comprised of three (3) members, including the Coordinator and two (2) members from the Employer. Within sixty (60) days of the effective date of this Agreement, the Employer and the Union shall appoint representatives to serve on the Board. The parties will notify one another of their respective representatives. Subsequently, the parties will then meet in order to design the application and donation forms, prepare FAQs, establish written policies and procedures for administering the Leave Bank, discuss automation of the entire process, and otherwise implement the Program.
- B. The Board will meet once a month in order to consider Applications, discuss the overall health of the Bank, and consider any other related matters. Each Application will be reviewed to evaluate the applicant's enrollment status and the severity and necessity of the medical condition. Afterwards, each of the Board members will vote as to whether the Application will be approved or rejected. Applications receiving at least two (2) votes will be deemed to have been approved. The applicant, or his or her designee, will be notified electronically of the Applications' approval or rejection within two (2) days after its consideration. Board decisions are not subject to the provisions of Articles 32 or 33.
- C. Quarterly reports will be provided by the Board to the Employer and the NTEU Chapter President.

#### **Section 4**

- A. In order to enroll in the Program, an employee must complete an Enrollment Form and return it to the appropriate Liaison during the Leave Bank Open Season. There will be one (1) Open Season period (October 1 through October 31) per Leave Year, during which employees will be permitted to enroll.
- B. In order to enroll in the Program, the employee must donate unused accrued annual leave hours equal to his or her annual leave accrual for one (1) pay period. However, the Board may decrease the minimum contribution for the Leave Year if it determines that there is a surplus of leave in the Leave Bank or increase the minimum contribution if it determines that such action is necessary to maintain an adequate balance of leave in the Leave Bank. Employees will be notified 30 days in advance of any change in the minimum contribution.
- C. A new employee may enroll in the Program within the first sixty (60) days of being hired regardless of whether an Open Season is active.
- D. An employee on leave during the entire Open Season may seek to enroll within the first sixty (60) days after his or her return to duty.

#### **Section 5**

- A. Once enrolled, employees may be eligible to receive leave from the Leave Bank by submitting an Application to their Liaison.
- B. If an employee is not capable of applying, a personal representative or designee may make the written Application on the employee's behalf.
- C. Once an employee receives notice that his or her Application has been approved by the Board, the leave recipient may only use annual leave withdrawn from the Bank for the purpose of the medical emergency for which the leave recipient was approved.

#### **Section 6**

- A. The amount of leave available in the Bank depends entirely upon the amount of annual leave received in donations.
- B. An employee in the Program may donate annual leave to the Bank at any time

by completing the appropriate donation form. The Employer will make these forms readily available to employees electronically over the Commission's intranet and in hard-copy.

### **Section 7**

During September of each Leave Year, the Employer will notify each employee in writing of the upcoming Open Season and their right to enroll in and donate unused annual leave to the Leave Bank, and provide them with information on how to enroll and donate.

### **Section 8**

An employee who has "use or lose" annual leave at the end of the year may donate it to the Leave Bank. "Use or lose" annual leave donations do not constitute a Leave Bank membership donation, and may be donated by employees not formally enrolled in the Program. Employees enrolled in the Program may opt to automatically have all or a portion of their "use or lose" leave donated to the Leave Bank at the time they enroll in the Program, or during any Open Season. Employees may withdraw permission for the automatic donation at any time. This automatic donation is separate from Section 4(B) which provides for a minimum contribution.

**Article 44**  
**DURATION AND TERMINATION**

**Section 1**

This Agreement will be approved or disapproved by the Employer within thirty (30) calendar days after being executed. If approved within that time period, its effective date shall be the date on which it is signed by the Employer so long as that date is within the same thirty (30) calendar day period. If the Agreement is not approved or disapproved by the Employer within the thirty (30) calendar days after being executed, it will become effective, as a matter of law, on the thirty-first (31st) calendar day after its execution.

**Section 2**

- A. This Agreement shall remain in effect for a period of three (3) years from its effective date and shall be automatically renewable for additional one (1) year periods unless either Party notifies the other Party, in writing, at least sixty (60) days, but not more than one hundred five (105) days prior to the expiration date of its intention to re-open, amend, modify, or terminate this Agreement. Such written notice shall be accompanied by proposed ground rules or a statement of the provision(s) in the Agreement that the Party desires to modify.
  
- B. When notice of desire to re-open, amend, modify, or terminate is given, the Parties shall confer within ten (10) business days to schedule a meeting for the purpose of negotiating ground rules for the conduct of negotiations on a new Agreement; this meeting should occur no later than thirty (30) calendar days prior to the expiration date of this Agreement. If negotiations on a new Agreement are not concluded prior to the expiration date, this Agreement shall continue in full force until a new Agreement has been approved.

**Section 3**

During the thirty (30) day period beginning twenty-four (24) months after the effective date of this Agreement, either Party may reopen negotiations on any one (1) existing Article in this Agreement. The request must be in writing and shall be accompanied by specific proposals. The Parties shall begin negotiations no later than thirty (30) days after receipt of the notice.

#### **Section 4**

Implementation of the new provisions of this collective bargaining agreement will occur by November 18, 2013.

**Article 45**  
**EXTENDED BACKUP CHILDCARE AND ELDERCARE PROGRAM**

**Section 1**

The Employer will continue to provide backup childcare and eldercare, also known as the Backup Care Program (Program), subject to budgetary limitations. The program's intent is to provide quality child and adult/elder care to employees whose regular care arrangements are unavailable or break down. Any changes to the Program will be negotiated to the extent required by law.

**Section 2**

All SEC employees are eligible for the Program. Employees must register with the appropriate vendor before using these services.

**Section 3**

Eligible "dependents" for purposes of this program include:

- A. Child Care - Employees with children or employees serving as legal guardians of children between the ages of 3 months through 12 years are eligible for backup child care services.
- B. Elder Care - Employees with responsibility for the care of a parent or step parent, grandparent or step-grandparent, or in-law (including the parents of an employee's partner, if the employee is not married) are eligible for backup elder care.

**Section 4**

The number of uses an employee may use under this program are subject to space availability at the facilities of the provider the Employer contracts with to provide the backup care, and any other terms in the contract between the Employer and SEC. A partial day of use counts as one "use" for purposes of calculating the calendar year benefit for each employee.

## **Article 46**

### **CONTRACTING OUT**

#### **Section 1**

The Employer will notify the Union regarding any anticipated review of a function currently being performed by bargaining unit employees, undertaken for the possibility of contracting out that function. The Union shall be advised prior to any decision by the Employer to contract out work. If the Employer makes a final decision to contract out, the Union shall have the opportunity to engage in impact and implementation bargaining concerning any adverse personnel actions for employees resulting from the contracting out of work. The Employer will make reasonable efforts to minimize any adverse impact on employees if a function is contracted out. The Employer will comply with all applicable laws, rules, and regulations.

#### **Section 2**

Prior to submission of the list of "Commercial Activities Inventory" under the Federal Activities Inventory Reform Act, the Employer will give the Union the opportunity to provide input with regard to bargaining unit positions included on the list.

#### **Section 3**

Nothing in this Article shall prevent the Union from exercising its right to bargain over any and all negotiable issues related to any contracting out decision, to the maximum extent allowable by law.

**Article 47**  
**WAIVER OF OVERPAYMENTS**

**Section 1**

- A. An employee may request a waiver of the obligation to repay an erroneous payment of pay or allowances or an erroneous payment involving travel, transportation or relocation expenses in whole or in part. The Employer will determine whether to waive the obligation to repay such overpayment, if that overpayment occurred through administrative error and there is no indication of fraud, misrepresentation, fault or lack of good faith on the part of the employee and is otherwise in accordance with 5 U.S.C. § 5584 and applicable regulations.
- B. If a requested waiver of over-payment is denied, the employee will be notified of the reasons for that denial in writing.
- C. When an employee is not entitled to a waiver of overpayment and the employee received an overpayment, such an employee should be permitted to repay the excess under a repayment plan at the rate of up to 15 percent of the employee's disposable income each pay period, including interest charges. Indebted employees may voluntarily agree in writing to pay more than 15 percent of disposable pay (pay of any individual remaining after the deduction from those earning of any amounts required by law to be withheld) each pay period, and may revoke such agreement in writing at any time.
- D. No over-payment of \$25.00 or more will be collected without first providing written notice of the over-payment to the employee. The payment will be due within 30 days of notification. The time shall run from the date of the official notification of overpayment. Any such notice shall, at a minimum:
  - 1. Inform the employee of the nature and amount of the indebtedness determined by the Agency to be due;
  - 2. The date by which the overpayment must be repaid in full to avoid collection through deductions from pay;
  - 3. The intention of the Agency to initiate proceedings to collect the debt through deductions from pay;
  - 4. Any additional costs or interest that will be charged during the offset process;
  - 5. An opportunity to inspect and copy Government records relating to the debt;

6. An opportunity to enter into a written agreement with the Agency to establish a schedule for the repayment of the debt;
  7. An opportunity for a hearing on the determination of the Agency concerning the existence or the amount of the debt, or both;
  8. Any and all other information required by law, rule or Agency regulations.
- E. If an employee files a request for a waiver of overpayment within 15 calendar days of the date of the written notice of the over-payment, the Employer will attempt to render a decision on his/her request within 30 calendar days. If the Employer does not render such a decision within 30 calendar days, no over-payment will be collected if the employee's request satisfied the Federal Claims Collection standards ((1) there is a reasonable possibility that waiver will be granted or that the debt (in whole or in part) will be found not owing from the debtor; (2) the government's interests would be protected, if suspension were granted, by reasonable assurance that the debt could be recovered if the debtor does not prevail; and (3) collection of the debt will cause undue hardship, until the employee's request for waiver of over-payment has been decided by the Employer).
- F. Bargaining unit employees have a right to representation in any debt collection action.

## **Section 2**

An employee who is given a specific RIF notice, or who receives a buyout or early-out, will not be required to repay the cost of any training previously provided by the Employer.

**Article 48**  
**PERSONNEL RECORDS AND ACCESS TO INFORMATION**

**Section 1**

Each employee, and/or their designee, shall be granted access to his or her personnel records in accordance with applicable law and regulation, including the Privacy Act of 1974.

**Section 2**

Personnel records will be made available only to authorized persons in accordance with applicable law and regulation, including the Privacy Act of 1974.

**Section 3**

It is agreed that all personnel records will be maintained and accessed in accordance with applicable law and regulation, including the Privacy Act of 1974. Disposition of personnel records will be made in accordance with applicable law and regulation, including the Federal Records Act.

**Section 4**

The Employer will notify an employee any time it places a record in the employee's personnel file.

**Section 5**

Managers or other representatives of the Employer may not maintain personal files on employees outside of the official personnel folder, unless the files are properly declared under the Privacy Act, with the exception of personal notes to be used solely as "memory joggers" not to be disseminated in any form and to remain in the exclusive possession of the originator. Memory joggers are notes prepared by the supervisor for the purpose of making a record regarding an employee's performance and/or conduct. Any material that the Employer intends to place in the employee's unofficial personnel file(s) must be shown to the employee prior to placement in the file(s), and the employee must be given an opportunity to copy such material for his or her own records. Each employee has electronic access to his or her official personnel file, and receives notice when material is placed into his or her official personnel file.

## **Article 49 RETIREMENT**

### **Section 1**

The Employer agrees that employees covered under CSRS, CSRS Offset, or FERS and who are eligible to retire within five (5) years, shall be given an opportunity to voluntarily participate in a SEC sponsored Pre-Retirement Planning Seminar on a space-available basis, subject to budgetary considerations. Topics in the seminar may include, but are not limited to: Civil Service Retirement System, CSRS Offset, or Federal Employees Retirement System benefits, SEC's and Federal benefits, Social Security qualifications, health, family adjustments, budget, legal, thrift savings plan and income tax subjects.

### **Section 2**

The frequency of programs will be determined by the Employer, subject to budgetary considerations, but will occur at least once every 3 years for CSRS and FERS employees. The locations of programs will be determined by the Employer with consideration to the location of employees, the cost effectiveness of the site, and the internal resources required to support such programs. All such programs will be made available via videoconference for employees who are not on site. Employees shall be provided official time to participate in these programs.

### **Section 3**

Employees have access to their personal benefits information through the Employee Benefits Information System (EBIS). The Employer will notify all employees on at least an annual basis of the existence of EBIS and how to log on to that system.

### **Section 4**

The Employer may permit an employee to withdraw his resignation at any time before it has become effective. The Employer may decline a request to withdraw a resignation before its effective date only when the Employer has a valid reason and explains that reason to the employee. A valid reason includes but is not limited to administrative disruption or the hiring or commitment to hire a replacement. Avoidance of adverse action proceedings is not a valid reason.

**Article 50**  
**FURLOUGH DUE TO LAPSE IN APPROPRIATIONS**

**Section 1**

The following procedures shall apply when a furlough may be necessary due to lapse in appropriations/debt ceiling limitation, failure to extend the debt ceiling, or lack of continuing resolution.

- A. The Employer will invite NTEU to be present at any meetings with bargaining unit employees where the discussion involves a potential and/or impending government shutdown. Prior to any such furlough, the Union will be given the opportunity to bargain the impact and implementation of the proposed furlough to the maximum extent permitted by law. Whenever OMB and/or OPM provide guidance to the Employer pertaining to a government shutdown, the Employer will promptly provide a copy to NTEU.
- B. The Employer retains the right to determine which duties and responsibilities must be performed during a furlough and which employees are qualified to perform such duties and responsibilities. The Employer agrees to provide a final list of "excepted" employees to the Union as soon as possible.

Whenever the Employer prepares any list of functions, positions and/or employees that have been designated as "excepted" and therefore expected to continue working during a furlough, the Employer will promptly provide a copy to NTEU. Whenever the Employer creates or receives guidance and/or criteria regarding the determination of functions, positions and/or employees to designate as "excepted," the Employer will promptly provide a copy to NTEU. Unless otherwise specified herein, other information regarding any furlough will be provided to the Union in accordance with Section 7114 of the Federal Service Labor-Management Relations Statute.

To the extent SEC is directed by OMB or OPM not to release guidance it received from those agencies, it will promptly provide that information to NTEU once any such restriction is lifted.

- C. The parties will meet jointly to evaluate mechanisms and procedures to be used within the Agency's various organizational units to identify which bargaining unit employees will be excepted in the event of a furlough. To the maximum extent possible, such mechanisms and procedures will balance the need for transparency,

employee fairness and employee forewarning with the Agency's mission requirements.

In the event the parties do not reach agreement on such procedures or mechanisms within 12 months following implementation of this Agreement, the Employer will create a list of excepted positions and identify qualified employees to fill them. Qualified employees will be solicited to volunteer to fill excepted positions in the event of a furlough under this article. Volunteers will be selected by service computation date. If there are an insufficient number of volunteers, the excepted slots will be filled with qualified employees based on reverse SCD, the list will constitute an "Excepted Position Cadre." The Cadre shall be updated at least annually by soliciting for volunteers using this same process. The Employer will provide NTEU with the Cadre list once completed, and any updates to the list as they are made. In the event of a furlough under this article, the employees on the Cadre will be notified and given the opportunity to volunteer to be activated during the furlough. Volunteers will be selected by SCD, and if there are insufficient volunteers, employees on the Cadre will be selected by reverse SCD. NTEU will be promptly provided with a list of the employees selected to serve during the furlough. The Employer will consider an employee's request not to work due to a hardship. Employees will be given written documentation notifying them if they are selected as an "excepted" employee and required to work.

- D. The Employer will notify all impacted employees of the conclusion of the furlough. The notification will include instructions on reporting to work. However, a liberal leave policy will be in effect on the day employees are to return to work.

## **Section 2**

If an employee is unable to use their officially scheduled and approved "use or lose" annual leave due to the furlough, and if they are unable to reschedule it, provided they qualify for carry-over of annual leave, such annual leave will be carried over.

## **Section 3**

During any fiscal year in which a furlough occurs, and in advance of the furlough, the Employer and NTEU shall jointly issue an all-employee notice with Questions and Answers attached which advise employees of the impact of non-pay status on civil service benefits and programs, and which addresses financial concerns employees may have when faced with a pay reduction. Once finalized, the notice will be distributed to all employees.

During any fiscal year in which a furlough occurs, and in advance of the furlough, the Employer shall provide all employees with information describing a furlough and benefits, including unemployment, that are available in their jurisdiction. At a minimum, this notice will contain information on unemployment benefits availability, the waiting period, if any, benefits eligibility requirements, and the location and phone number of State and/or municipal agencies responsible for administering the program in the local area.

#### **Section 4**

While in a non-pay status, employees may engage in outside employment without obtaining prior written permission as long as the outside employment does not otherwise violate law, rule, or regulation.

This agreement is executed this 22<sup>nd</sup> day of October, 2013.

For the Securities and  
Exchange Commission:

Rufus Beatty  
Rufus Beatty  
Senior Special Counsel  
Chief Negotiator

Lacey Dingman  
Lacey Dingman  
Director, Office of Human Resources

Barry D. Walters  
Barry D. Walters  
Director and Chief FOIA/PA Officer  
Office of Support Operations

Kevin W. Goodman  
Kevin Goodman  
Associate Director  
Denver Regional Office

Amanda Ravitz  
Amanda Ravitz  
Assistant Director  
Division of Corporation Finance

For the National Treasury  
Employees Union:

Anna Ghadi  
Anna Ghadi  
National Negotiator  
Chief Negotiator

Gregory S. Gilman  
Gregory S. Gilman  
President, NTEU Chapter 293

Patricia L. Copeland  
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APPROVED:

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Chair  
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Colleen M. Kelley  
Colleen M. Kelley  
National President  
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11-18-13  
Date