

COLLECTIVE BARGAINING AGREEMENT

Economic Research Service (ERS)

National Institute of Food and Agriculture (NIFA)

And

American Federation of Government Employees

Local 3403



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PREAMBLE

In accordance with 5 U.S.C., Chapter 71, the United States Department of Agriculture (USDA), the Economic Research Service (ERS), the National Institute of Food and Agriculture (NIFA), and the American Federation of Government Employees (AFGE), Local No. 3403 (Union), defined as the Parties within this agreement, agree that the wellbeing of employees and efficient administration of the Government are benefitted by the statutory protection of the right of employees to organize, bargain collectively and participate through a labor organization of their choosing, in the formulation and implementation of personnel policies and practices affecting the conditions of their employment.

The Parties mutually recognize that the Congress of the United States has expressed public policy concerning labor relations in the Federal Government as follows:

...the right of employees to organize, bargain collectively and participate through labor organizations of their choosing in decisions which affect them, safeguards the public interest, contributes to the effective conduct of the public business, and facilitates and encourages the amicable settlement of disputes between employees and their employers 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. Therefore, labor organizations and collective bargaining in the civil service are in the public interest (5 U.S.C. 7101)

Pursuant to the policy stated above, the Parties have agreed upon the various Articles hereinafter set forth. This Agreement constitutes a Collective Bargaining Agreement (CBA) between ERS, NIFA and AFGE.

ARTICLE 1
RECOGNITION COVERAGE

Section 1 - Definition of Bargaining Unit

A. Economic Research Service (ERS)

The bargaining unit (BU) will be designated to include all professional and nonprofessional employees employed by the ERS, United States Department of Agriculture (USDA). **Excluded** from the unit are all temporary employees with an appointment of fewer than 120 days, management officials, supervisors, and employees described in 5 U.S.C. 7112(b)(2), (3), (4), (6), and (7).

B. National Institute of Food and Agriculture (NIFA)

The bargaining unit (BU) will be designated to include All professional and nonprofessional employees employed by the NIFA, USDA. **Excluded** from the unit are all temporary employees with an appointment of fewer than 120 days, all temporary employees retained, designated, appointed, or employed as experts for not more than 130 days during any period of 365 consecutive days under the Special Government Employee authority described in 18 U.S.C. § 202, and all management officials, supervisors, and employees described in 5 U.S.C. 7112(b)(2), (3), (4), (6), and (7).

Section 2 - American Federation of Government Employees (AFGE) Exclusive Recognition (Union)

- A. As the sole and exclusive representative, the Union is entitled to act for, speak for, and to negotiate agreements covering all employees in the BU. The Union is responsible for representing the interests of all employees in the BU without regard to labor organization membership, 5 U.S.C. 7114 (a).
- B. Due to the Union's exclusive recognition, the Agency will not deal directly with Bargaining Unit Employees (BUEs) on matters such as working conditions, personnel policy or practices, or by engaging in formal discussions without Union notification. The Union may participate in any discussions or meetings between BUEs and the Agency regarding working conditions and personnel policy or practices. This does not include work assignments or performance discussions.

Section 3 - Changes in the Bargaining Unit

- A. Contraction or expansion of the unit may only be accomplished in accordance with existing statutory protocols identified in 5 U.S.C., Chapter 71.
- B. When a position is going to be removed from the BU, the Agency will provide the Union's designee with written notice concerning the establishment, abolishment, or change in the status of Bargaining Unit position(s). Upon request by the Union, the Parties, will meet

within five (5) business days to discuss and attempt to resolve the issue(s). If the matter remains unresolved, either Party may file a clarification of unit petition with the Federal Labor Relations Authority (FLRA) in order for this determination to be made, and the position will remain in the BU while the petition is being resolved. The FLRA will determine whether the removal of any position from the BU is appropriate.

Section 4 – Bargaining Unit Members

The Agency agrees to provide to the Local Vice President or designee, on a quarterly basis throughout the fiscal year, a standardized list reflecting the name, grade, duty station, and position title of each BUE. The Agency will also identify or provide a standardized list of all BUEs who have entered on duty within the last quarter. The Parties recognize that the listing will not be construed as action, or to confer action, by the Agency to unilaterally deny Bargaining Unit status to any employee.

ARTICLE 2
GOVERNING LAWS AND REGULATIONS

Section 1 - Relationship to Laws and Regulations

In the administration of all matters covered by this Agreement, ERS, NIFA and the Union shall be governed by all applicable Federal statutes, including those in effect on the date of this Agreement and those which are subsequently enacted. They also shall be governed by Government-wide regulations in existence at the time this Agreement was approved.

Section 2 - Precedence of Agreement

Where any Department and/or Agency regulation conflicts with this agreement and/or supplemental Memorandums of Understanding (MOUs), this agreement shall govern.

Section 3 - New or Changed Rules or Regulations

- A. **COVERED BY:** Except as may be required by law, new or changed rules or regulations issued after the effective date of this Agreement (including those which are prescribed by higher authority) which are in conflict with working conditions specifically contained in this Agreement may not be made applicable to BUEs during the term of the Agreement until the Parties have fulfilled their bargaining obligations.

- B. **IMPACT AND IMPLEMENTATION BARGAINING:** The Union will be notified by the Agency of the establishment of new conditions of employment or changes to established conditions of employment that are not in conflict with the provisions of this agreement and that are within the provisions of the Labor-Management Relations Statute and may impact upon working conditions of BUEs. The Union may bargain over the impact and implementation of such rules or regulation in accordance with the Mid-term Bargaining Article of the Collective Bargaining Agreement (CBA).

- C. **MEMORANDUM OF AGREEMENT:** Any changes to rules or regulations, with respect to working conditions of BUEs, or amendments to this Agreement which are negotiated and agreed to by the Parties will be documented as an MOU and will become an integral part of this Agreement and subject to all the terms and conditions of this CBA.

Section 4 - Compelling Need

The Union recognizes that both of these Agencies are components of USDA and that they must, therefore, operate strictly within the limits of the authority delegated to the Administrator of ERS and the Director of NIFA by the Secretary of Agriculture and that they must comply with and implement all non-discretionary directives issued by the Office of the Secretary of

Agriculture concerning matters not covered in this Agreement and not in conflict with this Agreement.

At the same time, ERS and NIFA recognize the right of the Union, in any given case, to allege that no compelling need exists for the Agency to implement a specific USDA directive and to seek relief by exercising the privileges accorded to it by 5 U.S.C. § 7117. Where the USDA, or the Federal Labor Relations Authority, determines that no compelling need for the directive exists, the matter may be negotiated at that time.

ARTICLE 3
UNION RIGHTS AND RESPONSIBILITIES

Section 1 - Exclusive Representative

In accordance with 5 U.S.C. 7114 (a) (1), "A labor organization which has been accorded exclusive recognition is the exclusive representative of the employees in the unit it represents and is entitled to act for and negotiate collective bargaining agreements covering all employees in the unit. An exclusive representative is responsible for representing the interests of all employees in the unit it represents without discrimination and without regard to labor organization membership."

Section 2 - Union Rights

- A. In all matters relating to personnel policies, practices, and other conditions of employment, the Parties will have due regard for the obligations imposed by 5 U.S.C., Chapter 71, this agreement, and the concept of a cooperative working relationship.
- B. Each Party shall recognize and meet with the designated representative(s) of the other Party at mutually agreeable times, dates, and places, which may include virtual methods, that are reasonable and convenient.

Section 3 – Official Time

Union representatives will receive official time for the performance of representational duties in accordance with Article 34 Official Time and Duty Time.

Section 4 - Notification of Changes in Conditions of Employment

The ERS and NIFA (Agency) shall provide reasonable advance notice (minimum of ten (10) business days) to the appropriate Union official(s) prior to changing conditions of employment of BUEs. The Union will be notified as soon as the Agency becomes aware of the change but not less than ten (10) business days prior to the change with the exception of emergency situations. (See Article 38 Mid-term Bargaining). All notifications shall be in writing to the appropriate Union official with sufficient information to the Union for the purpose of exercising its full rights to bargain.

Section 5 - Investigatory Examinations (Weingarten Rights)

- A. As provided in 5 U.S.C., 7114 (a) (2) (B) and Article 19, Disciplinary and Adverse Actions, the Union has the right to be represented at any examination of an employee in the BU by a representative of the Agency in connection with an investigation if:
 - a. any formal discussion between one or more representatives of the Agency and one or more employees in the unit or their representatives concerning any grievance, or any personnel policy or practice or other general

condition of employment; or

- b. any examination of an employee in the unit by a representative of the Agency in connection with an investigation if-
 - i the employee reasonably believes that the examination may result in disciplinary action against the employee; and
 - ii the employee requests representation.

- B. The Agency supports and will follow statutory and contractual prohibitions against restraint, coercion, discrimination, or interference with any Union representative or employee in the exercise of their rights.
- C. The Union will determine which representative will be assigned to any particular investigatory examination.
- D. The Union representative will be given no less than twenty-four (24) hours notification of such meetings unless precluded by a situation that is urgent in nature. Once the employee requests representation, no further questioning will take place until the representative arrives. If the Union representative, or a designee, is not available due to work schedules or other representational business, the examination will be postponed and rescheduled by mutual agreement.
- E. The Union representative may be informed of the subject of the meeting. The Union will have an opportunity to meet with the employee prior to the examination.

Section 6 – Union Representation at Meetings

In accordance with 5 USC 7114(a)(2)(A), Representation Rights and Duties, an officially designated union representative will be allowed to attend any meeting with BUEs and management concerning any grievance or any protected personnel policy or practices or other general conditions of employment.

Section 7 – Information

If the Union makes a request under 5 USC 7114(b)(4), the Agency agrees to provide the Union, upon request, with information that is normally maintained, reasonably available, and necessary for the Union to effectively fulfil its representational functions and responsibilities. This information will be provided to the Union within a reasonable time and at no cost to the Union.

Section 8 – Union Employee Communication

The Agency will not alter or censor the content of any direct communications between the Union and employees. However, Agency facilities may not be used for posting or distribution of libellous or defamatory material directed at Agency or Union officials or programs.

Section 9 - Surveys and Questionnaires

- A. The Agency will not communicate directly with BUEs through verbal or written surveys and questionnaires regarding conditions of employment without prior notification to the Union and bargaining where appropriate. Nothing in this section precludes the Union from the right to bargain over conditions of employment under the 5 USC Chapter 71.
- B. Participation in surveys will be voluntary, unless the parties agree to require participation.
- C. The results of surveys conducted by either Party regarding conditions of employment will be shared. If a third party conducts a survey and the results are distributed to the Agency, the results will be shared with the Union.

Section 10 - Union Representatives

The Union will designate its own representatives. The Union agrees to provide management and the Labor Relations Officer or designee a complete list of names, email addresses, physical work address with cubicle/office location, and work telephone numbers of its Union Officials on an annual basis and/or when a change in Union Officials occurs. For changes in Union representation, the Union will provide notification to a designated management official in a timely manner, normally within ten (10) business days. Management agrees to disseminate the list to all BUEs via electronic means.

Section 11 - National and District Union Officials

In addition to the officers, stewards, and unit members of Local 3403, the Agency agrees to recognize the AFGE National and District officials who will be provided access to the physical office locations in Washington, DC and Kansas City, MO to conduct representational duties in accordance with Agency and/or local rules and regulations that apply to non-employees.

Section 12 - Membership Drives

The Union will be given access to conference rooms and auditoriums for meetings requiring the size and space necessary for union meetings and membership drives, before or after duty hours or during lunch periods if such space is not already committed. Meetings must occur within designated building access hours. The Union may conduct virtual meetings using available Agency virtual methods before or after duty hours or during lunch periods. The Union will follow the same reservation process and procedures as all other users.

Section 13 - General Distribution of Material

- A. Union officials and stewards may distribute information for representational purposes during employee breaks and lunch times. They shall be considered to be on official time.

- B. The Union is permitted to publish and update the names, work locations, and telephone numbers of the Union officials on the Union intranet page.
- C. Union officials and stewards are permitted to distribute materials via desk drop or email. The Union may distribute general information to employees on non-duty time.

Section 14 - Training for Union Officials

- A. Workload permitting, Union representatives will be allowed official time during each year of this agreement to attend Union training which will be a mutual benefit for the Parties. The total amount of Union sponsored training granted in any calendar year to all Union representatives will be a total allotment per Agency of eighty (80) hours. Requests for official time will be in writing and will be accompanied by a copy of the agenda for the training. Such requests will be presented to the supervisor at least thirty (30) calendar days prior to the beginning of the training. Exceptions to the request deadline will be made if a valid reason presented.
- B. New Union officials will each be allowed up to twenty-four (24) hours of official time during their first year in office to attend these programs.
- C. The total number of training hours may be extended by mutual agreement. The request from the Union needs to be addressed to the LRO or his/her designee.

Section 15 - Other Committees

The Union may appoint at least one (1) BUE to represent the Union on each current or newly established Agency committee that may affect working conditions and that does not involve the budget, mission, organization, or internal management. Union appointed BUEs and Union officers who serve on committees will be on duty time. Examples include but are not limited to Safety Committee, EEO Committee, etc.

Section 16 – Union Rights in Formal Discussions

At the start of any formal discussion, the Agency representative will normally ask Union representatives who may be present to introduce themselves. Furthermore, the Agency management representative will permit the Union representative to ask relevant questions, to present a brief statement before the end of the meeting outlining the Union's position concerning the issues presented by the Agency, and to have appropriate participatory rights during the meeting.

ARTICLE 4
EMPLOYEE RIGHTS

Section 1 – General

- A. In an atmosphere of mutual respect, all employees shall be treated fairly and equitably and without discrimination in regard to their political affiliation, union activity, labor organization affiliation or non-affiliation, race, color, religion, sex (including pregnancy, transgender status, and sexual orientation), national origin, age (40 or older), disability or genetic information, marital status, status as a parent, and any other non-merit-based factor, unless specifically designated by statute as a factor that must be taken into consideration when awarding such benefits, or retaliation for exercising rights with respect to the categories enumerated above, where retaliation rights are available. Employees will also be afforded proper regard for and protection of their privacy and constitutional rights. It is therefore agreed that management will endeavor to establish working conditions which will be conducive to enhancing and improving employee morale and efficiency.
- B. Instructions will be given in a reasonable, respectful, and constructive manner. Such guidance will be provided in an atmosphere that will avoid public embarrassment or ridicule. If an employee is to be served with a warrant or subpoena, it will be done in private without the knowledge of other employees to the extent it is within management's control.
- C. No disciplinary or adverse action will be taken against an employee upon an ill-founded basis such as unsubstantiated rumors or gossip.
- D. No employee will be subjected to intimidation, coercion, harassment, or unreasonable working conditions or as reprisal nor be used as an example to threaten other employees. An employee who exercises any statutory or contractual right shall not be subjected to reprisal or retaliation and shall be treated fairly and equitably.

Section 2 - Rights to Union Membership

Under 5 U.S.C., 7102, each employee shall have the right to form and join a union, to act as a designated Union representative, and to assist the Union, freely, without fear of penalty or reprisal. Each employee shall be protected in the exercise of such rights. This right shall extend to participation in all union activities including service as officers and stewards.

Except as otherwise provided, such employee rights include the right to:

- A. act for the Union in the capacity of a representative and the right in that capacity to present the views of the Union to heads of agencies and other officials of the Executive Branch of Government, Congress, or other appropriate authorities.
- B. engage in collective bargaining with respect to conditions of employment through representatives chosen by employees.

- C. be represented by an attorney or other representative other than the Union, of the employee's own choosing, in any appeal action not covered under the negotiated grievance procedure. The employee may exercise grievance or appellate rights, which are established by law, rule, or regulation.

Section 3 - Employee Rights During Investigations

Employees have the right (commonly known as the Weingarten right) to be represented by the Union during any examination of the employee by a representative of the Agency in connection with an investigation if they reasonably believe that the examination may result in disciplinary action against them and they request representation.

Section 4 - Rights to Union Representation

Management recognizes an employee's right to assistance and representation by the Union, and the right to meet and confer with Union representatives in private during the employee's duty time, consistent with Article 3, Union Rights and Responsibilities. If the employee and the local representative cannot be released immediately, the employee will be released for a mutually agreed time frame between the Parties. If such release is not made, appropriate relief from time frames will be afforded. The Agency agrees to annually inform all employees of the right to Union representation under 5 U.S.C., 7114 (a) (2) (B) by appropriate means.

Section 5 - Use of Recording Devices

No electronic recording of any conversation between an employee and Agency official may be made without mutual consent except for investigations by the Office of Inspector General or other law enforcement. When a recording is made with mutual consent, the employee will be given the opportunity to review the transcript for accuracy and will be provided with a copy of the recording and transcript if one is made. Information obtained in conflict with this section will not be used as evidence against any employee.

Section 6 - First Amendment Rights

Employees have the right to present their views to Congress, the Executive Branch, or other authorities and to otherwise exercise their First Amendment rights without fear of penalty or reprisal, except where such exercise is prohibited or limited by law (i.e., Hatch Act).

Section 7 - Access to Documentation

- A. Employees have a right to be made aware of and receive copies of any information specific to them personally maintained under their name and/or social security number. The Agency agrees that the official record of the employee is the electronic Official Personnel File (eOPF). Employees may access their eOPF while on duty time.
- B. Employees have a right to access information pertaining to conditions of employment such as laws, rules, and regulations published by the Office of Personnel Management (OPM),

the U.S. Department of Agriculture (USDA), etc. These publications or policies are available for employees to review on the employer's and other government Agency websites.

Section 8 - Personal Rights

- A. Employees have the right to engage in outside activities and employment of their own choosing and otherwise conduct their private lives as they see fit in accordance with 5 CFR, 2635; 5 CFR, 735; and 5 CFR, 8301.
- B. It is understood that if employees engage in outside employment it should not impair their ability to perform their job.
- C. Without prior approval, an employee may participate in the activities, not prohibited by law or government-wide regulation, of national or state political Parties and may participate in the affairs of or accept an award for a meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, and non-profit educational and recreational, public service, or civic organization.
- D. An employee shall not accept a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances in which the acceptance may result in or create the appearance of conflicts of interest.

Section 9 - Dignity and Self Respect in Working Conditions

Employees, individually and collectively, have the right to expect, and to pursue, conditions of employment which promote and sustain human dignity and self-respect.

Section 10 - Employee Right to Privacy

- A. Searches and seizures by the Agency are subject to Constitutional constraints. It should be understood that the employee's person and personal items owned by the employee, such as pocketbooks, briefcases, personal cell phone, or other like materials, are not subject to search without reasonable suspicion that criminal activity is involved.
- B. Employees may store personal papers and effects in their offices, desks, file cabinets, lockers, lockable space, and government vehicles. However, a search or seizure of such items without a warrant may be justified if the Agency has reasonable grounds for suspecting that the search will produce evidence that the employee is guilty of work-related misconduct, or that the search is necessary for a non-investigative work-related purpose, such as ensuring the internal security of the Agency. Security concerns may necessitate searches of the workplace and/or Agency employees, subject to Constitutional constraints.
- C. If a search is to be conducted, the primary investigator and an independent party will be present for the search. The employee may or may not be notified prior to the search

depending on the circumstances necessitating the search. If the employee receives prior notification of the search, they may request a Union official to be present for the search.

- D. As an exception, if searches are used when individuals enter or exit a facility, then such search methods must be conducted consistently for all individuals.

Section 11 - Whistle-Blower Protection

Consistent with the Whistleblower Protection Act, currently codified at 5 U.S.C., 2302 (B) (8), employees shall be protected against reprisal of any nature for the disclosure of information not prohibited by law or Executive Order which the employee reasonably believes evidences a violation of law, rule or regulation, or evidences mismanagement, a waste of funds, an abuse of authority, or danger to public or employee health or safety.

Section 12 – Unlawful Orders

An employee has the right to refuse orders that would require the employee to violate an applicable law or cause imminent danger. Employees will promptly bring their specific concerns to the supervisor or appropriate Agency official. The Agency will consider the employee's concern and will promptly notify the employee whether the order is lawful or unlawful. This refusal to obey an unlawful order or one that could cause imminent danger will not subject the employee to disciplinary or adverse action.

Section 13 – Improper Orders

Employees may promptly bring their concerns about the improper order to an appropriate supervisor. The management official will promptly advise the employee whether the order is proper or improper. A refusal to obey an improper order will not subject the employee to disciplinary or adverse action or major adverse actions.

Section 14 - Conflicting Orders

When employees receive conflicting orders, the employee will bring the conflict to the attention of the supervisor who gave the last order or another appropriate supervisor. The employee will be given a clarified order. The employee will not be subject to disciplinary or adverse action or major adverse actions for following the clarified order.

ARTICLE 5 MANAGEMENT RIGHTS

General

The Union recognizes the rights of the Agency and agree to demonstrate an affirmative willingness to deal with the appropriate management representatives on matters involving the administration of this agreement.

Section 1- Rights and Obligations of the Employer

A. This article shall be administered in accordance with 5 U.S.C. Chapter 71, and the terms of this agreement. Management officials of the Agency retain the following rights outlined in 5 U.S.C. 7106, Management Rights:

- (1) determine the mission, budget, organization, number of employees, and internal security practices of the Agency; and
- (2) in accordance with applicable laws;
 - (a) 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 operations shall be conducted;
 - (c) with respect to filling positions, to make selections for appointments from:
 - (i) among properly ranked and certified candidates for promotion; and
 - (ii) any other appropriate source; and
 - (d) take whatever actions may be necessary to carry out the Agency mission during emergencies.

B. Nothing in this section shall preclude any Agency and any labor organization from Negotiating:

- (1) at the election of the Agency to negotiate on the numbers, types, grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods and means of performing work;
- (2) procedures which management officials of the Agency will observe in exercising any authority under this section; or

- (3) appropriate arrangements for employees adversely effected by the exercise of any authority under this section by such management officials.

C. In accordance with 5 U.S.C. 7114 (a) (2), ERS and NIFA may each designate a management official, or their designee, who will be the point of contact for Labor Relations matters.

ARTICLE 6
USE OF FACILITIES & SERVICES PROVIDED BY THE AGENCY

Section 1 - Union Office Space

- A. ERS and NIFA each recognize the importance and value of the AFGE Local 3403 mission and purpose. Accordingly, the Agency agrees to furnish office space to the Union appropriate for carrying out its representational and partnership duties in locations easily accessible to employees in both Kansas City, MO and Washington, DC. Office spaces shall be sufficiently private to ensure confidentiality to the maximum extent possible. The offices shall be of sufficient size for necessary storage of confidential materials. The offices shall have a locking door to protect confidential employee information.
- B. The offices shall be equipped with adequate information technology provided by the Agency. The Union will be provided computer and internet access equal to that of the location.
- C. Requests for the use of official facilities will be made at least one (1) workday prior, if possible, to the date of the meeting and will be in accordance with local procedures.
- D. It is understood that technology, equipment, and space is being provided at no cost to the Union with an expectation that increased efficiencies will be realized for both the Agency and the Union. It is expected that the Union will utilize such equipment and technology to communicate with and receive notices from the Agency as provided elsewhere in this Agreement. As new technology becomes available, equipment/software/programs used by administrative office level officials shall be made available to the Union in a time frame consistent with availability with other administrative offices. Nothing herein is intended to impact or change the provisions of any other article in this Agreement.

Section 2 – Use of Official Facilities

The Agency will, on an as-needed basis, provide conference rooms, auditorium, or virtual method(s) as available for discussions between employees and Union officials. The Agency will also provide suitable space for regular Union meeting, as available. The Union agrees to exercise reasonable care in use of such space and follow the same room reservation procedures as all other users. The Union will also have access to the same services routinely available at the Agency (teleconference, video conference, video equipment, presentation equipment, etc.)

Section 3 - Access to Agreement

This Agreement will be made available online on the Agency Intranet website. See Article 3 Union Rights and Responsibilities.

Section 4 - Bulletin Boards

A bulletin board (at least 20 in. by 30 in.) will be provided for the use of the Union for the display of union literature, notices, and information of interest. It will be located in a busy and easily accessible location in the administrative portion of all buildings the Agency occupies. The Union will maintain the appearance of the bulletin boards. The Union representative may authorize the posting of material by initialing the documents. The Union will have access to or the ability to have notices, communications and documents posted on an electronic bulletin board. Bulletin boards must not contain harassing words or images, harsh language; management may remove postings that do not conform to such standards. Management will notify the Union if they do so.

Section 5 - Interoffice Communications System

The local and its representatives may use the interoffice mail, email, and video conferencing systems for regular representational communications (e.g., grievances, internal correspondence, and correspondence or memos to the Agency). The Union may send messages to multiple persons at the same time.

ARTICLE 7
GRIEVANCE PROCEDURE

Section 1 - Purpose

The intent of the parties is that differences should be resolved promptly, equitably, and whenever possible, informally. Since the prompt settlement of disputes is desirable in the interest of sound labor management relations and efficient operations, employees may discuss their concerns or complaints with their immediate supervisor prior to filing a grievance, through an informal process. Nothing in this section requires the Union or employee to attempt to resolve the matter informally, and the Union, or employee may always file a Step 1 formal grievance to initiate the process as outlined below in lieu of attempting to resolve the matter under this section. To the extent the foregoing informal attempt(s) to resolve disputes are unsuccessful or unused, the following is the sole procedure for resolution of employee, Union, or employer grievances.

Section 2 - Protection from Reprisal

- A. Employees and their representatives will be unimpeded and free from restraint, interference, coercion, discrimination, or reprisal, consistent with 5 U.S.C. Chapter 71, and this agreement, in seeking adjustment of grievances.

- B. The parties recognize that dissatisfaction and disagreements arise in the workplace. Thus, the filing of a grievance shall not be construed as reflecting unfavorably on an employee's standing, performance, loyalty, or desirability to the organization.

Section 3 - Coverage and Scope

- A. A grievance means any complaint:
 - 1. by a BUE(s) concerning any matter relating to employment of the employee;
 - 2. by the Union concerning any matter relating to the employment of any employee; or
 - 3. by any employee(s), the Union or the Agency concerning:
 - (a) the effect or interpretation, or a claim of breach, of a collective bargaining agreement; or
 - (b) any claimed violation, misinterpretation or misapplication of any law, rule or regulation affecting conditions of employment.

- B. Grievances on the following matters are excluded from the scope of this procedure:
 - 1. any claimed violation of subchapter III of chapter 73 of Title 5, USC relating to prohibited political activities;
 - 2. retirement, life insurance or health insurance;

3. a suspension or removal under 5 U.S.C. 7532 relating to national security;
4. any examination, certification, selection or appointment;
5. the classification of any position which does not result in the reduction in grade or pay of an employee;
6. separation of employees during their probationary period;
7. Any disputes over the assignment of a performance rating of record.

Section 4 - Exclusivity

- A. Grievances may be initiated by employee(s) covered by this agreement and/or their Union representative or by the Agency. Representation of BUEs shall be the sole and exclusive province of the Union.
- B. Except as provided by law, this is the exclusive procedure available to employees, the Union, or the Agency for the resolution of grievances within its scope.

Section 5 - Representation

- A. Prior to filing a grievance, an employee may elect to be self-represented or represented by the Union. When an employee elects to be represented by the Union, anyone whom the Union has designated in writing for a particular issue is the representative of the Union for that issue.
- B. In accordance with 5 U.S.C. Chapter 71, the Union has the right to be present during any proceeding under the negotiated grievance procedure. If the Union is not the designated representative, a copy of the grievance will be provided to the Union within seven (7) business days of the filing date. The Agency will provide the Union reasonable advance notice of any grievance meeting/discussion when the Union is not the designated representative. A copy of each grievance decision will be timely provided to the Union.
- C. Employee and/or the Union will submit a written notification to management identifying the selection of Union representation or their declination of Union representation.
- D. Management will forward the written notification of the election or declination of Union representation to the Union President or designee.
- E. Where the grievant elects Union representation, any and all meetings and communication with regard to the grievance and any attempts at resolution shall be made through the designated Union representative. The BUE will be on official time.
- F. In situations where the grievant(s) and representatives are on different work schedules and/or locations, the Parties will make every reasonable effort to schedule all steps in the

grievance process within the grievant's and representative's common work times; this may include adjusting either the grievant's or the representative's tour of duty.

Section 6 - Resolution of Grievances and Employee Standing

- A. The Union and the Agency agree that grievances should be settled in an orderly, prompt, and equitable manner so that the efficiency of the Agency may be maintained, and morale of employees shall not be impaired. Efforts shall be made by the Agency and the Union to settle grievances at the lowest appropriate level of supervision. Employees and their representatives will be unimpeded and free from restraint, interference, coercion, discrimination, or reprisal, consistent with 5 U.S.C. Chapter 71, and this agreement, in seeking adjustment of grievances. Employees shall be authorized a reasonable amount of duty time (requested in advance and mutually agreeable with management), to prepare and participate in grievances, including individual or group grievances. Authorized reasonable time is normally up to two (2) hours of duty time, with additional time considered upon request in writing with a brief explanation for the request.
- B. In cases of group grievances, the Union may select spokesperson(s) from the grieving group who can serve as a group representative to assure efficient use of government time.
- C. Grievances can be initiated by one (1) or more employees. When two (2) or more employees have similar grievances (the dissatisfaction expressed, and the relief requested are the same), the Parties will, by mutual agreement, process the grievances concurrently.
- D. In the interest of efficiency, in the case where the grievant has multiple grievances that concern the same subject matter, the parties agree to consolidate the grievances.
- E. The Parties will attempt to settle grievances at the lowest possible level. However, in so much as matters of concern and dissatisfaction arise occasionally among people in any work situation, the filing of a grievance will not be construed as reflecting unfavorably on the employee's conduct or performance.

Section 7 - Grievability/Arbitrability Questions

In the event either party should declare a grievance non-grieveable or non-arbitrable, the original grievance shall be considered amended to include this issue. The parties agree to raise any questions of grievability or arbitrability of a grievance prior to the deadline for the written answer in the final step of the grievance procedure. All disputes of grievability/arbitrability as a threshold matter shall be presented jointly with the merits issue(s) in the related grievance.

Section 8 - Time Limits

All time limits in this article may be extended by mutual agreement. Timeline extensions must be in writing through email. Per the timelines set in this article, deadlines must be on a business day (no weekends or Holidays).

Section 9 - Complaint or Grievance Options

- A. In accordance with 5 U.S.C. 7121, an employee may raise matters covered under Sections 4303 (Unacceptable Performance) and 7512 (Adverse Actions) under the appropriate statutory procedures or the negotiated grievance procedure. Employee shall be deemed to have exercised their option at such time as the employee timely files a notice of appeal under the applicable appellate procedures or timely files a grievance in writing, whichever event occurs first.
- B. Similarly, an employee affected by a prohibited personnel practice under 5 U.S.C. 2302 (b) (1) of the Civil Service Reform Act may raise the matter under a statutory procedure or the negotiated procedure but not both. Employee shall be deemed to have exercised their option at such time as they timely file a grievance in writing or file a formal complaint under the statutory EEO procedure, whichever event occurs first.
- C. Complaints of employment discrimination may be raised as a grievance or as a statutory equal opportunity complaint, but not both.
- D. Alternative Dispute Resolution (ADR) processes, including mediation, may be used at any stage in a grievance upon mutual agreement of the Parties. If ADR/mediation is used, the grievance time limits are paused until the conclusion of the ADR process.

Section 10 - Procedures for Employee Grievances

- A. The written grievance should normally contain a description of the matter(s) being grieved, including:
 - 1. The article(s) of the agreement, law, rule, or regulation alleged to have been violated, or to the employment condition in dispute;
 - 2. statement of the circumstances giving rise to the grievance including the date, if applicable, of the alleged violation;
 - 3. the name of the management official(s) or others alleged to have committed the action grieved;
 - 4. name and position title of the grievant(s) with work telephone number(s) and email address;
 - 5. name of Union representative (if any); and
 - 6. the desired personal relief.

- B. All the time limits in this article may be extended by mutual consent. Grievance meetings under this procedure normally will be face-to-face or upon mutual agreement by the Parties via virtual methods.
- C. The grievant and the Union representative will meet with the designated management official and an Agency representative (if one is designated). The Union and management may be permitted to have an equal number of representatives during meetings or discussions at all formal steps of the grievance procedure. If an Agency representative is designated, the Union will be apprised who the representative will be. Normally, this notice will occur not less than three (3) business days in advance of the meeting.
- D. Grievances may be hand delivered or delivered through email. The recipient of the grievance shall sign and date the grievance if hand delivered or reply via email. If the grievance is delivered via email and an acknowledgement of receipt of the grievance has not been received within seven (7) business days, the Parties will assume the grievance has been delivered and received. Timelines will be preserved if the serving party is able to show the grievance was delivered via email.
- E. Management officials designated to be grievance-deciding officials will have the authority to resolve the grievance. The designee will not be someone who decided the issue at a previous step.

Grievances should normally be resolved at the lowest level possible. However, there will be times when a grievance may be more appropriately initiated at a higher supervisory level (e.g., when a disciplinary action is taken by the supervisor at the lower level or who clearly has no authority to resolve the issue).

- F. Through mutual agreement of the Parties, the grievance timeline(s) may be placed in abeyance to allow the Parties to come to consensus or resolution prior to filing a grievance.
- G. All grievance decisions will be in writing and state the issue being grieved, facts and/or evidence considered in reaching the decision, a summary of the findings, and the rationale for the decision.
- H. New facts that support the initial claim in the grievance may be added during the grievance process.
- I. Failure on part of the Agency to meet any of the time requirements of the grievance procedure will advance the grievance to the next step or to Arbitration. If the grievant and/or the union after receiving a decision, fails to timely advance the grievance to the next step, the grievance shall be terminated. Reasonable effort shall be made by the Agency and the union to settle grievances at the lowest level possible. A grievant that misses the deadline for timely filing a grievance due to circumstances beyond their control may request a “waiver in writing” to file. Such requests will be determined on a case-by-case basis. The grievant may be required to provide documentation in support of the request. If the request is granted, all applicable timelines will run from the date of the approval.

Section 11 - Grievance Process

Step 1:

- A. The grievance will be presented in writing to the supervisor at the level above the immediate supervisor within twenty (20) business days of the date that the employee or Union became aware or should have become aware of the grievable act or occurrence. Timelines will be suspended if the act or occurrence is of a continuing nature.
- B. The Step 1 management official or designee receiving the grievance will meet with the grievant and/or representative, at the request of any party, within ten (10) business days of receipt of the grievance. The Step 1 official will provide the Step 1 response within twenty (20) business days from the date of the meeting.
- C. The grievance response will include the designation of the next level deciding management official to whom the grievance would be advanced.

Step 2:

- A. If the grievance is not satisfactorily resolved at Step 1, it may be presented to the Step 2 management official or designee named in the written decision letter within fifteen (15) business days of receipt of the response. The Step 2 management official receiving the grievance will meet with the grievant and/or representative, at the request of any party, within twenty (20) business days of receipt of the grievance. The Step 2 official will provide the Step 2 answer within twenty (20) business days from the date of the meeting.
- B. If the grievance is not satisfactorily resolved in Step 2, the grievance may be referred to arbitration as provided in Article 8, Arbitration. Only the Union or management can refer a grievance to arbitration.

Section 12 - Employer/Union Grievance Procedure

Union/Employer grievances over interpretation or application of this Agreement or interpretation, application or implementation of any law, rule or regulation affecting conditions of employment not concerning the employment of any specific Employee will be resolved through the following procedure:

Step 1.

- A. The Union or Employer may initiate a grievance by submitting it in writing to the appropriate management official or Union Vice President or either's designee, as appropriate, within twenty (20) business days after the incident occurs, or within twenty (20) business days after the Union or Employer first became aware of the incident.

- B. The grievant must state the Article(s) and Section(s) of the Agreement that has/have been violated to include but not limited to any law, rule, regulation, or agency policy and how the CBA or any law, rule, regulation, or agency policy has been violated, a description of all the facts the grievant is relying on to support their grievance along with any documentation supporting the grievant's position and the relief being sought.

- C. The Parties will then meet within twenty (20) business days of receipt of the grievance to discuss and attempt to resolve the matter. A written decision on the grievance will be issued by the responding party within twenty (20) business days of the meeting by the Union or Employer. Any resolution must be in writing. If the grievance is not settled by this method, the grieving party may invoke arbitration within ten (10) business days after receipt of the final decision. If the responding party fails to issue a decision, the grieving party may invoke arbitration within twenty (20) business days after the deadline for the responding party's decision.

Section 13 - Information Requests

In accordance with the 5 U.S.C. 7114 or the Freedom of Information Act, (FOIA), upon receipt of a written request, management will provide a written response within twenty (20) business days, unless there are "unusual circumstances." Management will provide the information as requested or management will provide a written response to the Union as to why the information was not provided as requested or request an extension of time for response. The preferable method of delivery is email. All requests will be submitted to the LRO or their designee.

ARTICLE 8 **ARBITRATION**

Section 1 - Notice to Invoke Arbitration

Only the Union or management may refer to arbitration any grievance that remains unresolved after the final step under the procedures of the Article 7, Grievance Procedures. A notice to invoke arbitration shall be made in writing to the opposite party (Union Vice President or designee or the Labor Relations Officer or designee), within ten (10) business days after receipt of the decision rendered in the final step of the grievance procedure or ten (10) business days following the date the response was due. If arbitration is not invoked within the ten (10) business days, the decision will be final and binding.

Section 2 - Selection of Arbitrator

- A. On or after the date of the notice to invoke arbitration, the party invoking arbitration will request the Federal Mediation and Conciliation Service (FMCS) to provide a list of seven (7) impartial persons to act as an arbitrator. Fees associated with obtaining said list will be shared by the parties. If a party seeks to obtain a secondary list, they are responsible for the fees.
- B. The Parties shall normally meet within twenty (20) business days after receipt of such list to select an arbitrator (this may be done by telephone or other various means of communications). If the Parties cannot mutually agree upon an arbitrator to hear the case, the Parties will alternately strike names from the panel until one (1) name remains. The remaining arbitrator will be selected.
- C. The Parties agree that if the striking method is applied, who will strike first will be determined by coin flip. There must be representatives from both parties physically, or virtually by mutual agreement, present to witness the coin flip. The winner of the coin flip may strike first or require the other party to strike first. The remaining person shall be the duly selected arbitrator.
- D. If the moving Party refuses, delays or fails to participate in the selection process within the aforementioned timeframe, the grievance/ arbitration appeal will be considered terminated and withdrawn. If the non-moving Party refuses, delays or fails to participate in the selection process within the aforementioned timeframe, the moving Party may select the arbitrator from the list and unilaterally set the arbitration date. The time limits under this Section may be extended by mutual agreement without being considered a delay.
- E. Following the selection, the Parties will, within ten (10) business days, notify FMCS of the name of the arbitrator selected. The time limits may be extended by mutual agreement.
- F. Once selection of an arbitrator is made, the moving Party shall have the responsibility of contacting the selected arbitrator and obtaining available dates for the hearing. The hearing must be at least sixty (60) business days from the date on which the Parties agreed on the

arbitrator. Once available dates are received from the arbitrator, the Parties will mutually agree on a specific date for the hearing. If for any reason the selected arbitrator becomes unavailable, the last arbitrator to have been struck will be contacted and the procedure in this Subsection will begin again, until an arbitrator with available dates has been selected. Should no arbitrator on the list be selected due to unavailability, then a new list will be generated in accordance with this section.

- G. The arbitration hearing date must be scheduled (not held) within six months from the date the arbitrator was selected, or the grievance will be considered terminated. An exception to this time period will be made by mutual consent to extend the timeframes. Additionally, an exception will be made for inability on the part of the arbitrator to provide a hearing date. Should either party refuse to participate in scheduling the arbitration within the time frames set forth in this article, the opposing party may unilaterally schedule the arbitration hearing date.

Section 3 - Procedures for Arbitration Hearing

- A. The procedures used to conduct an arbitration hearing shall be determined by the arbitrator, with agreement of the Parties.

- B. The Parties agree to follow these general guidelines:

- 1. Both Parties shall be entitled to call and cross-examine witnesses before the arbitrator. All bargaining unit witnesses necessary for the arbitration will be on duty time.

When necessary, management will change the scheduled bargaining unit witnesses so that they are on duty status during the arbitration hearing. Such schedule changes may be made without regard to contract provisions in Article 14, Hours of Work and Overtime.

- 2. The grievant will be granted adequate duty time to prepare for arbitration and shall be in duty time for the duration of the hearing.
- 3. Both Parties shall be entitled to call technical advisors before the arbitrator. All bargaining unit technical advisors necessary for the arbitration will be on duty time.
- 4. Observers may be permitted upon mutual agreement.

- C. The arbitration may be at the location of the affected employee or through virtual methods with mutual consent. If either party wishes to have a change of venue from the Agency-provided facility, the requesting party is responsible for the fees and costs associated with the change.

- D. The Parties will attempt to submit a joint statement of the issue or issues to the arbitrator. If the Parties do not agree to file a joint submission, each shall make a separate submission to the arbitrator and to the other party. The arbitrator shall determine the issue or issues to be heard.

- E. The Parties will be entitled to submit post-hearing briefs (including rebuttal briefs) or closing statements. It is further agreed that all documents given to the arbitrator are also provided to the opposing party's representative at the same time.
- F. The arbitrator will be requested to render a decision within sixty (60) calendar days. An arbitrator will not add to, subtract from, change or modify any provisions of this agreement. The arbitrator shall have full authority to provide a remedy appropriate to resolve the grievance, including but not limited to an award of back pay, restoration of leave or other benefits, interest, and reasonable attorney fees or other monetary or non-monetary make whole remedy to the extent authorized by controlling law and regulation. The arbitrator's decision shall be final and binding. However, either party may file an exception to the arbitrator's award in accordance with applicable law and regulation(s). Any dispute over the interpretation of an arbitrator's award shall be returned to the arbitrator for clarification.
- G. The Parties agree to exchange witness lists. Witness lists will be exchanged not later than fifteen (15) business days prior to the scheduled arbitration. The Employer will arrange to have all Employee witnesses available and confirm with the Union or Employee at least seven (7) business days prior to the hearing. If the union discovers a witness after this timeframe, the Union will notify the Employer as soon as reasonably possible.
- H. The time limits in this article may be extended by mutual agreement.

Section 4 - Costs

- A. All fees and expenses of the arbitrator will be shared equally by the Agency and Union. If prior to the arbitration hearing, the Agency and the Union resolve the grievance, any cancellation fees shall be borne equally by the Agency and the Union. If either party requests the hearing to be postponed, the cost from the arbitrator, if any, will be borne by the party requesting the postponement.
- B. If there is a mutual agreement for a verbatim transcript, the cost of the court reporter and the official transcript will be shared equally. If either party requests a verbatim transcript, the cost of the court reporter and the official transcript will be paid by the requesting party and no copy will be available to the other party. Either party may by mutual consent use audio equipment to record the proceedings at their own expense.

Section 5 - Scope of Proceedings

The Parties agree that the issue(s) to be arbitrated shall be no broader in scope than the issue(s) presented during the last step of the grievance procedure, except that the parties would not be precluded from introducing procedural and background material that is necessary and relevant. Documents or other evidence which were not made a part of the last step of the grievance processes will not be allowed to be submitted at the hearing unless they were not available at the time of the last step of the grievance process, or there is good cause to allow their admission as determined by the arbitrator.

The arbitrator has the authority to make all grievability and/or arbitrability determinations. If either Party raises an issue of grievability/arbitrability, the arbitrator will hear the merits of the underlying grievance and decide both issues together. Any issue of grievability/arbitrability must be raised in writing by Step 2 of the grievance procedure. Any allegations of grievability/arbitrability will be heard as threshold issues in the hearing. If the arbitrator determines the grievance is arbitrable, the merits of the grievance will be heard. There will be no separate hearing for grievability/arbitrability issues, except by mutual consent.

Section 6 - Official Time/Duty

- A. A reasonable amount of official time for arbitration preparation will be granted to the Union representative. The Union official will be on official time during the hearing.
- B. The grievant(s), the union representative, and technical advisor, if any, and all employees identified as witnesses, who are in active duty status, shall be excused from duty and granted duty time and travel and per diem expenses to the extent necessary to participate in all phases in the arbitration proceeding, either as a Party or to testify as a witness, without loss in pay.

ARTICLE 9
LABOR - MANAGEMENT RELATIONSHIP

Section 1 – Purpose

The desire and intent in this Article is to describe and encourage an effective labor-management relationship. The Agency and the Union are committed to working together at all levels to improve service to the American people, ensure a quality work environment for employees, foster a cooperative, constructive working relationship between employees and management, establish an atmosphere of mutual respect and trust, and to improve the morale of the employees.

Section 2 – Scope

Union and Management may discuss any topic, including but not limited to:

1. Interpretation and application of this Agreement
2. Interpretation and applicability of rules, regulations, and policies
3. Matters involving personnel policies, practices, and working conditions
4. Numbers, types, and grades of employees as well as methods, means and technology of work
5. Correction of conditions causing grievances and misunderstandings
6. Encouragement of good human relations in employer-employee relationships
7. Promotion of job-related education and training
8. Strengthening of morale

Section 3 – Labor-Management Committee

- A. The Agency and Union recognize that open communication between management and employees can enhance the quality of service, improve morale, and avoid misunderstandings. To these ends, the Parties agree to form a labor-management committee that will meet to discuss issues of mutual interest.
- B. Additional members of either Party may attend meetings by mutual agreement when their areas of responsibility are to be discussed.
- C. Meetings shall be held monthly or whenever the Committee members mutually deem necessary.

D. Members of the Committee may introduce issues for discussion. The member will attempt to notify members in advance of the issues the member wishes to be discussed.

ARTICLE 10
EMPLOYEE NOTICES AND ORIENTATION

Section 1 – Representation Rights

On an annual basis and normally during the third (3rd) quarter of the fiscal year, the Agency will, in accordance with 5 U.S.C. § 7114 (a)(2)(B) and (a)(3), notify employees of their Weingarten Rights, established by the Supreme Court, in 1975 in the case of J. Weingarten Inc.

The following statement will also be included in the above notice: “In accordance with 5 U.S.C. § 7114 (a)(2)(A), the Union is authorized to be present at any formal discussion between one (1) or more representatives of the Agency and one (1) or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment.”

Section 2 - Frequency of Employee Orientation

The Agency shall provide the Union a list of BUEs who entered on duty and are scheduled to attend orientation as soon as reasonably possible. When available, the list will include the following information; name, grade, title, and organization.

Section 3 – New BUE Orientation

- A. The Agency will provide adequate advance notice to the Union when new employees are scheduled for orientation and will provide the Union with the employee’s name, position title, grade and series, organizational unit and supervisor. During orientation the BUE will be provided with Union contact information.

- B. The Union will be provided Official Time to address BUEs during new employee orientation, normally from the block of official time provided. Normally, the Union’s presentation time will be scheduled as close as possible to the lunch break. If the Union is unable to attend New Employee Orientation (NEO) or a BUE does not attend the NEO, the Union may request official time to meet with the employee as soon as possible.

- C. After NEO, Stewards or Union officers may introduce themselves to new employees at the worksite or virtually and inform them of their availability for representation functions so long as there is no undue disruption of work activities.

ARTICLE 11
WORKSPACE MOVES

Section 1 - Notification

The purpose of this Article is to outline a clear process for how workspace will be assigned. The Parties agree that management will first determine the need for employee reassignments to vacant workspace, consistent with organizational needs, budgetary limitations, and departmental guidelines, prior to considering any employee request to move in vacant workspace.

Section 2 - Management Initiated Moves

- A. A BUE who is reassigned to a new workspace will receive at least one full pay period advance notice of the change. If management is unable to meet this obligation, they will notify the Union and provide a business-based reason.
- B. The Agency will provide moving boxes in advance of any scheduled move.
- C. The Union may recommend suggestions regarding workspace moves. If the Agency determines the suggestion meets organizational needs, the initial proposed workspace move will be cancelled or altered.
- D. Barring an urgent situation or work requirement, workplace moves that involve ten (10) or more BUEs or an entire work unit, the Agency will provide the Union a copy of the proposed layout in thirty (30) calendar days prior to the move.

Section 3 - Employee-Initiated Moves

When a workspace becomes vacant, a BUE may make a written request to move into that vacant workspace which will be considered by the agency. If the request is consistent with operational requirements, budgetary constraints, and the Departmental Guidance, the request may be approved. Barring any job functional requirements, when more than one (1) employee requests to move into the vacant space, the higher-graded employee will be given preference, and within the same grade level, the employee with earliest Federal leave Service Computation Date(SCD) will be given preference. If the SCDs are identical, the Agency will utilize a random pick/draw method to break the tie, with a Union representative present. Requests for employees to exchange work locations are subject to the same constraints as individual moves to vacant space.

ARTICLE 12
REASSIGNMENT AND RELOCATION

Section 1 - General

- A. Reassignment is the change of an employee from one position to another without promotion or change to a lower grade, level, or band. The regulation 5 C.F.R. Part 335 authorizes reassignments of Federal employees. Because they are permanent, all reassignments will be documented in the employee's e-OPF. Requests for voluntary reassignments shall be given prompt and fair consideration.
- B. Reassignments may be either Management-directed (e.g., in order to avoid RIF actions or when an employee's skills are better utilized in another equivalent position) or voluntary (employee-initiated). A reassignment may also occur as an accommodation of last resort under the reasonable accommodation process.
- C. Barring immediate work requirement or specific Agency considerations, an employee being involuntarily reassigned to new duties or work location normally will be given notification within one full pay period in advance.
- D. The BUE will receive an SF-50 (a standard form) from the Agency documenting the reassignment, normally within thirty (30) calendar days of being reassigned. The BUE will receive a copy of the new PD for the new job within thirty (30) calendar days of being reassigned.

Section 2 - Management-Directed Work Location Reassignment

- A. When deciding to reassign an employee, the Agency will be guided by objective considerations in support of the Agency's mission, and/or to promote the efficiency of service.
- B. Unless a reassignment is directed for a specific employee(s) for legitimate Management considerations, all other things being equal, seniority (Service Computation Date for Leave) will be the final tiebreaker. The reassignment opportunity will be given to the most senior qualified volunteer or to the least senior qualified employee if no one volunteers for the reassignment.
- C. When the relocation requires a reassignment to a new position of record, the employee will be given a reasonable period, normally ninety (90) calendar days, in which to become proficient. The Agency will provide the employee sufficient training, in the Agency's determination, to allow the employee to become proficient.
- D. The Agency may subject Union officials to reassignment but may not do so as a form of reprisal. The Agency will provide the Union Vice President advanced written notice before conducting a work location reassignment of a Union Officer, Official, or Steward

E. The Agency will consider documented reasons that a location reassignment may cause a BUE undue personal or professional hardship.

Section 3 – Voluntary Reassignment

Employees may volunteer for duty or work location reassignments to other divisions, offices, or geographical areas within the Agency. All such requests are subject to the Agency's right to assign employees work, and to determine the personnel by which Agency operations shall be conducted. Such requests will be considered by the Agency, and a good faith effort will be made to balance the needs of the BUE(s) with the Agency's needs. Voluntary reassignments will be processed in accordance with applicable laws, rules, regulations, and this CBA.

Should a request for a voluntary reassignment from the current duty location not be made available or if management determines that such request is not in the best interest of the Agency, the BUE will be considered for an alternative work arrangement. Any reassignments made under this Article will not preclude a BUE from subsequently applying for a duty location reassignment.

Section 4 - Relocation Expenses

An employee affected by a management-directed work location reassignment may be entitled to relocation expenses.

ARTICLE 13
REORGANIZATION

Section 1 - Definition

A reorganization is the elimination, addition, or redistribution of duties and reporting relationships within an organization that affects one (1) or more positions, including the restructuring of the Agency's components.

Section 2 - Communications and Bargaining with the Union

- A. The Agency will provide the Union, whose BUEs will be impacted by a reorganization, with written notice containing the impacted organization(s), number of BUEs impacted, positions impacted, and the proposed timeline.
- B. Upon request, a briefing will be provided to the Union, expounding on the specifics/parameters of the proposed reorganization. Afterwards, the Union may request an opportunity to meet/survey the impacted BUEs and to bargain over the procedures and the appropriate arrangements for BUEs impacted by the reorganization.
- C. Consistent with 5 U.S.C. § 7114(b)(4), the Agency will provide the Union with the information necessary to conduct bargaining. The status quo will be maintained pending the completion of any bargaining unless the Agency can show the Union that the status quo would adversely impact the functioning of the Agency.

ARTICLE 14
HOURS OF WORK AND OVERTIME

Purpose

This article shall be administered in accordance with Title 5 U.S.C. Chapters 61, title 5, CFR, Policy and Procedures (P&P) 402.1 dated September 8, 2011 or its successor, and this agreement. The purpose of this article is to prescribe the policies covering hours of work for all employees in accordance with applicable law and regulation.

Definitions

Tour of Duty is the hours of a day and the days of a workweek that constitute an employee's regularly scheduled workweek (e.g., Monday-Friday, 8:00 a.m.-4:30 p.m.). Under a Flexible Work Schedule (FWS) or other fixed schedule, "Tour of Duty" is synonymous with "basic work requirement."

Maxiflex

A type of flexible work schedule that contains core hours on fewer than ten (10) workdays in the biweekly pay period and in which a full-time employee has a basic work requirement of eighty (80) hours for the biweekly pay period, but in which an employee may vary the number of hours worked on a given workday or the number of hours each week within the limits established for the organization.

Flexible work schedule

A work schedule established under 5 U.S.C., 6122, that-

1. In the case of a full-time employee, has an eighty (80)-hour biweekly basic work requirement that allows an employee to determine his or her own schedule within the limits set by the Agency; and
2. In the case of a part-time employee, has a biweekly basic work requirement of less than eighty (80) hours that allows an employee to determine his or her own schedule within the limits set by the Agency.

Section 1 – General Provisions

- A. Normally, operational hours will be 6:00a.m. to 6:00p.m. local time, Monday-Friday.
- B. Core hours are the time periods during the workday, workweek or pay period that are within the tour of duty which an employee covered by a FWS is required to be present for work.
- C. Core hours will be Monday-Friday, 10:00a.m.–2:00p.m. local time. Core hours will not prevent employees from telework, working a FWS, being in an approved leave status or effect lunch periods.

- D. Basic work requirement means the number of hours, excluding overtime hours, an employee is required to work or to account for by charging leave, credit hours, excused absence, holiday hours, and compensatory time. For full-time employees, the basic work requirement is eighty (80) hours per biweekly pay period. A part-time employee's basic work requirement is the number of hours the employee is scheduled to work in a biweekly pay period.
- E. Start time begins when the employee reaches their assigned work area (e.g. where work begins offsite telework location, workstation/office, etc.). End time is when the employee leaves their assigned work area.
- F. Employees are expected to submit an accurate bi-weekly timesheet (WebTA or its successor) and will not be required to document the start and end time of each day's work.

Section 2 – Notification of Schedules

Notice of management-directed changes in an employee's master schedule to meet programmatic needs will be provided to the Union. Normally, the notification will occur at least two (2) pay periods in advance of the change. The Union will notify the Agency if it demands to bargain regarding such change.

Section 3 – Meal Periods

- A. All employees are required to take non-paid meal period of at least thirty (30) minutes, normally scheduled at or near the mid-point of the shift or tour of duty.
- B. The meal period may not be the first or last thirty (30) minutes of the scheduled shift.

Section 4 – Breaks

- A. Normally, two (2) breaks of fifteen (15) minutes will be provided for employee(s) working a minimum of an eight (8) hour workday. Break periods should not interfere with work (e.g. scheduled meetings, deadlines, etc.). Break periods will not be combined with a meal period without prior approval. Additionally, breaks cannot be added to the start or end of tour of duty.

Section 5- Flexible Work Schedules (FWS)

- A. An employee may request a flexible work schedule (FWS) by submitting a written request to their first line supervisor. All written requests will be subject to supervisory approval/disapproval within fifteen (15) calendar days of receipt of the request.
- B. There are various types of FWS arrangements that provide different degrees of flexibility. These include schedules which can vary the number of hours worked in a day or week and schedules in which the 80-hour biweekly requirement for a full-time employee can be worked in less than 10 days. Possible FWS options include Maxiflex and Flexitour;

1. **Maxi-flex** is an FWS that contains core hours on fewer than 10 workdays in the biweekly pay period. An employee may vary the number of hours worked on a given workday, or the number of hours each week. For example,
 - a. 5/4/9 schedule is a work schedule in which a full-time employee works eight, 9-hour days and one, 8-hour day for a total of eighty (80) hours in a biweekly pay period.
 - b. 4-10 schedule is a work schedule in which a full-time employee must work 10 hours a day, forty (40) hours a week and eighty (80) hours a biweekly pay period.
2. A **Flexitour** schedule is an FWS that consists of 8 hours a day, 40 hours per week, and 80 hours in a biweekly pay period. The flexible time surrounds the core hours and is discussed in Section 1, General Provisions. Employees must account for missed core hours, if permitted, with leave, credit hours, compensatory time off, or time off as an award. Employees may vary and schedule their arrival and departure times per day subject to management approval.

C. For additional guidance refer to the following authorities:

1. 5 U.S.C. 6120 – 6121
2. 5 U.S.C. 6129-6133
3. 5 CFR, part 610
4. P&P 402.1

Section 6 – Denial, Suspension and Termination of Flexible Work Schedules (FWS)

Denials of FWS:

A. When a supervisor denies a request for an FWS, the supervisor will:

1. notify the employee in writing of the basis for the denial;
2. as appropriate, provide an alternate schedule to the employee; and
3. notify the Union of the denial.

B. The supervisor may deny an employee's request for an FWS if that particular schedule

would have an adverse impact on the Agency. Adverse Agency impact is defined as:

1. A reduction of the productivity of the Agency;
2. A diminished level of services furnished to the public by the Agency; or
3. An increase in the cost of Agency operations (other than a reasonable administrative cost relating to the process of establishing a flexible or compressed schedule).

Suspension of an FWS:

- A. FWSs may be suspended as a result of emergencies and incident responses, and unusual workload or operational demands. Management and/or the supervisor will normally provide advance notice of at least two (2) pay periods for non-emergencies. Management and/or the supervisor will notify the Union of suspensions for emergency or incident responses as soon as practical. Efforts will be made to limit suspensions of FWSs to as short a time frame as necessary to meet the workload or operational requirements and restore FWSs as soon as possible.

Termination of FWS:

- A. If an FWS has already been established and management determines that the schedule is having an "adverse Agency impact" on a management unit and/or location, management will notify the Union. The Parties will attempt to resolve the issue and promptly determine whether to continue the schedule.
- B. The basis for the decision will be based on demonstrating:
 - 1. A reduction of the productivity of the Agency;
 - 2. A diminished level of services furnished to the public by the Agency; or
 - 3. An increase in the cost of Agency operations (other than a reasonable administrative cost relating to the process of establishing a flexible or compressed schedule).
- C. An employee's FWS may be suspended and/or discontinued due to performance and/or conduct issues. There must be a nexus between the flexible schedule and the performance and/or conduct for an employee's flexible schedule to be discontinued.

Section 7 – Credit Hours

Credit hours are hours that an employee elects to work, with the supervisor's approval, in excess of the employee's eighty (80)-hour non-overtime work requirement. Such approval shall normally be required in advance before the credit hours are earned.

- A. Credit hours are earned in accordance with P&P 402.1.
- B. The employee must elect to perform work voluntarily.
- C. Eligible employees (e.g., an employee that has an appointment of under ninety (90) days is not eligible) may earn credit hours, provided there is work available and may use credit hours in accordance with regulation and Agency directive(s).
- D. The approval or denial of credit hours will be subject to the same criteria as annual or sick leave. Credit hours must be earned before they may be used. Credit hours may be earned and used within the same pay period.

- E. The Parties recognize that the law requires employees to forfeit credit hours above the twenty- four (24) hours they are allowed to carry over from one (1) pay period to the next; therefore, to avoid forfeiture of credit hours, the employee and the supervisor are strongly encouraged to work together when planning work schedules.
- F. If an employee separates from Federal employment, transfers to another agency, or is no longer eligible to work a FWS, the employee will be paid the balance of credit hours earned up to maximum allowable carry over limit.

Section 8 - General Overtime Provisions

- A. Overtime will be first offered to the individual/group currently working the assignment. However, if not available, the overtime work will be offered to volunteer(s) that meet the qualifications to perform the assignment.
- B. When an employee works overtime, such overtime will be paid in increments of 1/4 hour.
- C. Employees shall be paid differential and premium pay in addition to the overtime compensation in accordance with applicable regulations.
- D. Management shall make a reasonable effort to give the employee as much notice as possible when planned overtime is required, and further, will give due consideration to the employee's personal circumstances.
- E. At the request of an employee in writing, the supervisor or designee may grant compensatory time in lieu of overtime pay, whether such overtime hours are regularly scheduled or irregular or occasional in nature. If the employee does not request compensatory time in lieu of overtime pay, or if the employee's request for compensatory time in lieu of overtime pay is not granted, the employee shall be compensated for such overtime under the applicable statutory provisions.
- F. In accordance with regulations, supervisors will not require employees to earn compensatory time in lieu of overtime pay.
- G. The Agency shall, to the extent practicable, permit employees to use their compensatory time at the earliest time convenient to them within twenty-six (26) pay periods.
- H. Normally, compensatory time off shall be granted before annual leave is approved. If annual leave would otherwise be forfeited, the annual leave shall be granted before compensatory time. Any employee who is unable to use compensatory time within twenty-six (26) pay periods shall receive overtime pay instead. However, earned compensatory time off for travel will be forfeited if not used within 26 pay periods in accordance with OPM regulations.

Section 9 - Call-Back

Call-back is irregular or occasional overtime work performed by an employee on a day when work was not scheduled for them. Call back requires an employee to return to their official duty location, which is neither a virtual platform nor the employee's residence.

- A. In accordance with 5 U.S.C. 5543 (b) (1), employees who are called back will be granted at least two (2) hours of overtime.
- B. The overtime pay will be paid out in accordance with 5 U.S.C. 5545(c)(2).
- C. It is understood that employees' safety is paramount, and call-backs will be held to a minimum, and that employee rest requirements will be considered.
- D. Management will make every attempt to minimize requests for irregular and unscheduled work via any virtual platform as well.

Section 10 - Flex Time

Flexible work schedule changes require prior supervisory approval (e.g., a master schedule of 8:00 a.m. - 4:30 p.m. and tomorrow the employee would like to flex their schedule to 6:00 a.m.- 2:30 p.m.).

Section 11 - Glide Time

Unit employees will have the option to work on an FWS schedule and use up to (30) minutes of glide time, subject to workload requirements. Glide time is that part of an FWS schedule of working hours during which employees may vary their time of arrival and departure from their work site on a daily basis with notification as soon as possible to the supervisor, within limits consistent with the duties and requirements of the position.

Section 12 - Resolving Disagreements Related to Work Schedules

- A. In order to resolve disagreements at the lowest level possible, the employee shall make a good faith effort to meet with their immediate supervisor or their designee. If resolution is not reached, the employee may request a meeting with their second level supervisor or their designee.
- B. Meetings should be held at dates and times by mutual agreement. The employee may request Union representation at any time during attempts to reach resolution.
- C. Exercising this option does not negate the employee's right to file a grievance. The Parties agree to hold grievance timelines in abeyance while working through this informal process.

Section 13 - Master Schedules

- A. The purpose of the master schedule is to have a written record of the employee's regular scheduled tour of duty for safety matters, to ensure proper pay practice, and to coordinate work effort to meet mission goals. Employees may elect to submit a master schedule in WebTA. Annually, employees will submit a master schedule to their first line supervisor.

- B. The supervisor will ensure that the scheduling of master schedules is fair and equitable for the employees that they supervise.
- C. Supervisors retain the authority to restrict individual schedules for valid business reasons and to accomplish the research in an effective manner.
- D. An employee may elect a tour of duty that will allow the normally scheduled shift to start and be completed within normal location hours of 6:00 a.m.-6:00 p.m.
- E. The master schedule requires approval by the immediate supervisor or designee.

ARTICLE 15
LEAVE

Section 1 - General

- A. This Article is accordance with P&P 402.6.v.2 (Leave Administration) dated January 13, 2012.

Employees will accrue and use sick and annual leave in accordance with applicable regulations.

- B. Employees should make requests for leave as far in advance as practical to their immediate supervisor or their designee.
- C. Leave may be requested any time and will only be denied for valid operational needs.
- D. The Agency may exercise flexibility of work scheduling or numbers of required employees on duty to accommodate an employee's need for emergency or unscheduled leave.
- E. Leave will be administered in a fair and equitable manner.

Section 2 - Leave Earnings

- A. Full-time and part-time employees earn leave during each full bi-weekly pay period while in a pay status or in a combination of a pay status and a non-pay status in accordance with 5 CFR, Part 630, Absence and Leave.
- B. A full-time employee in a Leave Without Pay (LWOP) status who reaches an increment of eighty (80) hours of unpaid leave will not accrue leave within that pay period. The running total of eighty (80) hours will reset each year on pay period one (1).

Section 3 - Annual Leave

- A. Annual leave is provided to allow employees extended leave for rest and recreation and to provide periods of time off for personal and emergency purposes.
- B. The use of accrued annual leave is a right of the employee, subject to the right of the employer to approve when leave may be taken.
- C. Normally, the supervisor or designee will reply to the request for leave in a timely fashion. The employee will be responsible for ensuring that leave is recorded in their time and attendance record.
- D. If while on annual leave an employee becomes ill or injured, upon employee request, the annual leave will be changed to sick leave for the time of incapacitation, provided the employee has adequate sick leave to cover the absence.

- E. Employees are advised that the proper leave-approving official is their immediate supervisor or designee.
- F. Management will notify direct reports of the process to request leave and have leave approved. Examples of methods to request annual leave may include but are not limited to: phone call, email, text messages, WebTA, etc. Employees are to document and receive approval through Web T&A regarding their leave request(s) prior to the end of the pay period.
- G. Restoring forfeited annual leave will be addressed in accordance with P&P, 402.6.v.2.

Section 4 - Unanticipated Annual Leave

- A. If the need for leave cannot be anticipated, the employee shall, as soon as practicable, contact the immediate supervisor or their designee to request approval of unscheduled leave. The employee will follow established work unit notification procedures in the event the immediate supervisor or their designee is not available.
- B. Employees who fail to follow leave request procedures as required above may be charged Absent without Leave (AWOL). Leave charged to AWOL may later be changed to approved leave (i.e., annual, sick, credit or compensatory leave, LWOP, or excused absence) should the employee provide a legitimate excuse for the absence, see P&P, 402.6.v.2.

Section 5 - Annual Leave for Union Representatives

An employee who is a steward or other Union official will be granted annual leave or LWOP to attend internal Union functions, during the employee's regular tour of duty, which are not covered by Official Time and Duty Time as set forth in Article 34. Normally, an advanced notice of ten (10) business days will be required, and leave will be approved subject to workload considerations.

Section 6 - Sick Leave

- A. Employees are entitled to use sick leave, in accordance with 5 CFR, 630.401, when they:
 - 1. Receive medical, dental, or optical examination or treatment; or
 - 2. Are incapacitated for the performance of duties by sickness, injury, pregnancy, or confinement; or
 - 3. Are required to give care and attendance to a family member (5 CFR, 630.201 (b)) who is incapacitated due to a medical or mental health condition.
 - 4. Make arrangements necessitated by the death of a family member or attends the funeral of a family member.

5. Would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by his or her presence on the job because of exposure to a communicable disease.
 6. Must be absent from duty for purposes relating to his or her adoption of a child, including appointments with adoption agencies, social workers, and attorneys; court proceedings; required travel; and any other activities necessary to allow the adoption to proceed.
- B. It is the responsibility of an employee who is incapacitated and /or unable to perform their assigned work duties to notify the immediate supervisor or their designee (or to have any responsible person make the notification for the employee) as soon as possible on the first day of absence from the work location.
- C. Management is responsible for providing employee(s) with instructions on requesting sick leave.
- Example of methods to notify the supervisor may include but are not limited to: phone call, email, text messages, WebTA, etc. Employees are to document and receive approval through Web T&A regarding their leave request(s) prior to the end of the pay period.
- D. An employee who expects to be absent for more than one (1) day will inform the supervisor or their designee of the expected date of return to duty and will notify the supervisor of any change. In the case of extended illness, of more than three (3) consecutive workdays, daily reports may not be required.
- E. Employees may request temporary modification of their workstation or duties for periods as defined in the medical documentation that has been provided. The medical documentation will identify specific restrictions that preclude them from performing full regular duty assignments. Supervisors may provide appropriate limited duty assignments if they are available.

Section 7 - Documentation for Sick Leave

- A. Upon return to duty, employees will be required to furnish administratively acceptable evidence to substantiate utilization of sick leave of three (3) or more consecutive workdays.
- B. An employee requesting annual leave, planned sick leave, or LWOP for periods of illness of three (3) or more consecutive workdays must make an appropriate request. The Agency may place the employee on AWOL pending receipt of the medical certification.
- C. An employee may justify the use of sick leave:
1. By medical documentation from the employee's personal physician or healthcare professional, or

2. For employees who have approved Family Medical Leave Act (FMLA): An employee with a chronic medical condition that does not require medical treatment but does result in periodic absences from work will not be required to furnish a physician's certificate on a continuing basis if the employee: (1) is absent three (3) days or less, (2) is not on leave restriction and (3) provides, if requested, an updated valid medical certificate not more frequently than every fifteen (15) calendar days but at least annually which clearly states the continuing need for the periodic absences.
3. Medical documentation must include a statement that the employee was incapacitated for work, listing date(s) of incapacitation and the employee's ability to return to work with or without restrictions, per the regulations. This will be considered sufficient for medical documentation purposes. This applies to both sick leave of three (3) days or more and documentation for sick leave restriction(s).

D. Documents regarding employee absence for sick leave purposes are highly sensitive. The supervisor will ensure that they are maintained in a secure and confidential manner. Only those with a business need to know will be privy to such information.

Section 8 - Sick Leave Restriction

Wherein there is evidence of a pattern of sick leave abuse, a sick leave restriction may be put into place by the supervisor or their designee. The supervisor shall partner with a representative from Personnel and Labor Solutions (PALS) Branch or its successor to ensure appropriateness of the sick leave restriction. Use of sick leave for valid reasons shall not be considered a pattern of abuse.

Examples of sick leave abuse may be, but not limited to:

1. Extension of weekends
2. Extension of leave
3. Consistent call offs on specific days, i.e. Mondays and Fridays
4. Extension of Holidays

Where there is reason to believe that an employee is abusing the sick leave entitlement, the following will apply:

1. The employee shall be advised in writing of the possibility of future medical certification requirements or other actions should the abuse continue. This does not preclude the supervisor from discussing perceived abuse of sick leave.
2. If the abuse continues, the employee may be required to furnish a medical certification for each sick leave application.

3. During the course of the leave restriction, typically a ninety (90) day period, and upon serving at least 50% of the time on the restriction, the employee may once per calendar month, request the supervisor evaluate and consider holding in abeyance the remainder of the time to be served on the leave restriction.
4. If the employee fails to maintain the desired improvement during the course of the original time period specified in the leave restriction letter, the supervisor will reinstate the leave restriction letter with an adjusted end date. After reinstatement of the sick leave restriction the period will be one hundred and twenty (120) calendar days. However, the supervisor will have discretion to extend or reduce the restriction period based on employee behavior. If the letter of leave restriction is reinstated, there will be no further review during the life of the letter.
5. Sick leave restriction documentation does not become part of the employee's eOPF.

Section 9 - Advanced Sick/Annual Leave

- A. Employees who are incapacitated for the performance of duties because of serious health condition, disability, or ailment may request advance sick leave not to exceed two hundred forty (240) hours. Two hundred forty (240) hours of sick leave is the maximum number of hours that may be advanced to an employee with a medical emergency related to the adoption of a child, for family care or to care for a family member with a serious health condition. Sick leave will not be advanced just because an employee has exhausted their sick leave. The advancement of sick leave is at the discretion of the supervisor.
- B. Credit hours and annual leave may be used to liquidate advanced annual or advanced sick leave.
- C. Requests for advanced sick leave will be considered in accordance with governing regulations and for periods of absence that will be for more than three (3) consecutive days when all of the following conditions are met:
 1. The employee is eligible to earn sick leave;
 2. The employee's request does not exceed two hundred forty (240) hours, or for temporary employees only the amount to be earned during the period of temporary employment if appropriate;
 3. There is no reason to believe the employee will not return to work after having used the leave;
 4. The employee has provided acceptable medical documentation of the need for advanced sick leave.

Section 10 - Advance Annual Leave

- A. An employee with an appointment of greater than ninety (90) days or longer, and who is not intermittent may be advanced annual leave in accordance with their employment appointment and leave will accrue up to the end of the leave year. However, advanced annual leave may not be granted to a temporary employee beyond the date set for the expiration of the employee's temporary appointment or to any employee if there is a likelihood that the employee will retire, be separated, or resign from the Agency before the date the employee will have earned the leave. Upon separation, employees must repay the balance of any remaining advanced annual and sick leave, unless resigning due to exceptions, as listed in regulation or:
1. Death;
 2. Disability retirement;
 3. Entrance into military service with reemployment rights; or
 4. Resignation or separation because of disability which, according to medical certification, prevents the employee from return to or continuing employment.
- B. Advanced sick leave may be combined with annual leave when necessary to cover one continuous period of absence.
- C. It is agreed that advance leave, including both sick and annual, will be fairly and equitably administered on a case-by-case basis.
- D. Denials of requests for advanced leave must be conveyed to the employee promptly and must contain a specific explanation of the reasons for the denial.
- E. The employee will be required to pay back the advanced leave in accordance with current and subsequent regulation, Departmental and Agency policies.

Section 11 - Leave for Family Purposes

- A. Family and Medical Leave Act (FMLA)
The Agency will adhere to the Government-wide regulations for FMLA.
1. Maternity and Paternity Leave
 - a. Under the Family Medical Leave Act, BUEs are entitled to twelve (12) weeks of LWOP during any twelve (12) month period for the following reasons:
 - i. Birth of a son or daughter and the care of such son or daughter,
 - ii. Placement of a son or daughter for adoption or foster care.
 2. Other Family Leave

- a. Under the Family Medical Leave Act (FMLA), BUEs are entitled to twelve (12) weeks of LWOP during any twelve (12) month period for one or more of the following reasons:
 - i. The care of a family member of the employee with a serious health condition. Family member is defined as:
 - (i) Spouse, and
 - (ii) Sons and daughters,
 - (iii) Parents of the employee
 - ii. A serious health condition of the employee that makes the employee unable to perform the functions of the position of such employee.
 - iii. Any qualifying exigency arising out of the fact the employee's spouse, son, daughter, or parent is a covered military member on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces.

Note: The employee may elect to substitute annual leave and/or sick leave for unpaid family or medical leave for any part of the applicable period consistent with governing laws and regulations. Employees may also combine annual leave and/or sick leave with unpaid family or medical leave for any period of approved leave. An employee may not retroactively substitute paid time off for unpaid family and medical leave.

Employees are not required to invoke FMLA to manage family and medical absences. For example, full-time employees could use 8 weeks of sick leave, annual leave, and/or LWOP for family and medical reasons and then invoke an additional 12 weeks of FMLA leave.

B. Family Friendly Leave (FFL)

Under 5 C.F.R. §630.401, employees are entitled to use sick leave to provide care for:

1. Spouse, and parents thereof;
2. Children including adopted children, and spouses thereof;
3. Parents, and spouses thereof;
4. Brothers, sisters, and spouses thereof;
5. Grandparents and grandchildren, and spouses thereof;
6. Domestic partner and parents thereof, including domestic partners of any individual in paragraphs (2) through (5) of this definition; and,

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

C. Notice of Leave

1. The employee will make an appropriate request for use of FMLA and/or FFL in accordance with Government wide regulation.
2. When the need for unpaid FMLA is foreseeable and the employee fails to give thirty (30) day notice with no reasonable excuse for the delay of notification, the Agency may delay the taking of family and medical unpaid leave until at least thirty (30) days after the date the employee provides notice of his/her need for family and medical leave.

D. Medical Certification

An employee shall provide written medical certification to the Agency in a timely manner. The written medical certification shall include:

1. The date the serious health condition commenced.
2. The probable duration of the serious health condition.
3. The appropriate medical facts within the knowledge of the health care provider regarding the serious health condition including a statement as to the incapacitation, examination, or treatment, and likely duration of condition, may be required.
4. A statement that the employee is unable to perform the functions of his/her position.

The Agency shall not require any personal or confidential information in the written medical certification other than what is required by regulation.

If the Agency doubts the validity of medical records it can require a second and third (and final) opinion at the Agency's expense (5 U.S.C., 6383).

E. "Health Care Provider" is defined as any of the following individuals:

1. A licensed Doctor of Medicine or Doctor of Osteopathy or a physician who is serving on active duty in the uniformed services and is designated by the uniformed service to conduct examinations under this subpart;
2. Any health care provider recognized by the Federal Employees Health Benefits Program or who is licensed or certified under Federal or State law to provide the service in question;
3. A health care provider as defined in paragraph (2) of this definition who practices in a country other than the United States, who is authorized to practice in accordance with the laws of that country, and who is performing within the scope of his or her practice as defined under such law;

4. A Christian Science practitioner listed with the First Church of Christ, Scientist, in Boston, Massachusetts; or
5. A Native American, including an Eskimo, Aleut, and Native Hawaiian, who is recognized as a traditional healing practitioner by native traditional religious leaders who practices traditional healing methods as believed, expressed, and exercised in Indian religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, consistent with Public Law 95-314, August 11, 1978 (92 Stat. 469), as amended by Public Law 103-344, October 6, 1994 (108 Stat. 3125).

If the employee is unable to provide the requested medical certification before leave begins or the Agency questions the validity of the original certification provided by the employee and the medical treatment requires the leave to begin, the Agency shall grant provisional leave pending final written medical certification.

F. Medical Recertification

The employee may be required to provide an updated certification during the leave period under FMLA if;

1. the medical condition(s) has changed, or
2. the leave is not consistent with the information provided on the medical documentation.

The Agency may require subsequent medical recertification in accordance with law, statute or government-wide regulation.

An employee eligible under the Agency's Family Medical Leave Program may request to participate in the Telework Program.

Section 12 - Protection of Employment and Benefits

- A. Upon return from FMLA, the employee will be restored to the same position as occupied before the leave or to an equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment.
- B. When an employee requests leave under the Agency's Family Medical Leave Program, the Agency will provide guidance concerning the employee's rights and obligations under the program.
- C. Under FMLA, an employee who meets the criteria for leave and has complied with the requirements under this section may not be denied leave, consistent with all applicable rules governing annual leave, sick leave, or LWOP as appropriate.
- D. An employee enrolled in a health benefits plan, who is placed in a LWOP status may continue his or her health benefits enrollment while in the LWOP status but is responsible to arrange through the appropriate channels to pay the contributions into the Employees Health Benefits Fund. The Employer will continue to pay their portion of health and life insurance, if applicable, according to legal and regulatory requirements.

Section 13 - Employee Absences for Court or Court-Related Services

- A. Except as otherwise modified by applicable law, government-wide regulations or other outside authority binding on the Agency, an employee summoned or subpoenaed in connection with a judicial proceeding by a court or other authority responsible for the conduct of that proceeding shall be authorized to attend the judicial proceeding without charge to leave or loss of employee salary in the following instances:
1. For jury duty.
 2. To appear as a witness on behalf of the Federal, District of Columbia, state, or local government.
 3. To appear as a witness on behalf of a private party in an official and job-related capacity or to produce official records.
 4. "Expense money" may be retained by the employee; "fees for services rendered" must be submitted to the appropriate financial office.
 5. It is agreed that days off and/or schedules will not be changed to avoid granting absence for court or court-related services.
- B. An employee who is granted court leave and is excused or released by the court for any day or substantial portion of a day is expected to return to the employee's regular duties except when:
1. Only a small portion of the workday would be involved and thus no appreciable amount of service would be rendered.
 2. The distance from the court to the place of duty is such that this would be an unreasonable requirement.
 3. The regular tour of duty occurs at night.

Section 14 - Leave Without Pay (LWOP)

- A. LWOP may be requested and considered for approval in the same manner and for the same purposes as annual leave and sick leave.
- B. Employees may request LWOP for educational purposes.
- C. LWOP is granted at the discretion of management. Management does not have the discretion to deny leave in the following cases:
1. When a disabled veteran requests LWOP for medical treatment;

2. When requested by a reservist or National Guard member for military duties in accordance with appropriate military orders. Employees may request such leave after their military leave has been exhausted (38 U.S.C., Section 4316(d));
 3. When requested by an employee who has suffered an incapacitating job- related injury or illness and is waiting adjudication of a claim for employee compensation by the Office of Workers' Compensation Program; or
 4. When an employee makes a request under the Family and Medical Leave Act and meets the criteria for that program.
- D. Upon return to duty after a period of LWOP, management will restore the employee to a similar position at the same grade and pay.

Section 15 - Religious Compensatory Time

- A. An employee whose personal religious beliefs require abstention from work during certain periods of time may elect to engage in credit or compensatory time work to compensate for time lost for meeting those religious requirements.
- B. 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 the employee the opportunity to work compensatory time. The Agency shall in each instance grant compensatory time off to an employee requesting such time off for specific religious observances and when the employee's personal religious beliefs require that the employee abstain from work.
- C. For the purpose stated in paragraph B of this section, the employee may work such compensatory time before or after the granting of compensatory time off. Advanced compensatory time off should be repaid with the appropriate amount of compensatory overtime work within a reasonable amount of time, not to exceed the end of the leave year. Compensatory time shall be credited on an hour-for-hour basis or authorized fractions thereof. Appropriate records will be kept of compensatory time earned and used.
- D. If the employee is separated or transferred before using the time set aside for a religious observance any hours not used must be paid at the employee's rate of basic pay in effect when the extra hours of work were performed. Any religious compensatory time used and not repaid will be charged to the employee at the same rate.

Section 16 - Military Leave

- A. In accordance with law and regulations, full-time permanent and part-time permanent employees who are members of the National Guard or the Armed Forces Reserves are entitled to fifteen (15) calendar days of regular military leave in a fiscal year for active duty or active duty for training.

- B. For part-time employees, military leave is prorated based on the number of hours in the employee's work week.
- C. Employees who do not use the entire fifteen (15) days can carry any unused military leave (not to exceed fifteen (15) days) over to the next fiscal year. Military leave may never exceed thirty (30) days in any one (1) calendar year.
- D. Regular military leave is charged in increments of one (1) hour. Non-workdays falling at the beginning or end of military leave are not included in the period of military leave.
- E. Management will take into consideration the schedules of employees who work off-tours and will, when possible, arrange schedules to allow such employees to have scheduled days off immediately preceding and following the required military leave.

Section 17 - Voluntary Leave Transfer Program

- A. The Agency will continue to use the Leave Transfer Program as designated in the current Agency Directives and Policies and as authorized by 5 CFR, 630 Subpart I.
- B. Employees are entitled to donate and receive leave for medical emergencies.

Section 18 - Leave for Bereavement

- A. Upon request, subject to any documentation requirements, leave-approving officials shall approve sick leave for employees to mourn the death of the following family members:
 - 1. Spouse, and parents thereof;
 - 2. Children including adopted children, and spouses thereof;
 - 3. Parents, and spouses thereof;
 - 4. Brothers, sisters, and spouses thereof;
 - 5. Grandparents and grandchildren, and spouses thereof;
 - 6. Domestic partner and parents thereof, including domestic partners of any individual in paragraphs (2) through (5) of this definition; and,
 - 7. Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.
- B. Additional leave (annual leave, and/or LWOP) can be requested for family care and bereavement needs not covered by sick leave.
- C. The supervisor has discretion to require documentation (e.g., obituary, death certificate) prior to final approval of bereavement leave. However, this documentation will normally be required only in unusual circumstances.

Section 19 - Administrative Leave

- A. Administrative leave is absence from assigned duties without charge to leave or loss of pay, The Parties agree that excused absence may be granted for activities which are in the government's interest. The employee will be required to have supervisory approval prior to leaving or being absent from the workplace.
- B. Employees will be granted up to four (4) hours of administrative leave to donate blood. Time spent donating blood and in necessary travel for such purposes shall also be administrative leave.
- C. When a donor is paid for donating blood by the blood collecting organization, the employee is required to take some type of leave (other than sick leave) for any period of absence resulting from the blood donation.
- D. Upon request, subject to certification by a physician, leave-approving officials shall approve administrative leave for employees who serve as living donors for bone marrow, organ, and tissue donation and transplantation. The use of administrative leave can cover time off for activities such as donor screening, the actual medical procedure, and recovery time. Leave-approving officials shall approve:
 - 1. Employees may use up to seven (7) days of paid leave each calendar year, in addition to annual and sick leave, to serve as a living bone marrow donor,
 - 2. Employees may use up to thirty (30) days of paid leave each year, in addition to annual and sick leave, to serve as an organ donor.
- E. Voting: If necessary, the employee will be authorized an amount of excused absence that will permit the employee to report for work up to three (3) hours after the polls open or leave work up to three (3) hours before the polls close, whichever requires the lesser amount of time off. Such excused absence should be requested in advance.
- F. The Parties agree that the above reasons for granting administrative leave are not all inclusive, DR 4060-630-002, Leave Administration, and that there may be other situations supporting a request for the granting of such leave. Such requests shall be considered based on the reasons presented at the time. The employer may require documentation as appropriate to support the reasons for and/or the duration of such administrative leave requests.
- G. Any changes in policy will be subject to Union notification and negotiations as required.

ARTICLE 16
POSITION DESCRIPTIONS (PDs)

Section 1 - General

- A. Each position covered by this agreement that is established or changed must be accurately described in writing and classified to the proper occupational title, series, bargaining unit status code, and grade.
- B. All PDs must clearly and concisely state the major and significant duties, responsibilities, and supervisory relationships of the position.
- C. Employees will have access to a current, accurate copy of their PD (e.g., eOPF).
- D. PDs will be kept current and accurate, and positions will be classified properly. Management-directed changes to a PD will be incorporated in the PD to assure that the position is correctly classified/graded to the proper title, series, and grade. Incidental changes may be made in the form of pen and ink notations on the PD; the BUE will be informed of the changes. The Union will be provided copies of, or access to, updated or current PDs upon request.
- E. In accordance with regulation, the Agency has the right to assign work that is not in the PD; however, assigned work should be within the scope of education and training of the employee. If that work occurs on a regular and recurring basis, the PD must be revised to accurately reflect the job duties.
- F. Employees dissatisfied with the classification of their positions should first discuss the problem with their supervisors. If a supervisor is unable to resolve the issue to the employee's satisfaction, the employee can discuss the matter with the local Human Resources staff member who will explain the basis for the classification/job grading.
- G. Upon request, the Union will have access to the evaluation report, if available, organizational and functional charts, and other pertinent information directly related to the classification of the position. This informal classification review process should be completed in a reasonable period of time. If the employee is unsatisfied with the outcome of the informal review, the employee may ask the supervisor to forward a request for a desk audit to the Agency.
- H. If/when a desk audit is conducted by the Agency, the desk audit will normally be completed in ninety (90) days from the employee's request. This time frame may be extended by mutual agreement.
- I. If the employee still believes there is an inequity, an appeal may be filed with the Agency and/or OPM as appropriate. An employee may file a classification/job grading appeal at any time through appropriate channels whether or not this informal classification review process was followed.

- J. Vacant positions will not be posted until the appointing authority assures that they are authorized, properly described, evaluated, and classified according to series, title, and grade.
- K. No position(s) will be downgraded without a thorough review. For a downgraded position, the employee's pay and grade will be maintained on an incumbent basis in accordance with law and regulations.

Section 2 - Classification Standards

- A. The Agency will apply newly issued OPM classification and job grading standards within a reasonable period of time, or as prescribed by OPM. The Union will be provided with copies of new standards that are implemented at the local level. Current classification standards are available on the OPM website.
- B. Upon request, the Agency will make available to the Union copies of any Agency guidance provided by OPM in connection with any classification standards.

Section 3 - Classification Appeals

- A. Upon request, the Agency will make available information to employees and the Union regarding procedures for filing classification appeals through the Agency or OPM.
- B. Employees or their Union representatives may submit their written classification/job grading appeals through the designated HR staff. The HR staff will forward the complete appeal to the Agency or OPM as appropriate normally no later than fifteen (15) business days from receipt and will provide the Union with a copy of the employee's appeal request. However, this does not preclude an employee from filing a classification/job grading appeal directly to the Agency or OPM as appropriate. Timelines may be extended by mutual agreement.
- C. General Schedule employees who file written appeals with the Agency or OPM concerning the title, series and grade, and/or coverage of their position will have their appeal decided within a reasonable period of time from the date the Appeals Office receives a completed application. Classification appeal decisions will be forwarded by the Labor Relations Officer to the Union.

Section 4 - Effective Date

The effective date of a personnel action taken as a result of an appeal should be in accordance with the directions provided by the Agency or OPM decision, normally no later than the beginning of the fourth pay period following the date of the decision.

ARTICLE 17
MERIT PROMOTION

Section 1 - Purpose

The Parties agree that merit promotion principles will be applied in a consistent manner, with equity to all employees, and without regard to political, religious, or labor organization affiliation or non affiliation, genetic information (including family medical history), marital status, race, color, sex (including pregnancy and gender identity), national origin, disabling condition, age (as defined by the Age Discrimination in Employment Act of 1967, as amended), or sexual orientation, status as a parent, or any other non-merit-based factor, unless specifically designated by statute as a factor that must be taken into consideration when awarding such benefits, or retaliation for exercising rights with respect to the categories enumerated above, where retaliation rights are available, and shall be based solely on job-related criteria.

Section 2 - Actions Covered by Competitive Procedures

In accordance with 5 CFR, 335.103, competitive procedures will apply to the following types of personnel actions subject to the exceptions explained in Section 3:

1. Promotions,
2. Temporary promotions for more than one hundred twenty (120) calendar days,
3. Details over one hundred twenty (120) calendar days to higher graded positions or to positions with known promotion potential,
4. Selection for training, which is part of an authorized training agreement, part of a promotion program, or required before an employee may be considered for a promotion as specified in 5 CFR, 410.302.
5. Reassignment or demotion to a position with more promotion potential than a position previously held on a permanent basis in competitive service. Exceptions are actions permitted by reduction-in-force regulations,
6. Transfer to a higher-grade position or with more promotion potential than a position previously held on a permanent basis in the competitive service,
7. Reinstatement to a permanent or temporary position at a higher grade or with more promotion potential than a previously held on a permanent basis in competitive service.

Section 3 - Actions Not Covered by Competitive Procedures

In accordance with 5 CFR, 335.104, competitive procedures will not apply to the following personnel actions which are exceptions to Section 2 above:

1. Career Ladder Promotions: Career ladder promotions are permitted when an employee is appointed or assigned to any grade level below the established full performance level of the position (i.e., the position has a documented career ladder and promotion potential). These promotions may be made non-competitively for any employee who entered the career ladder by:
 - a. Competitive procedures;
 - b. Competitive appointment from a certificate of eligibles (through OPM or delegated examining authority);
 - c. Non-competitive appointment under special authority; such as conversion of Pathways Program or similar program(s), appointment of former ACTION Volunteers or Peace Corps volunteers, conversion of a Veterans Recruitment Authority (VRA) appointee and Presidential Management Fellows.
 - d. ERS employees ONLY: Positions under the Research Position Classification System in accordance with OPMs Research Grade Evaluation Guide.

2. Promotion Based on Reclassification when:
 - a. No significant change occurs in the duties or responsibilities of the position and the position is upgraded due to issuance of a new classification standard, or the correction of a classification error; or
 - b. The position is upgraded due to accretion of additional duties and responsibilities and the following provisions are met:
 - i. The duties of the former position are absorbed into the new position
 - ii. The new position has no promotion potential;
 - iii. The additional duties and responsibilities assigned or accrued by the incumbent do not adversely affect or impact other positions in the organizational unit;
 - iv. The new position is not a reclassification from nonsupervisory to supervisory status; and
 - v. The accretion is supported by a written analysis of the position which may involve a position review including written; face-to-face, and/or telephonic reviews with the employee and/or the employee's supervisor, or other fact gathering method.

3. Permanent Promotion: to a position held under a temporary promotion when:
 - a. The assignment was originally made under competitive procedures;

- b. It was known to all competitors at the time of original appointment that the assignment may lead to a permanent position.
4. Temporary Promotion:
 - a. of an employee for less than one hundred twenty (120) calendar days;
 - b. Promotion for more than one hundred twenty (120) calendar days to a grade level previously held on a permanent basis, unless the employee was demoted for reason related to performance or misconduct.
5. Placement as a Result of Priority Consideration: when the referral is a remedy for candidates not given proper consideration in a competitive promotion action.
6. RIF Placements: which result in an employee receiving a position with higher promotion potential will not occur unless an employee currently holds or previously held the higher grade on a permanent basis in the competitive service.
7. Promotion to a Grade Previously Held: on a permanent basis in the competitive service, from which the employee was separated or demoted for other than performance or conduct reasons and not at the employee's request.
8. Promotion, Reassignment, Demotion, Transfer, Reinstatement, or Detail to a Position Having Promotion Potential: no greater than the potential of a position an employee currently holds or previously held on a permanent basis in the competitive service (or in another merit system with which OPM has an interchange agreement approved under 5 CFR, 6.7 and did not lose because of performance or conduct reasons.
9. Promotion as a legal remedy as ordered and agreed upon in a legal or administrative proceeding.
10. Details: for one hundred twenty (120) calendar days or less to a higher graded position or to a position with known promotion potential.

Section 4 - Temporary Promotions

- A. Employees will not be detailed and/or temporarily promoted to higher graded positions or positions with known promotion potential for more than a cumulative total of one hundred twenty (120) calendar days during any twelve (12) month period without the use of competitive procedures.
- B. Temporary promotions for qualified and eligible employees will take effect the date requested on the SF52, or as soon as possible thereafter. Employees must be doing the full scope and performance of the position and be eligible to meet OPM qualifications for temporary promotions. Short term "acting" positions are not considered for temporary promotions.

- C. Temporary promotions for more than one hundred twenty (120) calendar days will be advertised and competed in accordance with OPM regulations.

Section 5 - Involuntarily Demoted Employees

- A. Employees who are involuntarily demoted in the Agency due to no fault of the employee and as a result of the following events are entitled to consideration for re-promotion before using competitive procedures:
 - 1. An error in the prior classification of a position;
 - 2. A change in classification standards without a change in duties and responsibilities;
 - 3. A change in duties and responsibilities caused by a gradual erosion or by management action; or
 - 4. The application of RIF procedures.
- B. Grade retention entitlement lasts for a period of two (2) years and applies to positions at the employee's former grade or at any intervening grades that are to be filled under competitive procedures. The right to this consideration does not apply to a position with promotion potential higher than that of the position held at the time of the change to the lower grade.

Section 6 - Scope of Competition

- A. Area of consideration for the vacancy will be determined by the Agency and will be broad enough to reach a high-quality applicant pool while meeting its obligations under the Agency's Outreach and Diversity objectives.
- B. The Agency may consider the use of an area of consideration limited to the local commuting area, within the Agency, etc. prior to opening a separate case examining announcement open to all U.S. citizens.

Section 7 - Vacancy Announcements

- A. Publication of vacancies will be made through the government wide electronic recruitment site, currently www.usajobs.gov (or its successor).
- B. Notification of amendments, cancellations, or other changes to the vacancy announcement will be accomplished through the government electronic recruitment site.

C. Announcements for BU vacancies will be posted for a minimum of seven (7) business days prior to closing date and/or if the vacancy announcement has met the allotted number of applications documented in the vacancy announcement. By mutual agreement the posting period can be adjusted.

D. Vacancy announcements will include:

1. Statement of nondiscrimination;
2. Announcement number and posting and closing dates;
3. Title(s) title(s), series and grade(s);
4. Anticipated number of (i.e., multiple) vacancies to be filled;
5. Area of Consideration;
6. Type of test(s) to be used, if any;
7. Description of promotion potential, if any;
8. When using an automated recruitment system, each factor/question used to determine the basic eligibility and/or best-qualified candidates will be included on each announcement;
9. Geographic and organizational location;
10. If relocation expenses will or will not be authorized;
11. Summary of the duties of the position;
12. Summary of eligibility and qualification requirements;
13. Permanent or temporary nature, and, if temporary, the duration and if the promotion may be made permanent;
14. Contact information of the Human Resources staff member relating to the announcement;
15. Special working conditions, such as tour of duty, travel requirements, expected overtime, physical requirements, background investigations, etc.;
16. The different levels at which the position may be filled if it is a multiple-level announcement;
17. Additional specific information relevant to the evaluation of the candidates, such as writing samples, portfolios, etc.;

18. Indication of bargaining unit eligibility.

Section 8 - Open and Continuous Announcements

- A. Open continuous announcements may be used.
- B. An employee may apply at any time as outlined on the vacancy announcement for open continuous announcements.

Section 9 - Application Process

- A. Employees will follow the requirements for submitting an application as outlined in the vacancy announcement.
- B. The Parties agree to encourage employees to take the initiative to become familiar with the current electronic application process/technology identified at the link in Section 7 above and the associated tools available therein. This will help them set up their profiles, apply for vacancies and become aware of what they can expect once the application process is initiated.
- C. It is the employees' responsibility to be aware of open vacancy announcements and to meet application requirements for each announcement.

Section 10 - Interviewing

If interviews are used, they must be job-related, reasonably consistent, and fair to all candidates. Management will make every opportunity to conduct in person interviews but has the option for a telephone and/or virtual interview if circumstances warrant.

Section 11 - Selection

The selecting official has the right to select or not select any candidate(s) referred. However, the selecting official will give consideration to the candidates fitness and qualifications, without regard to political, religious, or labor organization affiliation or non affiliation, genetic information (including family medical history), marital status, race, color, sex (including pregnancy and gender identity), national origin, disabling condition, age (as defined by the Age Discrimination in Employment Act of 1967, as amended), or sexual orientation, status as a parent, or any other non-merit-based factor, unless specifically designated by statute as a factor that must be taken into consideration when making a selection. The selection shall be based only on job-related criteria.

Section 12 - Career-Ladder Promotions

- A. Except as provided below, employees within a career ladder will be promoted to the full performance level as soon as they have:
 - 1. meeting legal and regulatory requirements (i.e. time-in-grade restrictions);

2. having grade building experience in order to meet all basic eligibility requirements;
3. demonstrating ability to perform at the next higher level; and
4. having a current rating of record of “Fully Successful” (level 3) or higher. Employees are not guaranteed promotion once selected for positions within an established career ladder.

A career promotion may not be made to a supervisory position on the basis of the addition of supervisory duties to a non-supervisory position.

- B. Upon request, the supervisor will meet with the employee and will explain where the employee's performance is lacking and advise what the employee must do to qualify for the promotion. Supervisors will be encouraged to speak with employees throughout the performance rating cycle regarding career ladder promotion opportunities.

Section 13 - Compensation

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

ARTICLE 18
INVESTIGATIONS

Section 1 – General

- A. An investigation may be conducted in the following manner, but is not limited to, face-to-face meeting, virtual methods or telephone, and preparation of statements or other written witness statements. The Parties agree that investigations should be initiated in a timely manner once the Agency is on notice of allegations of misconduct.
- B. The Parties recognize that the length of time needed to initiate and complete investigations may vary given extenuating circumstances, such as case complexity, availability of witnesses, etc.
- C. An employee is required to cooperate in the course of an administrative investigation. The right of employees not to incriminate themselves will apply in criminal investigations.
- D. The employee will be informed of the process as applicable.
 - 1. At minimum:
 - a. If known, the subject of the investigation will be informed that they are the subject of the investigation;
 - b. Employees participating in the investigation will be informed of the allegation(s);
 - c. The employee will be informed that facts will be gathered and evaluated;
 - d. Any information exchanged during the course of the investigation will remain confidential until the investigation is closed.
 - 2. The Union shall be given the opportunity to be present at any examination/fact finding of BUE(s) by a representative of the Agency in connection with an investigation if:
 - a. The employee reasonably believes that the meeting may result in disciplinary action against the employee; and
 - b. The employee requests representation.
- E. If the supervisor or an Agency official, in advance of or during the questioning of an employee contemplates the likelihood of disciplinary action, the employee may request Union representation prior to further questioning.
- F. If an employee requests Union representation, the meeting will be delayed or rescheduled for when a Union representative can be present. The Union representative will be given no less than twenty-four (24) hours notification of such meetings unless precluded by a situation that is urgent in nature. Once the employee requests representation, no further questioning will take

place until the representative arrives. If the Union representative is not available due work schedules or other representational business, the examination will be postponed and rescheduled by mutual agreement.

- G. The right to Union representation is not intended to interfere with the routine interaction between supervisors and employees in the normal course of the workday. In the event the employee or Union Representative are unable to be excused from the work area due to valid operational need; the management official will provide in writing the reason for the delay and the dates and/or times of availability that will not impede the operation.

Section 2 - Investigations

- A. The Agency will inform the Union in advance of an administrative investigation when a BUE is the subject of the investigation/fact finding.
- B. Investigations should consider all facts, circumstances, and human factors. An investigation should be conducted timely and efficiently.
- C. Employees have the right to be represented by the Union while being questioned in an investigation.
- D. The employee will be informed of the nature of the allegation(s). Once an employee requests Union representation, except in very rare and unusual circumstances, no further questioning will occur until Union representation is present.
- E. Supervisors, employees, and Union representatives will not, except as specifically authorized, disclose any information about an investigation. An employee may discuss the investigation with their authorized Union representative. A copy of the statement of the employee will be given to the employee and/or the employee's representative upon written request.
- F. In accordance with the Freedom of Information Act (FOIA) or 5 U.S.C. 7114, upon written request, with the subject of the investigation and the Union will be furnished a copy of the completed investigation and evidence file and all other relevant and pertinent information.
- G. The statement of employee rights and obligations will be consistently applied. That statement will be consistent with this agreement and will include the following:
 - 1. The right of an employee to a copy of their personal statement; and,
 - 2. The right of an employee not to incriminate themselves during a criminal investigation.

Section 3 - Kalkines and Garrity Warnings

If the matter being investigated concerns potential criminal misconduct, the matter will normally be referred to the Office of Inspector General (OIG) or to another law enforcement authority. Should the OIG or other law enforcement authority decline to investigate, and the Agency then conducts an

administrative investigation of a matter that concerns potential criminal misconduct, the following warnings will be provided to interviewed employees as appropriate;

A. Kalkines Warnings:

- a. Kalkines is an advisement of rights usually administered by United States federal government agents to federal employees in internal investigations. The Kalkines warning compels federal employees to make statements or face disciplinary action up to, and including, dismissal, but also provides suspects with criminal immunity for their statements.
- b. Kalkines grants the employee "use immunity," which means that any truthful statements made in response to the investigation are immune from subsequent use in criminal prosecution against them.
- c. An employee under investigation has the right to not incriminate themselves in criminal investigations. When an employee does not provide necessary information regarding job performance duties the Agency has the right to pursue disciplinary actions up to and including removal.

B. Garrity Warnings:

- a. Inform a federal employee who may face criminal prosecution that the employee will not be subject to discipline for refusing to answer questions if answering may tend to incriminate the employee.

ARTICLE 19
DISCIPLINE AND ADVERSE ACTIONS

Section 1 - General

- A. The Agency and the Union recognize that the public interest requires the maintenance of high standards of conduct. The objective of discipline is to correct and improve employee behavior so as to promote the efficiency of the service. It is not to be punitive in nature.

The Parties agree to the concept of progressive discipline which promotes the efficiency of service and the objective of discipline. Levels of discipline may be bypassed when the severe nature of the behavior /conduct makes a lesser form of discipline inappropriate.

- B. Supervisors are encouraged to use coaching and/or counseling sessions where appropriate prior to taking disciplinary action.
- C. The Parties agree to promote the concept of alternative discipline in appropriate circumstances. Alternative discipline is an alternative to traditional penalties such as a reprimand, suspension, and removal.

Section 2 - Definitions

For purposes of this article, the following general definitions are used:

- A. A disciplinary action is defined as official written reprimands or suspensions of fourteen (14) calendar days or less.
- B. Adverse actions are defined as removals, suspensions of more than fourteen (14) calendar days, reduction in pay or grade or furloughs of thirty (30) calendar days or less.
- C. Representative means "Union-designated representative" such as a steward or officer or when applicable any other formally designated representative as selected by the employee per 5 U.S.C. § 7114(a) (5).

Section 3 - Fairness and Timeliness

Disciplinary actions must be consistent with applicable laws, government wide regulations in existence at the time of this agreement, and this agreement. If the Agency believes that misconduct has occurred, an investigation may be completed prior to any disciplinary action being taken. After completion of an investigation if one is conducted and, if it is determined that disciplinary action is warranted, such action will be initiated in a timely manner after completion of the investigation (Refer to Section 7 of this article). Discipline will be applied fairly and equitably and will not be used to harass employees. The proposing official will not act as the deciding official. The deciding official may be at a higher level of management than the proposing official.

Section 4 - Coaching and/or Counseling (Non-Disciplinary Tools)

- A. Prior to taking disciplinary action, supervisors are encouraged to use any of the following as non-disciplinary means to correct the alleged misconduct or unacceptable performance:
 - 1. Coaching and/or counseling sessions,
 - 2. Letters of Caution, and
 - 3. Informational and instructional letters.
- B. These are not punitive nor are they disciplinary in nature. Rather, these are constructive instruments designed to correct behavior at the lowest possible level.
- C. At the discretion of the supervisor, such letters, notations, or records may be maintained by the supervisor and documented within a reasonable time period of the event. Supervisory notes may be used to support an action taken against an employee for misconduct.
- D. Coaching and/or counseling will be conducted privately and in such a manner as to avoid embarrassment to the employee.

Section 5 - Alternative Dispute Resolution (ADR)

- A. The Parties recognize the shared interest in correcting behavior promptly and avoiding unnecessary or lengthy litigation. The employee or the Union may request the use of the ADR process. However, the Agency retains the right to offer alternative resolution, including Last Chance Agreements (LCAs). LCAs should only be used after other forms of alternative resolution have failed.
- B. Alternative resolution options, including LCAs (see Section 10 of this article), are always voluntary in nature and require mutual agreement between the Agency and the employee prior to being executed. Prior to offering an employee the option of ADR, the Union will be notified and given an opportunity to be present at any meeting in which the employee is offered such an option.
- C. Alternative Dispute Resolution does not preclude the employee from pursuing a negotiated grievance. Time periods for grievances will be paused while the matter is in the ADR process. Enforcement of discipline, other than removal, may be held in abeyance during the ADR process by mutual agreement.
- D. ADR sessions shall be held during the employee's regular tour of duty in a mutually agreeable manner using facilities provided by the Agency.

Section 6 - Reprimands

- A. Reprimands are effective upon date of issuance to the employee. The reprimand will state the specific reasons and material used to support the action. Management agrees that the employee

shall be given a reasonable amount of time to review the information provided if requested by the employee.

- B. Once an employee receives a letter of reprimand, they may grieve the action under the procedures set out in Article 7. Reprimands will remain in the employee's eOPF for a period of two (2) years but can be removed sooner at the discretion of the employee's supervisor. At the end of the retention period, the reprimand will be permanently removed from the employee's eOPF. Once the reprimand is removed from the employee's file, it can no longer be used to support future discipline.
- C. BUEs have the right to be represented by the Union, or any other representative acting on behalf of the Union including attorneys or other representatives. If the employee elects Union representation, in writing, then the Union Representative, upon request, will be provided material relied upon.

Section 7 - Investigation of Disciplinary Actions

- A. Management will investigate an incident or situation to determine whether or not discipline is warranted. Investigations will follow the procedure outlined in Article 18 of this Agreement. Weingarten rights will be afforded employees engaged in investigatory interviews in accordance with Article 10.
- B. Investigations will be conducted fairly and impartially. The Parties will remind employees of their responsibilities to answer all questions asked during an investigative interview fully and with candor.
- C. An employee who wishes consideration of any medical condition to a conduct, performance or leave problem shall be given a reasonable amount of time to furnish medical documentation (as defined in 5CFR 339.102) in accordance with Article 15, Leave of this Agreement.
- D. Unit Employees are entitled to be represented by an attorney or other representative, including any representative acting on behalf of the Union. If the employee elects Union representation, in writing, then the Union Representative, upon request, will be provided material relied upon.

Section 8 - Suspensions and Adverse Actions

- A. An employee for whom a suspension of fourteen (14) days or less or an adverse action is proposed is entitled to a thirty (30) calendar days written notice prior to the effective date of the action, except when the crime provision has been invoked.
- B. An employee for whom a suspension or an adverse action is proposed is entitled to a response period of ten (10) calendar days. The employee may ask for an extension, if needed.
- C. Notices will state specific reasons for the proposed action.

- D. Management agrees that the employee shall be given the opportunity to use a reasonable amount of time to review the evidence on which the notice is based and that is being relied on to support the proposed action.
- E. The employee and/or representative may respond orally and/or in writing as soon as practicable but no later than ten (10) calendar days from receipt of the proposed action notice. The response may include written statements of the persons having relevant information and/or other appropriate evidence. Extensions for replying to proposed adverse actions and suspensions may be granted when good cause is shown. Requests for extensions shall be submitted to the designated Deciding Official in writing.
- F. In responding to a proposed disciplinary action, the employee will be entitled to Union representation and will be responsible to secure such representation and to notify the Deciding Official of their election to be represented.
- G. The written decision shall include the reason for the disciplinary action, a statement of findings, evidence relied upon in making the decision and conclusions as to each charge. The letter will also provide the employee's appeal rights and/or grievance rights. The Decision Letter will include the time period for filing a grievance and to whom it must be filed.
- H. BUEs are entitled to be represented by an attorney or other representative, including any representative acting on behalf of the Union. If the employee elects Union representation, in writing, then the Union Representative, upon request, will be provided material relied upon.

Section 9 - Administrative Reassignment

Administrative reassignments or demotions may be used when deemed to be the best corrective action. Appropriate procedures must be followed, and appeal rights will be provided for decisions of reassignments or demotions made for reasons of misconduct.

Section 10 - Last Chance Agreements

- A. LCA's refer to situations in which the Agency agrees to hold in abeyance an adverse action against an employee in exchange for the employee's agreeing to conform to specific conditions for a set period of time. The conditions set for the employee shall be directly related to the alleged misconduct. The LCA will contain language that specifies what constitutes a violation of the LCA. The use of LCAs shall be for just cause and will not be arbitrary, capricious, or be based on disparate treatment. Signing a LCA does not constitute admission of any wrongdoing by the employee.
- B. The understanding is that if the employee does not meet his or her obligation under the agreement, then the Agency is free to reinstate the original discipline under the terms of this agreement. The Parties recognize that LCA's are the employee's final choice between adverse action (i.e., suspension or removal) and adhering to the terms of the LCA.
- C. The use of LCAs shall be offered at the Agency's discretion consistent with the facts of the case. The Union can also propose an LCA at their discretion. The employee retains the right to accept

or reject the offer of settlement. The Parties recognize that acceptance of the terms of an LCA are entered into voluntarily but are un-retractable upon signature. The length of the LCA shall be negotiated by the parties, however under no circumstances will the LCA exceed two (2) years.

- D. Prior to offering an employee an LCA, the Union will be notified and given an opportunity to be present at any meeting in which the employee is offered such an agreement.

Section 11 - Self Incrimination

The right of employees not to incriminate themselves will apply in criminal investigations.

Section 12 - Official Time

The employee and the union representative will each be given a reasonable amount of duty/official time in each step of the processes covered in Article 34.

Section 13 - Douglas Factors

In proposing disciplinary or adverse action, the Agency shall comply with the applicable law and regulation and shall also consider the Douglas Factors as outlined below:

- A. The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
- B. The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
- C. The employee's past disciplinary record;
- D. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
- E. The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's work ability to perform assigned duties;
- F. Consistency of the penalty with those imposed upon other employees for the same or similar offenses;
- G. Consistency of the penalty with any applicable agency table of penalties;
- H. The notoriety of the offense or its impact upon the reputation of the agency;

- I. 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;
- J. The potential for the employee's rehabilitation;
- K. mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and
- L. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

ARTICLE 20
SURVEILLANCE

Section 1 – General

- A. The Parties recognize that building surveillance is conducted for safety and internal security purposes.
- B. This article covers, but is not limited to: camera, video, microphone, access card swipes, telephone, cellphone, computer, and other electronic devices.
- C. If the Agency uses surveillance during an investigation into possible misconduct, the Union will be allowed to represent affected employees in any subsequent discussions or proceedings involving them if a disciplinary or adverse action is proposed against an employee represented by the Union.
1. The Union, if representing the employee, will be given a copy of all relevant evidence collected;
 2. The Union, if representing the employee, will be provided a copy of the pertinent recordings; and,
 3. Upon request by an affected employee, the Union will be allowed to provide representation in any subsequent discussions or proceedings.
- D. The Union is not precluded from any further negotiations on the impact and implementation of surveillance, hidden or otherwise.
- E. The Agency agrees that surveillance program will be in public areas where there is no reasonable expectation of privacy. Places where an individual has a reasonable expectation of privacy include:
- Bathrooms
 - Shower areas
 - Hotel rooms
 - Locker rooms
 - Changing rooms
 - Nursing Mother's rooms
 - Wellness rooms (where they exist)
 - Union Office(s)
- F. No electronic recordings may be made without mutual consent except for the Office of Inspector General (OIG) investigations, other law enforcement investigations, or EEO investigations.
- G. The Union will be given written notice of any newly established surveillance system that is not of a medical or criminal nature and that impacts BUEs. Such notice shall include:

1. What information is to be collected (e.g. nature and source),
2. Why the information is being collected (e.g. to determine eligibility),
3. Intended use of the information (e.g. to verify existing data),
4. With whom the information will be shared (e.g., another agency for a specified programmatic purpose),
5. What opportunities individuals have to decline to provide information (i.e., where providing information is voluntary) or to consent to particular uses of the information (other than required or authorized uses), and how individuals can grant consent,
6. How the information will be secured (e.g., administrative and technological controls), and
7. Whether a system of record is being created under the Privacy Act, 5 U.S.C. 552a.

ARTICLE 21
PERFORMANCE MANAGMENT

Section 1 – General

Performance plans will be written in a manner that is consistent with Departmental Regulation, Agency Performance Guidance and this agreement.

- A. The application of performance standards and the determination of acceptable level of competence will both be made in a fair, objective, job-related and measurable manner. Measurable criteria are defined as observable and/or demonstrable, and may gauge quality, quantity, timeliness, cost effectiveness, and/or manner of performance.
- B. When the employee is evaluated, management has determined that factors beyond the control of the employee will be taken into consideration.
- C. The employee will not be rated on union representational activities nor will they be penalized for the performance of union duties.
- D. It is the Agency's policy to operate a performance appraisal program in a manner which is consistent with applicable statutes, regulations, Agency Guidance, and this agreement.
- E. A written performance plan will be provided to each employee covered by this agreement at the beginning of each appraisal period (normally within thirty (30) days).

Section 2 – Policy

- A. The official appraisal period, for which a performance plan must be prepared and monitored, and for which a summary performance rating (rating of record) will be issued, is normally October 1 through September 30 of each year.
- B. The performance rating prepared at the end of an appraisal period is for performance of assigned duties over the entirety of the specified appraisal period.
- C. The minimum performance appraisal period is ninety (90) days (DR 4040-430, Employee Performance and Awards, dated June 24, 2020). If an employee is not on a performance plan for ninety (90) days (DR 4040-430,), the employee cannot be rated.

A written performance plan will be provided to each employee normally within thirty (30) days of the new performance period. In accordance with the Agency guidance, the performance plan will contain all of the written performance elements, and performance standards.

- D. The performance plan must be communicated to the employee before the employee may be held accountable. The employee will sign and date the plan to acknowledge they have received their performance plan.

- E. Standards established for an employee's position shall be in writing and communicated to the employee when the employee enters a position or when a new standard is established, or when a change in the performance standard occurs within the employee's position. Evaluation of performance standards will be consistent with written procedures.
- F. Progress reviews by the supervisor will be conducted during the appraisal period. The supervisor must conduct interim progress reviews during the appraisal period to ensure that performance elements and standards are appropriate and to advise the employee of current performance. Supervisors and employees are encouraged to communicate frequently during the appraisal period and discuss any performance concerns that may arise as soon as possible.
- G. Normally the immediate supervisor will be responsible for establishing the employee's performance plan, will provide progress reviews, and will prepare the final performance appraisal rating (rating of record).
- H. Normally the employee's second-level supervisor will review and approve the final performance appraisal rating (the rating of record). Reviewing Officials are reviewing narrative assessments and element ratings for accuracy, objectivity, completeness, and consistency with the plan's standards.
- I. When an employee changes positions and has served the minimum appraisal period in the position from which they have changed, the rating official will prepare an interim rating. This rating will be considered and given appropriate weight when the next rating of record is done.

Section 3 - Employee Responsibilities

All employees are responsible for:

- A. Participating in discussions with their supervisor concerning the development of performance elements, standards and measures and participating in their progress reviews and performance appraisals;
- B. Ensuring they familiarize themselves with their position description and performance plan, requesting clarification of expectations if necessary, and proactively requesting information to be able to work towards a rating beyond a fully successful from the supervisor;
- C. Taking responsibility to improve their own performance and support team endeavors;
- D. Seeking performance feedback from their supervisor and, as appropriate, from internal and external customers;
- E. Identifying work problems or other obstacles which may hinder the accomplishment of performance expectations, and working with the supervisor to

resolve them;

- F. Documenting their performance accomplishments and being prepared to provide written specific examples of their accomplishments including feedback from internal and external customers during the performance appraisal discussion (see Article 22, Employee Awards and Recognition).

Section 4 - Management Responsibilities

Management is responsible for:

- A. Supervisors will receive ongoing performance training in accordance with DR 4040-430, Employee Performance Management.
- B. Performance plans are not required to be uniform, but they must be fair and equitable throughout the Supervisors' respective management unit.
- C. Establish meaningful and achievable performance expectations in a performance plan for each subordinate employee.
- D. Performance elements must reflect the responsibilities and duties actually assigned to and expected to be performed by the employee, consistent with an accurate and current position description.
- E. Performance elements must represent work assignments and responsibilities that are within the employee's control.
- F. Planning the work in advance so that expectations and goals can be set.
- G. Engaging the employee in the process of establishing and documenting the employee's performance plan, which means seeking and including employees' ideas and opinions in the development of performance plans.
- H. Communicating performance expectations clearly, monitoring performance during the appraisal period and providing performance feedback and performance coaching to employees, providing development opportunities as applicable for the employee's current scope of position and career ladder promotion as applicable, and taking appropriate actions to address performance not meeting expectations.
- I. Proactively, supervisors will provide regular and reoccurring feedback on the quality of performance during the appraisal period and preparing ratings. Supervisors will inform employees when they become aware that the employee's performance has fallen below the fully successful level.
- J. Developing a culture of engagement and recognition for work done well. Recognizing and rewarding employees whose performance so warrants.

- K. Preparing performance ratings in a timely manner and ensuring equity and consistency in performance ratings.
- L. Providing training when applicable (e.g., new technologies and changes in procedures).
- M. Employees who are approved for telework or work virtually should not be held to a higher or lower production standard than those who are not utilizing the flexibility.

Section 5 – Standards

- A. Standards describe results, outcomes, goals, and accomplishments, rather than lists of duties and responsibilities. They are the performance thresholds, requirements, and/or expectations an employee must meet for an element to be appraised at a specific level of performance.
- B. Measures are the defined indicators within the standards used to determine how well the employee produced or provided products or services. They are criteria that are observable and/or demonstrable, and may gauge quality, quantity, timeliness, cost effectiveness, and/or manner of performance.
- C. Each element's standards must be defined at the Fully Successful (FS) level, and cannot be made more or less rigorous based on a particular employee's perceived strengths or weaknesses, nor based on past performance
- D. Absolute standards, which allow for no errors, are prohibited unless a single failure could result in loss of life, injury, breach of national security, or great monetary loss.
- E. Backwards standards, which describe unacceptable performance rather than describe what level of performance is expected, are prohibited.
- F. Standards and measures may be defined with milestones throughout the performance year to ensure continual progress is being made.
- G. Assigning generic standards to all employees, regardless of the type of work they do, is prohibited if the generic standards do not truly represent their work.
 - 1. Generic standards covering similar positions with similar responsibilities must ensure that expectations reflect the respective employee's actual duties and responsibilities and are clearly and specifically communicated.

Section 6 - Rating Performance

Normally, a written final performance appraisal rating (record of rating) will be issued to each employee by October 30. If a performance cycle has been extended, the supervisor should rate employees within fifteen (15) days of the end of the extended cycle.

Section 7 - Unacceptable Performance

The Parties recognize that there is an important duty to accomplish the mission of the Agency in an effective and efficient manner, and to encourage employees to perform to the best of their ability. They also recognize that the work performance of individuals varies on a daily basis. Supervisors are responsible for monitoring their employees' work throughout the performance year. Supervisors are encouraged to act informally, when appropriate, at an early stage to correct any decline and avoid the need to take formal action.

A. If at any time during the performance appraisal period an employee's performance is determined to be unacceptable in one or more critical elements, the supervisor must:

1. Notify the employee of the performance element(s) for which performance is unacceptable; and,
2. Inform the employee of the performance requirement(s) or standard(s) that must be attained to demonstrate acceptable performance. The supervisor must inform the employee that unless his/her/their performance in the critical element(s) improves to and is sustained at an acceptable level, the employee may be reassigned, reduced in grade or removed.
3. Conduct and performance management problems may coincide, but they are distinct issues.
4. Poor performance is the failure of an employee to do the job at the FS level, as defined in the performance plan. A pending conduct consideration will have no bearing on conducting progress reviews and/or issuing a timely rating of record.

B. An element rating may not be lowered:

1. Because of work that was not completed during the period of time an employee was on pre-approved leave, or other approved absence,
2. Because of work that could not be completed due to an abbreviated performance year; and/or
3. For not meeting a specific standard due solely to factors outside the employee's control.

C. Demonstration Opportunity (DO): The goal of the DO period is a mutual desire to return the employee to fully successful performance as soon as possible. A DO should not be used as or considered as a punitive tool. For each critical performance element in which the employee's performance is unacceptable, the supervisor must afford the employee a reasonable opportunity to demonstrate acceptable performance commensurate with the duties and responsibilities of the employee's position and place the employee on a formal DO. The plan must include:

1. A minimum opportunity period of thirty (30) days to demonstrate acceptable performance; it is understood that the time frame may be extended if additional time is needed;
 - a. The length of the DO should be determined by the following considerations:
 - i. The complexity of the work;

- ii. The duration of the segment of work which would provide adequate evidence that performance is demonstrated, or not, at the FS level; and
 - iii. Whether the employee has demonstrated acceptable performance, as defined at the FS level of the current performance plan, at a previous time.
- 2. Identify and describe the performance deficiencies in the performance elements and standards for which the employee's performance is at the unacceptable level;
- 3. Provide clear goals which are appropriate for the responsibilities of the employee's position;
- 4. A DO requires a DO Plan, which must provide clear notice of the performance the employee is required to demonstrate in the critical element(s) and standards for which the employee's performance does not currently meet FS level.
 - a. The performance expectations must be achievable within the duration of the DO;
 - b. The expectations in the DO must be commensurate with the duties and responsibilities of the employee's position and grade level, as reflected in the employee's position description and performance plan;
 - c. The expectations must allow for a margin of error during the DO; an absolute standard is not permitted unless a single failure could result in loss of life, injury, breach of national security, or great monetary loss;
 - d. The DO must describe how the expectations will be measured and/or assessed; and
 - e. The DO must describe any assistance the agency will provide the employee to bring the performance up to the FS level.
- 5. Frequent (at a minimum, weekly) interaction and feedback with supervisor regarding progress; and
- 6. Required progress reports will be documented in writing and a copy provided to the employee.
- D. If the employee demonstrates an acceptable level of performance during his/her opportunity period, then he/she/they is/are required to maintain an acceptable level of performance for one (1) year from the beginning of the opportunity period.
- E. In accordance with 5 CFR, 432.105 (a)(2), if the employee does not demonstrate an acceptable level of performance for a critical element during the opportunity period or for one (1) year from the beginning of the opportunity period, the supervisor may initiate a reassignment, reduction in grade, or removal action.

- F. If an employee elects to have Union representation, management will provide copies of any letters or proposed actions and a decision letter to the Union representative. Upon request, DO documents shall be provided throughout the process.

Section 8 - Details, Temporary Duty Assignments (TDY) and Temporary Promotions

- A. Performance plans must be provided for details and temporary promotions of ninety (90) days or more. Performance plans will be provided in writing to the employee normally within fifteen (15) days of the start of the detail or temporary promotion.
- B. The supervisor responsible for the detail or temporary promotion should document the employee's accomplishments at the end of the TDY assignment or detail and forward the documentation to the employee's supervisor for appropriate consideration. The employee's supervisor will give the accomplishments the appropriate consideration (i.e., performance of elements and standards associated with the employee's normal duties versus duties not normally performed).

Section 9 - Individual Developmental Plan (IDP)

In accordance with Departmental Regulations, and as a part of the employee performance planning process, each employee is required to discuss short- and long-term learning and developmental goals with the supervisor and to develop a plan. The plan may include elective training, education, and developmental activities in which employees may engage to improve their knowledge, skills and abilities, and ultimately job performance.

Section 10 - Resolving Disagreements

In the event that an employee and the supervisor disagree over the employee's performance elements or standards, or if they disagree over the performance appraisal, the employee may request a meeting with the next level supervisor. This meeting will be held on a timely basis. The purpose of the meeting is to attempt to resolve any differences of opinion regarding the content of the employee's performance elements or standards or performance appraisal. The employee will be granted a reasonable amount of time up to one hour to meet with a Union Representative for informal consultations prior to the meeting with the next level supervisor.

ARTICLE 22
EMPLOYEE AWARDS AND RECOGNITION

Section 1 – General

- A. Recognition of employees through monetary and non-monetary awards reflects the Parties' efforts to promote continuous improvement and achievement in mission accomplishments. The employee recognition program provides a positive indication of the Parties' commitment to providing quality public service. The intent of this program is to promote a positive work environment, reward employee achievement and to link awards to employee contributions that enhance Agency performance. Awards will be granted in a consistent and objective manner without discrimination and administered in accordance with 5 U.S.C., 2301 Merit Principles and DR 4040-430, Employee Performance and Awards, June 24, 2020, or its successor.
- B. Absent budget constraints and mission requirements, management will utilize the award budget to the fullest extent authorized.
- C. Awards will be processed in a timely and expeditious manner.

Section 2 - Types of Awards

- A. The type of awards by which employees may be recognized, and the awards which may be eligible to receive include but are not limited to:
 - 1. Monetary and Time Off Awards (TOAs)
 - a. The minimum monetary award is \$100.
 - b. Award amounts must be commensurate with the contribution(s), consistent with the applicable benefits to the Agency.
 - c. Monetary awards granted by ERS and NIFA may never exceed 20% of the employee's rate of basic pay.
 - d. Employees may request to receive a TOA instead of a monetary award.
 - e. All employees whose current rating is Fully Successful are eligible for monetary and time off awards, except that employees who were on leave restriction within the 52 weeks prior to the award effective date are not eligible for a TOA.
 - f. TOAs are granted in increments of no less than one hour.
 - g. Full-time employees may be awarded up to 80 hours of time off during a leave year; however, the BUE cannot receive more than 40 hours per award.
 - h. Part-time employees may be granted TOAs up to the average number of work hours in the employee's biweekly scheduled tour of duty during a leave year. The limit for a single TOA for part-time employees or employees with an uncommon tour of duty is one-half the maximum that may be granted during the leave year.

2. Rating-based awards:

- a. These awards are based solely on an employee's performance rating of record assigned at the end of the appraisal period and are intended to recognize sustained levels of successful performance over the course of the rating period.
- b. A rating-based award may not be granted to an employee without a rating of record.
- c. Because a two-tier summary rating pattern does not differentiate among levels of successful performance, monetary awards and TOAs are not authorized on the basis of ratings of record in that summary rating pattern. Instead, non-rating-based achievement awards will be utilized to recognize specific accomplishments that supported excellence in performance.
- d. Actual awards and recognition will be commensurate with the purpose and intent of the award granted, provide for special acknowledgement of the accomplishments, and given as close to the time of achievements as possible.
- e. Award nominations will follow the justification, submission, and approval process as outlined in DR4040-451-1 and this Agreement.

3. Quality Step Increase (QSI).

- a. Constraints. (a) QSIs are reserved for the most exceptional levels of performance. No single accomplishment merits a QSI; it may be granted only to those employees who have demonstrated sustained exceptional performance, commensurate with the classification of the employee's position, over at least an eighteen (18) month period in the same grade and type of position.
- b. Because a QSI permanently increases the employee's salary, it essentially continues to reward the employee's performance for the remainder of their career, and increases the Mission Area, agency, or staff office's retirement costs and Thrift Savings Plan contributions. Judgment must therefore be exercised to ensure only the top performers are recommended for this award.
- c. Mission Area, agency, and staff office management reserve the discretion to grant a QSI. It is not required or automatically granted to employees who meet the basic eligibility criteria.

B. Supervisors and managers should ensure employees are not inadvertently receiving duplicative awards for the same contribution. For example:

An employee was given an award by their supervisor for a customer service contribution, and the office that benefitted from the customer service nominated the employee for a separate award. In

this situation, the employee's supervisor should flag the award as duplicative and suggest another form of recognition (e.g., certificate of appreciation.)

Section 3 – Employee Appreciation

The Agency advocates a culture of appreciation where recognition for good work is owned by the entire workforce, and encompasses a very broad spectrum of acknowledgement, not limited to the monetary, time off, and non-monetary awards delineated in this Article, Regulations, and the DR 4040-70 Performance and Awards . Intangible recognition provides meaningful appreciation for successes and achievements and facilitates engagement and positive business outcomes.

Examples include, but are not limited to:

- A. Public credit for work done well;
- B. Opportunities to participate in visible projects;
- C. Being selected to lead initiatives;
- D. Thank you notes; and
- E. White boards for employees to leave short notes of appreciation for their peers.

Section 4 – Information Request

The Union maintains the right to all reasonable information regarding awards granted to employees covered by this Article. Such information shall include, at a minimum:

1. The award recipient's series and grade;
2. The type of award granted;

Upon written request and in accordance with 5 U.S.C. 7114(b)(4), and Article 3, Union Rights and Responsibilities, the Agency will provide the Union with any information that is normally maintained by the Agency.

ARTICLE 23 TRAINING

General

The Parties acknowledge the importance of training and employee development to the mission of the Agency and to the morale and wellbeing of the employees. Therefore, the Agency will make available to employees the training necessary for the basic performance of the employees' assigned duties.

- A. Subject to budgetary and workload constraints, the Agency will provide employees with appropriate job-related training to perform their duties in a safe and efficient manner.
- B. The Agency will attempt to provide opportunities for employee development and advancement. Workload and funds permitting, support personnel will be encouraged to participate in work-related technical conferences, workshops and seminars.
- C. Employees who desire information regarding training opportunities should first consult with their supervisors. If additional assistance is required, the employee may seek it from the second line supervisor.
- D. Joint labor management training will be conducted once for all current BUEs and supervisors, within one (1) year of the effective date of this agreement. Training logistics and schedule will be by mutual agreement. A representative from the AFGE District or National Office may attend the joint labor management session(s).

Section 1 – Additional Training

The following provisions shall apply to programs or training sessions which may not be directly related to the duties and responsibilities of the position and which are conducted in the respective local commuting areas of the unit locations:

- A. Employees must obtain advance approval from their immediate supervisor to attend such training if the training occurs during scheduled hours of duty.
- B. Supervisors are strongly encouraged to give favorable consideration to such requests, subject to workload and budget.
- C. Programs or training sessions which are covered by this section concern career-related matters, e.g., retirement, EAP, etc.
- D. Training may be provided by the Agency or other governmental or not-for-profit entities.
- E. The Agency may provide training related to benefits, retirement, TSP, etc.

Section 2 - Travel costs associated with Training

In accordance with current travel regulations, the Agency will pay all approved expenses, including travel in connection with training required by the Agency to perform the duties of an employee's current position or a position to which an employee has been assigned, consistent with applicable law, rules and regulations.

Section 3 – Reassignments and New Assignments

When employees are reassigned to new positions or assigned new duties in connection with their current positions, the Agency will provide the training necessary to enable employees to perform required duties.

Section 4 - Scheduling Training

When training requests are approved by management, employees will be granted absences from work to attend approved training. Schedule adjustments will be made to accommodate an employee's training or educational program. Training will be completed on duty time.

Section 5 - Training Information

The Agency shall inform employees about required training. This notification shall include training that is required to maintain certifications outlined in the employee's position description that are required to maintain employment.

Section 6 – Notification

Employees will be notified of approval or disapproval of training requests prior to the starting date of the training.

Section 7 - Union Recommendations

At any time, the Union may bring to the attention of the appropriate management officials such training needs as it deems necessary for the performance of the duties of employees. These officials agree to give serious consideration to recommendations.

ARTICLE 24
STUDENT LOAN REPAYMENT PROGRAM

Section 1 – General

The Agency will administer the Student Loan Repayment Program pursuant to 5 U.S.C. § 5379, 5 CFR § 537, and other applicable USDA rules and regulations as of the effective date of this CBA. The Federal student loan repayment program permits agencies to repay federally insured student loans as a recruitment or retention incentive for candidates or current employees of the agency. A decision to offer a student loan repayment and the amount offered is an individual determination made by the Agency on a case-by-case basis. The Agency's decision to offer a student loan repayment without regard to an individual's political affiliation, race, color, religion, national origin, age, sex or disabilities. There is no entitlement to participate in the program. Repayment of student loans is at Management's discretion and subject to budgetary considerations of each Agency.

Section 2 – Consideration

- A. Should a BUE, or a BUE being considered for an internal placement due to a vacancy announcement, wish to be considered for this program, they must communicate in writing such interest to their immediate supervisor or when a candidate for internal placement to the selecting official. The Agency, after careful consideration, will provide a written response to the BUE in a timely manner.
- B. In accordance with 5 CFR 537.103(d), the Agency's selection process for employees or job candidates to receive student loan repayment benefits will ensure fair and equitable treatment.

In accordance with 5 CFR 537.106(c), repayments of student loans are subject to maximum limits of \$10,000 per calendar year and a total of \$60,000 per employee.

Section 3 – Criteria

The Agency in accordance with 5 U.S.C. § 5379 and 5 CFR 537.105., will comply with the student loan repayment program pertaining to retention of BUEs. The Parties agree to maximize the Agency's use of the Student Loan Repayment program for recruitment purposes.

Section 4 – Employee Obligations

- A. An employee receiving this benefit must sign a service agreement to remain in the service of the paying Agency (ERS or NIFA) for a period of at least three (3) years. An employee must maintain an acceptable level of performance in order to continue to receive repayment benefits. An employee must reimburse the paying agency for all benefits received if they separate voluntarily or are separated involuntarily for misconduct, unacceptable performance, or a negative suitability determination under 5 CFR part 731.

B. Employees will:

1. Be responsible for making loan payments on the portion of the loan that continues to be their responsibility;
2. Be responsible for any income tax obligation resulting from the loan repayment benefit.

C. Termination of Benefits: An employee receiving loan repayment benefits will be ineligible for continued benefits if they:

1. Separate from the agency for any reason;
2. Fail to maintain a fully satisfactory level of performance; or
3. Violate any of the conditions of the service agreement.

ARTICLE 25
CHILDCARE, NURSING MOTHERS AND WELLNESS

Section 1 - Child Care

- A. The Parties recognize that working parents may have special childcare needs during working hours. The Agency recognizes the need to be flexible when emergencies occur. Employees acknowledge their responsibility to make adequate arrangements for childcare so that emergencies are infrequent and short-lived.
- B. The Agency will provide information regarding EAP, which provides information and assistance with dependent care, the Flexible Spending Account (FSA), which also assists employees with dependent and medical care costs, and Tuition Assistance Program, which provides monetary assistance based off income for eligible employees. The Agency will also provide information regarding the Family Friendly Leave (FFL) program.

Section 2 - Nursing Mothers

- A. For one year after the birth of a child, an employee must be granted reasonable time to express breast milk for her nursing child each time she has a need to do so. This may include regularly or ad hoc compensated rest/break periods, meal period, changes in work schedules, the use of annual leave, LWOP, credit hours, compensatory time, or other arrangements as appropriate.
- B. The Agency will comply with the Office of Personal Management policy on Nursing Mother Rooms. The Agency will, to the maximum extent practicable, provide one (1) Nursing Mother Room per location and the current arrangements in Kansas City will be maintained.
- C. The Agency agrees the Nursing Mother Room will include, to the greatest extent possible: a locking door for privacy, a sink with hot and cold running water, paper towels, hand soap and/or sanitizer, adequate lighting, electrical outlets, and seating for the nursing mother. Nursing mothers should have access in the room to a microwave for sterilization of breast pumps and associated items and access to a refrigerator for storing breast milk during work hours.

Section 3 - Wellness Rooms

- A. In Kansas City, the Agency will provide one (1) wellness room for both ERS and NIFA. The wellness rooms will, to the maximum extent practicable, be located on the 4th and 6th floors. These rooms will be separate and apart from the Nursing Mother Room.
- B. For other locations and wherever possible, the Agency will provide one (1) wellness room per location for employees to attend to medical or physical conditions in privacy, which will be separate from Nursing Mother's Rooms.

ARTICLE 26
BREAK ROOMS/BREAK AREAS

General

Both Parties recognize that the health and well-being of employees are necessary to the successful accomplishment of the Agency's mission. Management will provide break rooms, and/or break areas for employee use at all locations the Agency occupies.

Section 1 – Location

Break rooms/areas shall be reasonably accessible to the employees' work areas, subject to compliance with OSHA, biological containment, and safety regulations.

Section 2 – Break Room Specifications

The Agency will provide adequate break rooms per building, furnished with the following list of items:

- Sink with running water where possible
- Microwave
- Refrigerator
- Seating
- Cleaning Supplies

If any of the above become inoperable, management will provide a replacement normally within 30 days and provide employees with an alternative option(s) in the interim.

Section 3 - Changes to Break Room(s)

Should the Agency need to change access and/or configuration of designated or existing break rooms/break areas or establish new break rooms, the Agency agrees to notify the Union and negotiate as required.

ARTICLE 27
SAFETY AND HEALTH

General

- A. The Parties agree to cooperate in the furtherance of safety objectives, the enforcement of all appropriate safety regulations, rules, and published standards. The Agency will make a reasonable effort to maintain conditions of employment that are free of hazards or conditions that may cause accidents, injuries, or illnesses. Employees will be required to comply with safety standards, rules and regulations, and the use of safety equipment which is provided by the Agency.
- B. Maintaining safe and healthy work environments is a shared role of the Union and Agency and is necessary for the accomplishment of the Agency's mission and contributes to a high quality of life for employees.
- C. There will be no restraint, interference, coercion, discrimination, or reprisal directed against any employee for filing a report of an unsafe or unhealthful working condition or for participating in Occupational Safety and Health Program activities or because of the exercise by an employee on behalf of the employee or others of any right afforded by the Occupational Safety and Health Act, Executive Order 12196, 29 CFR, Part 1960, or any provision of this agreement.
- D. One (1) Union representative from each Agency will be invited to accompany the Agency representative(s) during safety inspections, e.g. OSHA. Normally, Union representatives will be granted official time for accompanying safety inspections.

Section 1 - Safety and Health Committee

- A. The Safety and Health Committee (SHC) and/or Safety Officer or their designee, is a point of contact for safety and/or health initiatives for the Agency involving BUEs.
- B. The SHC plan(s)/charter will be available on the shared drive and/or intranet.
- C. The Union may designate one (1) representative to serve on the SHC. The employees so designated shall not suffer loss to leave or pay while serving in such a capacity.
- D. Union participation in SHCs is not to be construed as a waiver of the Union's right to collective bargaining.
- E. At least annually, the Union Vice President will be provided (written) information on work related illnesses, injuries, and accident trends for development of recommendations to go forward to the appropriate Agency management.

NOTE: The information will be redacted to preserve Personally Identifiable Information (PII) and Health Insurance Privacy and Portability Act (HIPPA) information accordingly.

Section 2 - Investigation of Accident, Injuries, and Near Misses

Management agrees to investigate the facts and circumstances related to accidents, injuries, and near misses in accordance with Agency policy and procedures, with the goal of promoting a safer work environment.

Section 3 - Work-Related Injuries and/or Illnesses

- A. Employees have the right and are encouraged to report injuries and/or illnesses that are work-related to a supervisor. Reporting incidents of injury, illness, and/or near misses will not be detrimental to an employee's performance review.
- B. An employee will be notified promptly concerning possible options such as a claim under the Federal Employee Compensation Act (i.e., Workers' Compensation). The employee may request assistance regarding a claim for compensation for such work-related illness or injury and the Agency will provide such assistance.
- C. Appropriate Agency personnel are promptly notified to ensure timely processing of necessary reports and employee claims.
- D. Employees may request information related to leave options.

Section 4 - Imminent Danger

- A. In accordance with 29 CFR, 1960, the term "imminent danger" means any conditions or practices in any workplace which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through normal procedures.
- B. An employee may decline his or her assigned task because of reasonable belief that, under the circumstances, the task poses an imminent risk of death or serious bodily harm coupled with a reasonable belief that there is an insufficient time to seek effective redress through normal hazard reporting and abatement procedures.
- C. Employees will report imminently dangerous situations by the most expeditious means available to any supervisor or safety officer who is immediately available.
- D. The Union will be notified immediately by the Agency of all reports of imminent danger situations so that it may provide representation and assistance to employees making reports and given an opportunity to be present during any inspection. Employees and the Union will be told when the imminent danger situation will be

inspected. Inspections of imminent danger situations will occur within the timeframe established by applicable regulations, 29 CFR, 1960.28 (d) (3).

- E. All Agency actions on imminent danger reports will be put in writing to the reporting employee and the Union explaining the basis for the findings and actions within the timeframe established by applicable regulations (currently within fifteen (15) days from the date the report was made to the Agency if no inspection is to be done or within fifteen (15) days after the completion of an inspection under 29 CFR, 1960.29(d) (4)).
- F. If the conditions cannot be immediately corrected, employees will be assigned to work in a safe area.
- G. If the supervisor believes the condition or corrected condition does pose an immediate danger, the supervisor shall request an inspection by Safety Specialists. The Union President or designee shall also be contacted and afforded the opportunity to be present at the time that the inspection is made.
- H. When the Agency has determined that the imminent danger has been resolved and employees may return to work, supervisors may verbally instruct employees to return to their work areas. This will be promptly followed by the supervisor or other management official sending an email or other written document notifying the employee and Union that the situation is now deemed to be corrected and the area is safe. Employees are advised that failure to follow supervisors' instructions may result in disciplinary action. If an employee has concerns over returning to the work area in these types of situations, the employee may elect to take leave or telework, as allowable.

Section 5 - Reporting and Processing of Safety Complaints

- A. Any employee, group of employees, or Union representative of employees who believe that an unsafe or unhealthy working condition exists in any worksite has the right to report such condition to any supervisor, manager, executive, OSHA, and/or SHC member. An inspection of potentially serious conditions will be made within the timeframe established by applicable regulations. Appropriate testing or sampling may be required as part of the inspection under 29 CFR, 1960.28 (d) (3).
- B. When the Agency or other appropriate authority determines that a dangerous or potentially dangerous condition exists at a worksite, employees at that worksite will be notified as fast as possible so that precautionary steps can be taken.
- C. At the conclusion of a review, investigation or analysis of a potential or imminent safety concern, the reporting employee will be advised that the issue is being addressed, and if/how/when it has been resolved. This information will also be shared with the Union President or designee.

Section 6 – Signage

- A. The Agency shall post a notice of hazardous conditions discovered in worksites as required by applicable laws, rules, and regulations as soon as practicable. The notice shall be posted at or near the location of the hazard and shall remain posted until the cited condition has been corrected.
- B. Such notices shall contain a warning and description of the unsafe or unhealthy condition and any required precautions to the full extent required by applicable laws, rules, and regulations.

Section 7 - Abatement of Safety Issues

- A. The Agency shall promptly abate any known unsafe and unhealthy working condition.
- B. If there is an emergency situation in a worksite, the paramount concern is for the preservation of safety and health. Should it become necessary to evacuate an area, the Agency shall take precautions to protect the safety and health of employees. Employees will not be readmitted to an evacuated area until it is determined that there is no longer danger to the evacuated personnel.
- C. A plan to mitigate the impact on employees will be prepared if an unsafe or unhealthy working condition will not be possible within thirty (30) calendar days. Such plan shall contain a summary of steps being taken in the interim to protect employees from being impacted as a result of the unsafe or unhealthy working conditions.
- D. The Union Vice President and/or designee will be notified as soon as practicable regarding the development and implementation of plan(s) and all personnel subject to the hazard shall be advised of interim measures in effect and shall be kept informed of subsequent progress on the plan.
- E. If conditions cannot be immediately corrected, the Agency may utilize alternative work measures or other available mitigation tactics for the safety of employees.
- F. If an employee has safety concerns about their work environment their concerns should be immediately reported to their supervisor. The supervisor will make an assessment as soon as possible. The employee has the liberty to elevate their concerns to the next level supervisor and /or Safety Officer or their designee in the event the immediate supervisor has failed to respond to the employee's concern.

Section 8 - Safety Equipment and Personal Protective Equipment (PPE)

- A. Personal Protective Equipment (PPE), as required by appropriate Federal and/or State government (or its subdivisions) standards to protect employees from hazardous conditions encountered during the performance of their official duties at their worksite, will be provided at no cost to employees.

- B. At a minimum, the Agency will provide employees information and any training required by OSHA standards on PPE issued to employees.

Section 9 – Smoking

The Parties agree that a smoke-free work environment is essential to the health of all employees.

Section 10 - Safety Training

- A. The Agency agrees to conduct training in the emergency alarm and evacuation system at the Agency, including evacuation drills at least annually.
- B. All Agency employees shall receive appropriate training in order to conduct their work in a safe manner.

Section 11 - Wellness Program

Employee wellness and the investment in programs to maintain employee health, contribute directly to sustained productivity and reduction of lost employee time due to illness. Therefore, Agency may facilitate and/or encourage programs in such areas as weight reduction, stress reduction and management, nutritional counseling, smoking cessation, prevention of injuries, health screenings, exercise, and etc.

Section 12 - Temporary Accommodations

For an employee requesting return to duty from sickness or injury with temporary limitations placed on his/her performance, as substantiated by a doctor's certificate, the Agency will make a diligent effort to assign the employee to available work within these limitations. If a temporary accommodation is not available, the employee will be placed on continuation of pay (Workers' Compensation), if eligible, or the employee may elect to take leave or utilize telework, as allowable.

Section 13 - Personal Security

The Parties recognize that personal/property security and protection are mutual responsibilities of the employer, the Union and employee; each have a role in maintaining a safe and secure working environment. The Agency's internal security practices will be focused on protecting employees' safety and the Federal Government's facilities and property. In accordance with Article 18 – Investigations of this Agreement, the Union will normally be provided advance notice of searches.

- A. The Agency shall provide all employees a secure (e.g. locked office space, locked filing cabinet, locked drawer, etc.) Agency for storing personal property. Employees are advised

that for compelling reasons the Agency may access locked storage areas. This may include but is not limited to: mission requirements, security requirements, safety needs, and facility maintenance requirements.

- B. The Agency shall take immediate steps to notify all employees of incidents such as but not limited to: bomb threats, severe weather, suspicious persons/packages, active shooter, etc., received at or about any potentially affected facility.
- C. Employees who report physically threatening situations to a management official will receive appropriate assistance from the Agency.
- D. When the Agency becomes aware that an employee in the workplace has been subjected to threats, harassment, or other conduct leading to a reasonable fear on the part of the employee for their safety, the Agency shall promptly discuss the matter with the employee and take appropriate within the scope of applicable regulations and rules.
- E. The Agency will be responsible for providing information related to safety policies and procedures for all employees. Training will be provided to employees when protocols are updated, or new protocols are introduced.

Section 14 - Workplace Violence

Violence constitutes a health and safety hazard in the workplace. Exposure to violence can result in both physical and emotional harm to employees. Although it is the Agency's obligation to provide a safe and secure working environment, the Agency and Union agree to work together to prevent workplace violence and to minimize the occurrence and effects of violence in the workplace should it occur. The Agency will refer to applicable Departmental Regulations and any other workplace violence polices. The Union will be notified as soon as practicable if a BUE is involved in workplace violence.

- A. All employees who report harm resulting from an incident of workplace violence shall:
 - 1. Have access to immediate first aid;
 - 2. Have access to emotional support under the employee assistance program(s);
and
 - 3. Be referred to the appropriate Human Resources staff member or designee for information on filing a Workers' Compensation claim.

Section 15 – Occupant Emergency Preparedness

- A. Agency employees shall have access to the occupant emergency plan for the official Federal facility that establishes procedures for safeguarding lives in the event of incidents such as: fire, earthquake, bomb threat, tornado, flood or similar natural or man-made emergency.

- B. Employees may request specific information on emergency plans.
- C. It is expected that employees will participate in drills unless otherwise excused by their supervisor.
- D. The Agency's Occupant Emergency plan will be posted and available on the shared drive and/or intranet.
- E. The Agency shall ensure that there is an emergency notification system at the Agency that allows immediate notification of employees in the event of an emergency situation.

Section 16 - Ergonomic Review of Work Area and Duties

- A. Employees may request an ergonomic review of their work area and duties, conducted in an assigned official Federal facility, at any time.
- B. Once the ergonomic review has been completed, supervisors will review the report with the employee to determine the necessary outcomes. Ergonomic adjustments to the work area and/or equipment may be acquired if deemed necessary.

Section 17 - Applications of Glue, Paints, Pesticides, Etc.

- A. There will be limited application of carpet glue, HVAC cleaning agents, paints, or other like construction or maintenance chemicals during work hours, when possible, in enclosed spaces occupied by employees. The Agency will notify employees as soon as practicable prior to the work being conducted during normal work hours.
- B. The Agency will attempt to notify employees prior to the spraying of pesticides in and/or around the building(s).

Section 18 - First Aid, CPR, and AED's

- A. The Agency will provide first aid kits in easily accessible locations.
- B. The Agency may provide training on a voluntary basis to employees at each Agency on the techniques of CPR/ AED's and first aid.

Section 19 - Indoor Air and Water Quality

- A. Employees are entitled to work in an environment containing safe and healthful indoor air and water quality. The Agency shall provide safe and healthful indoor air and water quality by

conforming to laws, guidelines, regulations, and/or policies issued by federal regulatory agencies such as OSHA, EPA, and GSA.

- B. On-site investigations/inspections will be conducted when a problem concerning indoor air and water quality or building-related illness is formally brought to Management's attention. These investigations/inspections shall meet the criteria of established government wide rule or regulations including OSHA protocols.
- C. The Agency will make reasonable efforts to maintain comfortable indoor work temperatures. Employees who are uncomfortable with those temperatures may suggest and request temporary provisions to assist them in maintaining a comfortable working environment.

Section 20 – Emerging Public/Health Crisis

When unanticipated local, regional, national, or global emergency (e.g. pandemic, etc.) occurs, the Agency will normally consult with the SHC to develop specific workplace safety plans to protect the Federal workforce and individuals interacting with the Federal workforce, and to ensure the continuity of Government services and activities, on-duty or on-site Federal employees, on-site Federal contractors, and other individuals in Federal buildings and on Federal lands. The sections above, as appropriate, will apply when developing these specific workplace safety plans. The safety plan will be shared with the Union for feedback, and Management will consider the Union's opinion.

ARTICLE 28
EMPLOYEE ASSISTANCE PROGRAM (EAP)

Section 1 - Program Purpose

This Article will be administered in accordance with applicable Federal laws and regulations, including 5 C.F.R. Part 792. 105. The Agency agrees to promote an Employee Assistance Program (EAP) that provides no-cost, short term, confidential counseling to assist employees with issues of a personal nature related to work and family.

The purpose of EAP is the appropriate prevention, treatment and rehabilitation of employees with alcohol, drug abuse or other biopsychosocial problems that are adversely affecting the employee's job performance and/or conduct. Biopsychosocial problems may include physical, emotional, financial, marital, family, legal, or work issues. Employees who suspect they may have such a problem, even in the early stage, are encouraged to voluntarily seek counseling and information on a confidential basis by contacting the individual(s) designated to provide such services. Supervisors are also encouraged to note when employees appear to be experiencing difficulties for which EAP may provide assistance, and to refer the employee to EAP for assistance. Early intervention may be helpful in returning the employee to full productivity.

- A. The Agency will maintain an EAP (or any successor programs) and make this service available to BUEs at no cost unless the cost is specifically required. The EAP should be staffed with professional counselors who will assist employees in addressing problems that have had an adverse effect on their job performance, reliability, and health.
- B. As appropriate, supervisors will offer the availability of the EAP to employees who are experiencing performance and conduct issues.
- C. In extreme cases, such as threats of workplace violence or suicidal thoughts, management may consider a mandatory referral to EAP. Management should focus on the employee's job performance and conduct in the workplace rather the perceived medical condition when making a mandatory EAP referral.
- D. Management may consider delaying a disciplinary action during which time an employee is in a EAP counseling program.

Section 2 - Record of Participation

The Agency will assure that no employee will have job security or promotion opportunities jeopardized by a request for counseling or referral assistance. The Agency will ensure that the confidentiality of medical records of employees concerning treatment for problems related to alcohol, drugs, emotional concerns, or other personal issues will be preserved in accordance with current laws and OPM regulations or successors.

Section 3 - Voluntary Participation and Employee Responsibility

The existence and functions of counseling and referral programs will be publicized to employees. No employee will be required to participate or be penalized for merely declining referral, unless mandated to attend, counseling services or for participating in the services provided.

Section 4 – Confidentiality

- A. The Parties recognize that all confidential information and records concerning employee counseling and treatment will be maintained in accordance with applicable laws, rules, and regulations and in accordance with the Privacy Act of 1974 (5 U.S.C. 552a)
- B. Without an employee's specific written consent, the supervisor may not obtain information about the substance of the employee's involvement with a counseling program.
- C. Employees that fail to attend voluntary EAP appointments when the employee has been excused from work may be subject to disciplinary action.
- D. Employees who fail to improve their conduct or performance, after a mandated referral to the EAP may have a conduct or performance-based action initiated against them, see DR 4430- 792-1, Employee Assistance Program.

Section 5 - Excused Absence(s)

- A. A supervisor and/or manager shall grant up to one (1) hour of excused absence for each counseling session, up to a maximum of six (6) sessions per calendar year, during the assessment/referral phase of rehabilitation. Additionally, employees may use sick leave, annual leave, or request LWOP.
- B. Reasonable time to and from the scheduled appointment to account for travel time may be granted as an excused absence in accordance with individual circumstances. The employee will be required to notify their immediate supervisor as soon as practicable if the agreed-upon circumstances were to change. If additional time is required, the employee will request leave as soon as practicable and the request will be approved in accordance with existing leave policies and this agreement. Additionally, employees may use sick leave, annual leave, or request LWOP.
- C. Supervisors will release employees for EAP visits as soon as practicable and as soon as work requirements allow. The Parties will encourage employees to make appointments with the EAP professional.
- D. The number of excused absences for EAP counseling services will be consistent with the current Agency regulation and/or successors.

Section 6 - Leave Associated with EAP

It is the policy of the Agency to grant leave (sick, annual, or LWOP) for the purpose of treatment or rehabilitation for employees under EAP as would be granted for employees with any other health problem.

ARTICLE 29
EQUAL EMPLOYMENT OPPORTUNITY (EEO)

General

It is agreed between the Parties to cooperate in providing equal opportunity and in preventing discrimination against any employee based on race, color, national origin, religion, sex, genderidentity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity. Furthermore, management agrees to be compliant with associated rules, regulations, laws, policy and procedures.

Section 1 - EEO Committees

An EEO committee shall be established by each Agency. The committee will meet by mutualagreement.

Section 2 - EEO Program Attendance

Unless it conflicts with mission related activities or requirements, employee requests to attend EEO activities and programs shall be approved.

ARTICLE 30
CHARITIES, CIVIC ORGANIZATIONS, AND PUBLIC WELFARE

Section 1 – Charities

The Parties agree to cooperate in the furtherance of charities sanctioned by the Agency, such as the Combined Federal Campaign. The Parties recognize the voluntary nature of such causes and agree to the furtherance of this principle. Participation or nonparticipation will not advantage or disadvantage employees.

Section 2 – Organizations

Employees are encouraged to join and participate in professional and civic organizations in their personal capacity as appropriate. Membership in such organizations is recognized to be voluntary.

Section 3 – Voting

The Parties agree to mutually encourage employees to exercise their right to register and vote in elections.

ARTICLE 31
SCIENTIFIC INTEGRITY

General

The Parties recognize the importance of promoting a continuing culture of scientific excellence and integrity, and of establishing a policy that ensures the integrity of the agency's scientific activities. The intent of this Article is to strengthen universal confidence – from employees and managers – in the established USDA scientific integrity policies and procedures. It also denotes the Parties commitment to a culture of support for employees, which are its principal scientific asset.

The Parties agree to comply with DR-1074-001 Scientific Integrity, DM-1074-001 Procedures for Responding to Allegations of Compromised Scientific Integrity, or their successors, as well as the ethics laws, regulations and guidelines that govern Executive Branch employees' conduct, and any other relevant Agency and/or Departmental guidance. The impact and implementation of any changes to the Scientific Integrity policies mentioned here will be bargained between the Parties in accordance with the Mid Term Bargaining Article of the CBA.

Section 1 – Policy Implementation

- A. Management shall provide Agency BUEs yearly guidance and training to understand and fulfill their responsibilities on scientific integrity and for reporting of issues regarding compromised scientific integrity.
- B. To ensure continued implementation of the policy, the Agency will establish an email alias, or other point of contact, for scientific integrity comments or questions and publish it through the intranet.
- C. To facilitate the free flow of scientific and technological information and support scientific integrity in the communication of scientific findings (data and results) and products, (such as publications and reports) Management representatives to include, Public Affairs Officers, will comply with the Scientific Integrity DR and DM and relevant agency policies regarding the presentation of scientific findings and may not compromise the objectivity or accurate representation of those findings.
- D. ERS and NIFA scientists may communicate their scientific findings (data and results) objectively without political interference or inappropriate influence, while at the same time complying with USDA policies and procedures for planning and conducting scientific activities, reporting scientific findings, and reviewing and releasing scientific products.

Section 2 – Whistleblower Protection

Where cases of compromised scientific or research integrity are alleged, ERS and NIFA scientists will follow the procedures in DM-1074-001 and DR-1074-001. Employees are not

precluded from filing whistleblower complaints, consistent with the Whistleblower Protection Act, as defined by the Office of Special Counsel (OSC);

1. a violation of law, rule, or regulation;
2. gross mismanagement;
3. gross waste of funds;
4. an abuse of authority;
5. a substantial and specific danger to public health or safety; or
6. censorship related to scientific research if censorship meets one of the above-listed categories.

ARTICLE 32
OFFICIAL RECORDS

Section 1 - Official Records and Files

- A. No personnel records may be collected, maintained, or retained except in accordance with law, government wide regulations, Agency regulations, and this agreement. All personnel records are confidential and shall be known or viewed by officials only with a legitimate need to know for the performance of their duties; they must be maintained in a secure location.
- B. Employee(s) files maintained by supervisors:
 - 1. must be absolutely uncirculated; will be viewed only in accordance with official Agency business and/or a need-to-know basis; and
 - 2. must be maintained in secure fashion in order to prevent disclosure.
- C. The employee shall have the right to prepare and enter a concise statement of disagreement with any supervisory note provided to the employee.

Section 2 - Access to Records

- A. Employees have the ability to access their eOPF during duty hours. Employees may contact the assigned HR point of contact for needed assistance in gaining access to their eOPF.
- B. During normal duty hours, employees and/or their representative designated in writing shall have the right to examine records personally identified to the employee (e.g., eOPF, EEO, evidence files, appeal and grievance records), PD's, and performance standards.

Section 3 - Outdated Records

- A. All official personnel records shall be purged, and information disposed of in accordance with appropriate records control schedules.
- B. The Agency will maintain a system of follow-up to assure that any disciplinary or similar action(s) with a time limit is removed from the employee's eOPF on the proper date.
- C. If any outdated or unauthorized material is accidentally left in a file, it may not be used to support any personnel action detrimental to the employee.

ARTICLE 33
DUES WITHHOLDING

Section 1 - Eligibility - BUEs

Any BUE may have dues deducted through payroll deductions, or any other approved system. Such deductions will be discontinued only when the employee leaves the unit of recognition, ceases to be a member in good standing of AFGE, or submits a timely revocation form under the procedures of this article.

Section 2 - Union Responsibilities for BUEs

- A. The Union agrees to inform the Agency, in writing, of the following:
1. The dues amount(s) or changes in the dues amount(s),
 2. The names of the Union officials responsible for certifying each employee's authorization form, the amount of dues to be withheld, and changes in allotments, and
 3. The name and address of the payee to whom the remittance should be made.
 4. The Union agrees to notify dues-paying members of any increases in dues and to advise them of the reasons for the change.
- B. The Union agrees to promptly forward completed and certified forms(s) to the appropriate administrative office.

Section 3 - Agency Responsibilities for BUEs

- A. It is the responsibility of the Agency to:
1. Process voluntary allotments of dues in accordance with this article and in amounts certified by the Union,
 2. Withhold employee dues on a bi-weekly basis, and
 3. Transmit remittance to the local allottee designated by the Union in accordance with this article, as expeditiously as possible at the end of each pay period.
- B. The Agency will process the changes and make them effective normally within two (2) pay periods but no later than three (3) pay periods from notification of the change.
- C. Electronic transfer of funds is authorized for the transmittal of union dues.
- D. The Agency agrees to withhold union dues from a back-pay award granted to an employee

who was terminated and was on dues withholding at the time of a termination. The amount withheld from the back-pay award will be calculated from the date of termination until the employee's date of reinstatement. Upon their return to duty, the employee will be made whole and will continue status quo in the BU and dues-paying status they were in at the date of termination.

- E. The Agency agrees to withhold union dues from a back-pay award to an employee who was on dues withholding at the time of a suspension.

Section 4 - Procedures for Withholding for BUEs

BUEs wishing to have their dues withheld by payroll deduction, or any other approved system, will submit their completed SF- 1187 (Request for Payroll Deductions for Labor Organization Dues) to the designated Union official(s). This official will certify the form and include the amount of dues to be withheld. The certified SF-1187 will be forwarded to the appropriate administrative office for processing. The deduction will become effective within four (4) pay periods after the SF-1187 was submitted to the appropriate administrative office.

Section 5 - Cancelling Dues Withholding

- A. In accordance with 5 U.S.C, 7115, employees may discontinue dues withholding after one (1) year as a dues paying BUE by submitting form SF-1188 to the Union.
- B. Employees may rejoin the Union by resubmitting a new SF-1187.

Section 6 - Continuation of Dues for BUEs

- A. When an employee is detailed or temporarily promoted out of the BU, union dues withholding will be stopped and restarted automatically when the employee returns to the BU.
- B. When an employee is detailed or by other personnel action placed in a BU position, the employee shall have all the rights of the BU, including the right of dues withholding.

Section 7 - Position Determination

- A. When there is a dispute regarding whether a BU position is "covered by" a BU or not, the employee's dues paying status will continue status quo until the issue is resolved.
- B. The Parties will discuss the issue until a decision is reached, either through mutual agreement or through the formal process.

Section 8 – Costs

All payroll deductions and transmittals will be made at no cost to the Union.

ARTICLE 34
OFFICIAL TIME AND DUTY TIME

Section 1 - Official Time

In accordance with 5 USC 7131, Union representatives shall be allowed a reasonable amount of official time, if otherwise in a duty status, to carry out their representational activities. This time will be without charge to leave. Employees acting as Union representatives may be released from duty without charge to leave for appropriate representational purposes under the Statute. Official time for employees and representatives is provided under separate authority to participate in certain statutory appeal procedures. This includes, but is not limited to, proceedings before the Federal Labor Relations Authority and the Equal Employment Opportunity Commission. Such official time is not limited by this Article.

Section 2 - Appropriate Activities

- A. The use of official time will be permitted for, but not limited to, the performance of the following representational functions:
1. Discussing grievances and appeals, discrimination complaints or matters affecting general working conditions with employees
 2. Participating in training for labor-management relations, where appropriate
 3. Participation on joint Union-Management committees regarding workplace conditions or employee engagement
 4. Preparing (including making inquiries) and presenting grievances, appeals, or discrimination complaints
 5. Attending meetings necessary to the collective bargaining or the representational process
 6. Considering and preparing Union proposals to Management
 7. Labor relations training for Union representatives
- B. The ERS Vice President and the NIFA Vice President or their designees, may arrange with their supervisors a block of official time for the purposes allowed under the Statute and by this Article, of up to twelve (12) hours per pay period, to be used to perform statutory representational duties and additional time may be granted as reasonable.

Section 3 - Meetings with Union Representatives

With prior supervisory approval and subject to workload needs, BUEs will be granted reasonable official time to confer with designated Union representatives concerning

employment concerns, personnel practices, working conditions, or grievances.

Section 4 - Travel and Meetings

- A. Official time will be granted for one (1) Union representative at a time to appear before the Federal Labor Relations Authority, the Merit Systems Protection Board, the Federal Services Impasses Panel, or the Federal Equal Employment Opportunity Commission, if designated by an Agency appellant or complainant as the Union representative.
- B. Union representatives will be allowed a reasonable amount of travel in conjunction with official time to perform representational activities.

Section 5 - Internal Union Business

As provided by 5 USC 7131 (b), "Any activities performed by any employee relating to the internal business of a labor organization (including the solicitation of membership, elections of labor organization officials, and collection of dues) shall be performed during the time the employee is in a nonduty status or on official time."

Section 6 - Official Time to Observe

A Union representative acting as an observer under the provision of 5 USC, 7114(a) (2) will be on official time if otherwise in a duty status.

Section 7 - Performance Evaluation

The use of official time, in accordance with this agreement and the regulations, will not adversely affect an employee's performance evaluation.

Section 8 – Training

- A. Consistent with the Agency's mission requirements, the Agency will grant up to one hundred and twenty (120) hours total of Official Time per calendar year to the Union Local, for its current Union officials to attend labor relations training or other training related to employees' conditions of employment. In addition, newly appointed Stewards may request Official Time for periods up to twenty-four (24) hours to attend New Stewards Training and additional time may be granted as reasonable.
- B. When requesting official time for training purpose the Union steward or representative will provide the agenda for the training. Under this Section, Official Time approved for training will generally cover such areas as contract administration, handling of statutory actions such as grievances, and information related to Federal labor relations laws, regulations, and procedures. The Union may request additional hours of Official Time for training. A Union representative may not normally attend the same type of training within a two (2) years.

ARTICLE 35
CONTRACTING OUT

Section 1 - General

- A. The provisions of this article concern contracting out of work currently performed by BUEs.
- B. The intent of this article is not to impede the day-to-day private sector contracts for work that are currently or likely to be determined to be necessary for limited time periods or for specific work projects, including but not limited to, lack of personnel, lack of specialized skills or equipment, etc.

Section 2 - Periodic Briefings

- A. If a decision is made to contract and eliminate BU position(s), periodic briefings will be held with the Union to provide information concerning any decisions that may impact employees in implementing OMB Circular A-76.
- B. Timely briefings will be held with affected employees for the purpose of providing information concerning contracting out under A-76 procedures. One (1) Union representative per Agency will be given an opportunity to attend such employee briefings. The Union representatives will be on official time.

Section 3 - Site Visits

The Agency will notify the Union if a site visit is going to be conducted for potential bidders seeking contracts for work performed by BUEs. One (1) Union representative per Agency may attend this site visit. The Union will be free to participate in the process but will not disrupt the site visit.

Section 4 - Union Notification

When the Agency determines that BU positions will be eliminated and contracted out, the Agency will notify the Union within fifteen (15) business days and provide to the Union information concerning the decision which is disclosable. The Union will then have the opportunity to request to negotiate as appropriate.

Upon request from the Union, the Parties shall meet and confer within fifteen (15) business days, concerning the impact upon BUEs.

Section 5 - Employee Placement

When permanent employees are adversely affected by a decision to contract out, the Agency will make maximum effort to find available positions for employees.

This effort will include:

1. Giving priority consideration for available positions within the Agency
2. Utilize Interagency Career Transition Assistance Program (ICTAP), Career Transition Assistance Program (CTAP)
3. Establishing an employment priority list and a placement program
4. Paying reasonable costs for training and relocation that contribute to placement in accordance with Agency regulations

ARTICLE 36
FURLOUGH

Section 1 - Definition

- A. An administrative furlough is a planned event by the Agency that is designed to absorb reductions necessitated by downsizing, reduced funding, lack of work, or any budget situation other than a lapse in appropriations.
- B. A shutdown furlough (also called an emergency furlough) occurs when there is a lapse in appropriations or authorization, and can occur at the beginning of a fiscal year, if no funds have been appropriated for that year, or upon expiration of a continuing resolution, if a new continuing resolution or appropriations law is not passed.
- C. “Exempt” BUEs are not affected by a lapse in appropriations. This includes BUEs who are not funded by annually appropriated funds. BUEs performing those functions will generally continue to be governed by the normal pay, leave, and other civil service rules.
- D. “Excepted (essential) BUEs” refers to BUEs who are funded through annual appropriations but are excluded from a furlough because they are performing work that, by law, may continue to be performed during a lapse in appropriations or authorization. Excepted BUEs include BUEs who conduct emergency work involving the safety of human life or the protection of property, or certain other types of excepted work.

Section 2 - Coverage

- A. Only the minimum number of BUEs necessary to carry out essential activities will be “excepted” and will not be furloughed.
- B. Positions that provide direct support to excepted positions may also be deemed excepted if they are critical to performing the excepted activity. Determinations regarding status of excepted or non-excepted will be made on a position by position basis.
- C. BUEs who are funded through annual appropriations and not designated as excepted (non-essential) are barred from working during a shutdown except to conduct up to four (4) hours of activities necessary to execute an orderly suspension of Agency operations.
- D. During a furlough, exempt BUEs serving as Union officials shall continue to be granted Official Time in accordance with this CBA. Other BUEs serving as Union officials may work on Official Time during a shutdown if such activities fall within the Anti-Deficiency Act’s exceptions. The Office of General Counsel will be consulted before approving Official Time during a furlough.

Section 3 – Planning

- A. For Administrative Furloughs, the Agency will consider all reasonable alternatives to address budgetary constraints prior to placing BUEs on furlough.
- B. The Agency will consider the Union’s pre-decisional input regarding the agency’s Administrative Furlough plan through the Labor Management Forum (LMF). No waivers are implied, and agreements may be reduced to writing.
- C. Subject to mission requirements, BUEs may request continuous or non-continuous furlough days during an Administrative Furlough.
- D. For Administrative Furloughs, the Union may request, and the agency will normally provide the criteria for selecting the BUE positions that are excepted from furlough.
- E. For Administrative Furloughs, the Union may request, and the agency will normally provide the reason for furlough.
- F. For Shutdown Furloughs, in accordance with Congressional authorization and appropriation(s) for backpay, the Agency will process the pay and benefits for BUEs impacted by a loss of pay in a timely manner.

Section 4 – Notification

- A. The Agency agrees to notify the Union of an impending furlough as soon as practical after the Agency is informed. Subsequently, the Agency will identify to the Union the impacted organization(s) and provide a list of any BUEs that are excepted from furlough. The Agency will provide notice to the Union and impacted BUEs of an orderly shutdown of Agency activities (e.g. turning in equipment, and if required, setting out of office replies).
- B. In advance of a shutdown, the Agency will notify BUEs, whether they are excepted or non-excepted BUEs.
- C. BUEs on furlough will be advised that they are not permitted to conduct Agency work or volunteer to work.
- D. The Agency will issue furlough notices (proposed and/or decision letters) to affected BUEs. Notices will normally be delivered as soon as practical after the Agency is informed of the furlough/shutdown. Notices may be issued electronically to BUEs where possible; or any other delivery method deemed appropriate to ensure receipt. Notices will indicate the actions and employee rights through this process.
- E. BUEs will be notified that Federal Employee Health Benefits (FEHB) coverage will continue during a shutdown furlough. The employee’s share of the FEHB premium will accumulate

and be withheld from pay upon return to pay status. The employee can choose between paying the Agency directly on a current basis while in a non-pay status or having the premiums accumulate and be withheld from his or her pay upon returning to duty. BUEs will be provided information about helpful resources during this period, their benefits, and any impact this could have on their leave.

- F. BUEs will be notified that Federal BUEs' Group Life Insurance (FEGLI) coverage will continue for twelve (12) consecutive months in a non-pay status without cost to the employee.

Section 5 – Return to Work

Furloughed BUEs will be notified when to return to work as soon as it has been officially determined by the appropriate authorities and will be informed when they are to report. BUEs must provide contact information (cell number, personal email, or any other method that will provide the Agency with the ability to contact them). Additionally, BUEs are encouraged to monitor the media resources and contact their supervisor for guidance.

Section 6 – Access to Union Office

Access to the Union office during a period of furlough should not be prevented solely on the basis of the Union official's non-duty status. Access to the Union's office by a Union official in a non-duty status does not change the employee's furlough status.

ARTICLE 37
REDUCTION IN FORCE (RIF)

Section 1 – Purpose

- A. The Agency and the Union recognize that employees may be seriously and adversely affected by a RIF, reorganization, or transfer of function action. The Agency and OPM recognize that attrition, reassignment, furlough, hiring freeze, and early retirements are among the alternatives to RIFs that may be available. This article describes the exclusive procedures the Agency will take in the event of a RIF, reorganization, or transfer of function as defined in this article. It is also intended to protect the interests of employees while allowing the Agency to exercise its rights and duties in carrying out the mission of the Agency.
- B. Recognizing the potential disruptive impact that a RIF may generate, the Parties agree to use RIFs after careful consideration and utilization when possible, of less invasive tools such as those described above.

Section 2 – Definition

For the purpose of this article, the following terms are defined in law and regulations and are included for informational purposes:

RIF: When the Agency releases a competing employee from his/her competitive level by furlough for more than thirty (30) calendar days, or of more than twenty-two (22) discontinuous workdays, separation, demotion, or reassignment requiring displacement when the release is required because of lack of work, shortage of funds, insufficient personnel ceiling, or reorganization, the exercise of reemployment rights or restoration rights, or reclassification of an employee's position due to erosion of duties when such action will take effect after the Agency has formally announced a RIF in the employee's competitive area and when the RIF will take effect within one hundred eighty (180) days.

Transfer of Function: A transfer of function occurs when a function ceases in one competitive area and moves to one or more competitive areas which do not perform the function at the time of the transfer. Also included, the movement of an entire work operation to another commuting area.

Reorganization: Reorganization is the planned elimination, addition, or redistribution of functions or duties of an organization.

Competitive Area: An area in which employees compete for retention is known as a Competitive Area. A competitive area must be defined solely in terms of the Agency's organizational units and geographical location; and it must include all employees within the competitive area as defined.

Competitive Level: The Parties agree that OPM regulations fully define competitive level. Employees are assigned to competitive levels based on their position of record. Positions in a competitive area that are in the same grade (or occupational level) and classification series, and which are similar enough in duties, qualification requirements, pay schedules, and working conditions. The incumbent of one position can successfully perform the critical elements of any other position upon entry, without any loss of productivity beyond what is normally expected in the orientation of any new but fully qualified employee. (The terms competitive level and retention register generally have the same meaning.)

Retention Register: The retention register is the ranking of employees in the competitive level after the Agency applies the four (4) retention factors. The four (4) retention factors are: tenure of employment, military preference (subject to section 5 CFR, 3501 (a) (3)), length of service, and performance rating. (The terms competitive level and retention register generally have the same meaning.)

Bump and Retreating: Bumping means the displacing of an employee on a different competitive level who is in a lower tenure group, or in a lower subgroup with the released employee's own tenure group. Retreating means the displacing of an employee on a different competitive level with less service within the released employee's own tenure group and subgroup.

Identification Method One and Identification Method Two

Under Identification Method One procedure, the losing competitive area identifies an employee with a transferring function if: the employee performs the function during at least half of the employee's work time: or regardless of the amount of time that the employee performs the function, the function includes the duties controlling the employee's grade or rate of pay.]

Under Identification Method Two procedure, the losing competitive area identifies for transfer the number of employees it needs to perform the functions. The losing competitive area uses Identification Method Two only to identify positions and employees not covered by Identification Method One.

Section 3 - Applicable Laws and Regulations

For purposes of Title 5 employees, the policy, procedures, and terminology described in this article are to be interpreted in conformance with 5 U.S.C., 3501-3504, 5 CFR, Part 351, and other applicable government-wide laws and regulations. Any changes or revisions to the published procedures will be subject to normal notification and negotiation protocols.

Section 4 – Application

The Agency agrees to fairly and equitably apply this article and any laws or regulations

relating to any matter in this article.

Section 5 - Union Notification

- A. Management officials shall be responsible for properly notifying the Union President or designee in conjunction with any of the actions described in this article.
- B. For actions covered by this article, the Agency agrees to notify the Union as described below:
 - 1. Management will notify the Union at the earliest possible date, normally no less than ninety (90) calendar days prior to the effective date.
 - 2. All notices to the Union will be given in writing prior to any notice to affected employees.
- C. The notice to the Union under this section shall consist, at a minimum, of the following information:
 - 1. The reason for the action;
 - 2. The approximate number, types, and geographic location of position(s) initially affected; and
 - 3. The approximate date of the action.

Section 6 - Freezing of Vacancies

The Agency will freeze all relevant vacant positions sixty (60) days prior to the effective date of a RIF. The Agency may elect to fill vacancies after the conclusion of the RIF actions initiated during the life of the RIF. When the Agency decides to fill a vacant position(s) after the effective date of the RIF, whether previously frozen by virtue of RIF or in the creation of new vacancies, employees who have been demoted through the application of RIF procedures will be offered the vacancy provided the employee is qualified or has been given a waiver of qualifications for the intended position. Employee entitlement to this special consideration shall be determined in accordance with the Merit Promotion Article 17, of this agreement.

Section 7 - Employee Notification

An individual employee who is adversely affected by actions stated in this article shall be given a specific written notice not less than sixty (60) calendar days prior to the effective date of the action. All such notices shall contain the information required by the OPM regulations in addition to the information required by this article.

Section 8 - Content of Employee Notices

The content of the specific notice shall include the following information:

1. The specific action to be taken
2. The reason for the action
3. The effective date of action
4. The employee's competitive area, competitive level, subgroup and service date, and the three (3) most recent ratings of record received during the last four (4) years
5. Information on reemployment rights (except as permitted by 5 CFR, 351.803 (a))
6. The employee's grievance or appeal rights

Section 9 - Employee Information

The Agency shall provide information and assistance to impacted employees by:

1. Informing all employees of the extent of the affected competitive area, the regulations governing such action, and the kinds of assistance provided to affected employees;
2. Notifying employees of all regular competitive vacancies the Agency wishes to fill by advertising on USAJobs.gov or its successor;
3. Conducting a placement program within the Agency, in accordance with applicable government wide rules/regulations. The placement program will include counseling for employees by qualified personnel on opportunities and alternatives available to affected employee(s).

Section 10 - Personnel Files

At the written request of an employee, the Union may review any employee's eOPF if the employee believes that the information used to place him/her on the retention register is inaccurate, incomplete, or not in accordance with laws, rules, regulations, and provisions of this article.

Section 11 – Records

- A. The Agency will maintain all lists, records, and information pertaining to actions taken under this article for at least one (1) year in accordance with applicable rules and regulations after the date it issues a specific RIF notice.
- B. A copy of the retention-register will be made available to the Union at the earliest possible time. In addition, the Union is entitled to see employee-requested Agency records that detail their bump and retreat records.

- C. An employee who has not received a specific RIF notice has no right to review the Agency's retention registers and related records.

Section 12 - Employee Use of Authorized Time and Agency Facilities

- A. Employees who are identified for transfer of function or separation as a result of a RIF under this article shall be entitled to a reasonable amount of duty time (at least forty (40) hours) for:
 - 1. Preparing, revising, and reproducing job resumes and/or job application forms;
 - 2. Participating in employment interviews;
 - 3. Using the telephone to locate suitable employment; and
 - 4. Reviewing job bulletins, announcements, etc.
- B. Such employees will also be entitled to reasonable use of the following facilities and/or services for the purpose of locating suitable employment: telephone, reproduction equipment, email, and counseling (EAP).

Section 13 - Performance Appraisals

Annual performance appraisals for purpose of retention standing will be frozen thirty (30) days prior to the issuance of the notice of action. The three (3) latest annual appraisals of record during the four (4) year period prior to the cut-off date for accepting performance ratings will be used to determine eligibility for additional credit toward an employee's service computation date. To be credited under this section, an appraisal must have been issued to the employee with all appropriate reviews and signatures and must be on record.

Section 14 - Career Transition Assistance Program and Inter-Agency Career Transition Assistance Program

- A. The Agency will notify employees of the services available under its Career Transition Assistance Program (CTAP) and Inter-Agency Career Transition Assistance Program (ICTAP) and how to obtain them.
- B. The Agency will notify eligible employees of their selection priority consideration in USDA and other Federal agencies under the Agency CTAP and ICTAP, if they apply, and are found to be well qualified.

Section 15 - Employee Response to Specific Notice

Upon receipt of specific notice notifying the employee that he/she is offered a reassignment or change to lower grade or will be released from his/her competitive level, the employee shall have

seven (7) calendar days in which to accept or reject the offer made. If a position with a higher representative rate or grade (but not higher than the rate or grade of the employee's current position) becomes available on or before the effective date of the RIF, the Agency will make the better offer to the employee. However, making the better offer will not extend the sixty (60) day notice period.

Section 16 - Displaced Employees

The Agency shall provide any employee to be separated by RIF or transfer of function with the appropriate contact information regarding unemployment benefits available to them.

Section 17 – Details

Employees on detail will not be released during a RIF from the position to which they are detailed but, rather, from the affected employee's permanent position of record.

Section 18 - Transfer of Function

This section only applies when a transfer of function is used.

- A. When a transfer of function occurs, the Agency will first solicit qualified volunteers for transfer from among those employees in positions that have been identified for transfer only if no competing employee who is identified under Identification Method One or Identification Method Two will be separated or demoted solely because a volunteer transferred to the gaining competitive area. If there are not enough qualified volunteers from among these affected employees, the Agency will solicit qualified volunteers from the competitive area.
- B. If the total number of employees who volunteer for transfer exceeds the total number of employees required to perform the function in the competitive area that is gaining the function, the losing competitive area may give preference to the volunteers with the highest retention standing or make selections based on other appropriate criteria.

In the event there are not enough volunteers for the transfer, the Agency will identify employees for transfer according to Identification Method One and/or Identification Method Two.

- C. Whenever possible, affected employees who do not volunteer to be transferred shall be reassigned to vacant positions within the competitive area for which the employee is qualified and which the Agency has determined to fill.

Section 19 - Re-promotion Rights of Affected Employees

For a period of two (2) years from the date of demotion, affected employees demoted by an action covered by this article will be re-promoted to vacancies as they occur according to the following criteria:

1. The Agency determines to fill the vacancy

2. The employee has the requisite skills and abilities for the position without undue interruption
3. Another qualified employee does not have a higher retention standing

Section 20 - Re-employment Priority Rights of Affected Employees

The Agency will inform employees of their right and responsibility to complete a re-employment application. The Agency will provide the employee with a point of contact for personal assistance with the re-employment application.

Career and career-conditional employees who have received a specific RIF separation notice or a Certificate of Expected Separation and who submit a complete Re-employment Priority List (RPL) application to Human Resources will be entered on the USDA RPL for the commuting area in which they are qualified and available. Agency components must use the RPL in filling vacancies before offering employment to an individual from inside or outside the Agency, unless it meets one of the exceptions in 5 CFR, 330.211. Employees may remain on the list for two (2) years from the date of RIF separation unless removed earlier based on the occurrence of one of the events in 5 CFR, 330.208.

Section 21 – Right to Grieve a RIF Action

Employees covered by this CBA may file a grievance in accordance with the Grievance Procedures Article of this CBA if the employee believes that the Agency failed to properly apply the RIF regulations.

ARTICLE 38
MID TERM BARGAINING

Section 1 – Introduction

- A. The Agency will follow the procedures of this section prior to implementing any proposed changes to established personnel policies and practices and other matters affecting the working conditions of employees in the unit, including past practices that are not enumerated in the Agreement.
- B. Nothing in this Article will be deemed to have waived the rights of either Party under the Statute.

Section 2 – Nonnegotiable Items

If the Agency declares an item nonnegotiable, it will provide the Union with a brief written description of why such a determination was made. If the Union disagrees with the Agency's written determination of non-negotiability, it may seek further consideration in accordance with 5 U.S.C., Chapter 7117.

Section 3 - Procedures for Negotiating During the Term of the Agreement

- A. Either party may propose changes in conditions of employment during the life of the agreement which are not already covered specifically by the agreement. The initiating party will provide the other party with reasonable advance written notice, not less than ten (10) business days prior to the proposed implementation date, of any change affecting conditions of employment.
- B. As soon as practicable, the Agency shall notify the Union in writing that the Agency intends to make a proposed change affecting conditions of employment and will advise the Union of the proposed implementation date. The Union shall acknowledge written receipt of the Employer's notification. The notice will, at a minimum, contain the following information:
 - 1. The nature and scope of the proposed change
 - 2. A description of the change
 - 3. An explanation of the initiating party's plans for implementing this change
 - 4. An explanation of why the proposed change is necessary (if known)
 - 5. The proposed implementation date
- C. If the Union elects not to respond, does not provide written notice of their intent to bargain

within the time limit, or if written proposals are not submitted within the time limit, the Agency will have no obligation to bargain on the matter and may implement the change(s).

- D. Extensions may be requested prior to above established time limits in writing and may be granted by mutual agreement in writing provided there is no adverse impact on the Agency for granting the delay.
- E. Either party may request to be briefed on the proposed change(s) prior to the submission of the demand to bargain notice by requesting a briefing. Once proposals have been submitted:
 - 1. The receiving party will review the proposal and may respond to the initiating party in the following ways:
 - a. If the receiving party wishes additional information or an explanation of the proposal, that party may, within five (5) business days of receipt of the notice, make a written request for a briefing (informal discussion) by the initiating party, and/or for additional information, in order to clarify or determine the impact of the proposed change; or
 - b. If the receiving party wishes to negotiate over any aspect of the proposed change, it shall notify the other party by submitting a demand to bargain within ten (10) business days of receipt of the notice. Written proposals will follow within ten (10) business days after the demand to bargain is submitted. If the initiating party is unable to meet within the prescribed time frames the timelines may be extended. Union proposals will be submitted to the Labor Relations Officer (LRO) or designee. Management proposals will be submitted to the Union Vice President or designee.
 - c. If the receiving party does not wish to bargain, it can either respond back indicating so, or if the proposing party does not receive any response, the proposing party can go forward with implementing the change after the expiration of the response period.
 - d. Upon request by the receiving party, the Parties will normally meet face-to-face or may also meet through virtual platform(s) with mutual agreement. The Parties agree to negotiate in good faith through appropriate representatives for the purpose of collective bargaining as required by law and this agreement.
 - e. Following this request to negotiate, the Parties will schedule a meeting to begin negotiations as soon as possible, normally no later than ten (10) business days from the receipt of the receiving party's proposal. Implementation shall be postponed to allow for the completion of bargaining, up to and including negotiability disputes and/or impasse proceedings, except as required by law.

f. Changes will not normally be implemented until all bargaining obligations are met. If emergency circumstances occur, the Agency will notify the Union of the situation as soon as is practicable, and the Parties may agree to post-implementation bargaining on changes in working conditions. An emergency is an unforeseen combination of circumstances or the resulting state that calls for immediate action. In the case of an emergency, management will notify the exclusive representative prior to meeting with employees and will meet their bargaining obligation. The Union understands that, under rare and extraordinary circumstances, delayed notification and post-implementation bargaining may be necessary.

- F. Where negotiations are required, the Parties will normally meet face-to-face or may also meet through virtual platform(s) with mutual agreement.

ARTICLE 39
DURATION

Section 1 - Duration of Agreement

- A. This Agreement will be implemented and become effective when it has been approved, ratified, and signed by the parties, including review pursuant to 5 USC 7114(c). Timelines are detailed in the ground rules for this agreement negotiations. The effective date of this agreement shall be the date of approval by the Director, Office of Human Resources Management (OHRM), Office of the Secretary of Agriculture, applies to both Agencies, or on the 31st day after execution of the agreement, if the Director or designee has neither approved nor disapproved the agreement. The effective date of this Agreement will be clearly stated on the title page/cover of this CBA.
- B. The duration of this agreement will be for a period of five (5) years from its effective date. It will remain in effect for yearly periods thereafter, automatically renewing on the anniversary date of the original effective date unless either party serves written notice of its desire to renegotiate this agreement. Either party may give written notice to the other not more than one hundred and five (105) or less than sixty (60) calendar days prior to the expiration date and each subsequent expiration date for the purpose of renegotiating this agreement.
- C. Once a party initiates negotiations pursuant to section 1B, the parties shall meet within ninety (90) calendar days of the receipt of notice to renegotiate. The parties will negotiate written ground rules prior to commencing negotiations of a new agreement.
- D. If the new agreement has not been executed prior to the expiration of this Agreement, this Agreement shall continue in effect until the new agreement is approved by Office of the Secretary of Agriculture or on the 31st day after execution of the new agreement by both parties, whichever is sooner.
- E. The current agreement shall remain in effect until the new agreement is executed.

Section 2 – Reopener

This agreement is subject to reopening by mutual consent of the parties concerned. Such negotiations shall be conducted in accordance with Article 38 Mid-term Bargaining.

Section 3 - Amendments and Modifications

This Agreement may only be amended, modified, or renegotiated in accordance with the provisions of this Agreement. Any amendments to this Agreement agreed to by the parties will be in writing and will become effective upon approval of the Agency Head or thirty-one (31) days after execution of the amendments, whichever comes first.

Section 4 – Exceptions

If any provision of this contract shall be held invalid by legislative act or court decision, the remainder of this contract shall not be affected thereby.