



# Homeland Security

SEP - 5 2019

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FROM:

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Deborah Eldredge  
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SUBJECT:

Agency Head Review of Collective Bargaining Agreement

Pursuant to title 5, United States Code § 7114 (c) (1), the Collective Bargaining Agreement negotiated between the U.S. Immigration and Customs Enforcement (ICE) and American Federation of Government Employees (AFGE) Local 511, executed on August 29, 2019, was submitted for review and is hereby approved.

**CBA 2019**



# **PROFESSIONAL EMPLOYEES AGREEMENT**

**U.S IMMIGRATION AND CUSTOMS ENFORCEMENT  
AND AFGE LOCAL 511**

American Federation of Government Employees, AFL – CIO  
Effective Date September 1, 2019



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## **ARTICLE 1**

### **RECOGNITION**

- A. U.S. Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (hereinafter, ICE or the Agency) recognizes the American Federation of Government Employees, AFL-CIO (hereinafter, AFGE) as the exclusive collective bargaining representative for all professional employees of the Agency, as certified by the Federal Labor Relations Authority in Case No. WA-RP-07-0018 (June 22, 2007). Excluded from the bargaining unit are non-professional employees, management officials, supervisors, and employees described in 5 U.S.C. § 7112(b)(2), (3), (4), (6), and (7).
- B. The Agency acknowledges that AFGE has delegated authority for administration of this Agreement and for all other day-to-day representational functions to AFGE Local 511 (hereinafter, Local 511 or the Union). Accordingly, except for negotiation of this Collective Bargaining Agreement and for matters affecting the certification of the bargaining unit, the Agency will deal with Local 511 as AFGE's authorized representative for all labor relations matters, unless and until AFGE should give written notice to the Agency that its delegation of authority to Local 511 has been amended or withdrawn.

**ARTICLE 2**

**EFFECT OF LAW AND REGULATION**

**AND**

**OTHER GENERAL PROVISIONS**

- A. In the administration of all matters covered by this Agreement, the Parties are governed by existing or future laws and by government-wide rules or regulations that are in effect on the effective date of this Agreement. In the administration of this Agreement, should any conflict arise between the terms of this Agreement and any present or future laws, provisions of such laws shall supersede conflicting provisions of this Agreement.
- B. Should any conflict arise in the administration of this Agreement between the terms of this Agreement and any government-wide rule or regulation, such as the Code of Federal Regulations, or DHS Orders, Directives, Instructions, Policies, Manuals, and issuances similar to aforementioned (other than a rule or regulation implementing 5 U.S.C. § 2302), issued after the effective date of this Agreement, the terms of this Agreement will supersede and govern.
- C. In any conflict between the terms of this Agreement and any provision of ICE Orders, Directives, Instructions, Handbooks, Manuals, policies, procedures, rules, or regulations, including local office practices, personnel policies, and matters affecting conditions of employment, regardless of date of issuance or establishment, the terms of the Agreement will govern.
- D. Should any part of this Agreement or any provision or provisions contained herein be rendered or declared invalid by reason of any of the contingencies referred to in this Article, such invalidation of such provision or provisions of this Agreement shall not invalidate those unaffected parts or provisions contained in this Agreement and they shall remain in full force and effect.
- E. The requirements of this Article shall apply to all supplemental, implementing, subsidiary, or informal agreements between the Parties.
- F. In a number of the provisions of this Agreement, statutes or regulations are restated for the convenience of the Parties and the employees covered by the Agreement. In restating the provisions of such statutes and regulations, some minor changes to the statutory and regulatory language have been made for clarity or to place that language in context. These wording changes are not intended to change the meaning of the language in question. However, should there be any conflict between the language of this Agreement and the language of applicable statutes or regulations in effect at the time the Agreement became effective, the language of the statutes and regulations is controlling.

G. The Parties have included a number of provisions of general applicability within this Article for the sake of a centralized reference; however, the same terms remain in their original Article(s) for the ease of the reader's access and understanding of the terms within the context in which they arise. The following provisions apply generally in implementation of this Agreement:

1. “Seniority” means:
  - a. for attorneys, “seniority” is the time as an Agency attorney (including time as an attorney with legacy U.S. Immigration and Naturalization Service and U.S. Customs Service).
  - b. for all other bargaining unit positions, “seniority” is time based on the employee’s service computation date.
2. “Day” means a calendar day unless otherwise specified.
3. Time limits established by this Agreement shall begin to run on the day after the date of the event or action that triggers the time limit.
4. Whenever the last day by which an action must be accomplished falls on a weekend, federal holiday, or other day when the Agency’s office is closed, the last day for action will be the next day that the office is open.
5. Any time limit established by this Agreement may be extended by mutual agreement.
6. Neither Party will unreasonably deny a reasonable request for an extension of time. Absent extraordinary circumstances, such requests must be made at least two (2) workdays in advance of the deadline.
7. Service, filing, or delivery of notices, requests, demands, decisions, or other documents (service) provided for in this Agreement shall be accomplished by personal delivery, certified mail, or electronic mail (e-mail).
  - a. Where service is by e-mail, electronic read receipt will constitute proof of service. Each Party may designate up to four (4) recipients. Documents transmitted by e-mail will be sent to each Party’s designees at their government e-mail addresses. The Parties’ designees will ensure their electronic read receipt is enabled and, where requested, will acknowledge receipt promptly.
  - b. When service is by e-mail, the subject line of the e-mail shall put the addressee on notice that an identified document is being served (*e.g.*, “Agency Notice of Proposed Change” or “Union Request for Information under 5 U.S.C. § 7114(b)(4)”).
  - c. Facsimile (FAX) transmission may be used for service only when the receiving Party expressly consents to such means in regard to a particular document.

- d. The Parties will act in good faith in sending read receipts for documents and will not attempt to evade the service of documents upon them.
- 8. Upon the sender's request, the recipient(s) agree(s) to acknowledge receipt for Union-related communications between Agency management officials and Union officers and stewards. Read receipt notices generated by the Agency's e-mail system constitute one manner of acknowledgment.

## **ARTICLE 3**

### **EMPLOYEE RIGHTS**

#### **Section 1. Employee Rights**

Employees covered by this Agreement shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right.

A. Except as otherwise provided by law, such rights include the right:

1. to act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the Executive Branch of the government, the Congress, or other appropriate authorities; and
2. to engage in collective bargaining with respect to conditions of employment through the Union as provided by law and this Agreement.

B. Nothing in this Section, or this Agreement, authorizes participation in the management of a labor organization by a management official, a supervisor, or a confidential employee, except as specifically provided by law, or by an employee if the participation or activity would result in a conflict or apparent conflict of interest or would otherwise be incompatible with law or with the official duties of the employee.

#### **Section 2. Prohibited Personnel Practices**

Employees are protected by law from prohibited personnel actions. The law provides that any federal employee who has authority to take, direct others to take, recommend, or approve any personnel action shall not, with respect to such authority:

A. discriminate for or against any employee or applicant for employment:

1. on the basis of race, color, religion, sex, or national origin, as prohibited under § 717 of the Civil Rights Act of 1964;
2. on the basis of age, as prohibited under §§ 12 and 15 of the Age Discrimination in Employment Act of 1967;
3. on the basis of sex, as prohibited under § 6(d) of the Fair Labor Standards Act of 1938;
4. on the basis of handicapping condition, as prohibited under § 501 of the Rehabilitation Act of 1973, as amended;

5. on the basis of marital status or political affiliation, as prohibited under any law, rule, or regulation;
  6. on the basis of sexual orientation, as prohibited by Executive Orders 11478 and 13087; or
  7. on the basis of parental status, as prohibited by Executive Order 11478, as amended by Executive Order 13152.
- B. solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action, unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of:
1. an evaluation of the work performance, ability, aptitude, or general qualifications of such individual; or
  2. an evaluation of the character, loyalty, or suitability of such individual.
- C. coerce the political activity of any person (including the providing of any political contribution or service) or take any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity.
- D. deceive or willfully obstruct any person with respect to such person's right to compete for employment.
- E. influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment.
- F. grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment.
- G. appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement in or to a civilian position any individual who is a relative (as defined in 5 U.S.C.) of such employee if such position is in the Agency in which such employee is serving as a public official (as defined in 5 U.S.C.) or over which such employee exercises jurisdiction or control as such an official.
- H. take or fail to take a personnel action with respect to any employee or applicant for employment as reprisal for:
1. any disclosure of information by an employee or applicant that the employee or applicant reasonably believes evidences:
    - a. a violation of any law, rule, or regulation; or

- b. gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety,
      - if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs; or
  - 2. any disclosure to the Special Counsel or to the Inspector General of an agency or another employee designated by the head of the agency to receive such a disclosure of information that the employee or applicant reasonably believes evidences:
    - a. a violation of any law, rule, or regulation; or
    - b. gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.
- I. take or fail to take, or threaten to take or fail to take, any personnel action against any employee or applicant for employment because of:
- 1. the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation;
  - 2. testifying for or otherwise lawfully assisting any individual in the exercise of any right referred to in Subsection I.1;
  - 3. cooperating with or disclosing information to the Inspector General of an agency or the Special Counsel, in accordance with applicable provisions of law; or
  - 4. refusing to obey an order that would require the individual to violate a law.
- J. discriminate for or against an employee or applicant for employment on the basis of conduct that does not adversely affect the performance of the employee or applicant or the performance of others, except that nothing in this Subsection shall prohibit the Agency from taking into account in determining suitability or fitness any conviction of the employee or applicant for any crime under the laws of any State, of the District of Columbia, or of the United States.
- K. knowingly take, recommend, or approve any personnel action, if the taking of the action would violate a veterans' preference requirement.
- L. knowingly fail to take, recommend, or approve any personnel action, if the failure to take such action would violate a veterans' preference requirement.
- M. take or fail to take any other personnel action, if the taking of or failure to take such action violates any law, rule, or regulation implementing or directly concerning the merit system principles contained in 5 U.S.C. § 2301.

### **Section 3. Information to Congress**

Nothing in Section 2 shall be construed to authorize the withholding of information from Congress or the taking of any personnel action against an employee who discloses information to Congress.

### **Section 4. Equal Employment Opportunity**

Nothing in Section 2 shall be construed to extinguish or lessen any effort to achieve equal employment opportunity through affirmative action or any right or remedy available to any employee or applicant for employment in the civil service under:

1. § 717 of the Civil Rights Act of 1964, prohibiting discrimination on the basis of race, color, religion, sex, or national origin;
2. §§ 12 and 15 of the Age Discrimination in Employment Act of 1967, prohibiting discrimination on the basis of age;
3. § 6(d) of the Fair Labor Standards Act of 1938, prohibiting discrimination on the basis of sex;
4. § 501 of the Rehabilitation Act of 1973, prohibiting discrimination on the basis of handicapping condition;
5. the provisions of any law, rule, or regulation prohibiting discrimination on the basis of marital status or political affiliation;
6. Executive Orders 11478 and 13087, prohibiting discrimination on the basis of sexual orientation; or
7. Executive Order 11478, as amended by Executive Order 13152, prohibiting discrimination on the basis of parental status.

### **Section 5. Selection of Complaint Procedure**

An employee aggrieved under Section 4 may raise the matter under a statutory procedure or the grievance and arbitration procedure provided in this Agreement, but not under both.

- A. An employee shall be deemed to have exercised his or her option under this Section at such time as the employee timely initiates an action under the applicable statutory procedure or timely files a written grievance under the provisions of this Agreement, whichever occurs first.
- B. The selection of the negotiated grievance procedures contained in this Agreement to process a complaint of discrimination shall in no manner prejudice the right of an aggrieved employee to request the Merit Systems Protection Board (MSPB) to review the final decision in the case of any personnel action that could have been appealed to the MSPB or, where applicable, to request the Equal Employment Opportunity Commission (EEOC) to review a final decision in any other matter involving a complaint of discrimination of the type prohibited by any law

administered by the EEOC. Appeals to the MSPB or the EEOC shall be filed pursuant to such regulations as the MSPB or the EEOC may prescribe.

- C. Except as provided in Subsection B, an employee may only file his or her complaint under the grievance and arbitration provisions contained in this Agreement.

## **Section 6. Private Discussions**

Any discussions with individual employees concerning counseling, evaluations, workload review, or disciplinary actions will be conducted so as to ensure the privacy and dignity of the employee.

## **Section 7. Voluntary Programs**

Participation in the Combined Federal Campaign, U.S. bond drives, blood donor drives, and other comparable programs will be on a voluntary basis.

## **Section 8. Gifts**

Contributions to gifts for supervisors, management officials, or fellow employees will be strictly voluntary and in compliance with the ethics program.

## **Section 9. Personnel Communications**

- A. Employees are strongly encouraged, but not required, to initiate individual personnel matters with first-line supervisors and to follow the Agency chain of command where appropriate.
- B. An employee also has the right to communicate with the appropriate member of the following offices concerning individual personnel matters:
  1. the servicing Human Resources Office;
  2. the Equal Employment Opportunity (EEO) Office or the EEO Officer;
  3. EEO Counselors; and
  4. the Health and Safety Office.

## **Section 10. Maintenance of and Access to Official Records**

- A. An Official Personnel Folder (OPF) and Employee Performance Folder (EPF) will be maintained in accordance with applicable laws and regulations. Only information authorized by law or regulation will be maintained in the OPF/EPF.
- B. Each employee and/or a formally designated representative may review and request copies of any document(s) in the OPF/EPF. The Agency must explain, in writing, any denial.

- C. No record, file, or document filed in the OPF/EPF that is not available to the employee or his or her representative for inspection will be made available to any unauthorized person for inspection or photocopying. Such information will be made available to any authorized person only for official use.
- D. If an employee does not have access to his or her electronic OPF or, should it become available, an electronic version of his or her EPF, the employee may make a written request to the servicing Human Resources Office for a print version of the OPF or EPF. The Agency will provide the requested material to the employee no later than 15 days after receipt of the request.
- E. No derogatory material of any nature that might reflect adversely upon the employee's character or federal career will be placed in his or her OPF or EPF without his or her knowledge.

## **ARTICLE 4**

### **MANAGEMENT RIGHTS**

#### **Section 1. Statutory Rights**

Nothing in this Agreement shall affect the authority of any management official of the Agency:

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

#### **Section 2. Permissive Rights**

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

- A. at the election of the Agency, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;
- B. procedures that the Agency will observe in exercising any authority under this Article; or
- C. appropriate arrangements for employees adversely affected by the exercise of any authority under this Article by the Agency.

## **ARTICLE 5**

### **UNION RIGHTS**

- A. The Agency recognizes the Union as the exclusive representative of all employees in the bargaining unit, as described in Article 1. The Union shall have all such rights and be subject to all such limitations as provided by law, and the Union is entitled to act for and, as provided in Article 1, to negotiate agreements covering all employees in the unit. The Union is responsible for representing the interest of all employees in the unit without discrimination and without regard to labor organization membership.

The Union shall be given the opportunity to be represented at 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, practice, or other general condition of employment. The Union may choose the representative who may attend the formal discussion, ordinarily at no expense to the Agency.

- B. The Agency will give the Union as much advance notice as possible of such formal discussions. Advance notice will be at least 48 hours, operational needs permitting. For formal discussions having bargaining unit-wide implications (*e.g.*, requiring a Union representative's travel to Washington, DC) advance notice will be at least 72 hours, operational needs permitting. Where practicable, the Union will receive advance copies of documents, PowerPoint presentations, videos, etc. to be supplied to employees at the discussion. Upon request, the Agency will use its best efforts to provide the Union with telephone or video-teleconferencing (VTC) access to a formal discussion. In the event telephone or VTC access to a formal discussion is not provided by the Agency, the Agency may pay travel and *per diem* expenses for a Union representative to attend.
- C. The Union shall have the right to present its views, either orally or in writing, to the Agency on any matters of concern regarding personnel policies and practices and matters affecting working conditions.
- D. Except as limited elsewhere in this Agreement, all matters affecting conditions of employment of employees are appropriate subjects for consultation and, where required by applicable law, negotiations between the Parties.

## **ARTICLE 6**

### **STATUS OF EMPLOYEE REPRESENTATIVES**

- A. The Agency shall not impose any restraint (except as may be otherwise provided in this Agreement), interference, coercion, or discrimination against employees in the exercise of their rights to organize and designate representatives of their own choosing for the purposes of collective bargaining, the presentation of grievances, appeals from adverse actions, or labor-management relations, or upon duly designated employee representatives acting on behalf of an employee or group of employees within the bargaining unit.
- B. A reasonable number of stewards may be designated by the Union who shall be recognized as employee representatives for employees in the designated locations, or other Agency facility in which they are designated to be stewards. The Union will supply the Agency with their names, which may be posted on appropriate bulletin boards. It shall be the duty of the Union to notify the Agency of any changes in the roster of stewards.
- C. Upon request and approval in advance, Union representatives are authorized to perform and discharge the duties and responsibilities which may be properly assigned to them under law by the Union in accordance with this Agreement and any supplemental agreement or agreements hereunder. Consistent with law, there shall be no restraint, interference, coercion, or discrimination against Union representatives because of the performance of these duties while they are serving as Union officials. Union representatives shall be relieved from official duties and performance requirements during the period they are serving as Union representatives. This does not preclude employees being called back to their official duties when there is an operational need for their services. The Agency recognizes Union representatives may at times conduct representational duties away from the work place subject to management approval.
- D. The Union will furnish the Agency written notice of the names of the Union representatives and advise the Agency of any changes in its list of designated Union representatives.

## **ARTICLE 7**

### **USE OF OFFICIAL TIME**

#### **Section 1. Purpose**

Official time permits bargaining unit employees to perform authorized representational activities on behalf of the Union during times they otherwise would be in a regular duty status, without loss of pay or charge to annual leave. This Article specifies the types of activities for which official time may be available, provides for the allocation of official time to various Union representatives, and establishes the procedures applicable to the requesting, approval, and recording of official time use.

#### **Section 2. Activities for Which Official Time May be Permitted**

Union representatives may be granted official time to conduct representational functions where such is authorized pursuant to, and consistent with, applicable statutes, regulations, and Executive Orders relating to complaints, grievances, appeals, and other matters involving dealings with Agency officials. Official time may be authorized for the following, provided that the amount of time requested and used is reasonable, necessary, and in the public interest:

- A. to confer with employees or groups of employees regarding matters for which they may seek relief under the terms of this Agreement;
- B. to prepare, present, and/or respond to grievances;
- C. to prepare replies and attend meetings regarding proposal notices of disciplinary actions, adverse actions, or actions under 5 C.F.R. Part 432 based on unacceptable performance;
- D. to prepare for arbitration, including preparation of witnesses, to present arbitration cases, and for any purposes required by the arbitrator after the hearing (*e.g.*, writing briefs);
- E. to prepare a reconsideration statement for the denial of a within-grade increase and attend related meetings;
- F. to meet with national representatives of the Union regarding representational activities;
- G. to participate in a U.S. Federal Labor Relations Authority (FLRA) investigation or hearing preparation;
- H. to attend discussions as described in Article 22;
- I. to travel, participate in, or conduct approved labor-management relations (LMR) training as described in Article 11, Section 9;
- J. to prepare and/or modify Union records and reports required by federal law;

- K. to respond to requests by Members of Congress for information or to testify before Congress;
- L. to prepare for or participate in or travel to and from negotiations (during normal duty hours) for Mid-Term Bargaining as provided in Article 9 and on any related third-party proceedings (*e.g.*, related FLRA proceedings);
- M. to present employee appeals under statutory or regulatory appeal procedures when the Union is the designated representative;
- N. to attend formal discussions and investigative examinations under Article 25;
- O. to attend any other meeting scheduled by the Agency to which the Agency has invited the Union as general representative of the bargaining unit; and
- P. to attend Union-initiated discussions with Agency management officials concerning conditions of employment.

### **Section 3. Prohibitions on Union Representative Use of Official Time**

Union representatives shall not use official time for **the following purposes:**

- A. lobbying activities in violation of 18 U.S.C. § 1913;
- B. internal Union business in violation of 5 U.S.C. § 7131(b);
- C. political activities in violation of 5 U.S.C. Chapter 73, Subchapter III;
- D. any other activity prohibited by law, rule, or regulation; and
- E. any activity not expressly authorized by this Article.

### **Section 4. Allocation of Official Time**

#### **A. Fixed Official Time for Union President**

- 1. The Union President will be granted 100% official time to represent the Union and the bargaining unit consistent with Section 2.
- 2. When the Union President is on leave for more than one continuous week, he or she may designate another representative to act for the President. The employee acting for the President will be granted a reasonable amount of official time upon request at a rate of no greater than 50% official time during the period the President is on leave. The Union shall notify the Chief, Labor and Employment Law Division, Office of the Principal Legal Advisor (OPLA), or designee, of the designation of the other employee who will act for the President two pay periods in advance, except in unforeseen circumstances.

B. Treasurer

1. Upon request, the Treasurer will be granted two (2) hours per pay period to prepare and complete reports required by federal law. In addition, up to 40 hours may be granted each calendar year between the end of the Union's fiscal year (December 31) and the federal tax filing deadline (April 15) to file required reports and tax returns. The 40 hours may be used at one time or in increments at the request of the Treasurer. There is no carryover of time not used for this purpose from year-to-year.
  2. If necessitated by changed circumstances, the Treasurer will be granted up to eight (8) hours of additional official time to attend training regarding governmental requirements for record keeping and reporting. "Changed circumstances" refers to such events as the appointment of a new Treasurer or the issuance of new laws or regulations affecting record keeping and reporting requirements.
- C. Other Union representatives not specifically identified in Section 4 will be granted amounts of official time as are reasonable, necessary, and in the public interest pursuant to 5 U.S.C. § 7131(d).

**Section 5. Required Procedures**

- A. Prior to the use of official time, a Union representative must first obtain management approval.
- B. To obtain such approval, the representative must submit the form at Appendix A to management prior to the use of official time, specifying the activity to be performed, the number of hours to be used, where and when the official time will be used, and how the tasks are related to representational duties.
- C. If a request for official time to perform a certain representational activity is approved, and the activity spans beyond a single pay period, the representative shall submit a new request on the form at Appendix A for each pay period in which official time is requested.
- D. If a request for official time to perform a certain representational activity is approved, and more time is needed than was anticipated for that representational activity within the same pay period, the representative will contact the approving official and obtain approval for the amount of additional time that is needed. As soon as practicable, the representative must edit the previously submitted form to memorialize the additional approved time and re-submit it to the approving official for signature.
- E. Management will only approve official time requests where the official time is reasonable, necessary, and in the public interest. Requests that do not contain sufficient information for management to render its decision will be denied. When a request is denied, in whole or in part, the Agency will explain the reason for the denial on the official time request form.

- F. Where representational activity will involve meeting during the duty time of a bargaining unit employee other than a Union representative, the employee or the Union representative must obtain prior approval of the employee's supervisor for the employee's use of official time, consistent with the procedures described within this Section.
- G. A representative who uses official time without advance written authorization or for purposes not specifically authorized by the Agency may be considered absent without leave and subject to appropriate disciplinary action. Repeated misuse of official time may constitute serious misconduct that impairs the efficiency of the federal service.

## **Section 6. Union Representative Use of Official Time**

- A. Official time for representational activities is available for use only during the tour of duty as described in Article 15, during time when the Union representative otherwise would be in a duty status. The Union representatives are required to report to their duty stations (*i.e.*, normal worksite), except when it is necessary to be at another location to perform the representational activity, in which case the representative will provide contact information so that he or she can be contacted regarding labor-management relations matters or recalled if needed to perform Agency work.
- B. While on official time, Union representatives are relieved of official duties, but are subject to recall to duty if needed to perform Agency work. In the event the representative is recalled to perform Agency work, the charge to official time will be stopped until the representational activity is resumed.
- C. Union representatives will receive performance appraisals based only upon Agency-assigned work.
- D. Activities for which an employee normally would be required to charge to annual, sick, or other appropriate leave, if he or she were not a Union representative, cannot be charged to official time.

## **Section 7. Official Time for Labor-Management Relations Training**

Union representatives will receive official time for approved LMR training, including official time for travel in connection with that training, in accordance with the provisions of Article 11.

## **Section 8. Travel and *Per Diem* Expenses for Union Representatives**

- A. The Agency will pay Union representatives' travel and *per diem* expenses for attending meetings to which the Agency has invited the Union to attend in person away from the respective Union representative's duty station.
- B. The Agency will pay for the grievant and Union representative's travel and *per diem* expenses for participation in an arbitration hearing in accordance with Article 22, only in the event a Union representative is not locally available.

- C. The Agency will pay travel and *per diem* expenses for a Union representative who is providing representation of an employee making an oral response to a proposed removal action (*i.e.*, under adverse action or 5 C.F.R. Part 432 performance-based action procedures) only in the event a Union representative is not locally available.
- D. The Agency will pay up to a cumulative total of \$10,000 per fiscal year for Union representatives' travel and *per diem* expenses for Mid-Term Bargaining in accordance with Article 9. Any allotted funds not used in a fiscal year will not be available in any subsequent year.
- E. Unless specifically granted under a provision of this Agreement, or at the sole discretion of the Agency, the Agency will not pay travel or *per diem* expenses for any other representational activity.
- F. Payment of travel and *per diem* expenses under this Section will be consistent with the Federal Travel Regulation (FTR).

## **ARTICLE 8**

### **FACILITIES, SERVICES, AND ACCESS TO EMPLOYEES**

#### **Section 1. General**

National, regional, and local representatives of the Union shall normally be permitted access to all Agency offices with bargaining unit employees. It is understood that such Union representatives shall give reasonable advance notice to the supervisor in charge of the office of their impending visit. If the supervisor cannot approve the visit for valid operational reasons, the supervisor will make an alternative arrangement for the representatives. Upon arrival, the representatives shall advise the supervisor of their presence. Such representatives shall not interfere with the work of employees during duty hours.

#### **Section 2. Bulletin Boards**

- A. Each Agency office will provide for the Union's exclusive use a dedicated bulletin board space in a place of prominence not ordinarily frequented by the public and reasonably accessible for posting material published by the Union.
- B. In each office facility with 30 or more bargaining unit employees, the Agency will provide to the Union for its exclusive use a minimum of one lockable bulletin board (measuring approximately 3x4 feet). The bulletin board will be permanently attached to the walls where building regulations permit such permanent installations. Such bulletin board(s) shall be in an employee high-traffic and -visibility area out of public view (*e.g.*, in employee break rooms or near elevators), such that all bargaining unit employees may have easy access. The key shall be in the sole possession of the Union. Subject to mutually acceptable space and within landlord requirements, the Union may install, at its own expense, a bulletin board of up to 3x4 feet in addition to the bulletin board supplied by the Agency.
- C. In each office facility with fewer than 30 bargaining unit employees, where building and landlord requirements permit, the Union may install at its own expense a bulletin board of up to 3x4 feet.
- D. Material that does not violate any law, contain libelous material, or contain personal attacks may be posted on Union bulletin boards.

#### **Section 3. Union Meetings**

- A. Upon reasonable advance request by the Union, the Agency will provide available meeting space in areas occupied by the Agency for meetings during non-duty hours. The Union will comply with all security, safety, and housekeeping rules in effect at that time and place.
- B. Nothing in this Section shall be construed as permitting meetings or the use of Agency-supplied equipment during duty time for the purpose of conducting internal Union business.

- C. Employees attending meetings under Subsection B will do so only during non-duty hours (*e.g.*, lunch time or while they are in a leave status).
- D. Upon reasonable advance request by the Union, the Agency will provide confidential meeting space during official hours of business, in areas occupied by the Agency, for the following purposes:
  - 1. preparing or discussing a grievance or appeal;
  - 2. caucusing immediately before, after, and during scheduled meetings with the Agency;
  - 3. discussing matters directly related to the administration of this Agreement; or
  - 4. matters relating to the Union's representation of employees.
- E. Upon reasonable advance request, mutually agreed upon space will be provided, if available, by the Agency to be used in conjunction with elections governed by local by-laws. Space will be made available for the ballot box for the duration of the election period. The Union will comply with security and housekeeping rules in effect at that time and place. The Union acknowledges that the Agency assumes no responsibility for the safety or security of the ballot boxes.

#### **Section 4. Photocopying**

Except for internal Union business, the Union is authorized the use of Agency photocopying equipment for representational purposes, such use being subject to the Agency's need of the equipment for Agency work requirements. For more than *de minimis* tasks, the Union will supply its own paper.

#### **Section 5. Use of Communication Equipment**

- A. Upon reasonable advance request by the Union, and where available at no additional cost to the Agency, the Agency will provide access to teleconference facilities, video conference facilities, video equipment (*i.e.*, TV, DVD player, video camera recording equipment), and other conferencing services routinely used in that work location. The Union will follow the same use procedures as all other users.
- B. Employee Union Officers or Stewards are authorized the use of the Agency's e-mail system, telephones, scanners, and FAX machines to conduct Union representational activities. The Union's use of the Agency's communications systems and equipment will be solely for proper and legitimate representational Union purposes, and not for internal Union business. The Union acknowledges that the e-mail system is administered by the Agency's Office of the Chief Information Officer (OCIO), and that its use is subject to OCIO security procedures and requirements and Office of Professional Responsibility investigations.

- C. The Agency will update the bargaining unit e-mail distribution lists for the Union. The Union will designate up to two (2) points of contact who will be responsible for electronic communication using the e-mail distribution lists and for coordination with the Agency's Chief, Labor and Employment Law Division, OPLA, or designee, regarding concerns that may arise. The e-mail distribution lists will be updated by the 15th of each month.
- D. The Union's use of Agency communication facilities and services identified above is subject to the Agency's work requirements.
- E. The Agency will not interfere with the reasonable access of the Union to the Agency's internal e-mail system (including archived files) and FAX transmission equipment, and will not inquire into the content of Union communications. The Agency will make no effort to gain purposeful knowledge of the content of such communications.
- F. As described more fully in Article 9, notices, proposals, and correspondence related to representational matters may be transmitted by e-mail with electronic read receipt requested, where service is applicable. Electronic read receipt by one designee will constitute proof of service. Documents transmitted by e-mail will be sent to all of a Party's designees, not to exceed four (4) government e-mail addressees by each Party. The Parties will exchange their respective lists of designees. The Parties will provide an updated list of designees by the 15th of each month. The Parties' designees will ensure their electronic read receipt is enabled and, where requested, will acknowledge receipt promptly. In the alternative, certified mail or personal delivery will constitute formal service. FAX transmission may be used only when the receiving Party expressly consents to such means in regard to a particular document.

## **Section 6. Computer Resources and Reference Materials**

- A. Access to the Agency's administrative manuals, memoranda, procedures, *etc.*, shall be available through the Agency internet, Agency SharePoint site, intranet, or internal regulation distribution.
- B. The ordinarily available attorney online research tools, including Westlaw, may be used by the Union for representational purposes, provided there is no additional cost to the Agency.
- C. Wherever the Agency maintains print or any electronic reference material (*e.g.*, Interpreter Releases, Broida Law & Practice, CCH), this material will be made accessible for shared use, provided there is no additional cost to the Agency.

## **Section 7. Mail**

- A. Consistent with postal regulations, the Union shall have *de minimis* use of Agency metered mail for correspondence with the Chief, Labor and Employment Law Division, OPLA, or designee, and other appropriate Agency officials (including a copy to the Chief, Labor and Employment Law Division, OPLA, or designee) regarding labor relations representational matters. This, however, does not permit the Union to use other types of mail services, such as express, overnight, registered, or certified mail, at Agency expense. The Union may deposit

mail relating to representational matters for pick up by the Agency's contract commercial delivery service (*e.g.*, FedEx, DHL, UPS) if such use does not result in any cost to the Agency.

- B. The Union shall have use of existing local internal mail for labor relations representational matters, other than mass mailings. However, this does not obligate the Agency to maintain any internal mail delivery system.

## **Section 8. Orientation**

A Union representative who is in duty status will be allowed to provide a 30-minute orientation to each new employee/transferee. The Union representative will cover only the labor relations law, the provisions of this Agreement, and Union/Management matters. No recruiting or other internal Union business may be conducted during the orientation.

## **Section 9. Personnel Roster and Telephone Directory**

- A. By the 15th of each month, the Agency will provide the Union President with the following:
1. a list of bargaining unit members within OPLA;
  2. a list of non-bargaining unit members within OPLA;
  3. a list of bargaining unit members who are non-attorney professionals; and
  4. a list of non-bargaining unit members who are non-attorney professionals.
- B. These lists will identify employee names and duty stations. These lists will also indicate new employees, separations, transfers, and changes in bargaining unit status.
- C. The Agency will include a separate page in the attorney telephone directory listing the following: the names, office locations and addresses, and office telephone numbers of all Officers and Stewards of the Union. The Union will provide an updated list of Union representatives when changes are made by the 15th of each month.

## **Section 10. Notice in Changes of Bargaining Unit Status**

- A. When the lists identified in Section 9.A indicate that a position/employee is no longer part of the bargaining unit based on a work assignment, the Agency will indicate the reason for the change in order to provide the Union with a timely opportunity to contest the change in bargaining unit status. The Agency and the Union may agree that a change in duties may exempt a position/employee from the bargaining unit.
- B. When the Agency determines that an employee is no longer excluded from the bargaining unit, a Union representative will be provided 30 minutes to communicate with that employee.

## **Section 11. Union Office Space and Technology**

- A. Union Officers and Stewards on official time status will have use of their private government office space for their representational duties and will be provided lockable storage space. The Union Officer or Steward will also be permitted to maintain the same seniority status for office selections.
- B. For a Union Officer who qualifies for at least 50% official time status, the Agency will provide a smartphone, laptop computer (with wireless connection), printer, and scanner for use at the Officer's government office or other authorized location for representational purposes. The Agency will provide the Executive Vice President and the Union representative who has primary responsibility for representing non-attorney bargaining unit positions (Chief Steward for non-attorney professionals) with a smartphone.
- C. The Union will be provided office space as needed at the Agency's headquarters building.

## **Section 12. Parking**

Employee safety is a mutual concern. When remote parking is the only option, the Parties agree that, upon request by the Union on a case-by-case basis, the Agency will endeavor to provide after-hours parking at adjacent Agency-controlled or other government-controlled parking facilities, provided that such after-hours parking does not result in additional costs to the Agency.

## **Section 13. Copies of the Collective Bargaining Agreement**

The Union will be provided 100 hard copies of this collective bargaining agreement for distribution to Officers and Stewards. This collective bargaining agreement will be made available electronically on the ICE intranet.

## **Section 14. Space Reallocation**

The Parties agree that timely pre-decisional involvement (PDI) as described in Article 9, Section 1.F regarding potential/future space reallocation may benefit both the Agency and its employees. Consistent with law and government-wide rules and regulations, the Agency will notify the Union of any non-*de minimis* space reallocation and will bargain with the Union, to the extent required by law and this Agreement. Space reallocation encompasses new acquisitions, relocations, expansions, consolidations, or reductions of physical space that affect employee working conditions anywhere within the Agency.

## **ARTICLE 9**

### **MID-TERM BARGAINING**

#### **Section 1. General Provisions**

- A. The purpose of this Article is to prescribe the circumstances and procedures under which the Agency and the Union shall engage in negotiations during the term of this Agreement. The Article shall be administered in accordance with 5 U.S.C. Chapter 71 and this Agreement.
- B. The Parties will engage in mid-term bargaining as provided in Sections 2 and 3, or otherwise only by mutual agreement.
- C. The Parties recognize that from time to time during the life of the Agreement, the need will arise for the Agency to introduce and/or modify existing Agency personnel policies, practices, and/or working conditions not covered by this Agreement or to exercise its statutory management rights in a manner that affects conditions of employment.
- D. In applying the provisions of this Article:
  - 1. Any time limit may be extended by mutual agreement.
  - 2. “Day” means calendar day unless otherwise specified.
  - 3. Whenever the last day by which an action must be accomplished falls on a weekend, federal holiday, or other day when the Agency’s office is closed, the last day for action will be the next day that the office is open.
- E. In this Article, as elsewhere in this Agreement, the Parties use terms of art developed through the precedent and regulations of third parties charged with administering the Civil Service Reform Act of 1978 (*e.g.*, FLRA, MSPB, U.S. Office of Personnel Management [OPM]). These terms of art include, but are not limited to, “the necessary functioning of the agency” and “covered by.” It is the intent of the Parties that where terms of art are used in this Agreement, they are to be interpreted in a manner consistent with the precedent and regulations of those third parties at the time this Agreement is negotiated.
- F. The Parties are committed to the use of pre-decisional involvement (PDI) to allow the Parties a reasonable period of time to make efforts to resolve issues through a consultative and cooperative approach. However, PDI is not mandatory. If the Parties are unable to reach agreement through PDI or in circumstances where PDI has not been used, bargaining may occur in accordance with this Article.
- G. Nothing in this Agreement shall be deemed to waive either Party’s statutory right unless such waiver is clear and unmistakable.

H. Post-Implementation Bargaining. Effective management of ICE and its resources is a mutual concern. On some occasions, the necessary functioning of the Agency may require implementation prior to bargaining. On those occasions, the Union retains the right to demand post-implementation bargaining.

## **Section 2. Agency-Initiated Changes**

A. Notice and Opportunity to Bargain. To the extent provided by law and this Agreement, the Union shall be given notice and an opportunity to bargain over Agency-initiated changes in matters affecting conditions of employment of bargaining unit employees. Any condition of employment covered by this Agreement may not be changed except as permitted by law. The Agency shall serve its notice of the proposed change upon the President of Local 511 or designee.

B. Content of Notice. The notice will, at a minimum, contain the following information:

1. a description of the proposed change and the scope;
2. the Agency's plans for implementing the change;
3. information that is relevant and necessary for the Union to understand the change; and
4. the proposed implementation date, which normally will be no fewer than 30 days after the date of the notice.

C. Union Response to Notice of Proposed Change

1. Request for Briefing. Within seven (7) days after receipt of the notice of proposed change and any supporting documentation, as provided in Subsection B, the President of Local 511, or designee, shall inform the Chief, Labor and Employment Law Division, OPLA, or designee, whether the Union requests a briefing on the change and, if so, identify the issues the Agency should address. The Chief, Labor and Employment Law Division, OPLA, or designee, will determine the manner, nature, and extent of the briefing. Generally, within seven (7) days of the Union's request, the Parties will agree on a future date for the informational briefing.
2. Request for Additional Information. Within 14 days after receipt of the notice of proposed change or within seven (7) days after the briefing—if a briefing is conducted—the Union may request additional information, in accordance with 5 U.S.C. § 7114(b)(4). The Agency shall respond to the Union's requests for information pursuant to 5 U.S.C. § 7114(b) in a timely fashion. Where practicable, the Agency may provide a partial response containing immediately available information while other information is still being gathered.
3. Demand to Bargain. The Union will submit any demand to bargain and its initial bargaining proposals not later than:

- a. 21 days after receipt of the Agency's response to the 5 U.S.C. § 7114(b)(4) information request;
- b. 21 days after the briefing, if no 5 U.S.C. § 7114(b)(4) information request is made; or
- c. 30 days after receipt of the notice of proposed change, if the Union neither requests a briefing nor makes a 5 U.S.C. § 7114(b)(4) information request.

The amendment of initial bargaining proposals or the submission of additional proposals will be by mutual agreement, and neither party will unreasonably deny the request.

### **Section 3. Union-Initiated Mid-Term Bargaining**

- A. In addition to bargaining pursuant to Section 2, the Union can propose up to two (2) new Articles at the middle of the original term of this Agreement to address matters that are substantively negotiable (*i.e.*, excluding matters affecting reserved management rights or permissive subjects of bargaining) and that are not already covered by the specific provisions of this Agreement, by the bargaining leading to this Agreement, or by bargaining under Section 2.
- B. To exercise this right, the Union will serve notice, including the Union's proposal(s), on the Agency's Chief, Labor and Employment Law Division, OPLA, or designee, during the 30-day period preceding the mid-term anniversary date.
- C. The Agency will respond to the Union's notice within 30 days of receipt of the proposal(s).
- D. Negotiations shall be conducted in accordance with the Ground Rules provided in Section 5.
- E. The Union's proposal will not be implemented except by agreement of the Parties or as directed consequent to statutory impasse resolution procedures.

### **Section 4. Service of Notices and Demands**

- A. Service of all notices, requests, demands, or documents provided for under this Article shall be accomplished by personal delivery, certified mail, or e-mail. As applicable, time limits shall begin to run on the day after the date of the receipt of the document that triggers the particular time limit. Electronic read receipt will constitute proof of service. Each Party may designate up to four (4) recipients. Documents transmitted by e-mail will be sent to each Party's designees at their government e-mail addresses. The Parties' designees will ensure their electronic read receipt is enabled and, where requested, will acknowledge receipt promptly. FAX transmission may be used only when the receiving Party expressly consents to such means in regard to a particular document. The Parties will act in good faith in sending read receipts for documents and will not attempt to evade the service of documents upon them.

- B. When service is by e-mail, the subject line of the e-mail shall put the addressee on notice that an identified document is being served (*e.g.*, “Agency Notice of Proposed Change” or “Union Request for Information under 5 U.S.C. § 7114(b)(4)”).

## **Section 5. Ground Rules**

- A. Commencing Negotiations. If the Parties are unable to reach agreement on the proposed changes during the procedures provided in Section 1.F or, as applicable, Section 2 or 3, negotiations will commence as expeditiously as possible.

1. Mid-term bargaining negotiations may be conducted by telephone, VTC, or in person and, unless otherwise agreed, shall begin at 9 a.m. Eastern Time on the second Tuesday following the date a demand to bargain is received by the Agency under Section 2, or, if applicable, the Agency’s response is received by the Union under Section 3.C. The Parties recognize there may be emergent changes that must be implemented quickly. In these instances, negotiations should begin as soon as practicable.
2. When the Agency-provided travel fund under Article 7, Section 7.D has been exhausted, negotiations may be conducted by telephone or VTC, unless the Union elects to fund its own travel expenses for its representatives.

- B. Duty to Bargain in Good Faith. The duties of the Parties to negotiate in good faith under this Article shall include the following obligations:

1. Resolve to Reach Agreement. To approach the negotiations with sincere resolve to reach agreement;
2. Duly Authorized Representative. To be represented by duly authorized representatives prepared to discuss and negotiate on the subjects authorized by this Article; and
3. Reasonable Times. To meet at reasonable times, as frequently as may be necessary, and to avoid unnecessary delay.

- C. Chief Negotiators. Each Party shall be represented at the negotiations at all times by one duly authorized chief negotiator or an alternate chief negotiator who may act in the absence of the chief negotiator. The chief negotiators will be prepared and authorized to reach agreement on all matters subject to negotiations and to sign off on agreements for their respective Party.

## D. Bargaining Teams

1. The Union will name up to two (2) representatives as its bargaining team or, if the Agency has more than two (2) representatives, an equal number as the Agency.
  - a. When Agency travel authorizations will be required for Union team members, the Union will inform the Agency of those employees at the earliest practicable date prior

to the first date of travel for each negotiating session and will provide all information the Agency needs for issuance of each employee's travel authorization.

- b. With supervisory approval, the Union representative may choose to travel outside the regular duty hours for the convenience of the employee or the benefit of the government based on such factors as cost and time away from his or her duty station. The maximum reimbursement for *per diem*/subsistence will be limited to that which would have been allowed had the employee traveled during regular duty hours.
2. The chief negotiators will inform each other of the members of their bargaining teams and alternates five (5) days before the date bargaining is scheduled to begin and will give reasonable advance notice of any changes thereafter. The name, title, location, e-mail address, and telephone number of each team member will be provided.
3. Each Party may designate alternates who will participate in the negotiations in the absence of any other team member.

#### E. Bargaining Procedures

1. The starting date will be governed by Section 5.A.1 unless the chief negotiators agree otherwise. The daily schedule for negotiations will be established by the chief negotiators.
2. No official transcript or electronic recordings will be made during the negotiations; however, each Party may designate a note taker to keep notes and records during the session(s).
3. Either Party may call a caucus at any time. Caucuses will not exceed 60 minutes, except by agreement of the chief negotiators. A Party may call no more than two (2) caucuses in a day, except by agreement of the chief negotiators.
4. The Parties will strive to conduct negotiations as expeditiously as possible and will avoid unnecessary delays. If a break in negotiations is necessary, the chief negotiators will agree on a time and date to resume prior to any recess.
5. The chief negotiators may, through mutual agreement, permit a subject matter expert to attend a negotiating session for the purpose of presenting information that will help the Parties to resolve issues. The expert will leave the negotiating session as soon as the presentation to the negotiating teams is finished, unless otherwise agreed.
6. All proposals and counterproposals will be provided in electronic format and, if applicable, in hard copy. Proposals and counterproposals will be identified as either Union or Agency and numbered successively. As each proposal or counterproposal is taken up, the Party offering that proposal or counterproposal will explain it and will, at a minimum, provide the meaning and objectives of the proposed language. There will be ample opportunity for questions and answers, additional information, and other discussion. The Parties will follow this procedure in a good-faith effort to reach agreement.

7. Both Parties will strive to make the language in the agreement as clear, simple, and understandable as possible.
8. When agreement is reached, the chief negotiators will sign and date two (2) copies of the agreement (*e.g.*, Memorandum of Agreement), and each chief negotiator will retain a copy.

#### F. Facilities and Equipment

1. When negotiations are conducted in person, they will be held in a suitable meeting room arranged for by the Agency at ICE headquarters or other mutually agreed-upon site. Where practicable, the Agency will furnish the Union negotiating team with a caucus room, such as a conference room or other private meeting space in close proximity to the negotiation room. Where providing a separate caucus room is not practicable, the Union will be provided the negotiation room as its caucus room.
2. When negotiations are conducted at an ICE facility, the Agency will provide the Union bargaining team with customary and routine office equipment, supplies, and services, including, but not limited to, at least one computer hard-wired with internet access, telephone(s) other than a conference phone, desks and/or tables and chairs, office supplies, and access to at least one dedicated printer, one dedicated scanner, and one photocopier.
3. Whether negotiations are conducted in person or by telephone or VTC, Union bargaining team members who are ICE employees may use their Agency-issued office equipment and available local ICE office equipment and supplies.

#### G. Issues of Negotiability and Duty to Bargain

1. If either Party alleges that it is not obligated to negotiate on a particular proposal, the Parties will make a reasonable effort to resolve their differences. If the Parties are not able to do so, each Party is free to take appropriate action. For example, either Party may request, in writing, a written declaration of non-negotiability/no duty to bargain, in which event the other Party will provide a written statement explaining the basis of its non-negotiable allegation. The written statement will be provided within 10 days of the other Party's written request.
2. If the Union files a negotiability appeal with the FLRA, and the Agency withdraws its allegation of non-negotiability or the Union proposal or a portion of the proposal is ruled negotiable before a final agreement has been reached, the Parties will commence negotiations on the proposal or portion of the proposal within 30 days of the final disposition of the negotiability appeal. Agreed-upon provisions will be incorporated into the Agreement.
3. A pending negotiability appeal will not delay a final agreement. The Parties will make every attempt to reach agreement on all other provisions and will initial/sign the agreement once that agreement is reached.

4. If the Agency files an unfair labor practice charge over a Union allegation that it has no duty to bargain over a particular proposal, and the Union withdraws its allegation or a dispositive ruling that there is a duty to bargain over the Agency proposal or a portion of the proposal becomes final before a final agreement has been reached, the Parties will commence negotiations on the proposal or portion of the proposal within 30 days of the Union's withdrawal or the ruling becoming final. Agreed-upon provisions will be incorporated into the Agreement.
5. A pending unfair labor practice charge filed by the Agency over a Union declaration that it has no duty to bargain over an Agency proposal will not delay a final agreement. The Parties will make every attempt to reach agreement on all other provisions of the Agreement and will initial/sign the Agreement once that agreement is reached.

I. Impasses. Impasses in mid-term bargaining negotiations will be resolved in accord with the following:

1. Impasse During Negotiation. During mid-term negotiations, when it has been determined that an impasse has been reached, the item shall be set aside. After all negotiable items on which agreement can be reached have been disposed of, the Parties shall once more attempt to resolve any existing impasse item.
2. Mediation. If such further consideration does not result in the resolution of the impasse, the assistance of the Federal Mediation and Conciliation Service may be requested by either Party.
3. Referral to Impasses Panel. Any impasse that remains unresolved following mediation may be referred to the Federal Service Impasses Panel in accordance with 5 U.S.C. § 7119(b).
4. Agreements Allowed. The procedure described above shall not preclude the Parties from agreeing on any issues or from entering into complete agreement with the assistance of the Mediator or the Panel.

J. Agency Head or Designee Review and Effective Date

1. The agreement will go into effect on the earlier of the date it is approved by the Agency Head, or designee, or 30 days after it is executed, in accordance with law.
2. If the Agency Head, or designee, disapproves the agreement, the Agency's chief negotiator will notify the Union's chief negotiator immediately, including which particular provisions were found to be contrary to law, rule, or regulation, as well as the particular law, rule, or regulation that the Agency Head, or designee, claims was violated. The chief negotiators will then set a date promptly to resume negotiations within 30 days in an effort to reach agreement. If negotiations are resumed, the Agency will provide an explanation in order to expedite and facilitate clarifications or changes the Parties may make to resolve the

disapproval. In the alternative, the Union may decline further negotiations and instead take appropriate legal action, including submitting the disputed issues to the FLRA and/or the appropriate court, as provided by law. Upon a final disposition that a disapproved provision is within the scope of bargaining, the provision shall automatically become part of the agreement and go into effect immediately.

## **ARTICLE 10**

### **NOTICE TO EMPLOYEES**

#### **Section 1. Notice of Union Officers**

The annual notice of employees' right to request Union representation in investigative interviews, provided in Article 25, will also inform employees that "AFGE, through Local 511, represents the bargaining unit of ICE professional employees in all labor-management matters. The Collective Bargaining Agreement is available online through the ICE Office of Human Capital (OHC) website on the ICE intranet."

#### **Section 2. New Employees**

- A. The Agency will inform a new bargaining unit employee in writing: (1) that the Union is the exclusive representative of employees in the bargaining unit; (2) that bargaining unit employees have the right to freely and without fear of penalty or reprisal form, join, and assist a labor organization or refrain therefrom; and (3) that the Union will be provided an opportunity to give a 30-minute orientation pursuant to Article 8, Section 8.
- B. The Agency will provide a new bargaining unit employee with the following in electronic format:
  1. a copy of this Agreement;
  2. the OPLA Directory, which includes the names, e-mail addresses, and telephone numbers of OPLA local stewards and national officers; and
  3. the Non-Attorney Professional Union Directory, which includes the names, e-mail addresses, and telephone numbers of the non-attorney professional local stewards and national officers.
- C. The Agency will notify the Union as soon as practicable when OPLA 101 and OPLA 201 are scheduled. The Union will be invited, at its expense, to attend each offering of the OPLA 101 and OPLA 201 courses conducted by the Agency and will be introduced to the course participants. The Union may invite the OPLA 101 and OPLA 201 course participants to arrive before or remain after training hours for a presentation or reception, at the Union's own expense.

#### **Section 3. Copy of Notice for Union Representative**

An employee who receives a personally-addressed notice, proposal, or correspondence from the Agency concerning:

1. an adverse action;

2. a disciplinary action;
3. a reduction-in-force;
4. denial of a within-grade salary increase;
5. a fitness for duty examination; or
6. an involuntary reassignment or transfer

shall receive an additional copy, which states at the top of the first page, “This copy may at your option be furnished to your Union representative.”

#### **Section 4. Leave and Earnings Statements**

Each employee will be furnished, on a biweekly basis, a National Finance Center payroll earnings statement showing the employee’s total cumulative earnings and total cumulative deductions from the first yearly pay period in each standard category. The statement shall also contain annual leave and sick leave balances.

#### **Section 5. Workplace Injuries and Illnesses**

The Agency will provide an employee who is injured while in duty status with the following link concerning the Employees’ Compensation Operations and Management Portal (ECOMP), the web-based electronic system selected by the Agency for recording workplace injuries and illnesses and for processing claims under the Federal Employees’ Compensation Act (FECA): <https://www.ecomp.dol.gov/>. The Agency will ensure that injured/sick employees will be given the appropriate ICE OHC Workers Compensation Program point of contact, as found at [https://insight.ice.dhs.gov/mgt/hc/Pages/workers\\_compensation/pocs.aspx](https://insight.ice.dhs.gov/mgt/hc/Pages/workers_compensation/pocs.aspx), to obtain relevant information and counseling pertaining to benefits under the FECA and will help facilitate their return to work.

## **ARTICLE 11**

### **TRAINING AND DEVELOPMENT**

#### **Section 1. General**

- A. Training and development of employees is important to ensure maintenance of a knowledgeable, skilled, and able workforce necessary for effective accomplishment of the Agency mission.
- B. Employees are encouraged to take advantage of training and educational opportunities that will enhance skills and qualifications needed to increase efficiency in the performance of assigned duties and to pursue career development interests. Such opportunities may include trial advocacy/legal writing, auditing/accounting, library science, health sciences, architecture, and engineering courses. Employees also are encouraged to pursue career interests through self-education, self-development, and self-training.
- C. Where the employee is attending job-related training approved by the Agency, the employee will be in a duty status during periods of time the employee is attending training and would otherwise be on duty. Upon request, the employee may be given an “in lieu of” Alternative Work Schedule (AWS) day off, so long as it can be done within the same pay period, when training takes place on the employee’s assigned AWS day off.
- D. The Agency will maintain training records as required by law and regulation.
- E. The selection for training will be free from prohibited personnel practices.
- F. As soon as practicable, the Agency will notify the Union President of national Agency training that bargaining unit members are eligible to attend, including the course title, location, and dates of the training. Upon request, the Agency will provide the Union President a list of selectees for any national Agency trainings.

#### **Section 2. Mandatory Training**

- A. Mandatory training, both in person and electronic (*e.g.*, DHS Performance and Learning Management System [PALMS]), is training that the Agency determines is necessary for employment with the Agency or for the performance of assigned duties.
- B. When an employee is performing specialized duties as of the effective date of this Agreement or has been selected to perform specialized duties in accordance with Article 14, the Agency may assign the employee to attend the specialized mandatory training without regard to the selection process identified in Section 3.
- C. The Agency shall provide reasonable advance notice, normally by e-mail, of mandatory training and reasonable duty time to complete the training.

D. When an employee cannot attend or complete mandatory training due to unforeseen or exigent circumstances, the employee may submit a request for temporary deferral of the mandatory training. The employee must state the reason in sufficient detail to allow the Agency to make an informed and timely decision on the request for deferral. This provision is not intended to be used to request deferral of mandatory training provided through PALMS or other online training for which an employee has been given at least 30 days' advance notice of the required completion date.

### **Section 3. Elective Training**

- A. Elective training may include training for human rights law, national security law, customs law, worksite enforcement law, technological resources, *etc.*
- B. Definitions
  - 1. Justified, legitimate reasons. Justified, legitimate reasons include such matters as mission needs, specific office conditions, direct and indirect costs, prior training attended, recent conduct deficiency that bears on an employee's attendance at training, performance issues, placement on a performance improvement plan, and workload.
  - 2. Seniority. For attorneys, seniority is time as an Agency (including legacy U.S. Immigration and Naturalization Service and U.S. Customs Service) attorney. For all other bargaining unit employees, seniority is service computation date.
- C. Selection Process. Absent a justified, legitimate reason, the Agency will use the following method for making employee selections for all elective, government-funded training:
  - 1. Announce training opportunities to all eligible employees. The announcement will be by e-mail.
  - 2. Solicit volunteers.
  - 3. Select on the basis of a fair and impartial seniority rotation process as determined on a local level.
  - 4. When training is necessary for the performance of specific or specialized job assignments, initial selection(s) may be based on assignment of duties. If spaces remain thereafter, the Agency shall make selections on a rotational basis based on seniority.
  - 5. Prior selection for training will not preclude an employee from selection for an unfilled training opportunity.
  - 6. Upon request, the basis for disapproval of a request to attend elective training will be explained in writing to the employee.

## **Section 4. Continuing Education Required to Maintain Professional Licensure**

Where possible to do so without incurring additional costs, the Agency shall provide continuing education training opportunities to all attorneys and non-attorney professionals who are required to complete continuing education for maintenance of their professional licenses (*e.g.*, West Legal Ed and in-house training). Such continuing education training opportunities will be related to an employee's work with the Agency. Employees may attend continuing education training during duty hours with management approval and will be in duty status for the duration of the training.

## **Section 5. Employee-Initiated Training**

- A. An employee may submit (a) request(s) to the immediate supervisor for job-related training and/or career development opportunities.
- B. Training provided by non-governmental vendors or other entities (*e.g.*, state or county bar associations, law schools, or professional associations) may be considered when available Agency or other government-sponsored training programs do not meet identified needs for knowledge, skills, and abilities bearing directly upon the performance of official duties.
- C. The training described in this Section may be approved under the following circumstances:
  - 1. the training has been applied for and approved in advance;
  - 2. reasonable inquiry has failed to disclose the availability of a suitable and adequate program elsewhere in government;
  - 3. funds are available to pay for the training program;
  - 4. the course is not being taken solely for the purpose of obtaining a degree; and
  - 5. the approval of such training will not create undue interference with operational requirements or an imbalance in staffing patterns.

## **Section 6. Reassignment Training**

When an employee is reassigned on the basis of management need or position abolishment, sufficient training as determined by the Agency will be provided to the employee to enable him or her to perform the duties of the new position. The employee will be given a reasonable time to become proficient in the new position.

## **Section 7. New Technology Training**

With the introduction of new technology, the Agency will provide appropriate basic training. Upon request, the Agency may provide additional training to employees affected by the introduction of such new technology.

## **Section 8. Training Recommendations**

The Union may submit recommendations to the Agency concerning employee training needs and programs at any time.

## **Section 9. Labor-Management Relations Training for Union Officers or Stewards**

### **A. General**

1. On an annual basis, up to 25 Union representatives (*i.e.*, officers or stewards for the Union) will be granted official time to attend approved LMR training courses/conferences that are of mutual benefit to the Parties. These courses/conferences will cover topics such as contract administration, grievance handling, and information relating to federal personnel/labor relations laws, regulations, and procedures.
2. Union representatives attending an approved LMR training course/conference pursuant to Paragraph 1 will be on official time during such time they are attending training and would otherwise be in duty status.
3. Union representatives referred to in Paragraph 1 will be authorized official time for travel to and from the approved training course/conference during such time they would otherwise be in duty status. Consistent with 5 C.F.R. § 550.1403 (definition of “Travel”), time spent traveling in connection with Union activities cannot be used to accrue compensatory time off. Training that relates to internal Union business will not be conducted or attended on official time.
4. The President of the Union, or designee, will submit requests to the Agency’s Chief, Labor and Employment Law Division, OPLA, or designee, for Union representatives to attend the LMR training under this Subsection. The Union will make such requests reasonably in advance of the scheduled training, and the Agency will approve or disapprove such requests within a reasonable time.
5. Union representatives may from time to time be presented with the opportunity to take advantage of last-minute or standby training slots, or the need for substitution of one Union representative for another at a training course/conference when the person originally approved for official time to attend the training course/conference experiences a problem preventing attendance as planned. Upon reasonable request by the Union to the appropriate Agency official, the Agency will act upon the request as soon as practicable and will immediately notify the Union of its decision.

### **B. Official Time to Travel to Attend Training at the Union’s Annual Meeting**

Where LMR training that is of mutual benefit to the Parties will be held in conjunction with the Union’s annual meeting, up to 30 Union representatives will be granted official time to travel to and from that training during such time they would otherwise be in duty status. Consistent with

5 C.F.R. § 550.1403 (definition of “*Travel*”), time spent traveling in connection with Union activities cannot be used to accrue compensatory time off.

#### C. Collective Bargaining Agreement Training

1. In addition to what is provided in Section A.1, the Union will be authorized up to eight (8) hours of official time each for up to 40 Union representatives to attend training that the Union will provide on this Agreement. The Union may use the Agency’s video facilities for this training. Representatives will use the facilities at their office or at the nearest Agency office with that capability if their office does not have the necessary equipment. The Agency will pay necessary travel expenses if a representative has to go to another office.
2. Union representatives presenting the training will be authorized 60 hours of official time per trainer for up to four (4) trainers to prepare, to travel to and from, and present the training on this Agreement. Trainers may also conduct the training by video.
3. This training will occur during the first year the Agreement is in effect.
4. The Union will coordinate the scheduling of this training with the Agency’s Chief, Labor and Employment Law Division, OPLA, or designee.
5. The Agency will reimburse the Union up to \$500 for printing and materials costs associated with this training. The Union will provide the Agency with receipts for any expenditures for which the Union requests reimbursement and will provide the Agency with a copy of any materials used in the training.

## **ARTICLE 12**

### **SAFETY AND HEALTH**

#### **Section 1. Safe and Healthful Working Conditions**

The Agency will provide safe and healthful working conditions, taking into account the mission of the Agency and the inherent hazards of the job performed. The Parties shall be governed by the Health and Safety Regulations and this Agreement. The Parties will also be informed by the ICE Occupational Safety and Health (OSH) Program Requirement Handbook. The Union President or designee will request the participation of a Union representative on any national and local Safety and Health Committee.

#### **Section 2. Reporting of Unsafe Conditions**

- A. The Union will encourage employees to observe all safety rules and use all equipment and safeguards provided. In the course of performing their normally-assigned work, employees will be alert to observe unsafe practices and conditions. Any employee who believes that an unsafe or unhealthy working condition exists in any workplace should report such condition to the appropriate safety and health official or the Union.
- B. In the case of a threat to life or danger of serious physical harm, the employee shall report the situation to his or her supervisor as soon as possible.
- C. When an employee reasonably believes that his or her life may be in imminent danger, the employee shall immediately desist in performing his or her duties and evacuate the premises to safety. The employee will notify his or her supervisor as soon as possible and provide an explanation.
- D. When an employee believes he or she is working under conditions that are unsafe or unhealthy beyond normal hazards inherent in the operation in question, he or she shall refer the matter to his or her supervisor. The supervisor will make an evaluation of the working conditions and advise the employee that the work either be continued or stopped. If requested by the Union, the supervisor will provide the rationale for the decision in writing. If the supervisor ordered a cessation of work, any steps taken toward the immediate mitigation of the hazardous working conditions will be explained to the best extent possible.
- E. In the case of an immediate threat to life or danger of physical harm, the Agency shall take all reasonable steps to ensure the protection and safety of employees, including, if necessary, the relocation of the employees to relative safety or detail to another office. An on-site Union representative will be notified of any action. If there is no on-site Union representative, the Agency will notify the Union President, Executive Vice President, or other Board Member.
- F. When the Agency receives a report that a dangerous and/or unhealthy condition, or potentially dangerous and/or unhealthy condition, is present at a particular worksite, the Agency shall

immediately notify a Union representative. If there is no on-site Union representative, the Agency will notify the Union President, Executive Vice President, or other Board Member.

- G. In these circumstances, where the Agency has been asked in writing by a Union representative for information regarding any such condition, the Agency will acknowledge such inquiry within 24 hours of receipt and will provide a written response to the Union's inquiry within 10 days, if practicable.

### **Section 3. Unsafe Condition Move**

In the event of an office relocation that involves the safety or health of employees, the Union will be notified—in advance of such a move in accordance with Article 9.

### **Section 4. Assistance for Employees with a Disability**

The Agency will develop procedures to ensure that all employees with a disability are provided appropriate assistance to evacuate buildings in case of emergencies.

### **Section 5. Tuberculosis Screening**

When an employee or the Agency believes that the employee has been exposed to a person with active tuberculosis (TB) while in an official capacity, the Agency will refer the employee for a voluntary TB screening. A TB screening test will be offered during normal business hours at no cost to the employee.

### **Section 6. Temperature and Humidity**

- A. The Agency shall take reasonable steps to ensure a safe and healthful working environment, including reasonable temperature and humidity levels, appropriate physical surroundings, and reasonable space and equipment necessary to carry out official responsibilities.
- B. During available hours of duty, when the indoor temperature falls below 55 degrees or rises above 80 degrees, the Agency will take immediate and all appropriate action to bring the temperature within those parameters. The Agency will initiate measures to reduce the risk to employees by making reasonable efforts to first accommodate employees and then consider placing them on administrative leave. This only applies to space owned or leased by the Agency.

### **Section 7. Office Space and Equipment**

The Agency will endeavor to provide employees appropriate physical surroundings, physical security, and reasonable office space and equipment necessary to carry out official responsibilities at their official station and any temporary duty location under the control of the Agency.

## **Section 8. Environmental Safety**

- A. When the Agency conducts safety and health inspections and/or Occupational Safety and Health Administration (OSHA) inspections, the Union will be provided at least 48 hours' advance notice when practicable and be afforded the opportunity to accompany the inspector in these inspections. The Agency will provide the Union President or designee with a copy of the final report generated in connection with the inspection. Safety and health hazards discovered in these inspections shall be corrected as expeditiously as possible in accordance with federal requirements.
- B. The Agency will ensure that employees who are working in offices or facilities with identified health or safety hazards (*i.e.*, beyond normal hazards inherent in the operation in question) are made aware of such hazards, informed of safe and healthful work practices, and educated in the appropriate use of those practices. Notice will be posted in a conspicuous location or where general notices are posted.
- C. Appropriate abatement procedures will be conducted pursuant to federal requirements when it is determined by a competent authority that the office and/or facility is determined to be unsafe or unhealthy.
- D. The Agency will notify the Union prior to initiating procedures for asbestos removal.
- E. The Agency will notify the Union at such time as it determines the need for an abatement action. Asbestos abatement plans may include the discontinuance of work or the shifting of the employee work location. To the extent required by law, the Agency will meet its bargaining obligation.
- F. If air sampling indicates that the airborne concentration of asbestos fibers exceeds regulatory levels, the Agency will notify the exposed employees in writing within one day after discovery of the excessive asbestos concentration.

## **Section 9. Workplace Injuries and Illnesses**

- A. Reporting. Employees shall report all work-related injuries or work-related illnesses to their supervisor as soon as possible. The Agency will take appropriate action to ensure that:
  1. the employee has the opportunity to report to the Employee Health Physician or his or her personal physician for treatment, completion of reports, *etc.*;
  2. the Agency will ensure that injured/sick employees are given the appropriate ICE OHC Workers' Compensation Program point of contact, as found at [https://insight.ice.dhs.gov/mgt/hc/Pages/workers\\_compensation/pocs.aspx](https://insight.ice.dhs.gov/mgt/hc/Pages/workers_compensation/pocs.aspx), to obtain relevant information and counseling pertaining to benefits under the Federal Employees' Compensation Act (FECA) and will help facilitate their return to work.

3. the Agency will provide an employee who is injured while in duty status with the following link concerning the ECOMP, the web-based electronic system selected by the Agency for recording workplace injuries and illnesses and for processing claims under the FECA: <https://www.ecomp.dol.gov/>.
- B. Return to Duty After Work-Related Injury. An employee who has sustained a work-related injury or work-related illness may be required to perform duties to the extent and within the limits prescribed by the treating physician or the Employee Health Physician. In the event that limited duty is not available, the employee will be placed on continuation of pay, if determined eligible by the Office of Workers' Compensation Program, or placed in an appropriate leave status. The Union may suggest limited duty opportunities. At an employee's request, the Union may represent the employee at any stage of this procedure.
- C. Re-Crediting Leave. If an employee has been charged for sick or annual leave when he or she is deemed to have been eligible for injury compensation benefits instead, the employee may repay, in lump sum or by any other plan acceptable to his or her payroll office, the amount collected while on annual or sick leave and have his or her annual or sick leave balances credited accordingly, so that he or she may qualify for injury compensation.

## **Section 10. Toxic Chemicals, Biomedical, and Airborne Hazards**

- A. When the Agency knows or has a reasonable belief that chemicals generally recognized as hazardous will be or have been used in areas where employees work, the Union, as well as affected employees, will be notified. If there is no on-site Union representative, the Agency will notify the Union President, Executive Vice President, or other Board Member.
- B. The Agency will notify employees and the Union, as soon as practicable, of known workplace biomedical hazards such as TB quarantine, chicken pox outbreaks, and airborne hazards such as toxic mold and asbestos contamination. If there is no on-site Union representative, the Agency will notify the Union President, Executive Vice President, or other Board Member.
- C. Where the Agency knows of any commercial or large-scale application of pesticides, the Agency will notify employees and the Union/steward(s), at a minimum, 72 hours in advance of the application. Individuals with special health needs will advise their immediate supervisor and will be appropriately accommodated. If there is no on-site Union representative, the Agency will notify the Union President, Executive Vice President, or other Board Member.

## **Section 11. Computer Injuries**

The Agency will provide reasonable and appropriate accommodation for a medically documented computer-related work injury.

## **Section 12. Freedom from Reprisals**

Employees shall be free from restraint, coercion, discrimination, or reprisal practiced as a result of an employee exercising any provision of this Article.

### **Section 13. Safety and Health Committee**

- A. The Agency and the Union agree to cooperate in a continuing effort to avoid and reduce the possibility of and/or eliminate accidents, injuries, and health hazards in all areas under the Agency's control. In that respect, the Agency will ensure a position for and facilitate full participation of a Union representative on Agency-sponsored Safety and Health Committees. The Agency will use its best efforts to provide the Union with telephone or VTC access to an Agency-sponsored Safety and Health Committee meeting. In the event telephone or VTC access is not provided by the Agency, the Agency may pay travel and *per diem* expenses for a Union representative to attend.
- B. Upon request, the Union representative on the National Safety and Health Committee will be invited to attend the ICE Field Collateral Duty Safety and Health Training Course. The Agency may pay travel and *per diem* for attendance.
- C. Subject to available funding, and upon request, the Agency will offer Union representatives newly identified to serve on a Safety and Health Committee with a 10-hour OSHA Hazard Awareness Course found at <https://www.nsec.niu.edu/nsec//course-schedules/osha-courses/osha-0501.shtml>.

## **ARTICLE 13**

### **TRAVEL**

#### **Section 1. General**

- A. Employees shall be reimbursed for travel on official business in accordance with law and the Federal Travel Regulation (FTR) and interpretations thereof by the Comptroller General of the United States, interpretations of the Administrator of the General Services Administration, Department of Homeland Security Financial Management Policy, and the ICE Travel Policy Handbook or successive policy, and in accordance with this Agreement.
- B. Any change in rates or reimbursements to federal employees by law or regulation during the life of this Agreement will be adopted on the effective dates of the changes.

#### **Section 2. Definitions**

- A. Official station. Official station is defined as:
  - 1. the work location (*e.g.*, a headquarters office, field sub-office, *etc.*) to which an employee is assigned permanently (*i.e.*, the employee's permanent duty station (PDS), his or her primary worksite); or
  - 2. an alternative work location to which the employee is temporarily assigned to report for duty that is within 50 miles of his or her PDS.
- B. Temporary duty location. Temporary duty location is defined as any job site that is not the employee's official station, but does not include an alternate duty site under Article 17. The definition of temporary duty location is applicable for determinations of mileage and other related travel expenses subject to reimbursement under this Agreement.
- C. Local travel. Local travel is defined as travel occurring while an employee is engaged on official business within the local commuting area. The local commuting area is within 50 miles of the work location to which an employee is assigned permanently (*i.e.*, the employee's PDS). Local travel must be authorized by the employee's supervisor or other authorizing official.
- D. Predetermined Rotational Schedule. A schedule of one or more established rotational assignments to an alternative work location(s) within the employee's official station.

#### **Section 3. Travel Status Outside The Local Commuting Area**

- A. To the maximum extent practicable, the Agency and employees shall schedule the time to be spent by an employee in a travel status outside the local commuting area within the regularly scheduled workweek of the employee.

- B. Subject to supervisory approval, where the Agency-designated travel day falls during non-duty hours, the employee may perform the travel during duty hours on the preceding work day in lieu of compensatory travel time. If an employee chooses to travel on a day or time other than that designated by the Agency, the maximum reimbursement for transportation costs will be limited to the lesser of (a) that which would have been reimbursed had the employee traveled on the day or at the time selected by the Agency, or (b) the actual transportation costs. The maximum reimbursement for *per diem*/subsistence will be limited to that which would have been allowed had the employee traveled on the day or at the time selected by the Agency.
- C. Time spent in a travel status outside the local commuting area of any employee is not hours of work unless it satisfies the criteria specified in governing law and regulations.
- D. In cases where employees are assigned outside the local commuting area and the travel time is greater than their normal commuting time, the difference in time shall be considered travel in a duty status, in accordance with 5 C.F.R. § 550.112(j)(2).
- E. Except as provided in the FTR, an employee will not be required to travel without a signed and approved Travel Authorization.

#### **Section 4. Travel Expenses and Reimbursement**

- A. Generally, employees are responsible for any expenses associated with their normal commute to and from their workplace (transit subsidy notwithstanding), whether the employee reports to his or her PDS, or an alternative work location that is part of a predetermined rotational schedule, subject to the following:
  1. When employees are required to report to an alternative work location within their official duty station that is not part of a predetermined rotational schedule, employees will be reimbursed in accordance with Subsections B and C.
  2. When employees are required to travel to different locations during the workday, after they have initially reported to their primary or an alternative workplace that day, expenses associated with that travel will be reimbursed in accordance with Subsection C.
  3. When employees request to travel to different work locations during the workday, after they have initially reported to their primary or an alternative workplace that day, and the employee's supervisor has approved the request, expenses associated with that travel may be reimbursed at the sole discretion of the supervisor in accordance with Subsection C.
- B. Employees are allowed reimbursement for that portion of local travel costs which exceeds their normal commuting costs. To determine excess commuting costs, employees must perform a constructive cost calculation. Travel costs included in the constructive cost calculation include, but are not limited to, mileage, tunnel fees, tolls, parking, and ferry fees. After the constructive cost calculation, final determination of reimbursable expenses for local travel costs exceeding a normal commute is at the discretion of the employee's approving official.

The approving official's decision will not violate applicable law, rule, regulation, or provisions of this Agreement.

- C. Employees will be reimbursed for local travel expenses by submitting reimbursable expenses through the Agency's authorized travel management system. Reimbursable expenses include, but are not limited to, mileage; tunnel, bridge, and/or ferry fees; parking; and tolls. Employees should accumulate local travel expenses and submit reimbursement for these expenses when the total value is over \$20 or every 30 days.
- D. The Agency has discretion to determine which transportation mode and route are most advantageous to the government. When the Agency determines that local travel or travel in connection with assignment to a temporary duty location must be performed by automobile, a government vehicle is presumed to be the most advantageous method of transportation. If a government vehicle is not available and the employee does not have a privately-owned vehicle (POV) or use of the employee's POV is impracticable or would cause hardship, a rental vehicle or other mode of transportation may be authorized. An employee using a POV to travel from home to a temporary duty location and/or from a temporary duty location to his or her home will be reimbursed for all travel expenses authorized by the FTR.

E. *Per Diem*

- 1. Employees are eligible for *per diem* or actual subsistence allowance when they travel to an assignment located outside their official station.
- 2. Employees will not receive *per diem* unless in a travel status for more than 12 hours.

F. Travel Advances

- 1. To the maximum extent possible, travel or any extension thereof will be authorized or ordered in advance in sufficient time for the employee to have in his or her possession a travel advance prior to starting such travel, if needed.
- 2. Those employees who have a valid government credit card for travel purposes are to use that credit card to obtain necessary and appropriate cash advances.
- G. When an employee with a disability requires the assistance of an attendant or escort in connection with official travel, the transportation and *per diem* expenses of the attendant will be allowed as necessary expenses for the employee's travel. Further, in accordance with 41 C.F.R. §§ 300-3.1, 301-13.2 and 301-13.3, the Agency may pay expenses it deems necessary to accommodate an employee with special needs that are clearly visible and discernable or that are substantiated in writing by a competent medical authority. Depending on the circumstances and the employee's particular special need(s), additional allowable expenses may include, but are not limited to, specialized transportation to, from, and/or at temporary duty locations; baggage handling costs that are the direct result of the employee's special need(s); transportation or rental of a wheelchair; and premium class common carrier accommodations when necessary to accommodate the employee's special need(s).

H. Government-owned or government-leased automobiles are to be used for official purposes only. Misuse of such vehicles subjects employees to penalties under 31 U.S.C. § 1349(b).

I. Use of a government-reimbursed rental vehicle.

1. Use of a government-reimbursed rental vehicle while on temporary duty is authorized only for official purposes, which means travel to/from:

- a. places of official business;
- b. places of official business and places of temporary lodging;
- c. restaurants, drug stores, barber shops, places of worship, cleaning establishments, and similar places necessary for the sustenance, comfort, or health of the employee, as reasonable under the circumstances to foster the continued efficient performance of Agency business; and
- d. the car rental location and any of the above.

J. The Agency will provide employees required to travel as part of their official duties with necessary training on processing an authorization for official travel and filing a reimbursement claim for official travel. Employees needing additional training on these topics shall, upon request, receive such training from the Agency as soon as practicable.

K. Employees who are assigned to training or duty away from their official station, and who elect to check out of their temporary lodging establishment and return home during non-work days, will be reimbursed for round-trip transportation not to exceed the amount that would have been reimbursed for *per diem* had they remained at the training or duty location during the non-work days.

## **Section 5. Compensatory Time Off for Travel**

A. Employees may accrue compensatory time off for official travel pursuant to 5 C.F.R. Part 550, Subpart N.

B. Compensatory time off for travel is only available when an employee is required to travel away from the official station and the travel time is not otherwise compensable hours of work under other legal authority. Compensatory time off for travel may be earned in 15-minute increments. To the extent practicable, official travel shall be accomplished during an employee's normal duty hours.

C. Procedure for Requesting and Taking Compensatory Time Off for Travel

1. Prior to traveling on official business, an employee must submit to his or her supervisor a proposed travel itinerary via e-mail. The itinerary must include: (a) the reason for the

travel; (b) the proposed travel dates and times; (c) the proposed mode of travel; and (d) an estimate of the travel time during non-working hours. Employees proposing to travel during non-working hours should receive supervisory approval of their travel itinerary prior to departure.

2. Within five (5) workdays after returning from travel, if an employee was in travel status away from the employee's official station during non-work hours that are not otherwise compensable, the employee shall submit to his or her first-line supervisor a request for compensatory time off for travel using the Compensatory Time Off for Travel Form (see Appendix B). The request must include a copy of the employee's travel authorization and itinerary received from the contract travel agency, if applicable. After receiving supervisory approval on the form, employees shall ensure a Premium Pay Request is submitted through the Agency's system of reporting time and attendance (*e.g.*, WebTA) in order to have the approved travel compensatory time off credited to their leave account. The Premium Pay Type is "Compensatory Time Earned" and the Transaction Type is "Comp Time/Travel Earned."
  3. Compensatory time off for travel may be taken in 15-minute increments. Requests to use compensatory time off will be submitted using the Agency's system of reporting time and attendance (*e.g.*, WebTA). If an employee fails to use the compensatory time off within 26 pay periods after it was credited, the employee forfeits it. An employee may not transfer payment for unused compensatory time off upon leaving ICE.
- D. Employees may accrue compensatory time off for travel in accordance with 5 C.F.R. § 550.1406. Specifically, the following guidelines apply:
1. Travel outside scheduled hours of work between an employee's home and a transportation terminal is considered creditable travel time only when the transportation terminal is outside the limits of the employee's official station and only to the extent that such travel time exceeds the normal commuting time.
  2. Travel time for travel involving more than one time zone shall be counted from the time zone of first departure.
  3. An "extended" waiting period (*i.e.*, an unusually long wait during which the employee is free to rest, sleep, or otherwise use the time for his or her own purposes) is not considered time in a travel status.
  4. For employees working a flexible work schedule, hours of travel during the "tour of duty," as defined in Article 15, on any assigned or scheduled workday are considered compensable hours of work and not credited toward compensatory time off for travel unless the employee has already fulfilled his or her basic work requirement.
  5. Employees who elect to travel on a day or at a time other than that selected by the Agency only receive the lesser of (a) the estimated time in a travel status had the employee traveled

on the day or at the time selected by the Agency, or (b) the employee's actual time in a travel status.

## **Section 6. Travel for Continuing Education**

Employees are encouraged to complete continuing education through online resources or at no cost to the Agency. With management approval, an employee who is traveling to or from a continuing education training course or session during his or her "tour of duty," as defined in Article 15, Section 2.M, will be traveling in a duty status for such time that exceeds his or her normal commute to or from his or her official station, but only to the extent the total creditable travel time does not exceed two (2) hours each way. Reimbursement for such travel expenses is covered by Section 4.

## **ARTICLE 14**

### **TEMPORARY AND SPECIAL ASSIGNMENTS**

#### **Section 1. Purpose**

The Agency will equitably select employees for temporary and special assignments. This Article does not address reimbursement for travel on official business. Travel pursuant to temporary or special assignments is addressed in Article 13.

#### **Section 2. Definitions**

For the purposes of this Article, the following definitions apply:

- A. **Temporary Assignment.** An assignment of limited or a fixed duration involving: (1) different job duties; (2) duties outside of the employee's Area of Responsibility (AOR); (3) duties outside of the local commuting area; or (4) duties at a higher or supervisory/management level.
  - 1. **Type I Temporary Assignment.** Temporary assignment of an employee to substantially similar job duties outside of the employee's AOR or local commuting area (*e.g.*, assignment to another OPLA field office, assignment to another financial operations office, *etc.*) for a limited or fixed duration.
  - 2. **Type II Temporary Assignment.** Temporary assignment of an employee to substantially different job duties (*e.g.*, Special Assistant U.S. Attorney, OPLA headquarters). Type II may either be Short Term (duration of less than one year) or Long Term (duration of one year or longer).
  - 3. **Type III Temporary Assignment.** Temporary assignment of an employee to duties at a higher or supervisory/management level (*e.g.*, Acting Deputy Chief Counsel) for more than 120 days.
- B. **Special Assignment.** The designation or assignment of an attorney to perform specialized duties for a fixed or indefinite period of time in the following specialties: human rights law, customs law, Violence Against Women Act, federal litigation, juvenile law, worksite enforcement, and similar specializations that may exist or be created in the future. Special assignments also include special projects expected to last over 15 days or to comprise at least 25% of the employee's duty time. This also includes serving as a training instructor.
- C. **Area of Consideration.** The office or geographic area from which volunteers may be solicited.
- D. **Qualified.** The employee meets the prescribed and published knowledge, skills, abilities (KSAs) and experience required for a particular temporary assignment.
- E. **Seniority.** See Article 2, Section G.1.

F. AOR. A predefined geographic region assigned to an OPLA field office.

### **Section 3. Management Rights and Obligations**

- A. The Agency retains the right to assign employees and shall exercise this authority under applicable law, appropriate regulations, and this Agreement. This includes the right to:
  - 1. determine the requisite KSAs, experience, competencies, and characteristics for temporary and special assignments;
  - 2. determine the area of consideration for a temporary assignment; and
  - 3. select a qualified individual without issuing an announcement or seeking volunteers under the following circumstances:
    - a. an exigent need resulting from emergent circumstances or circumstances unanticipated by the Agency or program;
    - b. a temporary assignment relating to the knowledge, skills, training, experience, or job duties of a uniquely qualified employee;
    - c. a predetermined rotational assignment; and
    - d. a temporary or special assignment given to a Senior Attorney.
- B. The Agency will maintain an assignment process that is free of bias, favoritism, and prohibited personnel practices and, where applicable, fully complies with statutory merit system principles.
- C. Absent the circumstances in Subsection A.3, the Agency shall use volunteers before requiring employees to participate in a temporary assignment.
- D. The Agency shall provide notice to employees of temporary and special assignment opportunities as soon as practicable prior to the commencement of the assignment.
- E. Selections will be made on the basis of the advertised requirements and any other criteria in accordance with this Article.

### **Section 4. Competitive Service Employees: Temporary Assignments**

Competitive service employee temporary assignments and promotions to higher-graded positions will be processed under the applicable Agency merit promotion program.

## **Section 5. Process for Announced Assignments**

- A. Announcements. In its announcements of temporary and special assignment opportunities, the Agency will:
  - 1. use the e-mail system to announce assignment opportunities to all eligible employees;
  - 2. identify the area of consideration; nature of the duties; KSAs and any required special experience, competencies, and characteristics; location; duration; and grade level of the assignment in the announcement;
  - 3. specify the open period for submission of volunteer interest forms in the announcement (refer to Appendix C for Voluntary Assignment Request Form);
  - 4. select the employee for the assignment in accordance with Subsections C and D;
  - 5. provide as much advance notice as possible to employees selected for an assignment; and
  - 6. announce the selectee by e-mail within the area of consideration.
- B. Records. The Agency shall maintain copies of all assignment applications for 60 days beyond the announcement of the selection. Upon request, such records will be made available for inspection by the Union consistent with law and regulations.
- C. Voluntary Temporary and Special Assignment Selection Procedures

The Voluntary Temporary and Special Assignment Selection Procedures will be as follows:

- 1. After the close of the announcement, the Agency will consider the following:
  - a. the volunteer's written submission of the form in Appendix C, Voluntary Assignment Request Form;
  - b. whether the volunteer possesses the requisite KSAs and other specified requirements;
  - c. the volunteer's reliability, trustworthiness, and professionalism; and
  - d. the volunteer's current assignment(s) and workload.
- 2. When specialized skills are required, the best-qualified volunteer may be selected. Where equally qualified candidates exist for a temporary or special assignment requiring specialized skills, the selection will be based on seniority.
- 3. When specialized skills are not required and after consideration of Subsection C.1, where all other factors are considered equal, the selection for a temporary or special assignment will be based on seniority.

4. Selection for a prior voluntary temporary assignment does not automatically preclude selection for a subsequent voluntary temporary assignment.
  - a. Type I Temporary Assignment. Once an employee has been selected for a Type I, the Agency will not select the employee for a subsequent Type I for a period of 36 months after the date the previous assignment ends, unless all qualified and available applicants in the area of consideration also have served a Type I within the past 36 months. Selection for a Type I does not preclude an employee from selection for a Type II or a Type III.
  - b. Type II Temporary Assignment.
    - (1) Short Term. Once an employee has been selected for a Short-Term Type II, the Agency will not select the employee for a subsequent Short-Term Type II for a period of 36 months after the date the previous assignment ends, unless all qualified and available applicants in the area of consideration also have served a Short-Term Type II within the last 36 months. Selection for a Short-Term Type II does not preclude selection for a Type I, a Long-Term Type II, or a Type III.
    - (2) Long Term. Once an employee has been selected for a Long-Term Type II, the Agency will not select the employee for a subsequent Long-Term Type II for a period of 36 months after the date the previous assignment ends, unless all qualified and available applicants in the area of consideration also have served a Long-Term Type II within the past 36 months. Selection for a Long-Term Type II does not preclude selection for a Type I, a Short-Term Type II, or a Type III.
  - c. Type III Temporary Assignments. Once an employee has been selected for a Type III temporary assignment, the Agency will not select the employee for a subsequent Type III for a period of 12 months after the date the previous assignment ends, unless all qualified and available applicants in the area of consideration also have served a Type III within the past 12 months. Selection for a Type III does not preclude an employee from selection for a Type I or a Type II.
5. Selection for one special assignment does not automatically preclude selection for a subsequent special assignment.
6. An employee's prior involuntary temporary assignment shall not exclude the employee from consideration and potential selection for a voluntary temporary assignment.
7. Upon request, the local program office shall provide a list of its bargaining unit members' entry on duty date or service computation date to the Union representative.

#### D. Involuntary Temporary Assignment Selection Procedures

1. The Agency will make reasonable efforts to limit the imposition of involuntary temporary assignments. When involuntary temporary assignments tasked to a particular program office create undue hardship for the office, the Agency may consider expanding the area of consideration to increase the pool of individuals from which involuntary assignees are selected.
2. In the event there are no qualified volunteers to an announced temporary assignment, the Agency will select an employee based on inverse seniority, the requisite KSAs and experience, involuntary temporary assignment history, and workload. In an effort to encourage volunteers, employees who previously volunteered and served for a Type I, Type II, or Type III temporary assignment will not ordinarily be selected for an involuntary assignment of the same type for 12 months after the date the previous assignment ends, absent operational need. With Agency approval, a qualified employee from the area of consideration may volunteer to fill in for an employee who has been selected for an involuntary temporary assignment. In such cases, the temporary assignment will count as neither a voluntary nor involuntary assignment for purposes of subsequent announcements.
3. Whenever practicable, once an employee serves an involuntary temporary assignment, the Agency will not select the employee for another involuntary temporary assignment until all qualified and available employees in the area of consideration also have served an involuntary assignment.
4. An employee may request an exemption from an involuntary temporary assignment. The exemption request shall be in writing and shall specify the reasons in sufficient detail to allow the Agency to make an informed and reasonable decision on the request (refer to Appendix D for Assignment Exemption Form). The exemption from involuntary temporary assignments shall last for no more than six (6) months at a time. Any medical information provided to support a request for an exemption from an involuntary temporary assignment will be treated confidentially and with appropriate recognition of the employee's (and/or family member's) right of privacy. Any medical or other confidential documentation provided to support a request will be returned to the employee or maintained in accordance with applicable law and regulation. This does not preclude the Union's right to information in accordance with applicable law and regulation.
5. Union Executive Board Members may request to be exempted from involuntary temporary assignments.
6. Should the requirements of the Agency necessitate an employee being temporarily assigned to a lower-graded position, this will in no way adversely affect the employee's salary, classification, overtime eligibility, or job standing.

## **Section 6. Extension of Temporary Assignments**

- A. Where there is mission need, the Agency may extend a temporary assignment an additional 30 days beyond the duration set forth in the announcement for the temporary assignment. The Agency may direct an additional extension.
- B. Extending a temporary assignment will not change a Short-Term Type II temporary assignment to a Long-Term Type II temporary assignment.
- C. An employee may request an exemption from the extension of a temporary assignment. The exemption request shall be in writing and shall specify the reasons in sufficient detail to allow the Agency to make an informed and reasonable decision on the request (refer to Appendix E for Voluntary Temporary Assignment Extension Exemption Request Form). Any medical information provided to support a request for an exemption from the extension of a temporary assignment will be treated confidentially and with appropriate recognition of the employee's (and/or family member's) right of privacy. Any medical or other confidential documentation provided to support a request will be returned to the employee or maintained in accordance with applicable law and regulation.

## **ARTICLE 15**

### **HOURS OF WORK**

#### **Section 1. Purpose**

This Article shall be administered in accordance with 5 U.S.C. Chapter 61, 5 C.F.R. Part 610, and this Agreement. The purpose of this Article is to prescribe the policies covering hours of work for all employees in accordance with applicable law and regulation.

#### **Section 2. Definitions**

- A. Administrative Workweek means any period of seven (7) consecutive 24-hour periods designated in advance by the head of the Agency under 5 U.S.C. § 6101.
- B. Alternative Work Schedule (AWS) means both flexible and compressed work schedules.
- C. Basic Work Requirement means the number of hours, excluding overtime hours, an employee is required to work or to account for by charging leave or other approved absence. For full-time employees, the basic work requirement is 80 hours per biweekly pay period. A part-time employee's basic work requirement is the number of hours the employee is scheduled to work in a biweekly pay period.
- D. Biweekly Pay Period means the two-week period for which an employee is scheduled to perform work.
- E. Compressed Work Schedule (CWS) means:
  - 1. in the case of a full-time employee, an 80-hour biweekly basic work requirement that is scheduled by the Agency for fewer than 10 workdays for a minimum of eight (8) hours and a maximum of 10 hours in a day; and
  - 2. in the case of a part-time employee, a biweekly basic work requirement of fewer than 80 hours that is scheduled by the Agency for fewer than 10 workdays and that may require the employee to work a minimum of eight (8) hours and a maximum of 10.5 hours in a day.
- F. Core Hours is the minimum time range in a workday during which an employee is required to work or that an employee must otherwise account for by charging leave or other approved absence.
- G. Employee Decision Period (EDP) means the period during which an employee elects a work schedule.
- H. Flexible Hours means the times during the workday, workweek, or pay period within the tour of duty in which an employee covered by a flexible work schedule may choose to vary his or

her time of arrival to and departure from the worksite, consistent with the duties and requirements of his or her position.

- I. Flexible Work Schedule (FWS) means a work schedule established under 5 U.S.C. § 6122 that:
  - 1. in the case of a full-time employee, has an 80-hour biweekly basic work requirement that allows an employee to determine his or her own schedule within the limits set by this Agreement; and
  - 2. in the case of a part-time employee, has a biweekly basic work requirement of fewer than 80 hours that allows an employee to determine his or her own schedule within the limits set by this Agreement.
- J. Maxiflex Schedule is a type of FWS in which a full-time employee completes a basic work requirement of 80 hours for the biweekly pay period in fewer than 10 workdays, and in which an employee may vary the number of hours worked on a given workday or the number of hours each week within the limits established by this Agreement.
- K. Part-Time Work Schedule means a basic work requirement that is 80% or less of the full-time 80 hours per biweekly pay period requirement.
- L. Tour of Duty means the hours of a day and the days of an administrative workweek that constitute an employee's regularly scheduled administrative workweek. Tour of duty under an FWS means the limits set by this Agreement within which an employee must complete his or her basic work requirement. Under a CWS or other fixed schedule, tour of duty is synonymous with the basic work requirement.
- M. Variable Week Schedule (VWS) is a type of FWS in which a full-time employee is required to work five (5) days a week, 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 in this Agreement.

### **Section 3. General Provisions**

- A. The administrative workweek will generally be a period of seven (7) consecutive days beginning on Sunday.
- B. The basic workweek shall be Monday through Friday. Exceptions may occur only when mission requirements make it necessary to include Saturdays or Sundays as part of the basic workweek for certain employees.
- C. Normally, an employee's workweek shall not extend over more than five (5) days of the period Sunday through Saturday.

## **Section 4. Hours of Duty**

The hours of duty available for employee work schedules are between 6 a.m. and 7:30 p.m. Exceptions may occur when necessitated by mission requirements or by mutual agreement of the Parties. In such cases, the flexible hours will be modified accordingly.

## **Section 5. Core Hours**

The core hours for all employees will be 9 a.m. to 3 p.m.<sup>1</sup> Notwithstanding the core hours, employees must be present at work to fulfill all obligations on any given day, including, but not limited to, court and duty attorney assignments, training programs, mandatory meetings, and other Agency needs.

Where an office has a court requirement, the start of core hours for designated court attorneys will be no later than 30 minutes before the start of that attorney's court assignment. For backup/standby attorneys, the start of core hours will be no later than 30 minutes before the earliest court calendar/docket for that office. If an attorney is not assigned to court or as a backup/standby attorney, the core hours will remain from 9 a.m. to 3 p.m.

## **Section 6. Flexible Hours**

The flexible hours during which employees on a flexible schedule may begin their workday are 6 a.m. to 9 a.m. The flexible hours during which employees on a flexible schedule may end their workday are 3 p.m. to 7:30 p.m.

## **Section 7. Meal Periods**

Employees shall be granted, on a non-paid basis, a meal period each day. Normally, this will be scheduled at or near the mid-point of the hours of duty. Meal periods cannot be credited toward duty time or taken at the beginning or the end of the workday to adjust arrival or departure time. The minimum lunch period is 30 minutes. The meal period for employees on an AWS may be up to 60 minutes, provided that employees account for the entire work requirement for the day, either by working or by using leave or other approved absence. Consistent with regulations, breaks may not be combined with the meal period to extend the meal period.

## **Section 8. Breaks**

Employees are to be provided two (2) 15-minute breaks, one in the morning and one in the afternoon. Breaks shall be taken in a manner consistent with job responsibilities. The breaks may not be taken at the beginning or the end of the workday to adjust arrival or departure time.

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<sup>1</sup> Only employees who have been working on a 4/9/4 schedule continuously since before January 1, 2011, may have core hours other than 9 a.m. to 3 p.m. Those employees are grandfathered and may remain on the 4/9/4 schedule until they select and are approved to work a different schedule. If at any EDP a 4/9/4 grandfathered employee changes to a different schedule, that employee cannot subsequently return to a 4/9/4 schedule.

## **Section 9. Timekeeping Procedures**

All employees will maintain an accurate time and attendance record in the standard reporting system for time and attendance (*e.g.*, WebTA). The Agency may require employees to maintain a separate record of arrival and departure times.

## **Section 10. Alternative Work Schedules**

- A. Employees may request any of the following work schedules that fulfill mission requirements and meet the needs of the employees. Available work schedules are as follows:

### 1. Flexible Work Schedules

- a. Variable Week Schedule. Employees working the VWS have a basic work requirement of 80 hours in each biweekly pay period. They are required to work five (5) workdays per week during the core hours established in Section 5. They may choose a different arrival and departure time for each workday within the flexible hours established in Section 6, and they may vary the number of hours worked each workday and/or workweek.

The employee may work or account for time by use of leave or other form of excused absence as few as five (5) hours and as many as 12.5 hours on any given workday, excluding the meal period provided in Section 7, and a minimum of 25 hours and a maximum of 55 hours in any given workweek.

An example of a VWS with a 30-minute meal period is:

First Monday	8 a.m. – 3:30 p.m.	(7 hours)
First Tuesday	6 a.m. – 7:30 p.m.	(12.5 hours) <sup>2</sup>
First Wednesday	7 a.m. – 6 p.m.	(10 hours)
First Thursday	8:15 a.m. – 3:30 p.m.	(6.75 hours)
First Friday	8 a.m. – 4:30 p.m.	(8 hours)
		44.25 hours
Second Monday	8 a.m. – 4 p.m.	(7.5 hours)
Second Tuesday	8 a.m. – 4:30 p.m.	(8 hours)
Second Wednesday	7 a.m. – 3:30 p.m.	(8 hours)
Second Thursday	8:15 a.m. – 3 p.m.	(6.25 hours)
Second Friday	8:30 a.m. – 3 p.m.	(6 hours)
		35.75 hours
		44.25 + 35.75 = 80 hours

- b. Maxiflex Schedule. Employees working the Maxiflex Schedule are required to work during the core hours established in Section 5 at least eight (8) workdays each biweekly pay period. They may choose arrival and departure times within the flexible hours

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<sup>2</sup> Note that 12.5 hours is the maximum number of hours that can be worked in one day.

established in Section 6, as well as up to one day off per workweek within the biweekly pay period. They may vary the number of hours worked on a workday or in a workweek.

The employee may work or account for time by use of leave or other form of excused absence as few as five (5) and as many as 12.5 hours on any given workday, excluding the meal period provided in Section 7, provided the employee has a total of 80 hours each biweekly pay period. In order to schedule court in advance and meet office obligations, employees will be required to retain their preassigned AWS day off unless a change is approved in advance by a supervisor.

An example of a “Maxiflex in 9” Schedule with a 30-minute meal period is:

First Monday	8 a.m. – 3:30 p.m.	(7 hours)
First Tuesday	7 a.m. – 6:30 p.m.	(11 hours)
First Wednesday	9 a.m. – 3 p.m.	(5 hours) <sup>3</sup>
First Thursday	8 a.m. – 3:30 p.m.	(7 hours)
First Friday	No work	(0 hours)
		30 hours
Second Monday	7 a.m. – 4:30 p.m.	(9 hours)
Second Tuesday	6:30 a.m. – 7 p.m.	(12.5 hours)
Second Wednesday	6:30 a.m. – 5:30 p.m.	(10 hours) <sup>4</sup>
Second Thursday	7 a.m. – 6 p.m.	(10.5 hours)
Second Friday	7:30 a.m. – 4 p.m.	(8 hours)
		50 hours
		30 + 50 = 80 hours

An example of a “Maxiflex in 8” Schedule with a 30-minute meal period is:

First Monday	8 a.m. – 3:30 p.m.	(7 hours)
First Tuesday	7 a.m. – 6:30 p.m.	(11 hours)
First Wednesday	8:30 a.m. – 6 p.m.	(9 hours)
First Thursday	8 a.m. – 6:30 p.m.	(10 hours)
First Friday	No work	(0 hours)
		37 hours
Second Monday	7 a.m. – 6:30 p.m.	(11 hours)
Second Tuesday	7 a.m. – 6 p.m.	(10.5 hours)
Second Wednesday	7 a.m. – 6:30 p.m.	(11 hours)
Second Thursday	7 a.m. – 6 p.m.	(10.5 hours)
Second Friday	No work	(0 hours)
		43 hours
		37 + 43 = 80 hours

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<sup>3</sup> On this day, the employee took a 60-minute meal period.

<sup>4</sup> On this day, the employee took a 60-minute meal period.

## 2. Compressed Work Schedules

### a. 5/4-9 Schedule

Employees working a 5/4-9 Schedule are required to work eight (8) nine-hour workdays and one eight-hour workday, or otherwise account for time by use of leave or other form of excused absence, for a total of 80 hours in a biweekly pay period, excluding the meal period provided in Section 7.

### b. 4-10 Schedule

Employees working a 4-10 Schedule are required to work four (4) 10-hour workdays per week, or otherwise account for time by use of leave or other form of excused absence, for a total of 40 hours a week and 80 hours a biweekly pay period, excluding the meal period provided in Section 7.

### c. Choices when requesting a compressed work schedule.

During the EDP, the employee must choose a fixed period of 30 to 60 minutes for the unpaid meal period and fixed arrival and departure times that are the same for each workday (except for the short day of a 5/4-9 Schedule). The selected schedule and arrival and departure times are fixed for the duration of the EDP. The arrival and departure times must be within the hours of duty established in Section 4. Employees are required to work during the core hours established in Section 5 each workday. In order to schedule court in advance and meet office obligations, employees electing to participate in the compressed schedule must maintain the same schedule identified during the EDP, unless a change is approved in advance by a supervisor.

## B. Requests for Alternative Work Schedules

1. An EDP will be held twice a year during the first two (2) weeks of the months of January and July in order to permit employees an opportunity to elect a work schedule. A new employee or transferee from within the bargaining unit may make an election request at his or her entry on duty date. If the Agency determines that an employee is no longer excluded from the bargaining unit, the employee may make an election request upon his or her return to the bargaining unit. Requests will be in writing, which may include use of an EDP form (see SAMPLE at Appendix F).
2. To facilitate each employee obtaining a mutually agreeable schedule, employees are strongly encouraged to submit as many different AWS options as they wish to have considered. Employees who do not submit a request for an AWS will be assigned to a VWS consistent with Agency needs.

## C. Approval/Disapproval of Work Schedule Requests

1. A supervisor will use best efforts to review and approve or disapprove a proposed work schedule as soon as practicable after the close of the EDP.
2. If more employees request the same work schedule or day(s) off than can be accommodated, a manager will give priority to seniority, as defined in Article 2, Section G, when determining employee work schedules and/or days off, subject to each office's mission needs. If none of an employee's requested work schedule options is approved, the employee will be assigned to a VWS consistent with Agency needs.
3. Supervisors will notify employees of the approval or disapproval of a work schedule in writing. Upon request, the reason for disapproval will be explained in writing. Denials of requests to work an AWS will not be arbitrary or capricious. The approved work schedules will become effective the second pay period after the end of the EDP and will stay in effect until the next EDP.
4. In the event a desired schedule cannot be accommodated at the beginning of the EDP, the Agency may, in its sole discretion, implement the requested schedule once conditions change allowing mission needs to be met. The new schedule will then be in effect until the next EDP.
5. An employee may not request to change an approved work schedule between one EDP and another unless the employee demonstrates a hardship. The Agency may direct an employee to change his or her schedule either permanently or temporarily based on mission needs, failure to comply with the time requirements of the employee's approved schedule, or substandard performance.

#### D. Impact of Temporary Assignment, Training, and Court Leave on Alternative Work Schedules

1. **Temporary Assignment.** Employees on temporary assignment may continue on their work schedules provided prior supervisory approval is obtained from the temporary assignment office and the circumstances of the temporary assignment so permit. Otherwise, an extended temporary assignment may require that an employee be assigned to a VWS consistent with the temporary assignment requirements.
2. **Training.** Employees attending training may continue on their work schedules provided prior supervisory approval is obtained and the circumstances of the training so permit. Otherwise, attending training may require that an employee be assigned to a VWS consistent with the training program requirements.
3. When an employee is required to change his or her schedule for a temporary assignment or training assignment and returns to his or her original position before the start of a new pay period, the employee may resume his or her normal approved work schedule to the extent possible.
4. **Court Leave.** Employees on court leave, as defined in Article 18, Section 5, may continue on their work schedules provided the circumstances of the employee's obligations to the

court so permit. Otherwise, an employee on court leave may be assigned to a VWS with prior supervisory approval.

## **Section 11. Alternative Work Schedules for Part-time Employees**

Alternative work schedules will be made available to part-time employees in the bargaining unit.

- A. Part-time employees on an FWS must, at a minimum, work two (2) days in each week and five (5) days in each biweekly pay period. Subject to the core hours set forth in Section 5, part-time employees on an FWS may vary the number of hours worked on a workday or in a workweek, provided they meet the total number of hours in each biweekly pay period required under their particular appointment, excluding any meal periods taken.
- B. Part-time employees on a CWS must, at a minimum, work two (2) days in each week and five (5) days in each biweekly pay period. Subject to the core hours set forth in Section 5, part-time employees on a CWS work the same number of days of the week in every biweekly pay period. The number of hours in each workday is the same. Arrival and departure times are fixed and are the same for each day worked. The employee must select a fixed period of 30 to 60 minutes for the unpaid meal period. The employee works the total number of hours in each biweekly pay period required under the employee's particular appointment, excluding any meal periods taken.

## **Section 13. Holidays**

- A. Legal Public Holidays. The following are legal public holidays for employees in the bargaining unit:
  1. New Year's Day, January 1.
  2. Birthday of Martin Luther King, Jr., the third Monday in January.
  3. Washington's Birthday, the third Monday in February (sometimes referred to as Presidents' Day).
  4. Memorial Day, the last Monday in May.
  5. Independence Day, July 4.
  6. Labor Day, the first Monday in September.
  7. Columbus Day, the second Monday in October.
  8. Veterans Day, November 11.
  9. Thanksgiving Day, the fourth Thursday in November.
  10. Christmas Day, December 25.
  11. Inauguration Day, January 20 of each fourth year after 1965, for employees in the District of Columbia, Montgomery and Prince George's Counties in Maryland, Arlington and Fairfax Counties in Virginia, and the Cities of Alexandria and Falls Church in Virginia.
  12. Any other day declared a holiday by federal statute or Executive Order.

**B. “In Lieu of” Holiday**

1. When a holiday falls on a non-workday outside a full-time employee’s basic workweek, he or she is entitled to an “in lieu of” holiday. Except when the holiday falls on a Sunday, the day to be treated as the “in lieu of” holiday is the workday immediately preceding the non-workday.
2. For full-time employees on an AWS whose regularly scheduled AWS day off is a holiday or holiday observed, the workday immediately preceding that day will be designated as the employee’s “in lieu of” holiday. The Agency may select an alternative “in lieu of” holiday for employees on a CWS if the Agency head or designee determines that a different “in lieu of” holiday is necessary to prevent an “adverse agency impact,” as defined in 5 U.S.C. § 6131(b). As a matter of administrative discretion, the Agency may select an alternative “in lieu of” holiday for employees on an FWS where required to meet Agency needs.
3. When a holiday falls on a non-workday of a part-time employee, that employee is not entitled to an “in lieu of” holiday.

**C. Flexible Work Schedule Holiday Hours**

1. Employees on an FWS will be paid for holiday hours as follows:
  - a. A full-time employee on an FWS is entitled to eight (8) hours of pay on a holiday when the employee does not work.
  - b. A part-time employee is entitled to a holiday when the holiday falls on a day when he or she would otherwise be required to work or take leave. A part-time employee on an FWS is generally excused from duty for the number of hours of his or her basic work requirement on that day, not to exceed eight (8) hours. Part-time employees who are excused from work on a holiday receive their rate of basic pay for the hours they are regularly scheduled to work on that day.
2. If an employee on a Maxiflex Schedule wishes to “make up” a shortage in the basic work requirement resulting from a holiday, the employee may, with prior supervisory approval, work on his or her preassigned AWS day off, subject to the core hours requirement. With prior supervisory approval, a part-time employee may work on his or her non-workday, subject to the core hours requirement.

**D. Compressed Work Schedule Holiday Hours**

A full-time or part-time employee on a CWS who does not work because of a holiday receives his or her rate of basic pay for the number of hours he or she was scheduled to work on the holiday. For example, if a holiday falls on a 10-hour workday, the employee’s holiday is 10 hours.

## **Section 14. Emergency Situations**

If an employee wants to “make up” a shortage in the basic work requirement resulting from a delayed opening or limited early dismissal, the employee may, with prior supervisory approval, work on his or her preassigned AWS day off. A part-time employee, with prior supervisory approval, may work on a day he or she is not otherwise scheduled to work. Any hours worked on the preassigned AWS day off must be a minimum of two (2) hours and within the hours of duty established in Section 4. Any hours worked by a part-time employee on a day not regularly scheduled for work must be a minimum of two (2) hours and within the hours of duty established in Section 4.

## **ARTICLE 16**

### **PART-TIME EMPLOYMENT**

#### **Section 1. Introduction**

- A. Where consistent with mission requirements, part-time employment can be an effective tool for recruitment and retention because it provides management with the flexibility to meet work requirements and allows current or potential employees to maintain a reduced work schedule to balance work-life demands, including, but not limited to, hardship or temporary personal situations (*e.g.*, child care, elder care, family medical situations, educational pursuits).
- B. In accordance with 5 U.S.C. § 3401(2), a part-time permanent employee works between 16 and 32 hours in a week (or 32 and 64 hours in a biweekly pay period in the case of an Alternative Work Schedule under Article 15).

#### **Section 2. General Considerations**

- A. A part-time permanent employee is eligible for benefits in accordance with government-wide regulations, which generally provide the same benefits as a full-time employee but on a prorated basis (*e.g.*, leave, retirement, health and life insurance coverage).
- B. To the extent practicable, part-time employees will be given the same opportunities for professional development and training as their full-time counterparts. Part-time employees shall not be excluded from consideration for promotion because of their part-time status; however, promotion may require the employee to convert to and maintain a full-time schedule to accept the position.
- C. Employees in a part-time status are eligible to receive awards.
- D. To the extent practicable, the Agency will ensure that part-time employees receive assignments of similar quality and character as those provided to full-time employees.
- E. To the extent practicable, the Agency will take into consideration a part-time employee's available work hours when making work assignments, including court coverage and out-of-court preparation.
- F. A part-time employee earns a full year of service for each calendar year worked (regardless of schedule) for the purpose of computing dates for retirement eligibility, career tenure, completion of probationary period, within-grade pay increases, change in leave category, and time-in-grade restrictions on advancement.

#### **Section 3. Submission, Renewal, and Approval/Disapproval of Part-Time Requests**

- A. An employee who desires to work part-time must submit a written request to his or her immediate supervisor. The employee will state the reason part-time employment is being

requested; the schedule the employee is seeking, including the number of hours per week and per pay period; and any additional considerations relevant to the request. If additional information is needed, the employee will be given an opportunity to provide the information. Any confidential medical information provided to support a request will be returned to the employee or maintained in accordance with applicable law and regulation.

- B. If approved for a part-time schedule, an employee must request renewal of the part-time schedule, modification of the part-time schedule, or conversion to a full-time schedule with a brief written explanation of the reasons for the request to his or her immediate supervisor once a year during the month of July (renewal period). If the first renewal period occurs within the first year of the initial approval for part-time employment, the supervisor may defer the requirement that the employee request renewal until the following renewal period.
- C. The Agency will render a decision on the request within 30 days of receipt of the request. If additional information is requested, the Agency will render its decision within five (5) days of receipt of the additional information or within 30 days of receipt of the initial request, whichever is later. Any decision denying a request will explain the reason(s) for the denial. Upon written request, the Agency will provide an explanation of the conditions, if any, under which the employee's request may be approved.

#### **Section 4. Implementation**

- A. When the Agency approves a part-time schedule, the Agency shall ensure:
  - 1. all appropriate personnel actions are initiated and processed in accordance with existing regulations;
  - 2. if necessary, the employee's Performance Work Plan is revised and provided to the employee in accordance with the Agency's Performance Management Program and Article 27; and
  - 3. Notification of Conditions of Part-Time Employment (Appendix G) is received and acknowledged in writing by the employee.
- B. Employees interested in converting to part-time employment are encouraged to read the online information provided by OPM outlining the effect of conversion to part-time employment in the areas of leave and holidays, retirement, health and life insurance, qualification determinations (*e.g.*, for promotions), pay, reduction in force, adverse and performance-based actions, service credit (*e.g.*, for step increases), *etc.* This information is available at [www.opm.gov](http://www.opm.gov), Hiring Information Part-Time & Job Sharing.

#### **Section 5. Modifications to Part-Time Schedules**

- A. Part-time employees may be asked to temporarily modify their schedule to meet the needs of the Agency. Notice that the employee's schedule must be modified will be provided as soon as possible after the need arises. Where it is foreseeable that the modified schedule will be in

effect for more than two (2) pay periods, the employee will be provided written notice stating why the schedule is being modified, and either how long the modification is expected to continue or the conditions under which the original schedule will be reinstated.

- B. Part-time employees may temporarily modify their schedule to attend Agency-approved training with management approval. Part-time employees who temporarily modify their schedule to attend Agency-approved training must, to the extent possible, account for such hours (including travel time in excess of normal commuting time) by reducing or eliminating hours from their existing schedule to ensure the existing biweekly pay period hourly requirement is not exceeded. If management determines that it is not possible for the employee to modify his or her existing schedule to account for training time, the employee will be compensated for any excess hours worked.
- C. Generally, a part-time employee shall be given at least 21 days' notice prior to termination or permanent modification of the employee's part-time schedule. The notice may state the basis for requiring the employee to work full-time or to modify his or her part-time schedule. A part-time employee may submit a request for reconsideration to the Agency within the 21-day notice period. The Agency will provide a response to the reconsideration request within a reasonable period of time. Where arrangements to permanently modify or terminate the part-time schedule cannot be completed within the time established by this Article, additional time may be authorized. Such change to an employee's part-time work schedule will become effective at the beginning of a pay period.
- D. Employees who wish to change their number of hours of work or convert from part-time to full-time must make a written request to their immediate supervisor. The Agency makes no explicit or implicit guarantee of a return to a full-time position in the event an employee requests a return to full-time employment. The Agency will render a decision on the request within 30 days of receipt of the request. If additional information is requested, the Agency will render its decision within five (5) days of receipt of the additional information or within 30 days of receipt of the initial request, whichever is later. Any decision denying the request will explain the reason(s) for the denial.

## **ARTICLE 17**

### **TELEWORK PROGRAM**

#### **Section 1. Introduction**

- A. Telework is a work arrangement in which the employee performs officially assigned duties at an approved worksite or Alternate Duty Station (ADS) away from the employee's primary worksite. Telework is intended to provide benefits to the Agency and employees through increased productivity, flexibility, and reduced commuting time and expenses. Telework also relieves congestion on the nation's transportation systems and conserves resources. Telework may also play a critical role in emergency situations by establishing communication patterns and dispersed offsite capabilities, thereby ensuring the continuity of essential functions following a serious disruption to the Agency's operations. An ADS can include a government or private telework center, the employee's home, or other approved location equipped with the necessary standard office equipment as described in Section 5.F.
- B. Eligible employees may telework to the maximum extent possible without negatively impacting employee performance or mission accomplishment. Eligible employees are employees in a position with tasks determined by the Agency as being suitable for telework. Employees must also meet the Telework Program eligibility requirements described in Section 3.
- C. Decisions to approve telework will be made on a case-by-case basis. Teleworking is not an entitlement or right, and a telework agreement may be terminated by either the employee or the Agency.

#### **Section 2. General Considerations**

- A. Telework schedules may vary depending upon the individual arrangements agreed to by the employee and the authorizing Agency official.
- B. This program provides for two (2) types of telework pursuant to a telework agreement:
  1. Core Telework. Work scheduled in advance and performed at an ADS on a regular and recurring basis one or more days per pay period.
  2. Situational/Episodic. A telework arrangement used on an occasional, non-routine, or irregular basis at the Agency's discretion, for part of a day, for individual days or hours within a pay period, or for several pay periods on a temporary basis for an appropriate purpose, such as:
    - a. temporary incapacitation due to injury or illness;
    - b. more efficient completion of a project;

- c. potential emergency situations;
- d. temporary accommodation of an employee's disability; or
- e. other legitimate reasons as determined by the Agency.

C. Participants in telework may be permitted to use alternative work schedules.

### **Section 3. Eligibility Criteria**

- A. When determining whether a task, function, or project may be suitable for telework, consideration should be given to the following position-related eligibility criteria:
  - 1. whether tasks are portable and can be performed effectively outside the employee's primary worksite;
  - 2. whether tasks are measurable or project-oriented;
  - 3. whether client or customer contacts are foreseeable or may be satisfied by frequently checking voicemail for messages;
  - 4. whether work contacts can be adjusted to allow for telephone communications or work assignment can be accomplished when the teleworking employee is not at the primary worksite;
  - 5. whether materials, data, and communications needed to carry out telework tasks present a security risk or breach of confidentiality to DHS, ICE, or its customers;
  - 6. whether the integrity and confidentiality of any document removed from the Agency would be protected from disclosure;
  - 7. whether tasks require extensive face-to-face contact with the supervisor, other employees, stakeholders, customers, or the general public; and
  - 8. whether tasks involve the employee receiving substantial supervision or oversight or providing mentoring or assistance on a continuous basis.
- B. The Authorizing Official has sole discretion to determine the weight to be given to each of the various factors listed in Subsection A.
- C. Employees who have worked for the Agency less than one year will not be allowed to participate in the telework program, except on an occasional Situational/Episodic basis.
- D. An employee may be authorized to telework if the following eligibility criteria are met:
  - 1. the employee has not received disciplinary action within the last 12 months;

2. the employee's most recent performance appraisal reflects a rating of at least "Fully Successful," "Meets Expectations," or the equivalent for each critical element;
3. the employee is not on a Performance Improvement Plan (PIP), as provided in Article 24;
4. the employee is not on leave restriction;
5. the employee has a history of reliable and responsible performance of duties, trustworthiness, professionalism, and subject matter expertise;
6. the employee has the workspace, utilities, and equipment suitable for the work to be performed at the designated ADS as specified in a telework agreement;
7. the designated ADS complies with reasonable safety standards, including, but not limited to, the building's electrical system is grounded and all equipment is free of hazards that would cause physical harm (*e.g.*, frayed, bare, loose, or exposed wiring); telephone lines, electrical cords, and extension wires are secured under a desk or alongside a baseboard; the work area is free of obstructions and hazardous materials; the temperature is conducive to health, comfort, and proper equipment maintenance; equipment and furniture are in good condition and ergonomic;
8. the employee signs and abides by a telework agreement;
9. there is no more than a *de minimis* adverse impact on other employees in terms of workload, exposure to standby responsibilities, or reassignment of duties;
10. the employee has dependent care arrangements to permit concentration on work assignments and acknowledges that telework is not to be used as a substitute for dependent care; and
11. the employee's absence from the primary worksite would not interrupt normal operations.

#### **Section 4. Approval/Disapproval/Termination of Telework Agreements**

- A. Employees desiring to participate in telework will submit a written request to their immediate supervisor using the Telework Program Agreement (Appendix H). The Parties acknowledge that rare circumstances may exist where the Agency may approve an employee's request to telework prior to the execution of a written agreement.
- B. Employees must identify portable work or a specific work project or assignment and will include the proposed work schedule and days to be worked away from the primary worksite.
- C. The Agency will use its best efforts to review and approve or disapprove the request in writing within 14 days of receipt or as soon thereafter as practicable.

- D. If the request is approved, the Telework Program Agreement will be signed and executed. If the request is disapproved, the employee will be provided a written explanation.
- E. Telework agreements for participation on a Core Telework basis are in effect for six (6) months from the date of signing and may be initiated or renewed only during the Employee Decision Period (EDP) set forth in Article 15. Upon entry on duty, a transferee may request participation in telework without waiting for the next EDP. On a case-by-case basis, the employee may be allowed or required, as applicable, to change the established schedule to meet special needs of the employee or the Agency.
- F. The Agency may suspend, modify, or terminate the Telework Program Agreement on account of such factors as employee performance concerns or failure to abide by telework program requirements, operational needs of the Agency, and changed circumstances, such as budget, staffing, workload demands, and availability of portable work. Notice shall be provided to the employee in writing with reasons for the action. The employee must be provided a reasonable opportunity to return to the primary worksite (generally, one pay period for Core Telework participants). Where arrangements to return to the primary worksite cannot be completed within the time established by the Agency, additional time may be authorized. An employee may reapply to participate in a Core Telework schedule during the subsequent EDP.

## **Section 5. Guidelines**

- A. In cases of scheduling conflicts between two (2) or more employees where the employees do not reach agreement, and all factors are equal, the employee with the most seniority, as defined in this Agreement, will be given priority in choosing a telework schedule. In case of a tie, the conflict will be resolved by a toss of a coin in the presence of the employees. Upon request, the supervisor will give the Union an opportunity to be present either in person or by phone during any meeting to resolve the conflict.
- B. In the event that an employee's scheduled workday at an ADS falls on a holiday, the employee may not substitute any other day in the workweek as his or her telework day.
- C. Employees may be required to report to their primary worksite for events, including, but not limited to, training programs, conferences, or meetings, or to perform on a short-term basis work that cannot otherwise be performed at the ADS. When situations occur that require the employee to report to the primary worksite, travel to and from the office is normal commuting time and is not considered hours of work, nor compensable as local travel. In cases requiring that an employee report to the primary worksite, the employee will be provided reasonable advance notice and reasonable time to report. Where notice is given after the beginning of the employee's scheduled workday, the employee's normal travel time will be considered hours of work. The employee should make every effort to report as soon as possible. With good and sufficient reason, the employee will be permitted up to two (2) hours to report.
- D. Except as specified otherwise in this Article, employees performing work at the ADS are eligible for the same benefits and privileges and are subject to the same requirements and other provisions of this Agreement as employees performing work at the primary worksite.

- E. Teleworking employees must be vigilant in maintaining information security. The employee will adhere to DHS and ICE policies and applicable government regulations governing information management and electronic security procedures for safeguarding data.
- F. The Agency will provide, maintain, and repair any electronic equipment it deems necessary (*e.g.*, computers, printers, scanners, FAX machines) for the employee to perform the portable work at the ADS.
- G. The employee will exercise care and due diligence in safeguarding all government equipment.
- H. Where the ADS is the employee's home, the employee will be responsible for home maintenance and any other incidental costs (*e.g.*, electricity, phone, lockable storage, furniture, insurance) associated with the use of the ADS.
- I. On a day when an employee is scheduled to work at the ADS and his or her official duty station building is closed as a result of an emergency situation for all or part of the day, the employee is required to perform work at the ADS unless the emergency situation prevents the work from being performed at the ADS or causes the employee to be unable to perform assigned duties.
- J. If an emergency or other situation occurs at the ADS that affects the employee's ability to perform official duties, the employee will notify his or her supervisor as soon as practicable. The employee will be directed to report to the primary or another worksite, granted leave if requested, or directed to make other arrangements as necessary to meet the needs of the Agency.
- K. Employees working at an ADS are entitled to early dismissals and/or administrative leave granted by the Agency for holidays or other special observances to the same extent as the employees at the primary worksite.
- L. In case of injury, theft, loss, or potential tort liability related to telework arrangements at the employee's home, the teleworking employee will allow timely inspection of the telework site. The Agency will give the employee reasonable notice prior to any inspection of the telework site where the ADS is the employee's home.
- M. The Agency shall provide to the Union President or designee copies of any new or modified Telework Program Agreements that are approved during each EDP for bargaining unit employees who participate on a Core Telework basis.

## **Section 6. Effect of Telework with Regard to Temporary Assignments**

- A. An employee who participates in a telework program may apply for temporary assignments on the same basis as those who are not on a telework schedule.

- B. The Agency may involuntarily assign an employee who is working a telework schedule to temporary assignments on the same basis as those who do not participate in the telework program.

## **ARTICLE 18**

### **LEAVE**

#### **Section 1. Introduction**

The purpose of this Article is to prescribe the policies covering the different types of leave pertinent to bargaining unit employees in accordance with applicable law and regulation. This Article shall be administered in accordance with 5 U.S.C. Chapter 63, 5 C.F.R. Part 630, and this Agreement.

#### **Section 2. Annual Leave**

- A. Right to Use. Use of annual leave is a right of the employee and not a privilege. The scheduling of annual leave is subject to the needs of the Agency and advance approval by the supervisor. Leave may be used in 15-minute increments.
- B. Earn and Accrue. Annual leave will be earned and accrued in accordance with applicable laws and regulations.
- C. Request Procedure. Annual leave will normally be requested in advance on the Agency's system of reporting time and attendance (*e.g.*, WebTA). The Agency will not set unreasonable restrictions on when leave requests must be submitted. The employee will properly record actual leave usage in the system.
- D. Timely Leave Approval. Consistent with the needs of the Agency and the employee, annual leave requests will be decided in a timely manner. Upon written request, written explanation for a denial will be provided to the employee in a timely manner.
- E. Approval. When multiple requests for annual leave for the same period cannot be granted, the supervisor will attempt to resolve the conflict between the employees. Factors that would weigh in favor of an employee's request may include, but are not limited to:
  1. Accrued Leave. The employee's accrued leave balance (*e.g.*, the request of an employee who has "use or lose" leave could be given preference over one who has a lower leave balance).
  2. Children's Vacation. An employee has children of school age and would benefit from vacations taken when the children are not in school. This consideration does not affect previously approved leave for other employees.
  3. Previous Request. Whether the requesting employee was denied leave at the desired time during a previous leave year.

Unresolved conflicts will be settled by use of seniority, with the same meaning and usage as elsewhere in this Agreement. In case of a tie, the conflict will be resolved by a toss of a coin in the presence of the employees.

- F. Previously Approved Leave. An employee's approved annual leave will not be disapproved because an employee with an earlier seniority date subsequently requests leave for the same period.
- G. Cancellation of Leave. An employee may cancel previously approved leave. The Agency must be informed of this decision in a timely manner (*e.g.*, as far in advance of returning to work as possible).
- H. Advancing Annual Leave. Annual leave that can be earned in a given leave year will be available for use from the beginning of each leave year. Annual leave may be approved in advance of accrual, not to exceed the amount that is expected to accrue during the remainder of the same leave year.

### **Section 3. Sick Leave**

- A. Earn and Accrue. Sick leave will be earned and accrued in accordance with applicable laws and regulations. Leave may be used in 15-minute increments.
- B. Request Procedure. Sick leave will be requested in the Agency's system for reporting time and attendance (*e.g.*, WebTA), in advance where practicable. The employee will properly record actual leave usage in the system.
- C. Unforeseeable Requests for Sick Leave. When the need for sick leave arises in unforeseeable circumstances that prevent the employee from reporting to duty on time, the employee will contact the immediate supervisor or designated Agency official(s) to provide notice and request sick leave before the beginning of his or her reporting time or as soon as possible thereafter. In particular, where the employee is scheduled to represent the Agency in court or make another appearance of high importance, the employee is to make every reasonable effort to ensure the Agency is provided notice in sufficient time to take necessary action to protect the Agency's interests. The Agency shall provide employees the supervisor's alternate contact numbers.
- D. Timely Responses to Requests. Consistent with the needs of the Agency and the employee, sick leave requests will be decided in a timely manner. Upon written request, written explanation for a denial will be provided to the employee in a timely manner. Denials of requests for sick leave will not be arbitrary or capricious.
- E. Granting Sick Leave. Subject to the employee's having followed leave request procedures and, if applicable, submitting acceptable supporting evidence, and subject to 5 C.F.R. § 630.401(b)-(e), the Agency must grant accrued sick leave to an employee when he or she:
  1. is incapacitated for performance of one's duties by physical or mental illness, injury, pregnancy, or childbirth. In this context, an employee with a disability who depends on an aid, mechanical or otherwise, to perform work is normally incapacitated without the aid. A seeing-eye dog, a personal assistant, a wheelchair, or any prosthetic device may be

considered an extension of the employee, and a grant of sick leave for such purposes as training, replacement, or repair is appropriate under the same conditions as any other incapacitation;

2. receives medical, dental, or optical examination or treatment;
3. provides care for a family member incapacitated by a medical or mental condition or attends to a family member receiving medical, dental, or optical examination or treatment;
4. provides care for a family member with a serious health condition;
5. would jeopardize the health of others by coming to work because the employee has been exposed to a communicable disease (*i.e.*, a disease that requires isolation or quarantine, as determined by the health authorities having jurisdiction or by a health care provider);
6. makes arrangements necessitated by the death of a family member or attends the funeral of a family member; or
7. must be absent from duty for purposes relating to his or her adoption of a child, including appointments with adoption agencies, social workers, and attorneys; court proceedings; required travel; and any other activities necessary to allow the adoption to proceed.

#### F. Medical Evidence

1. Employees will normally not be required to furnish administratively acceptable evidence to substantiate a request for approval of sick leave for three (3) consecutive workdays or fewer. Where the Agency has reasonable grounds to believe that an employee is abusing the sick leave benefit (*e.g.*, when sick leave is used frequently or in unusual patterns or circumstances), the Agency may require the employee to furnish administratively acceptable evidence for sick leave requests of fewer than three (3) days. Depending on the particular circumstances, the Agency may accept the following as administratively acceptable evidence of an employee's illness: a doctor's note, medical records, a prescription for treatment, evidence of a pending medical appointment, or the employee's written statement.
2. Any medical information provided to support a request for sick leave will be treated confidentially and with appropriate recognition of the employee's (and/or family member's) rights of privacy. Normally, administratively acceptable evidence to support a request for sick leave will be provided to an employee's first- or second-level supervisor. However, in unusual circumstances where the employee has a specific basis for not providing such medical information to his or her supervisor, the employee may provide it to the Agency's Chief, Labor and Employment Law Division, OPLA, or designee.
3. Employees who suffer from a chronic medical condition that requires occasional absence from work, but does not necessarily require medical treatment, and who have previously furnished medical certification of the chronic condition, at the Agency's discretion, may

not be required to furnish a medical certificate to substantiate sick leave for subsequent occurrences of the same condition. The Agency may periodically require further medical certification to substantiate that the condition still exists.

- G. Advanced Sick Leave. Unless there is documented leave abuse, when an employee's sick leave balance has been exhausted, the Agency may approve requests for advanced sick leave in cases of serious disability or ailment of an employee, or to provide care for an employee's family member with a serious disability or ailment, or for purposes related to the adoption of a child, or family bereavement. Approval is subject to the following:
1. Medical Certificate. The application is adequately supported by a medical certificate from an appropriate health care provider.
  2. Repayment. Repayment may be reasonably expected.
  3. Maximum Advance. The amount advanced to a full-time employee may not exceed 30 days. Part-time employees, working under a regular tour of duty, may be advanced sick leave on a *pro rata* basis.
- H. Medical Review. If there are questions regarding an employee's medical information supporting a request for sick leave, it will be reviewed and assessed by the Agency's medically licensed designee. Following the designee's written assessment of the information, the employee and the employee's medical representative will receive a copy of the assessment within three (3) days after the assessment has been provided to the Agency.
- I. Use of Sick Leave During Annual Leave. Whenever illness or injury occurs during approved annual leave, the employee may request to change the period of illness to sick leave and the charge to annual leave will be reduced accordingly. The employee will notify a supervisor of the need for sick leave at the time the employee becomes aware of the need to take sick leave or as soon as possible.

#### **Section 4. Administrative Leave/Excused Absence**

Administrative leave is an excused absence from duty administratively authorized without loss of pay and without charge to an employee's accrued leave. Matters for which administrative leave may be granted include, but are not limited to:

- A. Voting.
- B. Agency-Sponsored or -Approved Blood Drives.
- C. Health, Safety, and Weather Hazards.
  1. Whenever it becomes necessary to modify the normal operation of a workplace because of inclement weather or any other emergency situation, the Agency may grant administrative leave for the duration of the closure. Such situations include, but are not limited to, such

events as heavy snow or severe icing conditions, floods, earthquakes, hurricanes or other natural disasters, severe pollution, massive power failure, terrorist attacks, major fires, or serious interruptions to public transportation caused by incidents such as strikes of local transit employees or mass demonstrations.

2. Local management is in the best position to assess the situation on the ground as to when office closure, delayed opening, or early dismissal is necessary. Local management will make decisions regarding operating status as soon as possible to ensure that employees have sufficient time to travel to or from the workplace safely. Office closure and other operating status policies and procedures will be consistent with the OPM Washington, DC, Area Dismissal and Closure Procedures.
  3. Employees with the option of requesting unscheduled leave as a result of a delayed opening on a particular day may also, within the same pay period, request, and with management approval, take the unscheduled leave day as an Alternative Work Schedule (AWS) day off and thereafter work on the subsequent preassigned AWS day off.
- D. Brief Absences or Tardiness. If an employee is unavoidably or necessarily absent, or tardy, for less than one hour, the Agency, for adequate reason, may excuse the employee without charge to leave. Where appropriate, the Agency may approve an employee's request to telework on a Situational/Episodic basis, in accordance with Article 17.
- E. Funeral Leave for Combat-Related Death of Immediate Relative of Armed Forces. Upon request, an employee will be granted up to three (3) work days of administrative leave without loss of or reduction in pay to make arrangements for, or attend the funeral or memorial service of, a family member or an immediate relative who died as the result of a wound, disease, or injury incurred while serving as a member of the armed forces in a combat zone. The leave need not be consecutive, but the employee shall provide the supervisor justification for the requested non-consecutive days (see 5 C.F.R. Part 630, Subpart H).
- F. The Parties agree that the above reasons for granting administrative leave are not all-inclusive 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 Agency may require documentation as appropriate to support the reasons for and/or the duration of such administrative leave requests.

## **Section 5. Court Leave**

- A. An employee will be excused from duty without charge to leave if summoned to serve as a juror or witness in a judicial proceeding, including time spent waiting to be called or selected and related travel, but not including time during which the employee is excused or discharged by the court for an indefinite period subject to call by the court or for a definite period in excess of one day.<sup>1</sup>

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<sup>1</sup> An employee who is summoned as a witness in an official capacity on behalf of the federal government is on official duty, not court leave.

- B. If any employee is on annual leave when called for jury duty, court leave should be substituted for the annual leave.
- C. Employees are required to contact their supervisors upon notification by the court of being excused or discharged. An employee who is excused or released by the court for any day or substantial portion of a day is expected to return to duty, telework, or be charged with a form of approved absence, excluding court or administrative leave. In this regard, management will consider the distance or travel time from the court to the employee's duty station. In the event that the employee is released such that less than one hour of the work day would be involved and thus no appreciable amount of Agency service would be rendered, management may grant the employee administrative leave. In the event that the employee is released such that one hour or more of the work day would be involved, management may approve telework on a Situational/Episodic basis for the remainder of the employee's daily work requirement.

## **Section 6. Leave Without Pay**

- A. Definition. Leave Without Pay (LWOP) is a temporary non-pay status and absence from that duty, in most cases, is granted at the employee's request.
- B. Administrative Discretion. In most circumstances, approval of LWOP is a matter of management discretion. Circumstances in which LWOP may be approved include, but are not limited to, the following:
  1. to allow an employee to pursue an educational opportunity;
  2. to provide time for recovery from an illness or disability not of a permanent nature;
  3. to protect an employee's rights and benefits while a claim for disability retirement is pending with OPM; and
  4. to maintain federal employment status while seeking employment in connection with a family relocation.
- C. Entitlement to LWOP. Employees will be granted LWOP for the following purposes:
  1. for necessary medical treatment of a disabled veteran, pursuant to Executive Order 5396;
  2. for periods of active duty as a member of the uniformed services, pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994;
  3. for certain family and medical needs, pursuant to the Family and Medical Leave Act of 1993 (FMLA) (see 5 C.F.R. Part 630, Subpart L); and
  4. for the first year during which an employee is receiving workers' compensation payments from the U.S. Department of Labor, pursuant to 5 U.S.C. Chapter 81.

- D. Upon written request, written explanation for a denial will be provided to the employee in a timely manner.

## **Section 7. Leave for Family Responsibilities**

- A. Family Considerations. Under applicable law, Executive Order, and regulation, the Agency may grant annual leave, sick leave, and/or LWOP for family circumstances. These circumstances may include maternity/paternity, adoption, bereavement, and family care. Upon written request, written explanation for a denial will be provided to the employee in a timely manner.
- B. Pursuant to 5 C.F.R. § 630.201(b), family member means the following relatives of the employee:
1. spouse, and parents thereof;
  2. sons and daughters, including adopted children, and spouses thereof;
  3. parents, and spouses thereof;
  4. brothers and sisters, and spouses thereof;
  5. grandparents and grandchildren, and spouses thereof;
  6. domestic partner (in accordance with the definitions at 5 C.F.R. § 630.201(b)), and parents thereof, including domestic partners of any individual in Paragraphs (1) 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. A more limited definition applies to employees requesting LWOP under the FMLA. The FMLA definitions are found in 5 C.F.R. § 630.1202.
- D. Legislation pending before Congress at the time this Article is being negotiated would provide federal employees a specified period of paid “parental leave” following the birth or adoption of a child. If this or similar legislation is enacted into law before the current negotiations are completed or during the life of this Agreement, this Section will be amended to include the legislation if either Party believes it necessary to do so for bargaining unit employees to receive the benefit of the legislation and/or its implementing regulations.

## **ARTICLE 19**

### **COMPENSATORY TIME OFF FOR RELIGIOUS OBSERVANCES**

#### **Section 1. Working Alternative Hours to Engage in Religious Observance**

An employee whose personal religious beliefs require that he or she abstain from work at certain times of the workday or workweek will be permitted to work alternative hours to accommodate the employee's religious observance, unless doing so would cause an undue hardship on the efficient accomplishment of the Agency's mission. The alternative hours (*i.e.*, compensatory time) may be worked either before or after the time taken off for the religious observance.

#### **Section 2. Employee Responsibilities**

- A. An employee is required to provide his or her supervisor with a written request for religious compensatory time off. The employee must submit the request at least 30 days in advance of earning or using religious compensatory time off, absent extenuating circumstances.
- B. At the time the religious compensatory time off is requested, the employee must provide the Agency with the following information:
  1. the name and/or description of the religious observance that is the basis of the employee's request to be absent from work in order to meet the employee's personal religious requirements;
  2. the date(s) and time(s) the employee plans to be absent to participate in the religious observances identified in Subsection B.1; and
  3. the date(s) and time(s) the employee plans to work to earn religious compensatory time off to make up for the absence. The hours worked in lieu of the normal work schedule must occur during the available tour of duty as defined in Article 15.
- C. In the event that an adjustment to the date(s) and time(s) of planned work in lieu of the normal work schedule is required due to unforeseen circumstances, the employee must submit for approval a revised schedule to reflect those changes.
- D. Employees must submit a WebTA Premium Pay Request for compensatory time off within the pay period for which it was earned so that the request can be approved prior to validation and certification of the timecard for that pay period. The WebTA request must be made after the supervisor approves the written request described in Section 2.A.

#### **Section 3. Agency Responsibilities**

- A. The Agency must approve the employee's request to use religious compensatory time off unless the Agency determines that approving the request would interfere with the Agency's ability to efficiently carry out its mission.

- B. If the employee's request to use religious compensatory time off is denied, the Agency must provide a written explanation as to the reason(s) the request has been denied.
- C. The specific timing of when an employee will be allowed to earn religious compensatory time off is a matter of Agency discretion based on the needs of the Agency.

#### **Section 4. Scheduling Time to Earn and Use Religious Compensatory Time Off**

- A. The scheduling of time to earn and use religious compensatory time off by an employee is subject to the Agency's approval.
- B. Compensatory time off for religious observance will be earned and used in 15-minute increments. Amounts less than 7.5 minutes must be rounded down to the nearest 15-minute increment; amounts equal to or greater than 7.5 minutes must be rounded up to the nearest 15-minute increment.

#### **C. Earning Compensatory Time Off Prior to Using It**

For an employee who earns religious compensatory time off prior to using it, religious compensatory time off may be earned up to 13 pay periods in advance of the pay period in which the targeted religious observance commences and must be linked to specific dates and times for future use, as compatible with Agency mission requirements.

#### **D. Using Compensatory Time Off Prior to Earning It**

- 1. An employee who uses religious compensatory time off prior to earning it must fulfill his or her obligation to perform work in exchange for the advanced religious compensatory time off within 13 pay periods after the pay period in which he or she used religious compensatory time off, or the Agency must take action as provided in Subsection D.3.
- 2. The 13 pay periods described in Subsection D.1 are calculated beginning with the first pay period after the date on which the religious compensatory time off was used.
- 3. If the employee fails to earn religious compensatory time off within 13 pay periods after taking religious compensatory time off, the Agency may take corrective action to eliminate or reduce the negative balance by making a corresponding reduction in the employee's balance of annual leave, credit hours, compensatory time off in lieu of regular overtime pay, compensatory time off for travel, or time-off awards. The Agency may determine the order of precedence for applying the various types of paid time off to offset the negative balance. Any negative balance of religious compensatory time off remaining after any charging of these types of paid time off must be resolved by charging the employee LWOP, which would result in an indebtedness that is subject to the Agency's internal debt collection procedures.

E. When possible, time taken off on any given day should be repaid in a block of time equal to the number of hours taken on the day of the observance. When the time cannot be repaid in an equal block, repayment must be in increments of no less than one hour or the balance of compensatory time owed, whichever is less. If an employee is absent when he or she is scheduled to perform compensatory time work, the employee must take annual leave, request LWOP, or, if appropriate, be charged absent without leave—the same options that apply to any other absence from the employee's basic work schedule.

## **Section 5. Other Considerations**

For issues regarding the accumulation and documentation of religious compensatory time off, record keeping, employee separation or transfers, and general application of these rules, the Parties shall abide by 5 C.F.R. § 550.1001 *et seq.* To the extent there is any conflict between this Article and such regulations, the regulations shall be controlling.

## **ARTICLE 20**

### **PROMOTIONS AND PAY INCREASES**

#### **Section 1. Definitions**

- A. Career ladder. Career ladder refers to a formally recognized succession of positions that represent the anticipated career progression for most permanent employees assigned to a specific occupation. Career ladders are established for large groups of like positions that have established career progression and known promotion potential. Career ladders are established within a single occupational series. Career ladders establish a pathway for career advancement leading to the full performance level of the position.
- B. Career ladder promotion. A career ladder promotion is a noncompetitive promotion when competition was held at an earlier stage to permit entry into an established career pattern. Promotion within an established career ladder to the identified full performance level may be effected without further competition.
- C. Expedited promotion. An expedited promotion is a one-time waiver of the one-year minimum service period for promotion within the General Schedule (GS) pay scale from GS-11 to GS-12 or from GS-12 to GS-13 (if hired at GS-12), if the attorney has served at his or her current grade level for a minimum of six (6) months and the attorney's chain of command certifies to the Deputy Principal Legal Advisor that the attorney is performing at the next grade level consistent with the promotion criteria.
- D. Within-grade increases. Within-grade increases (WGI) or step increases are periodic increases in a GS employee's rate of basic pay from one step of the grade of his or her position to the next higher step of that grade. For WGI purposes, an employee's rate of basic pay is the rate of pay fixed by law or administrative action for the position held by the employee before any deductions and exclusive of additional pay of any kind.

#### **Section 2. Career Ladder Promotions**

- A. Career ladder promotions shall be processed in a timely manner in accordance with applicable law and regulation. Once an authorized Agency official has made the determination that the required criteria are met, the promotions will be made effective on the first day of the first pay period following the completion of the required waiting period. Promotions will be processed retroactively if an administrative delay occurs after the authorized official has approved the promotion (*i.e.*, the authorized official has determined that the requirements have been met). Career ladder promotions for competitive GS positions are governed by 5 C.F.R. § 300.603.
- B. Expedited Promotions
  - 1. Upon entry on duty, the Agency will notify attorneys hired at the GS-11 and GS-12 levels of the possibility of a one-time expedited promotion.

### **Section 3. Within-Grade Increases**

- A. Effective Date. A WGI shall be effective on the first day of the first pay period following the completion of the required waiting period. There are two (2) exceptions:
  - 1. when there has been a determination that the employee is not performing at an acceptable level of competence; or
  - 2. when a determination of the employee's acceptable level of competence is delayed because the employee:
    - a. has not had 90 days to demonstrate acceptable performance on the employee's elements and standards; or
    - b. was reduced in grade because of unacceptable performance and has not served 90 days under performance standards in the new position.
- B. Delay. If a WGI is delayed under Subsection A.2 and the employee is subsequently found to be performing at the acceptable level of competence, the increase will be granted retroactively to the beginning of the pay period following the completion of the waiting period.
- C. Remedial Action. When the Agency's evaluation leads to a conclusion that the employee's work is not at an acceptable level of competence for a WGI, the Agency will advise the employee in writing and take the following actions:
  - 1. explain each aspect of performance in which the employee's performance falls below an acceptable level and relate deficiencies to specific job elements and performance standards;
  - 2. explain what is required to meet the acceptable level and what the employee must do to elevate his or her performance to that level, and inform the employee that if performance does not improve to the acceptable level, the WGI, for which the employee otherwise would be eligible, will be denied; and
  - 3. provide assistance (*e.g.*, formal training, on-the-job training, counseling, or closer supervision) in improving performance rated below the fully successful level.

After a WGI has been denied, the Agency may grant the WGI at any time after it determines that the employee has demonstrated performance at an acceptable level of competence. In such cases, the WGI will become effective the first day of the first pay period after the acceptable determination is made.

### **Section 4. Promotions to Bargaining Unit Positions**

- A. All bargaining unit positions above the full performance or journey level will be announced internally. Positions will be announced via e-mail notification to all bargaining unit employees within the geographical and/or organizational (*e.g.*, OPLA and Office of the Chief Financial

Officer) area of consideration. If the area of consideration is later expanded, the announcement will be sent to all bargaining unit employees in the new area of consideration.

- B. Announcements under Subsection A will generally include information reasonably necessary for an employee to determine whether to apply for the position, such as:
1. title, series, and grade of the position;
  2. that the position is in the Professional Employees Bargaining Unit;
  3. date by which an application must be submitted;
  4. organizational and/or geographical area of consideration;
  5. organizational and geographical location of the position;
  6. whether relocation expenses will be paid;
  7. primary duties and responsibilities of the position;
  8. specific qualification requirements;
  9. the number of positions the Agency expects to fill at each location, if more than one;
  10. how to submit an application, including any supplemental materials that must be provided; and
  11. any other information applicable to the position (*e.g.*, change in level of sensitivity/clearance; promotion potential, if any; unusual travel requirements; unusual tour of duty; and selective placement factors).
- C. In accordance with 5 U.S.C. § 7106(a)(2)(C)(ii), the Agency retains the right to fill positions from any appropriate source.

## **ARTICLE 21**

### **PERFORMANCE AND INCENTIVE AWARDS**

#### **Section 1. Introduction**

- A. The Agency will recognize and, subject to the availability of funds, reward bargaining unit employees when they perform in an exemplary manner or make significant contributions to the efficiency and effectiveness of the Agency.
- B. The granting of awards will be fair, objective, free from discrimination, and based on merit.
- C. All awards will be granted in accordance with this Article and Agency policy.

#### **Section 2. Definitions and Types of Awards**

- A. Award. Something bestowed or an action taken to recognize and reward an individual or team achievement that contributes to meeting organizational goals or improving the efficiency, effectiveness, and economy of the Agency, or that is otherwise in the public interest.
- B. Contribution. An accomplishment achieved through an individual or group effort in the form of a special act or service in the public interest, connected with or related to official employment, that contributes to the efficiency, economy, or other improvement of Agency operations.
- C. Length of Service Award. Consists of a certificate and/or pin given for years of service in the federal government. The recognized years of service are in five-year increments beginning with the fifth year of service.
- D. Monetary or Cash Award. An award that is in the form of a lump-sum cash payment that does not increase the employee's rate of basic pay and is based on tangible or intangible benefits to the Agency. This includes Special Achievement and Special Act Awards, Performance Awards, and On-The-Spot Awards.
- E. Non-Monetary or Honorary Award. An award that does not include a cash payment (*e.g.*, a Director's Award, commendation, certificate, medal, plaque with citation, and pin or similar item that can be worn or displayed).
- F. On-the-Spot Award. A nominal value cash award presented to employees by supervisors for actions worthy of recognition where it is important to recognize the achievement or contribution quickly.
- G. Performance Award. An award that is linked directly to the employee's annual performance appraisal and recognizes superior performance during the performance rating cycle.

- H. Quality Step Increase. A faster-than-normal within-grade step increase in recognition of sustained high-quality performance.
- I. Special Achievement Award. An award for exemplary acts or achievements providing tangible and/or intangible benefits or savings to the Agency for a non-recurring contribution, either within or outside of job responsibilities.
- J. Team or Group Award. An award that recognizes two (2) or more participants in a joint accomplishment or achievement.
- K. Time-Off Award. An award in which time off from duty is granted without loss of pay or charge to leave in recognition of superior contribution or accomplishment. A time-off award shall not be converted to a cash payment. Time off awarded must be scheduled and used within one year after the award is granted.

### **Section 3. Awards Process**

- A. The Agency will maintain all manuals, instructions, and directives concerning its award process on the ICE intranet under an awards topic.
- B. Criteria. The Agency may consider, among other criteria, the following factors when making award decisions:
  1. a suggestion, invention, superior accomplishment, productivity gain, or other personal effort that contributes to the efficiency, economy, or other improvement of Agency operations or achieves a significant reduction in time and/or costs, including paperwork;
  2. a project or initiative that significantly advances the Agency's mission;
  3. a special act or service in the public interest in connection with or related to official employment; or
  4. performance as reflected in the employee's most recent rating of record (as defined in 5 C.F.R. § 430.203).
- C. Recommendation and Recognition of Award Recipients
  1. All bargaining unit employees may be considered eligible for an award using the criteria set forth above.
  2. Supervisors are encouraged to identify employees whom they believe should be recognized for an award based on the employees' performance or contribution to the Agency.
  3. Any employee may recommend himself or herself or any other employee for an award. Such recommendations will be in writing and should include the proposed recipient's name, a description of his or her accomplishment or contribution and its significance, and

the name of the employee submitting the recommendation. Such recommendations must be submitted through the proposed recipient's chain of command and may include suggestions for the type of award to be granted.

4. Supervisors, at their discretion and with the consent of impacted employees, may announce the names of award recipients at local award ceremonies or through other means in order to provide an opportunity for local recognition and congratulations.

#### D. Records and Reports

Within 30 days of the Union's written request, the Agency shall furnish to the Union President the number, types, and amounts of awards given to bargaining unit professional employees, as well as the names and office locations of those employees. Award recipients will be given the opportunity to have their names deleted from the information to be disclosed to the Union President. The Union President may disclose information received under this Subsection to other members of the Union Executive Board. Before making any disclosure other than to members of the Executive Board that would allow the identification of any individual employee(s), the Union President or Executive Board will obtain a written release from the affected employee(s).

## **ARTICLE 22**

### **GRIEVANCE AND ARBITRATION PROCEDURE**

#### **Section 1. General**

- A. The purpose of this Article is to provide a fair, simple, and expeditious means of processing grievances. This negotiated procedure shall be the exclusive administrative procedure available to the Union and employees in the unit for resolving grievances that come within its coverage, except as specifically provided in 5 U.S.C. § 7121(d), (e), (g).
- B. Any employee or group of employees in the unit may present such grievances to the Agency and have them adjusted, without the intervention of the exclusive representative, as long as the adjustment is consistent with the terms of this Agreement and the exclusive representative has been given an opportunity to be present as provided in this Article.
- C. Employees and their representatives will be free from restraint, interference, coercion, discrimination, or reprisal, consistent with 5 U.S.C. Chapter 71 and this Agreement, in seeking adjustment of grievances. The initiation or presentation of a grievance by an employee will not negatively impact his or her standing with the Agency.
- D. Grievances should be processed in a fair, orderly, and expeditious manner to promote the efficiency of the Agency and the morale of employees. All individuals involved in the grievance procedure are expected to conduct themselves in a respectful, courteous manner. The aggrieved Party(ies) will make every effort to resolve grievances at the lowest possible level.
- E. The Agency will give the employee and his or her representative a reasonable amount of official time to consult, prepare, and present the grievance.

#### **Section 2. Representation.**

- A. Upon filing of a grievance, an employee may elect to be self-represented or represented by a Union representative. The Union in its sole discretion shall designate in writing its authorized representative, including any change in representative.
- B. The designated Union representative may be disqualified only for conflict of interest or conflict of position.
- C. The Union has the right to be present during any discussion with a bargaining unit member conducted 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) days of the grievance's receipt by the Agency. The Agency will provide the Union reasonable advance notice, not less than 48 hours excluding weekends and federal holidays, of any grievance discussions when the Union is not the designated representative.

D. Where the grievant elects Union representation, any communications with regard to the grievance and any attempts at resolution shall be made through the designated Union representative.

E. The Parties will make a reasonable effort to schedule discussions in the grievance process for a time that is mutually acceptable to all Parties.

### **Section 3. Grievances**

A. Grievance. A grievance means any complaint by:

1. any employee concerning any matter relating to the employment of the employee;
2. the Union concerning any matter relating to the employment of any employee; or
3. any employee, 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, or past practice.

B. Exclusions. This procedure does not cover grievances concerning:

1. any claimed violation of 5 U.S.C. Chapter 73, Subchapter III (relating to prohibited political activities);
2. retirement, life insurance, or health insurance;
3. a suspension or removal under 5 U.S.C. § 7532 for reasons of national security;
4. any examination, certification, or appointment;
5. the classification of any position that does not result in a reduction in grade or pay of any employee;
6. any matter that is not subject to the direct control of the Agency or the Union;
7. a complaint of discrimination that is listed in 5 U.S.C. § 2302(b)(1), if the employee has elected to use the statutory appeal procedure;
8. an action covered by 5 U.S.C. § 4303 (because of unacceptable performance) or by 5 U.S.C. § 7512 (adverse actions), if the employee has elected to use the statutory appeal procedure;

9. the termination of an employee during his or her probationary or trial period;
  10. the termination of a temporary appointment;
  11. the loss or suspension of an employee's security clearance; and
  12. a notice of proposed disciplinary or adverse action, furlough, or removal. Issues relating to such proposal notices may, however, be raised in connection with any grievance over the final decision on the proposed action.
- C. Identical Grievance. In the case of employee grievances that the Parties agree are identical, one employee's grievance may be selected by the Union for processing. For the purposes of this Section, identical grievances are ones arising from a common or related set of circumstances that adversely affect the grievants in a common or related manner and where all of the witnesses would be testifying to the same or substantially similar facts. The term "substantially similar" means facts that are sufficiently alike so that a reasonable person would conclude that application of the same rules to the facts in each grievance would result in the same conclusions with regard to the outcome of those grievances. All decisions for the selected grievance will be binding on the remaining grievance(s).

#### **Section 4. Grievability/Arbitrability**

- A. A Party will raise any questions of grievability or arbitrability of a grievance as early in the grievance procedure as possible. Where a Party declares a grievance non-grievable or non-arbitrable, the dispute between the Parties shall be considered amended to include this issue.
- B. If a Party's assertion of non-grievability or non-arbitrability occurs less than 14 days before the scheduled arbitration hearing and the assertion causes the other Party to request a delay of the hearing, the Party asserting non-grievability or non-arbitrability shall be responsible for paying any costs the arbitrator may charge for late cancellation or rescheduling.
- C. Upon motion by a Party, the arbitrator will resolve any issue of grievability/arbitrability prior to hearing the merits of the grievance. The issue of grievability/arbitrability may be presented on brief where there are no factual issues requiring live witness testimony and in the alternative by telephone or VTC.
- D. In the event the arbitrator determines the grievance is non-grievable or non-arbitrable, the arbitration will be concluded. Any hearing on the merits will be scheduled on a mutually agreeable date at least five (5) days following the Parties' receipt of the decision that the matter is grievable/arbitrable.
- E. Where the issue of grievability/arbitrability is heard and decided in advance of a hearing on the merits of the grievance, the Party asserting non-grievability or non-arbitrability shall be responsible for paying the arbitrator's fees and expenses for the resolution of this issue.

## **Section 5. Grievance Procedure: Employee Grievances**

### **A. Step 1**

1. The Step 1 grievance must be filed in writing within 30 days after a particular act or occurrence, or within 30 days from the date on which the employee knew or had reason to know of the act or occurrence which is the subject of the grievance. The grievance should be filed with the first level of management having the authority to resolve the concern. If the management official with whom the grievance is filed does not have authority to resolve the grievance, the official will forward the grievance to the appropriate official within seven (7) days of receiving the grievance and will so notify the grievant and the Union. The grievant may, if he or she desires, be assisted by a Union representative.
2. The grievant shall set forth the basis for the grievance, including the underlying facts, the names of any individual(s) alleged to have acted improperly, the Article(s) and Section(s) of the Agreement and/or legal or regulatory provision(s) alleged to have been violated, the reason(s) for dissatisfaction, and the corrective action requested. The grievance will also include the name and contact information of any known witness(es).
3. Within 10 days after receipt of the grievance and prior to issuance of a decision, the Parties may confer (*e.g.*, in person, in writing, by telephone) to attempt to resolve the grievance. The Union has the right to be present during any discussion(s) between the Agency and the grievant relating to a Step 1 grievance, even if the grievant has not designated a Union representative.
4. The Agency will respond in writing with a grievance decision within 21 days of receipt of the grievance. The decision will include the basis for the decision. Copies of any materials cited in a decision that denies the relief in whole or in part will be provided if they are not otherwise readily available to the grievant or his or her representative and release is not prohibited by law. The decision will include the name, title, and contact information of the Step 2 management official.
5. Any decision will be delivered to the grievant's Union representative. If the employee is representing himself or herself, the decision will be provided to the employee and also to the Union President or designee.

### **B. Step 2**

1. If the grievant is dissatisfied with the Step 1 decision and desires to advance the grievance to Step 2, the grievant (or the grievant's Union representative acting on behalf of the grievant) must submit a written grievance to the Step 2 management official identified in the Step 1 decision, within 14 days after receiving the Step 1 decision on the grievance.
2. The grievant, or Union representative if designated, will present the Step 2 management official with the written grievance, a copy of the Step 1 decision, any additional evidence to which the grievant has access and that is relevant to resolution of the grievance, all

reasons why the Step 1 decision is incorrect, and the corrective action requested, if different than as stated in the Step 1 grievance. The Step 2 grievance will also include the name and address of any witness(es) not previously provided with the Step 1 grievance.

3. Within 21 days after receiving the grievance, the Step 2 management official or designee may hold such meeting(s) and complete such inquiry as he or she deems necessary. If any meeting is held with the grievant, the following guidelines will apply:
  - a. If the Step 2 management official or designee meets with the grievant at this stage and the grievant has designated the Union as a representative, both the grievant and the grievant's Union representative will be given the opportunity to be present. The Union has the right to be given the opportunity to be present at such meetings and discussions even if the grievant has not designated a Union representative.
  - b. When a Step 2 meeting is held, the Agency will pay applicable travel and *per diem* expenses for the grievant.
  - c. Where the Union is the employee's designated representative and (1) there is no Union steward or member of the Local 511 Executive Board at the duty station where the meeting is held and (2) the Union has presented good cause to believe that effective representation cannot be provided by telephone due to particular circumstances applicable to the grievance, the Agency will provide applicable travel and *per diem* expenses necessary for the Union representative to be present on-site. This provision will not be applied to require the Agency to pay such expenses for a non-employee Union representative.
4. The Step 2 management official or designee will render a written decision on the grievance within 21 days of receipt of the grievance. The decision will include the basis for the decision. Copies of any materials cited in a decision that denies the relief in whole or in part will be provided if they are not otherwise readily available to the grievant or his or her representative and release is not prohibited by law. The Step 2 decision will include the name, title, and contact information of the Step 3 management official, if a Step 3 grievance is available pursuant to Section C.1. Any decision will be delivered to the grievant's Union representative. If the grievant is representing himself or herself, the decision will be delivered to the grievant and to the Union President or designee.

#### C. Step 3

1. If the grievant is dissatisfied with the Step 2 decision and desires to advance the grievance to Step 3, the grievant (or the grievant's Union representative acting on behalf of the grievant) must submit a written grievance to the Step 3 management official identified in the Step 2 decision within 21 days after receiving the Step 2 decision on the grievance.
2. The grievant, or Union representative if designated, will present the Step 3 management official with the written grievance, a copy of the Step 2 decision, any additional evidence to which the grievant has access and that is relevant to resolution of the grievance, all

reasons why the Step 2 decision is incorrect, and the corrective action requested, if different than as stated in the Step 2 grievance. The Step 3 grievance will also include the name and address of any witness(es) not previously provided at Step 1 and/or Step 2 of the grievance procedure.

3. Within 21 days after receiving the grievance, the Step 3 management official or designee may hold such meeting(s) and complete such inquiry as he or she deems necessary. If any meeting is held with the grievant, the following guidelines will apply:
  - a. If the Step 3 management official or designee meets with the grievant at this stage, and the grievant has designated the Union as representative, both the grievant and the representative will be given the opportunity to be present. The Union has the right to be present at such meetings and discussions even if the grievant has not designated a Union representative.
  - b. When a Step 3 meeting is held, the Agency will pay applicable travel and *per diem* expenses for the grievant.
  - c. Where the Union is the employee's designated representative and (1) there is no Union steward or member of the Local 511 Executive Board at the duty station where the meeting is held and (2) the Union has presented good cause to believe that effective representation cannot be provided by telephone due to particular circumstances applicable to the grievance, the Agency will provide applicable travel and *per diem* expenses necessary for the Union representative to be present on-site. This provision will not be applied to require the Agency to pay such expenses for a non-employee Union representative.
4. The Step 3 management official or designee will render a written decision on the grievance within 21 days of receipt of the grievance. The decision will include the basis for the decision. Copies of any materials cited in a decision that denies the relief in whole or in part will be provided if they are not otherwise readily available to the grievant or his or her representative and release is not prohibited by law. If the Step 3 decision denies the grievance in whole or in part, it will inform the grievant of the Union's right to invoke arbitration if the grievant wishes to challenge the decision. Any decision will be delivered to the grievant's Union representative. If the grievant is representing himself or herself, the decision will be delivered to the grievant and to the Union President or designee.
- D. A grievance decision issued at Step 1 or Step 2 by a Headquarters Program Office Head or designee will be the final Agency decision on the grievance prior to arbitration. (A Headquarters Program Office Head is the Principal Legal Advisor, Chief Financial Officer, or similar program head).
- E. If the Agency grants the relief requested, the grievance will terminate at that Step.

- F. If the Agency does not grant the relief requested in the Final or Step 3 decision, the Union in its sole discretion may elect to invoke arbitration by filing a Form R-43, or other applicable form, with the Federal Mediation and Conciliation Service (FMCS).
- G. Except as otherwise specified below, all employee grievances are to be initiated at Step 1 of the grievance procedure within the timeframe as stated at Step 1.
1. The grievant shall initiate grievances that are based on the written decision or policy of a Chief Counsel or Finance Center Director (or equivalent position in any other program area) at Step 2 of the grievance procedure within the time frame specified at Step 1.
  2. The grievant shall initiate grievances concerning written reprimands at the next higher level of authority above the issuer of the reprimand. The grievance must be filed within the time frame specified at Step 1.
  3. The Union shall initiate grievances concerning suspensions, including indefinite suspensions, reductions in grade or pay, furloughs of 30 days or less, or removal at the final pre-arbitration step.

## **Section 6. Grievance Procedure: Institutional Grievances by the Union or the Agency**

### **A. Local Level Disputes**

1. Step A. If a dispute arises between local representatives of the Union and an OPLA field office or a Finance Center Director (or equivalent position in any other program area), one Party may file a written grievance with the other Party, provided such grievance is filed within 30 days after the particular act or occurrence which is the subject of the grievance or within 30 days from the date on which the grievant knew or had reason to know of the act or occurrence. Any such grievance must include the relevant facts; the provisions of any law, rule, or contract allegedly violated; and the relief being sought. When a grievance is filed, the Parties may meet and/or discuss the matter within 10 days after receipt. The Union has the right to be present during formal discussion(s) between the Agency and an employee relating to a Step A grievance. The Party with whom the grievance was filed shall render a written decision on the grievance within 21 days after receipt of the grievance. The decision will include the basis for the decision. Copies of any materials cited in a Step A decision that denies the relief in whole or in part will be provided if they are not otherwise readily available to the grievant or his or her representative.
2. Step B. If the grievant is dissatisfied with the Step A decision, the grievant may advance the grievance to the Headquarters Program Office Head (*i.e.*, Principal Legal Advisor, Chief Financial Officer, or similar program head) (or designee) or the appropriate Union Officer within 21 days after receipt of the Step A decision. The grievant shall include the written grievance, a copy of the Step A decision, any additional evidence to which the grievant has access and that is relevant to resolution of the grievance, all reasons why the Step A decision is incorrect, and the corrective action requested, if different than as stated in the Step A grievance process. The Union has the right to be present during formal

discussion(s) between the Agency and an employee relating to a Step B grievance. The Union Officer or Headquarters Program Office Head (or designee) will render a written decision on the grievance within 21 days of receipt. Copies of any materials cited in a Step B decision that denies the relief in whole or in part will be provided if they are not otherwise readily available to the grievant or his or her representative.

3. If the grievance is not resolved to the mutual satisfaction of the Parties, the dissatisfied Party may invoke arbitration within the time frame stated in Section 8.

#### B. National Level Disputes

If a dispute arises between the Union and a Headquarters Program Office Head (*i.e.*, Principal Legal Advisor, Chief Financial Officer, or similar program head), including a dispute affecting more than one local office of a program, either the Union President or the Chief Human Capital Officer (or their respective designees) may file a written grievance with the other Party within 30 days after the particular act or occurrence which is the subject of the grievance, or within 30 days from the date on which the grieving Party knew or had reason to know of the act or occurrence. The Party with whom the grievance was filed will render a written decision on the grievance within 21 days after receipt of the grievance. The decision will include the basis for the decision. If the grievance is not resolved to the mutual satisfaction of the Parties, the dissatisfied Party may invoke arbitration within the time frame stated in Section 8.

- C. Where the same issue or decision is present in grievances filed under Subsection A at more than one locality, either Party may consolidate the Local Level Disputes into a National Level Dispute.

### **Section 7. Time Limits and Service**

- A. For purposes of this Article, a day is a calendar day.
- B. The Parties may, by mutual agreement, extend all time limits.
- C. If a grievant should fail to meet an applicable time limit for moving a grievance forward, the grievance shall be deemed to have been withdrawn. If a Party fails to meet the time limit for rendering a decision on the grievance, such failure shall entitle the grievant to advance the grievance to the next step (including arbitration, if appropriate) within the applicable time frame for such action as measured from the date the Party should have rendered his or her decision.
- D. All time limits of this grievance procedure, including arbitration, shall be controlling. As applicable, time limits shall begin to run on the day after the date of receipt of the document that triggers the particular time limit.
- E. Grievances, grievance decisions, invocation of arbitration, and any correspondences related to such representational matters may be transmitted by e-mail with electronic read receipt requested. Electronic read receipt will constitute proof of service. Each Party may designate

up to four (4) recipients. Documents transmitted by e-mail will be sent to each Party's designees at their government e-mail addresses. The Parties' designees will ensure their electronic read receipt is enabled and, where requested, will acknowledge receipt promptly. In the alternative, certified mail or personal delivery will constitute formal service. FAX transmission may be used only when the receiving Party expressly consents to such means in regard to a particular document. The Parties will act in good faith in sending read receipts for documents and will not attempt to evade the service of documents on each other.

## **Section 8. Arbitration**

- A. If the Agency and the Union fail to resolve any grievance processed under the negotiated grievance procedures, either Party may invoke arbitration in writing within 30 days after the date the Agency or the Union's final decision is received. In cases involving suspensions of fewer than 15 days or adverse actions, requests for arbitration must be filed after receipt of the Notice of Decision, but not later than 30 days after the effective date of the action. Requests for arbitration shall be submitted by the Union President or his or her designee in the case of the Union or the Chief, Labor and Employment Law Division, OPLA, or designee in the case of the Agency. Designations of authority to invoke arbitration shall be served on the other Party in writing.
- B. Within 15 days of invoking arbitration, both Parties shall identify the arbitration representatives and identify the name, title, and contact information of the representatives.
- C. Both Parties have the sole discretion to identify and select their representatives. A Party's designated representative may be disqualified only for conflict of interest, or conflict of position.
- D. When invoking arbitration, the Union or the Agency shall submit a properly prepared Form R-43, or other applicable form, to the FMCS for a list of seven (7) arbitrators, and shall serve a copy of the FMCS form on the other Party. The Party invoking arbitration shall share equally the cost of any fee charged by the FMCS for the arbitrator's list. The Parties shall telephonically select an arbitrator within 14 days after receipt of such a list, or at a later date upon mutual agreement by the Parties. If they cannot mutually agree on one of the listed arbitrators, the Agency and the Union will each strike one arbitrator's name from the list of seven (7) names and will repeat this procedure. The Party invoking arbitration will exercise the first strike. The remaining person shall be the duly selected arbitrator.
- E. If, for any reason, either Party refuses to participate in the selection of an arbitrator, the FMCS will be empowered to make a direct designation of an arbitrator to hear the case.
- F. Each Party has the obligation to cooperate promptly with the designated arbitrator in setting a date for a hearing. Where an information request pursuant to 5 U.S.C. § 7114(b)(4) has been submitted in advance of an arbitration hearing and the Agency's response is still pending at the time the Parties seek to establish a hearing date, the Union may request that the arbitrator not schedule the hearing date until after the Agency response is received. Failure of either

Party to proceed with due diligence in responding to an offer of dates may serve as a basis for establishment of a hearing date by the arbitrator.

- G. Any request to cancel a scheduled hearing will be made at least 48 hours in advance of the date scheduled. The Party that cancels the hearing will be responsible for any cancellation fees and any other expenses of the arbitrator, except that where the Parties jointly request to cancel a hearing, including where a case is settled, the Parties will equally share any cancellation fees and other expenses of the arbitrator.
- H. Where an information request pursuant to 5 U.S.C. § 7114(b)(4) has been served on the Agency in advance of an arbitration hearing, the Agency shall respond within a reasonable period of time. The Parties recognize that the arbitrator may grant the Union's reasonable request for a continuance of the hearing where the Agency's response was provided so close in time to the scheduled hearing that the Union would be prejudiced in preparing for the hearing.
- I. The Union may contact Agency employees regarding issues relevant to the arbitration. Agency employees at their discretion may or may not respond. The Union will make best efforts to notify management prior to contacting employees regarding arbitration.
- J. Either Party shall be given, at the other Party's request, a complete list of the other Party's anticipated witnesses, a summary of expected testimony, and a copy of exhibits to be introduced, no later than 21 days prior to the hearing.
- K. All motions must be filed 30 days prior to the hearing unless otherwise agreed upon by the Parties. Responses to any motions must be filed within 15 days of the hearing unless otherwise agreed upon by the Parties.
- L. No later than 14 days prior to the start of the arbitration hearing, each Party will inform the other whether it desires a transcript of the hearing.
- M. If the Parties mutually agree on the need for a transcript, they shall equally share the cost of the transcript and the Agency will make the arrangements for securing a transcript. If they do not agree on the need for a transcript, the Party desiring a transcript will arrange for the transcript and will bear the full cost. However, should the other Party change its mind prior to the close of the arbitration hearing and indicate its desire for a copy, that Party shall be responsible for half of the costs. A copy of the transcript shall not be provided to the other Party absent such a timely change of mind. This provision is not intended to preclude the other Party from purchasing a copy of the transcript directly from the court reporting service.
- N. Either Party may record the hearing.
- O. The arbitration hearing will be held, if possible, on the Agency's premises during the regular day shift of the basic workweek. The location of the arbitration of an Employee Grievance filed pursuant to Section 5 will be held within the commuting area of the grievant, or at another location by mutual agreement. The location of the arbitration of a Local Level Dispute filed pursuant to Section 6.A will be determined by mutual agreement. The location of the

arbitration of a National Level Dispute filed pursuant to Section 6.B will be at the Agency's headquarters in Washington, DC, or at another location by mutual agreement.

- P. When the arbitration is held at the Agency's premises, the Agency will provide the Union representative(s) with a confidential meeting space that includes a telephone, as well as access to a computer, printer, scanner, and photocopier.
- Q. The Agency is responsible for appropriate travel and *per diem* costs incurred by the grievant and the Union's representative if the hearing is held away from their respective duty stations. This Paragraph does not apply to non-employee representatives. Travel time for Agency employee participants will be official time and will be compensated consistent with applicable regulations and this Agreement.
- R. The Agency will pay appropriate local travel expenses to bring witnesses (who are Agency employees) located within a 50-mile radius from the site of the hearing to appear for testimony. Telephone or VTC testimony will be used when practicable for presenting hearing testimony from witnesses located outside the 50-mile radius. If there is no VTC facility/equipment reasonably available, the Agency may elect to bring the relevant witness to the nearest VTC facility or the site of the hearing. Either Party may bring relevant witnesses from outside the 50-mile radius to a hearing at its own expense. The arbitrator is not authorized to order the appearance at the site of the hearing of any witness who is otherwise available by VTC.
- S. All necessary and relevant Union participants in the hearing (*e.g.*, grievant, representative, relevant witnesses) shall be on official time, if they would otherwise be in a duty status.
- T. To the extent possible, the Agency shall ensure that all witnesses who are employed by the Agency are available for the hearing. In those instances when a witness cannot be made available on the day required, the arbitration may be postponed.
- U. The arbitrator will be requested to render his or her decision as quickly as possible but, in any event, no later than 30 days after the conclusion of the hearing, unless the Parties mutually agree to extend the time limit.
- V. The arbitrator's award shall be final and binding on the Parties unless either Party files exceptions to the award with the FLRA under the regulations prescribed by the FLRA or seeks judicial review in accordance with 5 U.S.C. § 7121(f), except that adverse action appeals shall not be presented to the FLRA.
- W. The Parties shall share equally the arbitrator's fee and the expenses. Fees to be paid by the Agency will be governed by existing regulations.
- X. Reasonable attorney fees and expenses will be provided to the Union consistent with governing statute or case precedent. An arbitrator retains jurisdiction, consistent with applicable law, rule, or regulation, to resolve a motion for attorney fees by the Union after an award becomes final and binding.

The arbitrator's award on the issue of attorney fees will normally be issued within 30 days of the arbitrator's receipt of the Agency's response to the Union's request. The arbitrator will provide a detailed explanation of the award on attorney fees.

All charges of the arbitrator in connection with the award of attorney fees will be shared equally by the Parties.

- Y. Discussion of any arbitration cases where a Form R-43 has been issued and pending will be conducted telephonically at the request of either the Agency or the Union on a quarterly basis. Such discussions may include possible settlements in pending cases or in pending grievance matters.
- Z. The Parties recognize the importance of promptly handling cases involving removal, indefinite suspensions, and suspensions of 30 days or more. When the moving Party submits the Form R-43 to the FMCS, the Parties will request that the arbitrator be available to hear the case within 30 days.

## **ARTICLE 23**

### **EQUAL EMPLOYMENT OPPORTUNITY**

#### **Section 1. General**

- A. A federal employee (current or former) or an applicant for federal employment has a right to initiate a complaint of discrimination. The bases of discrimination are race; color; sex (includes pregnancy, equal pay, gender identity, and sexual orientation); religion; national origin; age (40 and over); disability; genetic information; retaliation (for having participated in activity protected by the various civil rights); and parental status.
- B. If employees have questions or believe they have been subjected to acts of discrimination; harassment, including sexual and non-sexual harassment; or retaliation, they should call the ICE Office of Diversity and Civil Rights at (202) 732-0192/0193. If they receive the office voicemail, employees should leave a message.
- C. The Agency shall publicize to all employees by posting on a bulletin board in each office facility the EEO Complaint Information (located at Appendix J of this Agreement), which will include the contact information for the ICE Office of Diversity and Civil Rights: [EEO-ADR-ICE@ice.dhs.gov](mailto:EEO-ADR-ICE@ice.dhs.gov); (202) 732-0192/0193 (telephone); (202) 732-0104 (FAX); U.S. Immigration and Customs Enforcement, 801 I Street NW, Suite 800, Mail Stop 5010 Washington, DC 20536.

Bulletin boards will be in the employee high-traffic and -visibility area (*e.g.*, in employee break rooms, near photocopiers), such that all bargaining unit employees may have easy access to the information.

#### **Section 2. Bargaining Obligations**

Where the development and implementation of the Agency's EEO Plans and Programs involve changes in personnel policies, practices, or working conditions, the Agency will fulfill its bargaining obligations with the Union under 5 U.S.C. Chapter 71.

#### **Section 3. Filing Options**

- A. Any employee who believes that he or she has been discriminated against on the grounds set forth in Section 1 may file any one of the following:
  1. a grievance pursuant to the provisions of Article 22;
  2. a complaint of discrimination with the Agency subsequent to required EEO pre-complaint counseling;

3. an appeal to the MSPB where an action is otherwise appealable to the MSPB and the employee alleges that the basis for the action was discrimination prohibited by Section 1; or
  4. a complaint of discrimination with the Office of Special Counsel.
- B. An employee shall be deemed to have exercised his or her option under this Section at such time as the employee timely files one of the following: (1) a formal complaint of discrimination; (2) an MSPB appeal; (3) a grievance in writing in accordance with the provisions of this Agreement; or (4) a complaint of discrimination with the Office of Special Counsel.
- C. The selection of the negotiated grievance procedure contained in this Agreement to process a complaint of discrimination shall in no manner prejudice the right of an aggrieved employee to request the MSPB to review the final decision in the case of any personnel action that could have been appealed to the MSPB, or, where applicable, to request the EEOC to review a final decision in any other matter involving a complaint of discrimination of the type prohibited by any law administered by the EEOC. Appeals to the MSPB, the EEOC, or the Office of Special Counsel shall be filed pursuant to such regulations as those agencies may prescribe.

#### **Section 4. Grievance Procedures Pursuant to Article 22**

- A. An employee may file a grievance pursuant to Article 22 within 30 days following:
  1. the date of the alleged discriminatory incident or, in the case of a personnel action, the effective date of the action; or
  2. the date of the employee's final interview with the EEO Contact Counselor.
- B. The time limit provided in Subsection A.1 shall be extended where the individual shows that he or she did not know and reasonably should not have known that the discriminatory matter or personnel action occurred, or that despite due diligence, he or she was prevented by circumstances beyond his or her control from filing a grievance within the time limits.
- C. If the employee elects to pursue the complaint under the grievance procedure in Article 22 and elects to process the grievance without representation, the Union shall have the right to be present at any meeting between the Agency and the employee concerning the grievance.
- D. Where the corrective or remedial action to be taken as a result of statutory adjudicatory procedures would conflict with, or appear to conflict with, the provisions of this Agreement, the Agency shall afford the Union reasonable notification and opportunity to negotiate the impact of the Agency's action effectuating the decision.
- E. The provisions of this Agreement may not serve to prevent implementation of statutory equal employment opportunity decisions (*i.e.*, the MSPB, the EEOC, or the federal courts) where the provisions:

1. violate applicable law, order, or regulations in effect at the time this Agreement was approved;
2. are themselves discriminatory in their impact on employees; or
3. leave no reasonable alternative for taking required action.

## **Section 5. Equal Employment Opportunity Process**

- A. Pursuant to 29 C.F.R. § 1614.105(a), aggrieved persons who believe they have been discriminated against on the basis of race, color, religion, sex, national origin, age, disability, or genetic information must consult with an EEO Counselor prior to filing a complaint to try to informally resolve the matter.
  1. An aggrieved person must initiate contact with an EEO Counselor within 45 days of the date of the matter alleged to be discriminatory or, in the case of personnel action, within 45 days of the effective date of the action.
  2. The Agency or the EEOC shall extend the 45-day time limit in Subsection A.1 when the individual shows (1) that he or she was not notified of the time limits and was not otherwise aware of them; (2) that he or she did not know, and reasonably should not have known, that the discriminatory matter or personnel action occurred; (3) that despite due diligence, he or she was prevented by circumstances beyond his or her control from contacting the EEO Counselor within the time limits; or (4) other reasons considered sufficient by the Agency or the EOC.
- B. EEO Counselors are provided by the ICE Office of Diversity and Civil Rights. They may be contacted by telephone at (202) 732-0192/0193 or TTY (202) 732-0097; by e-mail at [EEO-ADR-ICE@ice.dhs.gov](mailto:EEO-ADR-ICE@ice.dhs.gov); or by mail at ICE Office of Diversity and Civil Rights, U.S. Immigration and Customs Enforcement, 801 I Street NW, Suite 800, Mail Stop 5010 Washington, DC 20536.
- C. The aggrieved employee has the right to have a Union representative or other representative of his or her own choosing present throughout all stages of the discrimination complaints process. The aggrieved employee shall also have the right to present the discrimination complaint without representation.
- D. The EEO Counselor shall, insofar as is practicable, conduct a final interview with the aggrieved employee within 30 days after the date on which the matter was called to the attention of the EEO Counselor by the aggrieved employee.
- E. If the final interview with the EEO Counselor is not concluded within 30 days and the matter has not been previously resolved to the satisfaction of the aggrieved employee, the aggrieved employee has the right to immediately file a complaint of discrimination by exercising one of the options in Section 3.A.

- F. The aggrieved employee shall in no way be restrained from filing a discrimination complaint, nor encouraged to file a discrimination complaint.
- G. The aggrieved employee has a right to request the EEO Counselor not to reveal the identity of an aggrieved employee who has come to him or her for counseling, except when authorized to do so by the aggrieved employee, until a written discrimination complaint has been filed.

## **ARTICLE 24**

### **PERFORMANCE MANAGEMENT**

#### **Section 1. Introduction**

- A. The Agency and the Union are committed to providing quality public service. Performance management is the systematic process by which the Agency involves its employees, as individuals and members of groups, in improving organizational effectiveness in the accomplishment of Agency mission and goals. This Article shall be interpreted consistently with all appropriate statutes and government-wide regulations relating to performance management.
- B. The performance management program ensures honest feedback and open, two-way communications between employees and their supervisors.
- C. The performance management program integrates the processes the Agency uses to:
  1. communicate and clarify organizational goals to employees;
  2. identify individual and, where applicable, team accountability for accomplishing organizational goals;
  3. identify and address developmental needs for individuals and, where applicable, teams;
  4. assess and improve individual, team, and organizational performance;
  5. apply appropriate measures of performance as a basis for recognizing and rewarding accomplishments; and
  6. draw on the results of performance appraisals as a basis for appropriate personnel actions.
- D. The Agency shall not establish a forced distribution of summary rating levels. A rating of record shall be based only on the evaluation of actual job performance for the designated appraisal period.

#### **Section 2. General Considerations**

- A. Application of the employee performance management program shall be fair, reasonable, and based on work assignments and responsibilities.
- B. As used in this Article, terms that relate to the performance management program, such as “appraisal,” “critical element,” “performance rating,” “rating officials,” or “reviewing officials,” have the same meaning as in government-wide regulation.

### **Section 3. Critical Elements**

- A. Critical element means a work assignment or responsibility of such importance that unacceptable performance on the element would result in a determination that the employee's overall performance is unacceptable. Critical elements shall be used to measure performance only at the individual level.
- B. All critical elements to be used for performance appraisals will be directly related to the employee's work assignments and responsibilities. Critical elements shall be communicated to the employee at the beginning of the rating period or whenever elements or expectations change during the rating period.

### **Section 4. Performance Standards**

- A. Performance means accomplishment of work assignments or responsibilities. Performance standard means the management-approved expression of the performance threshold(s), requirement(s), or expectation(s) that must be met to be appraised at a particular level of performance. A performance standard may include, but is not limited to, quality, quantity, timeliness, and manner of performance.
- B. Performance standards will, to the maximum extent feasible, permit the accurate evaluation of job performance on the basis of objective criteria related to the job in question for each employee or position under the program. The criteria shall be reasonable, attainable, and job-related. Based on the nature of work performed and where appropriate, the criteria should also be observable and/or measurable to reflect accurately whether objectives have been met.
- C. Application of all performance standards shall be fair, reasonable, and consistent with regulatory requirements.

### **Section 5. Impact of New Technology, Methods, or Means of Performing Work**

The Agency will consider the effects of new technology, methods, or means of performing work when rating an employee. An accommodation period of a reasonable length will be provided where the new technology, methods, or means of performing work will have a direct impact on a critical element affecting the employee's rating.

### **Section 6. New and Revised Critical Elements and Performance Standards**

Upon execution of this Agreement, the Union will be provided copies of all current critical elements and standards for bargaining unit employees. Subsequently, the Union will be provided copies of proposed changes to critical elements and standards. The Union will be afforded an opportunity to bargain, consistent with applicable law and regulations, pursuant to the provisions of Article 9 before the revised critical elements and standards are implemented and issued to an employee.

## **Section 7. Communications**

- A. Employees are encouraged to participate in the development and discussion of their performance plan. Employees will be provided final performance plans, which will be in writing and reflect critical elements and standards.
- B. Absent exigent and/or unforeseen circumstances, an employee must be placed on a performance plan generally within 30 days after (1) the employee enters on duty or is assigned to a new position; (2) the Agency determines that an employee is no longer excluded from the bargaining unit, resulting in changes to the elements and standards in the employee's performance plan; or (3) the beginning of the appraisal period. Notwithstanding the above requirement, the Agency will not be required to place an employee who is on maternity, paternity, medical, or military leave on a performance plan until 30 days after the employee's return to work.
- C. Discussions between the employee and rating official may be held at any time, including, but not limited to, a(n):
  - 1. employee's entry on duty or change in position, to include reassignment, promotion, or reduction in grade;
  - 2. request submitted by the employee;
  - 3. change in the supervisor of record;
  - 4. detail of 90 days or more;
  - 5. temporary promotion of 90 days or more; or
  - 6. return from an extended absence of 90 days or more.

## **D. Ongoing Performance Discussions**

- 1. Discussions may be initiated by the supervisor, rating official (if not the immediate supervisor), or employee. If an employee requests a discussion with his or her rating official to discuss his or her performance, it will be scheduled within a reasonable period of time of the employee's request.
- 2. The discussion will provide an opportunity to address progress, identify any problems in the employee's work product, and seek further guidance, if needed.

## **Section 8. Mechanics**

- A. All bargaining unit employees will receive an annual performance rating for the rating cycle established by the Agency. Absent exigent and/or unforeseen circumstances, the performance rating will be issued in writing to the employees, generally within 30 days of the end of the

appraisal period. Notwithstanding the above requirement, the Agency will not be required to issue a performance rating to an employee who is on maternity, paternity, medical, or military leave until 30 days after the employee's return to work. This period may be extended where an employee is subject to a Performance Improvement Plan (PIP) under Section 12.

- B. When an employee has not been under a formal performance plan for a period of at least 90 days as of the end of the specified appraisal period, the appraisal period must be extended until such time as the 90-day requirement has been met.
- C. When an employee's performance plan changes less than 90 days before the end of the rating period, the employee will be evaluated based on those parts of the performance plan that had previously been in place.
- D. In the event an employee is detailed to a position with a different performance plan or is temporarily promoted for more than 90 days, the employee will be placed on a formal written performance plan for the detail or temporary promotion as soon as practicable, but not later than 30 days after the beginning of the detail or temporary promotion. At the completion of the detail or temporary promotion, documented input on the employee's performance will be prepared, which the employee's rating official shall consider in preparing the employee's rating of record.
- E. The extended absence of the rating official or the employee is a circumstance that may warrant extending the appraisal period.
- F. The rating official will evaluate the employee's performance against the standards for each performance element and assign the applicable summary rating level to each element.
- G. At least one formal progress review, either oral or written, must be conducted normally near the mid-point of the rating cycle. Progress reviews should be documented by the signatures of the rating official and the employee on the Performance Appraisal Record. If, at the time of a progress review, the rating official is aware of an instance or instances of performance deficiency, the employee should be so informed. The Agency shall provide a clear and accurate assessment regarding whether objectives are being met. The progress review is intended to provide feedback during the rating cycle; a "rating of record" is not issued as a part of the progress review.
- H. A rating of record shall be based only on the evaluation of actual job performance for the designated appraisal period. The Agency shall not issue a rating of record that assumes a level of performance by an employee without an actual evaluation of that employee's job performance. The Agency encourages a rating official who is departing the Agency during an appraisal period to provide a written assessment of the employee's job performance prior to departure.
- I. If there is insufficient information during the appraisal period to evaluate the employee's performance against the standards of a particular performance element, the rating official should make a statement to that effect on the performance appraisal record.

- J. If any element is rated as “Unacceptable Performance” or “Fails to Meet Expectations,” written comments, supported by specific examples, are required to explain how the performance was deficient.
- K. Employees may contest a rating of record by exercising their right to grieve such rating under Article 22. Except as provided in 5 C.F.R. § 430.208(i), a rating of record is final when it is issued to an employee with all appropriate reviews and signatures.

## **Section 9. Appraisal Levels**

- A. Within the context of formal performance appraisal requirements, rating means evaluating employee performance against the elements and standards in an employee’s performance plan and assigning a summary rating of record. The rating of record is completed at the end of the appraisal period, and a summary level must be assigned. The summary level assigned is based on work performed during the employee’s appraisal period.
- B. Employees represented by the Union and covered by this Agreement are employed within several of the Agency’s program offices. Program offices may use two (2), three (3), four (4), or five (5) summary levels.

## **Section 10. Uses of the Performance Rating of Record**

The performance rating given to employees under this performance management program is used for a number of purposes. The rating of record may be used in consideration for appropriate awards, promotions, and other personnel actions. This performance rating will be considered in making determinations regarding reductions-in-force within the Agency in accordance with applicable law and regulation.

## **Section 11. Changes in an Established Appraisal Program**

The Union will be provided notice of any changes to a program office’s appraisal program and will be afforded an opportunity to bargain to the extent required by law before the changes are implemented and issued to the employees.

## **Section 12. Performance Improvement Plan**

- A. Consistent with 5 C.F.R. § 432.104, whenever an employee’s performance is determined to be unacceptable in one or more critical elements during the performance appraisal cycle, the Agency shall notify the employee of the critical element(s) for which performance is unacceptable and inform the employee of the performance requirement(s) or standard(s) that must be attained to demonstrate acceptable performance in his or her position.
- B. Consistent with 5 U.S.C. § 4302(c)(6), a Performance Improvement Plan (PIP) provides an employee who is performing at an unacceptable level in one or more critical elements a specifically identified opportunity to demonstrate whether he or she can perform at an

acceptable level in the critical element(s). The purpose of the activities and requirements set forth in a PIP is to assist the employee in attaining acceptable performance.

- C. If at any time during the rating period the rating official determines that an employee is performing at an unacceptable level, the supervisor (or rating official) may place the employee on a PIP.
- D. When an employee is on a PIP at the end of a rating period, the rating period shall be extended until the completion of the PIP. A formal rating shall not be issued until the completion of the PIP.
- E. When the Agency informs an employee at the end of a rating cycle that he or she is performing at an unacceptable level, and that he or she is being placed on a PIP, the rating period will be extended and the formal rating will be held in abeyance until the completion of the PIP.
- F. When a rating period has been extended because the employee is on a PIP, the subsequent rating period shall commence upon completion of the PIP.
- G. Guiding principles for the creation and nature of a PIP include:
  - 1. The PIP will identify the critical element(s) for which performance is unacceptable or fails to meet expectations, provide example(s) of the employee's unacceptable performance, and inform the employee of the performance requirement(s) or standard(s) that must be attained in order to demonstrate acceptable performance. The PIP will state that unless performance in the critical element(s) improves to an acceptable level by the end of the PIP and is sustained at an acceptable level for a minimum period of one year from the beginning of the PIP, the employee may be reduced in grade or removed from federal service.
  - 2. The PIP will afford the employee a reasonable opportunity of at least 90 days to resolve the identified performance-related problem(s). During this period, the employee normally will not be subject to an adverse action based on performance-related problems. However, this would not prevent the Agency from imposing an adverse action for neglect of duty or other serious deficiency.
  - 3. The PIP will be tailored to the specific needs of the employee and may include formal training, on-the-job training, counseling, assignment of a journeyman mentor, or other assistance as appropriate. Employees should request additional assistance from the supervisor or rating official, if needed.
  - 4. The PIP will state which supervisor or management official(s) will be overseeing the PIP and available to assist the employee in reaching an acceptable level of performance.
  - 5. Ongoing communication between a supervisor and an employee during the PIP is essential; accordingly, a supervisor shall meet with the employee throughout the assessment period to provide feedback on progress made during the PIP period.

- H. In the event that unforeseen circumstances arising during the PIP period prevent the rating official from assessing the employee's performance at the end of the period (*e.g.*, prolonged absence due to illness or injury), the rating official may extend the PIP period until an assessment can be made, consistent with law.
- I. When it appears to the employee that his or her performance may not reach an acceptable level prior to the conclusion of the PIP, the employee may request the PIP to be extended for an additional reasonable period of time to allow an opportunity to improve his or her performance level. The decision to extend is in the Agency's sole discretion.

### **Section 13. Chapter 43 Action Based on Unacceptable Performance**

- A. In accordance with 5 U.S.C. § 4303, an employee who does not improve his or her performance to an acceptable level after having been provided a reasonable opportunity to do so (*i.e.*, a PIP) may be reassigned to another position, reduced in grade, or removed from federal service.
- B. An employee whose reduction in grade or removal is proposed for unacceptable performance is entitled to:
  1. 30 days advance written notice of the proposed action, which identifies the specific basis for the proposed action, including specific instances of unacceptable performance and the critical element(s) of the employee's position involved in each cited instance of unacceptable performance. The proposed action may not be based on unacceptable performance that occurred more than one year before the date of the notice of the proposed action.
  2. the right to be represented by an attorney or other representative. The employee must inform the deciding official, in writing, of the representative's name.
  3. a reasonable time, not to exceed 10 days, to answer orally and in writing, and to provide affidavits and work product or other evidence to challenge the proposed action. Upon request, the Agency may grant an extension to the period of time for an answer.
- C. The advance written notice period may be extended for 30 days or for a longer period, but only as consistent with 5 C.F.R. § 432.105(a)(4)(i)(B)(1)-(6) or (C).
- D. A final Agency decision to reduce in grade or remove an employee shall be made not later than 30 days after the expiration of the advance notice period. The employee will be given this decision in writing. Unless the action is proposed by the Head of the Agency, the deciding official will be at a higher management level than the proposing official. The decision will specify:
  1. the instances of unacceptable performance on which the decision is based; and
  2. the action to be taken, the effective date, and the employee's applicable appeal and/or grievance rights.

- E. The employee may appeal to the MSPB in accordance with applicable law; the Union, on behalf of the employee, may timely file a written request to invoke arbitration under the terms of Article 22; or the employee may contest the action pursuant to applicable EEO law and regulation. An employee shall be deemed to have exercised the appellate option at such time as the employee timely files an MSPB appeal or a formal discrimination complaint or the Union, on behalf of the employee, timely files a written request to invoke arbitration, whichever occurs first. Arbitration must be invoked no later than 30 days after the effective date of the action, unless the employee has initiated EEO action as provided at Article 23, Section 4.A.2.
- F. If a third-party adjudicator, including an arbitrator, determines that the Agency has established, by substantial evidence, that the employee's performance was unacceptable on at least one critical element, the Agency's action must be sustained. The Agency's decision to remove or reduce in grade taken under the authority of 5 U.S.C. § 4303 is not subject to mitigation.

#### **Section 14. Chapter 75 Performance-Based Actions**

Nothing in this Article limits the Agency's discretion to employ Chapter 75 procedures to address the unacceptable performance of an employee. A PIP is not required prior to initiating an action under 5 U.S.C. Chapter 75.

#### **Section 15. Electronic Performance Management System**

Should the Agency determine to establish an electronic system for processing any part of the performance management program, the Union will be notified and have an opportunity to bargain in accordance with law and Article 9.

#### **Section 16. Retention of Records**

The Agency will retain copies of progress reviews, ratings of record, and other correspondence related to performance management pursuant to applicable law and regulation. Upon request, the Agency will grant employees access to such documents.

## **ARTICLE 25**

### **FORMAL DISCUSSIONS AND INVESTIGATIVE EXAMINATIONS**

- A. The Union shall be given the opportunity to be represented at any formal discussion between one or more representatives of the Agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general conditions of employment.
- B. The Agency will provide the Union the opportunity to be represented at any examination of an employee in the unit by a representative of the Agency in connection with an investigation if:
  - 1. the employee reasonably believes that the examination may result in disciplinary action against the employee; and
  - 2. the employee requests representation.
- C. If an employee who is entitled to representation requests such representation, no further questioning will take place until a representative is available. The Union will determine which representative will be assigned to any particular investigatory examination. The Union's selection of a particular representative may not cause an unreasonable delay or obstruct the Agency's investigation. If the Union's selected representative has a scheduling conflict, the Union may request that the Agency make appropriate accommodations, where practicable. Any travel necessitated by this selection will be at the Union's expense.
- D. The Agency will advise, in writing, employees of the unit of this right annually.
- E. In some circumstances, a written memorandum may be used as a substitute for an oral examination in connection with an investigation. In such cases, where the criteria of Section B are met, the employee is entitled to the opportunity to consult with a Union representative prior to completing the memorandum.
- F. Examinations in connection with misconduct investigations may be conducted at any reasonable hour.

## **ARTICLE 26**

### **DISCIPLINARY AND ADVERSE ACTIONS**

#### **Section 1. Introduction**

- A. The Agency has the right and obligation to identify and correct conduct and performance deficiencies. Performance-based adverse actions are addressed by Article 24 and are not addressed by this Article. The objective of disciplinary and adverse actions is to promote the efficiency of the service. Generally, the Agency's objective is to correct deficiencies in employee conduct, not to punish the employee.
- B. When appropriate, the Agency may consider an oral or written warning or counseling in lieu of a disciplinary or adverse action. The Agency generally follows the sound principle of progressive disciplinary action, which involves using a higher range of penalties for second and subsequent incidents of employee misconduct. Where discipline is necessary, a common pattern of progressive discipline is reprimand, short-term suspension, long-term suspension, and removal. However, various factors, such as the severity of the behavior in question, may necessitate a higher range of penalties for a first offense.
- C. Corrective action can include:
  - 1. non-disciplinary actions, such as an oral warning, an oral or written counseling, and other non-disciplinary actions;
  - 2. disciplinary actions, such as letters of reprimand and suspensions of up to 14 days; and
  - 3. adverse actions, such as suspensions of 15 days or more, reductions of grade or pay, and removal.
- D. Disciplinary or adverse actions pursuant to 5 U.S.C. Chapter 75 will only be taken for such cause as will promote the efficiency of the service. The Agency will administer disciplinary and adverse action procedures and determine penalties for all employees in a fair and equitable manner. The standard of proof for disciplinary and adverse actions taken pursuant to 5 U.S.C. Chapter 75 is preponderance of the evidence. The deciding official will always be different from the official who proposes a disciplinary or adverse action. Normally, the deciding official will be at a higher level of management than the proposing official.
- E. In arriving at its written decision on any proposed disciplinary or adverse action, the Agency shall not consider any reasons for action other than those of which the employee received notice and to which the employee had an opportunity to respond. It shall consider any written and/or oral reply that the employee and/or his or her representative made to a designated official prior to the end of the reply period specified in the proposal or any extended deadline, where applicable, and any medical documentation furnished prior to the expiration of the reply period, as well as all the information relied on in proposing the action. The Agency will

consider relevant factors when taking an action governed by 5 U.S.C. § 7512 to the extent consistent with applicable law.

- F. The Agency will provide the employee and his or her designated representative, where they are not co-located, with a copy of the materials it relied on to support the reasons for the proposed action. Where an action has been proposed under Section 7 or 8 and a formal investigation has been conducted, the materials provided will include the report of investigation.
- G. When the Union is designated as the representative in a disciplinary or an adverse action, the employee will notify the Agency, in writing, of such designation. The designation will include the name, address, e-mail address, and telephone number of the representative. All correspondence will be served by the Agency to the representative and the employee.
- H. If the employee elects not to be represented by the Union, correspondence will be addressed to the employee and it will remain the employee's prerogative as to whether he or she wishes to furnish the Union with copies of such correspondence.
- I. No record of a complaint determined to be unfounded or not investigated will be placed in the employee's OPF.

## **Section 2. Definitions**

For the purposes of this Article,

- 1. day is a calendar day, unless otherwise specified;
- 2. furlough means the placing of an employee in a temporary status without duties and pay because of lack of work or other non-disciplinary cause;
- 3. suspension means placing an employee in a temporary nonduty status without pay;
- 4. removal is a separation from federal service initiated by the Agency, OPM, or the MSPB under 5 C.F.R. Parts 359, 432, 731, or 752; 5 U.S.C. § 1201; or comparable agency statutes or regulations; and
- 5. reinstatement means the noncompetitive reemployment for service as a career or career-conditional employee of a person formally employed in the competitive service who had a competitive status or was serving probation when he was separated from the service; for excepted service employees, it means to put back or establish again, as in a former position or state.

## **Section 3. Investigations**

- A. Prior to issuing a proposed disciplinary or adverse action, the Agency may investigate allegations of misconduct.

- B. The Union shall be given the opportunity to be represented at any examination (*i.e.*, questioning) of an employee by a representative of the Agency in connection with an investigation if the employee reasonably believes that the questioning may result in disciplinary action against the employee and the employee requests representation. The Agency will annually inform employees of this right in accordance with Article 25.
- C. If the employee reasonably believes that the questioning may result in disciplinary action against him or her and the employee requests Union representation, the Agency will not continue the questioning until a Union representative is present, unless proceeding with the interview in the absence of Union representation is not prohibited by law.
- D. Employees interviewed in a formal Agency investigation (*e.g.*, conducted by the Office of Professional Responsibility), whether as a subject or witness, shall be appropriately advised of their rights and responsibilities in connection with giving a statement.
- E. When the subject of a formal Agency investigation is made aware of that investigation, the Agency will advise the employee when the investigation is concluded, if the allegations are found to be without merit.

#### **Section 4. Timeliness of Disciplinary and Adverse Actions**

- A. The Agency will initiate disciplinary or adverse actions in a timely manner. Pursuant to 5 U.S.C. §§ 7503 and 7513, the deciding official shall issue the decision letter at the earliest practicable date. Extenuating circumstances that can delay the issuance of a proposal letter include, but are not limited to, the need to conduct a thorough investigation and/or obtain additional information regarding particular matters, the need to consult with Employee and Labor Relations or OPLA, and the requirement to follow specified procedures. Extenuating circumstances that can delay the issuance of a decision letter include, but are not limited to, the need to consult with Employee and Labor Relations or OPLA and difficulties in arranging meetings because the employee and the deciding official are at different locations.
- B. Delay in taking a disciplinary or adverse action will not excuse an employee's misconduct, but may be considered by the Agency when making its final decision, depending on the facts of the case.

#### **Section 5. Last-Chance Agreements**

- A. A Last-Chance Agreement (LCA) is an agreement in which an employee against whom the Agency has proposed a disciplinary or adverse action agrees to conform to certain conduct expectations for a set period of time in exchange for the Agency's commitment to hold the proposed action in abeyance for the same period and, upon successful conclusion, to forego imposing the action. If the employee does not meet his or her obligation under the LCA, then the Agency is free to impose the proposed disciplinary or adverse action without issuance of a new notice and opportunity to reply. In any subsequent grievance, appeal, or other challenge to the disciplinary or adverse action, the only issues that can be reviewed are whether the

employee conformed to the conduct expectations to which he or she had committed in the LCA and whether the Agency abided by the provisions of the LCA.

- B. An offer of an LCA is not an employee right. The Agency's determination of whether to offer an employee an LCA in any particular case is a matter solely within the Agency's discretion, including when the LCA has been offered at the specific request of the employee and/or his or her representative. An offer of an LCA establishes no precedent or presumption that it will be offered in any other case.
- C. In executing an LCA, the employee takes full responsibility for his or her actions and meeting the obligations under the LCA.
- D. The "probationary period" required by an LCA shall not exceed five (5) years, unless the Parties mutually agree otherwise.
- E. The Union will be notified and given an opportunity to be present at any meeting in which the Agency offers an LCA to a bargaining unit employee.

## **Section 6. Disciplinary Actions: Reprimands**

- A. A letter of reprimand is considered the mildest level of a disciplinary action. A letter of reprimand is a written disciplinary action that specifies the reasons for the action, places the employee on notice that he or she may be subject to more severe disciplinary action upon any further offense, and informs the employee that a copy of the reprimand will be made a part of his or her OPF.
- B. When the Agency issues a letter of reprimand, the Agency will allow the employee and his or her representative 10 days to make a written request for reconsideration. The employee and/or his or her representative, if an Agency employee, will be given a reasonable amount of official time to prepare the request.
- C. A letter of reprimand will inform the employee that he or she has the right to file a grievance regarding the reprimand under the negotiated grievance procedure; the time period for filing a grievance; the name, telephone number, and e-mail address of the management official to whom a grievance should be addressed (normally, an Agency official one level higher than the official who issued the reprimand); and the right to Union representation.
- D. A letter of reprimand will stay in the employee's OPF for a period of up to, but not exceeding, two (2) years or upon resignation or retirement, whichever is earlier. If a subsequent disciplinary or adverse action has been proposed after the reprimand is removed from the employee's OPF, the reprimand may no longer be considered a "prior disciplinary action" but continues to serve as specific notice to the employee that the underlying conduct is unacceptable.
- E. Where an employee has consistently exhibited exemplary conduct and performance for one year following issuance of a reprimand, the Union may make a single written request that the

reprimand be removed from the employee's OPF. The Agency will give good-faith consideration to the request. The Agency's decision on such a request for early removal of the reprimand is final and not subject to the negotiated grievance procedure.

## **Section 7. Disciplinary Actions: Short-Term Suspensions**

- A. An employee against whom a suspension for 14 days or less is proposed is entitled to:
  1. an advance written notice of at least 20 days stating the specific reasons for the proposed action;
  2. receive and review materials pursuant to Section 1.F;
  3. at least 14 days to respond orally and/or in writing and to furnish affidavits and other documentary evidence to a deciding official; and
  4. be represented by an attorney or other representative.
- B. The employee and/or his or her representative, if an employee, will be given a reasonable amount of official time to prepare and present an oral and/or written response to the proposal.
- C. If the Agency wishes to add additional charges to a pending proposed action between the time it proposes a disciplinary action and when a decision is issued, the Agency may rescind the original proposal and issue a new one, including the new charges, thus starting the process all over.
- D. If the deciding official determines to impose a suspension, the decision will include the applicable grievance and/or appeal rights specified in Section 11.

## **Section 8. Adverse Actions: Removal, Suspension for More than 14 Days, Reduction-in-Grade, Reduction-in-Pay, and Furlough of 30 Days or Less**

- A. An employee against whom a removal, suspension for more than 14 days, reduction-in-grade, reduction-in-pay, or furlough of 30 days or less is proposed is entitled to:
  1. an advance written notice of at least 30 days (except where a shortened notice period is authorized by law or regulation, such as 5 U.S.C. § 7513(b) and 5 C.F.R. § 752.404(d)), stating the specific reasons for the proposed action;
  2. the right to receive and review materials pursuant to Section 1.F;
  3. at least 14 days to respond orally and/or in writing and to furnish affidavits and other documentary evidence to a deciding official (normally at a level higher than the proposing official) (or at least seven [7] days where there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed [5 U.S.C. § 7513(b) and 5 C.F.R. § 752.404(d)]); and

4. be represented by an attorney or other designated representative.
- B. The employee and/or his or her representative, if an employee, will be given a reasonable amount of official time to prepare and present an oral and/or written response to the proposal.
- C. If the Agency wishes to add additional charges to a pending proposed action between the time it proposes an adverse action and when a decision is issued, the Agency may rescind the original proposal and issue a new one, including the new charges, thus starting the process all over.
- D. If the deciding official determines to impose an adverse action, the decision will include the applicable grievance and/or appeal rights specified in Section 11.

## **Section 9. Medical Condition**

An employee who wishes consideration of any medical condition that the employee claims has contributed to a conduct, performance, or leave problem shall supply supporting medical documentation within the time limits allowed for the employee's response to the proposal notice.

## **Section 10. Agency Decisions**

- A. Where the Agency proposed a form of discipline or adverse action covered under Section 7 or 8, it will follow the procedural requirements of law, regulation, and this Agreement in rendering a written decision.
- B. In arriving at its written decision on any proposed disciplinary or adverse action, the Agency shall not consider any reasons for action other than those specified in the notice of proposed action. It shall consider any timely response that the employee and/or his or her representative made to a designated official and any timely medical documentation furnished, as well as all the information gathered in the investigation.
- C. If the decision is to effect an action identified in Section 7 or 8, the decision will state the specific reason(s) for the decision, the effective date, the action to be taken, and the employee's appeal rights regarding the decision.
- D. When represented by the Union, a second copy of the letter, labeled "Copy for Union Representative" and including any attachments, will be provided to the employee.

## **Section 11. Appeal Rights**

- A. A decision to take an action specified in Section 6 or 7 may be grieved under Article 22. The grievance would be filed at the final pre-arbitration step. The reprimand or decision letter will specify the time limits under the grievance procedure and the name, telephone number, and e-mail address of the Agency official to whom a grievance should be addressed.

- B. For an action addressed in Section 8, an employee may grieve under Article 22 or appeal to the MSPB, but not do both. The choice of forum, by either filing a grievance or appealing to the MSPB, is irrevocable. An employee shall be deemed to have exercised his or her option at such time as the employee timely files a written grievance or timely initiates an appeal to the MSPB, whichever occurs first. A grievance will be filed at the final pre-arbitration step.
- C. For an action addressed in Section 8, the decision letter will specify the time limits under the grievance procedure and the name, telephone number, and e-mail address of the management official to whom a grievance should be addressed. The decision letter will also provide the notice of appeal rights to the MSPB consistent with 5 C.F.R. § 1201.21.

## **Section 12. Unjustified or Unwarranted Personnel Actions**

- A. Where it has been ultimately determined through administrative action or applicable third-party adjudication that a disciplinary or adverse action was unjustified or unwarranted, the Agency will take whatever action is required to correct the employee's personnel and pay records, in accordance with law and regulation. The Agency will also take other remedial action in accordance with the third-party determination, law, and regulation (*e.g.*, the Back Pay Act). Evidence of any unjustified or unwarranted personnel action will be timely removed from the official file(s) of the employee or otherwise disposed of in accordance with government records requirements. Upon request, the Agency will provide written notification to the employee and the employee's representative when such actions have been accomplished. The Agency retains the right to maintain any information, including documentation of any expunged personnel actions, in its litigation files. Any dispute over whether the Agency has complied with such requirements may be resolved through the negotiated grievance procedure or compliance proceedings before the applicable third-party adjudicatory forum.
- B. Where action taken under Section 8 is later found to have been unwarranted or where an independent determination has been made to reinstate an employee, the Agency shall timely reinstate the employee, in good-faith compliance with the lawful order of the adjudicatory body, by returning the employee to his or her previous position or one of equal status and pay, provided the employee meets the applicable suitability and clearance requirements at the time of reinstatement.

## **Section 13. Requests for Time Extensions**

The Agency will not unreasonably deny a reasonable request for an extension of time. Absent extraordinary circumstances, such requests must be made at least two (2) workdays in advance of the deadline.

## **ARTICLE 27**

### **EMPLOYEE ASSISTANCE PROGRAM**

- A. Under the Employee Assistance Program (EAP), the Agency will continue efforts to identify, counsel, and assist in rehabilitating employees with alcohol, drug-related, or personal problems that may adversely affect job performance. The Union will cooperate fully with the Agency in this program, while complying with the provisions for confidentiality in safeguarding client information.
- B. The Agency will provide an orientation for Union officials concerning EAP policies, referral procedures, and program resources.
- C. Employees may access information (including telephone number) regarding the EAP (which is available 24 hours per day, seven [7] days per week) on the Agency's website.
- D. An employee will neither be required to participate nor be penalized for declining to participate in the program, unless participation in the program is pursuant to a written agreement.
- E. Supervisors may grant a reasonable amount of time during normal working hours to an employee to attend EAP counseling sessions during duty hours. An employee may have his or her tour of duty modified to accommodate his or her attendance at such sessions. Permission to attend EAP counseling sessions on duty time will include travel to and from such sessions.
- F. The Agency recognizes its responsibility to identify and make reasonable effort at rehabilitation of employees with alcohol or drug problems at an early stage. Employees who are undergoing a prescribed program of treatment will be granted leave in accordance with Article 18.
- G. The Agency and the Union jointly acknowledge that employees entering the EAP are not immune from disciplinary action. However, the fact that an employee is actively pursuing, or indicates a commitment to enter, an established program of rehabilitation will be given weight in considering appropriate disciplinary action.

## **ARTICLE 28**

### **REIMBURSEMENT OF EMPLOYEE EXPENSES**

#### **Section 1. Professional Credentials**

- A. Pursuant to 5 U.S.C. § 5757(a), the Agency may reimburse eligible employees each fiscal year for qualifying expenses to obtain professional credentials required as a condition of employment, subject to the availability of funds. This includes mandatory dues and fees paid in one jurisdiction during each fiscal year for professional accreditation, licenses (*e.g.*, state bar membership), certifications, and the costs of examinations to obtain such credentials.
- B. The Agency will not reimburse an employee for late payment penalties, non-mandatory contributions, certification fees for a specialized area of practice, payment of professional taxes, or dues or other costs incurred prior to the individual's employment with the Agency or that qualify the employee for initial consideration for a professional position (*e.g.*, an employee's costs for initial admission to a state bar following completion of law school or an accounting technician's college tuition to obtain an accounting degree). The Agency may pay for court admission fees required of attorneys for admission to practice before a court, if admission is necessary to carry out the Agency mission.
- C. Eligible employees include the following:
  - 1. every attorney required by the Agency to be a member in good standing of the bar of the highest court of any state, possession, territory, commonwealth, or the District of Columbia; and
  - 2. every other professional employee within the bargaining unit who is required to maintain professional credentials as a condition of employment.
- D. Procedures
  - 1. The employee will initiate the process by presenting to his or her supervisor evidence of payment of qualifying expense(s) during the current fiscal year (*e.g.*, cancelled check, copy of bank statement showing payment, credit card statement, statement from bar or professional association showing payment) and a completed reimbursement request, currently an SF-1164.
  - 2. Reimbursement of qualifying expenses is only available during the fiscal year in which the expense is incurred by the employee.
  - 3. The employee must submit a request for reimbursement as soon as possible after incurring the expense to ensure that the Agency will be able to obligate the funds for reimbursement by the end of the fiscal year cutoff date.

4. The Agency will take reasonable steps to ensure prompt processing, adjudication, and timely reimbursement.

## **Section 2. Professional Liability Insurance**

As permitted by law and subject to the availability of funds, the Agency may reimburse up to 50% of the annual premium for professional liability insurance paid by bargaining unit employees whose primary duties include the investigation, apprehension, prosecution, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States (including OPLA attorneys whose primary duties involve enforcement of immigration laws of the United States).

## **Section 3. Transportation Subsidy**

- A. Consistent with applicable law and regulations, and subject to availability of funds, the Agency shall provide a subsidy of an employee's eligible commuting costs for mass transportation or vanpools, up to the maximum amount authorized at the time the subsidy is paid. The amount of the subsidy cannot exceed the actual costs incurred.
- B. Employees will apply for and receive the transportation subsidy in accordance with local procedures and schedules.
- C. The transportation subsidy may be used only for the employee's eligible mass transportation or vanpool commuting costs. No part of the subsidy may be used for any other purpose or transferred to anyone else, without regard to whether the employee receives anything in exchange.
- D. When the Agency is directed to increase or decrease the maximum amount of the transit subsidy by law, regulation, or Executive Order, the Agency will implement the change for all employees in the bargaining unit in a timely manner consistent with the guidance or requirements of the applicable law, regulation, or Executive Order.
- E. When the Agency is given discretion to increase the maximum amount of the transit subsidy by law, regulation, or Executive Order, the Union may negotiate over any changes in transit subsidy amounts within 30 calendar days of when the Agency receives this new discretion.

## **ARTICLE 29**

## **CHILD CARE**

### **Section 1. Policy and Purpose**

The Parties recognize that working parents may have special child care needs during working hours, including the need to secure appropriate child care arrangements.

### **Section 2. Child Care Activities**

- A. The Agency will continue to provide child care and parenting information, child care resource and referral information, and counseling as available through the Employee Assistance Program (EAP).
- B. If it is determined that training for an employee who assumes oversight responsibility for a federal child care facility is necessary and readily available, the Agency will consider paying for it in light of other competing demands for local training.

### **Section 3. Employee Needs**

- A. Whenever practicable, the Agency will grant emergency requests for annual leave and leave without pay necessitated by unexpected changes in child care arrangements.
- B. The Agency will consider requests from employees for such arrangements as part-time employment, job sharing, flextime, *etc.*, to assist with the employees' child care needs.
- C. The Agency recognizes that it may be necessary for employees to contact child care providers during duty hours.

### **Section 4. Facilities**

In accordance with 29 U.S.C. § 207(r)(1), the Agency will provide a properly furnished private space, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public for nursing mothers to express breast milk. Where necessary and practicable, the space will include a mini refrigerator and, to ensure privacy, will be lockable from the inside or clearly identified as private.

## **ARTICLE 30**

### **HARDSHIP REASSIGNMENT**

#### **Section 1. Introduction**

- A. Situations may arise during an employee's career where a personal hardship exists that could be alleviated if the employee is temporarily or permanently reassigned to an office other than the employee's current duty station.
- B. This Article provides procedures and requirements that apply when an employee requests a geographic reassignment because of personal hardship.
- C. Requests for reassignment because of personal hardship will be considered in a fair and equitable manner. While reassignment is not an entitlement and is at the sole discretion of the Agency, the Agency will make efforts to accommodate employees who establish personal hardships.
- D. If a request for reassignment because of personal hardship is granted, the employee will be responsible for any relocation expenses associated with the reassignment.

#### **Section 2. Definitions**

- A. Reassignment means a change from one position to another in a different geographic location at least 50 miles away from the employee's permanent duty station and from the employee's current residence while the employee is serving continuously within the same position classification series. Reassignment because of personal hardship may be approved only to a position with the same or lower promotion potential and at the same or a lower grade level.
- B. Immediate family refers to spouses, domestic partners, parents, spouses' parents, domestic partners' parents, former legal guardians, brothers, sisters, and children. "Step" relationships and relationships by affinity equivalent to one of the listed family relationships are also included in the definition of immediate family. The immediate family member must be a member of the employee's household or an individual for whom the employee has a primary duty for providing or directly overseeing the individual's care.
- C. A serious medical condition is a serious illness, injury, impairment, or physical or mental health condition, any of which involves (1) inpatient hospital care; (2) continuing treatment by a health care provider; (3) ongoing treatment for a serious chronic condition; (4) permanent/long-term conditions that require supervision; and/or (5) non-chronic conditions that require multiple treatments.
- D. A licensed medical practitioner includes, but is not limited to, the following: physician, physician assistant, nurse practitioner, psychologist, and other licensed mental health counselor such as a marriage and family therapist or licensed clinical social worker.
- E. Personal hardship means a serious difficulty (excluding an employee's own medical issue) that would negatively affect an employee's performance caused by:

1. a permanent relocation related to the employment of a spouse or domestic partner as defined in 5 C.F.R. § 875.213;
2. an immediate family member's serious medical condition that a licensed medical practitioner expects to be substantially alleviated or controlled by residence in another geographic location;
3. an immediate family member's serious medical condition that requires ready access to a hospital that specializes in treatment of the condition; or
4. an immediate family member's substantial disability or handicapping condition, including, but not limited to, deafness, blindness, or a serious learning disability that requires ready access to special education facilities.

### **Section 3. Pre-requisites for Requesting a Reassignment Because of Personal Hardship**

- A. Absent extreme medical circumstances, an employee must have at least two (2) years of current employment with the Agency before requesting a reassignment because of personal hardship.
- B. The personal hardship for which reassignment is requested must have arisen after the beginning of the employee's current employment with the Agency.
- C. The employee's performance must be at or above an acceptable level and the employee must not have been on a Performance Improvement Plan (PIP) within the last two (2) years.
- D. The employee must have had no disciplinary actions issued within the last two (2) years.

### **Section 4. Procedures for Requesting a Reassignment Because of Personal Hardship**

- A. In order to make a request for reassignment because of personal hardship, an employee must:
  1. submit a written request for reassignment because of personal hardship to the head of his or her current office; and
  2. provide administratively acceptable documentation to support the hardship request (*e.g.*, physician's letter, letter from the spouse or domestic partner, letter from the spouse or domestic partner's employer, letter from the specialized education facility). The documentation must contain an explanation as to why the move has to be to the location identified, or to a nearby location, where the hardship could be alleviated. The Agency will consider the licensed medical practitioner's diagnosis of a serious medical condition relating to the employee's immediate family member. The Agency may request additional documentation from the employee as necessary to assist in making its decision. Any medical documentation submitted by the employee will be stored in accordance with applicable law, rule, and regulation. When more than one duty location is available to alleviate the hardship, the employee will specify in the request the order of preference.
- B. The Agency may require an interview prior to deciding whether to grant a hardship reassignment request. In most cases, such interviews may be by telephone or VTC. However,

if an in-person interview is required, it will be the responsibility of the requesting employee to pay for any travel expenses associated with the interview.

- C. While reassignment is at the sole discretion of the Agency, the Agency will make efforts to accommodate an employee who has established a personal hardship. The Agency will notify the employee of its decision as soon as practicable.
- D. All hardship requests will be kept confidential within the Agency; the fact that an employee has made a hardship request and the information provided in support of the hardship request will only be disclosed on a need-to-know basis.
- E. When an employee's request for reassignment because of personal hardship is denied, the employee may ask that the request remain open for up to one year. In the event circumstances change that would allow the request to be approved, the employee may amend or supplement the initial request.
- F. Only one request may be submitted per year, unless the new request is based on an entirely different personal hardship situation that arose subsequent to the previous request.
- G. If multiple requests for the same location are pending, the Agency has discretion to determine the order of consideration of the requests.
- H. If an employee declines an offer of a position at the desired location in the same series and grade, the employee's request for hardship reassignment will be closed without further action.

## **ARTICLE 31**

### **ISSUANCE AND CONTROL OF BADGES**

#### **Section 1. Introduction**

- A. This Article will be interpreted and administered in accordance with DHS and ICE directives and instructions regarding issuance and control of DHS badges.
- B. While reserving its right to determine internal security practices, the Agency will issue a metallic badge to all Agency attorneys who prosecute cases for the United States or represent the United States in immigration court proceedings, or other Agency attorneys deemed appropriate, as part of the service credentials to be displayed for identification purposes.
- C. All ICE attorneys provided a badge as part of the service credentials acknowledge no arrest authority is created by the issuance of the badge.

#### **Section 2. Guiding Principles and Procedures**

##### **A. Guiding Principles**

- 1. ICE attorneys issued a badge pursuant to this Article are responsible for the proper use, display, accountability, and return of the badge.
- 2. DHS badges issued to ICE attorneys shall only be used in conjunction with the performance of official duties. Displaying any DHS badge that has not been officially issued is prohibited.
- 3. Badges are the property of the U.S. government and must be returned to the issuing office upon termination of employment or upon demand. Badges are subject to inventory and inspection.
- 4. All badges are considered accountable property. Due to the grave potential for misuse if lost or stolen, all badges are to be treated as sensitive high-valued items in accordance with DHS Management Directive 1120, Capitalization and Inventory of Personal Property.
- 5. Employees will not use their badges to exert influence, to obtain directly or indirectly any privilege, favor, preferred treatment, or reward for themselves or others, or to improperly enhance their own prestige. Employees involved in the inappropriate use or misuse of badges are subject to criminal and civil penalties, including removal from employment.

##### **B. Procedures**

- 1. Issuance of DHS Badges. ICE attorneys must satisfactorily complete any DHS and ICE requirements before issuance of a DHS badge.

2. Reporting Loss or Theft of DHS Badges. In the event of loss, theft, or destruction of badges, the employee responsible for the badge, or the employee discovering the condition, will:
  - a. take immediate action to effect recovery of the lost or stolen badge, and obtain all available information concerning the loss, theft, or damage for inclusion in reports required by DHS Management Directive 1120.
  - b. notify as soon as practicable, but within 24 hours, the property management officer and other appropriate official(s) and the supervisor of the employee with the affected badge. Care should be taken to ensure that those supervisors in the employee's chain of command see all notification documents.
3. Retirement of Badges. Badges may be retired and kept as a memento of honorable service to the United States and ICE by clearly marking the badge as retired (*e.g.*, embedding the badge in Lucite or permanently affixing a retired demarcation) at the individual employee's expense. Property accountability of the badge ends when the badge has been properly retired, presented to the employee, and removed from property accountability records. Badges shall be retired under the following circumstances:
  - a. upon retirement from federal service by the individual attorney after satisfactory completion of at least one year of ICE employment where a badge was authorized.
  - b. at the request of the family of a deceased employee, regardless of the length of ICE employment.

## **ARTICLE 32**

### **DEDUCTIONS FOR UNION DUES**

#### **Section 1. Introduction**

- A. The Agency shall deduct Union dues from bargaining unit employees who voluntarily authorize such deduction if their net salary, after other legal and required deductions, is sufficient to cover the amount of the authorized allotment.
- B. Deduction for Union dues from bargaining unit employees shall be administered in accordance with 5 U.S.C. Chapter 71, as amended, and this Agreement.

#### **Section 2. Deduction Process**

- A. Bargaining unit employees may make an allotment for payment of dues to the Union by voluntarily completing a SF-1187, Request for Payroll Deductions for Labor Organization Dues, or its equivalent.
- B. Such allotment forms will be submitted to the Union President or other authorized officer who will complete the certification portion of the form. The Union, in turn, will promptly submit all such forms received from employees to the servicing human resources office or other Agency designee for processing. The Agency will acknowledge the receipt and notify the Union of the form being forwarded for processing.
- C. Allotments will be effective not later than the beginning of the second pay period following the receipt of a properly completed allotment form by the servicing human resources office or other Agency designee. The Union may contact the servicing human resources office or other Agency designee for assistance in resolving discrepancies.

#### **Section 3. Remittance and Report of Dues Withheld**

- A. The Agency will make a remittance to the Union for all deductions for Union dues by bargaining unit members on a biweekly basis by electronic funds transfer (EFT). The Union will provide the Agency with the appropriate bank routing number/bank account number.
- B. The Agency will coordinate with the National Finance Center to ensure that a biweekly Report of Organization or Association Dues Withheld is provided to the Union containing:
  1. identification of the Agency;
  2. identification of the Union Local;
  3. date and pay period;

4. name of employee, location of employee's office, the amount deducted, and the effective date of the authorization;
  5. names of employees for whom deductions previously authorized were not taken with the reason for no deduction;
  6. total amount of remittance; and
  7. total number of members for whom dues are withheld.
- C. The biweekly report will be sent electronically to the Union President and Treasurer, or designee(s).

#### **Section 4. Changes in Union Dues Deduction**

- A. The Union may change the amount of the Union dues deducted per employee. The Union President or Treasurer shall certify in a statement to the servicing human resources office or other Agency designee indicating the dues change.
- B. Such statement must be received at least two (2) pay periods prior to the first day of the pay period in which such change is to be effective. Changes will be effective not later than the second full pay period after receipt by the servicing human resources office or other Agency designee.

#### **Section 5. Cancellation/Reinstatement of Union Dues**

- A. The Union will be made whole for any inadvertent cancellation of Union dues of members whose dues were improperly cancelled by the Agency, so long as the error was brought to the attention of the Agency's Chief, Labor and Employment Law Division, OPLA, or designee, within four (4) pay periods of the improper cancellation. When the Agency or applicable third party determines that the cancellation was in error, the Agency will promptly withhold the back dues amount from the employee(s) and transmit the payment to the Union by EFT.
- B. If the Agency cancels an employee deduction of Union dues based on a belief that the employee's position is outside the bargaining unit and the FLRA determines that the Agency acted improperly, the Agency will promptly comply with any applicable remedial order.
- C. Union members who have authorized Union dues withholding may at any time submit an SF-1188, Cancellation of Payroll Deductions for Labor Organization Dues, to the servicing human resources office. Regardless of when the SF-1188 is received in the servicing human resources office, it will be processed in accordance with the following:
  1. employees within their first year of membership may revoke dues withholding effective on the anniversary date of their first year of membership; or

2. employees with more than one (1) year of membership may revoke dues withholding effective no later than two (2) pay periods of such request being received by the servicing human resources office or other Agency designee.
- D. Employees whose dues allotment terminates because of a temporary assignment to a position not in the bargaining unit will have their dues withholding reinstated upon submission of a new SF-1187. The Agency will notify the Union immediately or as soon as possible, but no later than 30 days of any employee whose dues allotment was canceled by the Agency because of a temporary assignment to a non-bargaining unit position. Upon the employee's return to a bargaining unit position, the Union will contact that employee for the submission of a new SF-1187 to re-commence the deduction of Union dues.
- E. If an employee who has been separated by the Agency is reinstated by an arbitrator, the MSPB, the EEOC, or a court of competent authority, and the Agency is required to make the employee whole, dues withholding will be reinstated for the employee upon the submission of a new SF-1187.

## **ARTICLE 33**

### **COMPENSATORY TIME OFF FOR WORK PERFORMED OUTSIDE OF THE TOUR OF DUTY**

#### **Section 1. General Principles**

- A. This Article applies only to employees who are General Attorney Series 0905.
- B. Compensatory time off earned as a result of work performed outside the tour of duty is governed by applicable law, rule, and regulation.
- C. Compensatory time off is not a substitute for prioritizing and completing an employee's assigned workload within regularly scheduled duty hours.
- D. The Agency will exercise its discretion to order or approve employees to perform work outside the tour of duty on rare and infrequent occasions and solely based on mission needs.
- E. An employee may not accrue compensatory time off for work performed unless the Agency, in writing and in advance, orders or approves the employee to perform the work.
- F. The Agency, as a matter of law, can deny any request to earn compensatory time off for work performed outside the tour of duty. Although not required, the Agency's denial should be in writing.

#### **Section 2. Procedures for Agency-Initiated Compensatory Time Off**

- A. The Agency may order an employee to perform work outside the tour of duty to further the mission (*e.g.*, to respond to extraordinarily burdensome discovery requests or unanticipated and time-sensitive taskings).
- B. Completion of Appendix K, Agency-Initiated – Authorization for Compensatory Time Off for Work to be Performed Outside the Tour of Duty (the Form)
  - 1. The Agency must complete Sections I and II of the Form before the employee performs the work for which compensatory time off will be authorized.
  - 2. The employee must complete Section III of the Form no later than two (2) business days after completion of the work for which compensatory time off has been authorized.
  - 3. The Agency will then complete Section IV of the Form within two (2) business days of receiving the completed Form from the employee.

4. Both the Agency and the employee should endeavor to complete the Form in time for the employee to enter the approved compensatory time off into WebTA prior to validation for the pay period in which the time off was earned.

### **Section 3. Procedures for Employee-Initiated Compensatory Time Off**

- A. Requests to accrue compensatory time off for completing routine work assignments (*e.g.*, preparing filings and briefs or conducting legal sufficiency reviews) outside the tour of duty are not appropriate. An employee may request approval to perform work outside the tour of duty only in order to represent the Agency in a manner not typical of his or her daily job duties (*e.g.*, a job fair or academic forum).
- B. Completion of Appendix L, Employee-Initiated – Authorization for Compensatory Time Off for Work to be Performed Outside the Tour of Duty (the Form)
  1. The employee must complete Section I of the Form at least five (5) business days before the event for which the employee is seeking compensatory time off.
  2. The Agency must complete Section II of the Form within two (2) business days of receipt of the Form from the employee.
  3. If compensatory time off is authorized, the employee must complete Section III of the Form within two (2) business days of the event for which the compensatory time off was authorized and earned.
  4. The Agency will then complete Section IV of the Form within two (2) business days of receiving the completed Form from the employee.
  5. Both the Agency and the employee should endeavor to complete the Form in time for the employee to enter the approved compensatory time off into WebTA prior to validation for the pay period in which the time off was earned.

### **Section 4. Agency Action Where Work Has Been Ordered or Approved**

When the Agency exercises discretion to order or approve an employee to perform work outside the tour of duty, the Agency will determine and specify relevant details, such as:

1. the maximum number of hours to be worked, including any extensions;
2. the timeframe within which the work must be performed;
3. whether compensatory time off will be available for any travel within the local commuting area associated with the work performed outside the tour of duty (temporary duty travel is governed by Article 13); and
4. any other instructions or requirements.

## **Section 5. Accrual and Use of Compensatory Time Off**

### **A. Accrual of Compensatory Time Off**

1. Compensatory time off will be earned in 15-minute increments. Amounts less than 7.5 minutes must be rounded down to the nearest 15-minute increment; amounts equal to or greater than 7.5 minutes must be rounded up to the nearest 15-minute increment.
2. An employee may only accrue compensatory time off for the time spent performing the ordered or approved duties (including approved local travel). If the event or assignment is completed earlier than anticipated, the employee will only receive compensatory time off for the actual duration of the event or assignment, not the maximum number of hours originally authorized.
3. Employees must take one uncompensated meal break of at least 30 minutes for every six (6) hours worked; this time must be excluded from the total amount of compensatory time off ordered or approved.

### **B. Premium Pay Request**

Employees must submit a WebTA Premium Pay Request for compensatory time off within the pay period for which it was earned so that the request can be approved prior to validation and certification of the timecard for that pay period.

### **C. Use of Compensatory Time Off**

1. The scheduling of the use of compensatory time off is subject to the needs of the Agency and requires advance approval by the supervisor.
2. An employee's request to use compensatory time off earned will be submitted using WebTA.
3. Compensatory time off may only be used in 15-minute increments.
4. If an employee fails to use the compensatory time off within 26 pay periods after it was credited, the employee forfeits the unused compensatory time off.
5. When an employee separates from employment with ICE, forfeiture of or payment for unused compensatory time off will be governed by applicable law, rule, or regulation.

## **ARTICLE 34**

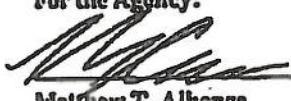
### **DURATION**

- A. This Agreement is effective on September 1, 2019.
- B. This Agreement may only be amended, modified, supplemented, or renegotiated in accordance with and consistent with the provisions of this Agreement. Any amendments or supplements to this Agreement will run concurrently with the Agreement.
- C. This Agreement shall remain in effect for five (5) years and will automatically renew itself from year to year thereafter, except that upon completion of the original five-year term and consistent with 5 U.S.C. § 7116(a)(7), any rules or regulations prescribed prior to a renewal date will thereafter be in effect and shall supersede any conflicting Agreement provision.
- D. If either Party desires to renegotiate this Agreement, it will furnish written notice to the other Party not less than 90 days but not more than 180 days prior to the expiration, including expiration of a renewal term, of this Agreement.
  - 1. Either Party may notify the other during the window period that it withdraws from any agreement(s) over “permissive subjects of bargaining” under the Federal Service Labor-Management Relations Statute. In such cases, that provision(s) will be voided as of the renewal date of this Agreement.
  - 2. Notwithstanding the window for requesting renegotiation of the Agreement, the Party receiving notice will have 30 days to request renegotiation of the Agreement following a notification under Subsection 1.
- E. If either Party requests renegotiation of the Agreement, negotiation of Ground Rules shall commence no later than 60 days after the request. The Parties will use statutory procedures to resolve any impasses in the negotiations of Ground Rules. Renegotiations of this Agreement will proceed under the terms of the Ground Rules. Both Parties will make best efforts to complete an Agreement expeditiously.

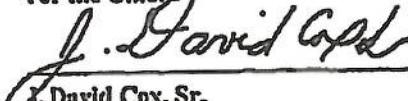
### CERTIFICATION OF AGREEMENT

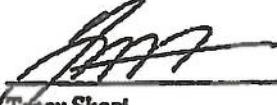
In accordance with 5 U.S.C. § 7114(c) and the Parties' Ground Rules, dated April 8, 2015, and Amendment to Ground Rules, dated July 12, 2019, this Collective Bargaining Agreement is binding and in effect as of September 1, 2019.

For the Agency:

  
Matthew T. Albence 8/28/19  
Deputy Director and Senior Official  
Performing the Duties of the Director

For the Union:

  
J. David Cox, Sr. 8/28/19  
National President, AFGE

  
Tracy Short 28 Aug 2019

Date

Principal Legal Advisor

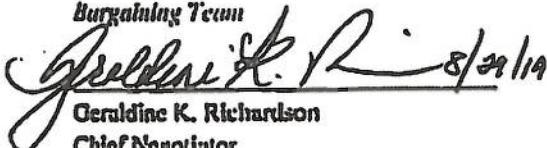
Date

  
Fanny Behar-Ostrow 8/28/19  
President, AFGE Local 511

Date

  
Stephen A. Roncone 8/28/19  
Chief Financial Officer

Date

Bargaining Team  
  
Geraldine K. Richardson 8/28/19

Chief Negotiator

  
Charles B. Barkdale

  
Ronald Lapid 8/29/19

Ronald Lapid

  
Robert L. Parsons 8/29/19

Robert L. Parsons

  
Linda L. Pullion 8/29/19

Linda L. Pullion

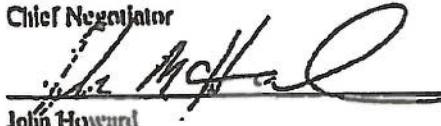
  
Jessica K. Rihma 8/29/19

Jessica K. Rihma

Bargaining Team

  
Fanny Behar-Ostrow 8/28/19

Chief Negotiator

  
John Howard 8/28/19

  
Jonathan Kaplan 8/29/19

Jonathan L. Kaplan

  
Randy Kung 8/29/19

## APPENDIX A

### OFFICIAL TIME REQUEST FORM

**U.S. Department of Homeland Security  
Immigration and Customs Enforcement**

**Submitted:**

<b>To Supervisory Official:</b> <i>(Designated by Agency to approve official time)</i>		<b>From Union Representative or Bargaining Unit Employee:</b> <i>(Name, union title and duty location)</i>
<b>I. Pursuant to Article 7 of the negotiated collective bargaining agreement, official time is hereby requested as follows:</b>		
Date and Time Requested:	Total Hours Anticipated:	Place of Contact/Phone Number:
Activities to Be Performed:		
<b>II. Endorsement by Supervisor:</b>		
The above requested official time is: <input type="checkbox"/> Approved <input type="checkbox"/> Denied		
(Retain two copies and return one copy to requestor)		
<b>III. Final endorsement as recorded on time and attendance report:</b>		
For Date:	Total Hours/Minutes Used:	Charged to Transaction Code:
Actual Time Began:	Actual Time Returned to Duty:	

Form G-826 (8/2019)

#### INSTRUCTIONS

<u>Transaction Codes</u>	<u>Type of Official Time</u>
35	Basic Negotiations, Renegotiations or Reopened Negotiations
36	Midterm Negotiations or Personal Representation/Union Affiliated
37	On-Going Labor Management Relationship, Regular Duty Hours
38	Representation During Grievances, Appeals, etc. Regular Duty Hours (including Travel Time)

*Employees/Supervisors:* Enter appropriate Transaction Code at Section III and on the employee's time and attendance report (WebTA)

## APPENDIX B

### COMPENSATORY TIME OFF FOR TRAVEL FORM

*(Supervisory approval of travel itinerary is required in advance of travel)*

Name: \_\_\_\_\_ Dates of Travel: \_\_\_\_\_ to \_\_\_\_\_

Work Schedule:  Flexible (Maxiflex, Variable)  Compressed (5/4-9, 4/10)

#### ITINERARY

*Attach a copy of approved travel authorization and itinerary.  
All times must be reported based on the time zone of the departure city.*

##### **Outbound:**

Date: \_\_\_\_\_ Scheduled hours of work: \_\_\_\_\_ to \_\_\_\_\_

Departed from:  Home  Official Station Departure time: \_\_\_\_\_ a.m./p.m.

Name of Terminal: \_\_\_\_\_ Arrival time at terminal: \_\_\_\_\_ a.m./p.m.

Within 50 miles of Official Station?  Yes  No

If No, normal commuting time: \_\_\_\_\_

Actual departure time from departure terminal: \_\_\_\_\_ a.m./p.m.

Arrival time at hotel or Temporary Duty Location: \_\_\_\_\_ a.m./p.m.

##### **Return:**

Date: \_\_\_\_\_ Scheduled hours of work: \_\_\_\_\_ to \_\_\_\_\_

Departure time from Temporary Duty Location: \_\_\_\_\_ a.m./p.m.

Name of Terminal: \_\_\_\_\_ Arrival time at terminal: \_\_\_\_\_ a.m./p.m.

Actual departure time from departure terminal: \_\_\_\_\_ a.m./p.m.

Arrival time at destination terminal: \_\_\_\_\_ a.m./p.m.

Within 50 miles of Official Station?  Yes  No

If No, normal commuting time: \_\_\_\_\_

Returned to:  Home  Official Station Arrival time: \_\_\_\_\_ a.m./p.m.

#### APPROVAL

Travel Compensatory Time Requested: Outbound: \_\_\_\_\_ Return: \_\_\_\_\_

Signature of Traveler: \_\_\_\_\_ Date: \_\_\_\_\_

Total Travel Compensatory Time Approved: \_\_\_\_\_

Signature of Supervisor: \_\_\_\_\_ Date: \_\_\_\_\_

## APPENDIX C

### VOLUNTARY ASSIGNMENT REQUEST FORM

**Temporary Assignment** \_\_\_\_\_

**Volunteer's Name** \_\_\_\_\_ **Duty Station** \_\_\_\_\_ **GS Level** \_\_\_\_\_

**Seniority Date** \_\_\_\_\_ (*start date as an Agency attorney, including time as an attorney with legacy INS, USCIS, or GSA; see "Seniority" definition in Article 2*)

**Briefly describe any special skills, knowledge, and abilities you have that may relate to this assignment:**

**List all your Type I and II temporary assignments within the past 36 months (see Article 14):**

**Type I Temporary Assignment.** *Temporary assignment of an employee to substantially similar job duties outside of the employee's AOR or local commuting area (e.g., assignment to another OPLA field office, assignment to another financial operations office, etc.) for a limited or fixed duration.*

**Type II Short Term Temporary Assignment.** *Temporary assignment of an employee to substantially different job duties (e.g., SAUSA, HQ) for less than one year.*

**Type II Long Term Temporary Assignment.** *Temporary assignment of an employee to substantially different job duties (e.g., SAUSA, HQ) for one year or longer.*

**List all your Type III temporary assignments within the past 12 months (see Article 14):**

**Type III Temporary Assignment.** *Temporary assignment of an employee to duties at a higher or supervisory/management level (e.g., Acting Deputy Chief Counsel) for more than 120 days*

**List any current assignments/workload that may be affected:**

**Request was submitted to:**

**Supervisor** \_\_\_\_\_ **Date** \_\_\_\_\_

## APPENDIX D

### **REQUEST FOR AN EXEMPTION FROM INVOLUNTARY TEMPORARY ASSIGNMENTS**

**Name** \_\_\_\_\_ **Date of Request** \_\_\_\_\_

**Duty Station** \_\_\_\_\_ **Seniority Date** \_\_\_\_\_

**Reason for Exemption Request:**

- I previously volunteered and served a Type I voluntary temporary assignment ending on \_\_\_\_\_, which is within the past 12 months. (See Article 14.)
- I previously volunteered and served a Type II *short-term* voluntary temporary assignment ending on \_\_\_\_\_, which is within the past 12 months. (See Article 14.)
- I previously volunteered and served a Type II *long-term* voluntary temporary assignment ending on \_\_\_\_\_, which is within the past 12 months. (See Article 14.)
- I previously volunteered and served a Type III voluntary temporary assignment ending on \_\_\_\_\_, within the past 12 months. (See Article 14.)
- I previously served an involuntary temporary assignment ending on\_\_\_\_\_. (See Article 14.)
- I was granted a Temporary Assignment Exemption on\_\_\_\_\_.
- Other (*please explain*)
  
- Medical documentation provided, if applicable:

**Certification:** *I understand that a grant of an exemption from involuntary temporary assignments shall last for no more than six (6) months at a time.*

---

**Signature of Employee**

---

**Date**

**Approved**

**Denied**

---

**Signature of Supervisor**

---

**Date**

## APPENDIX E

### REQUEST FOR AN EXEMPTION FROM THE EXTENSION OF A TEMPORARY ASSIGNMENT

Name \_\_\_\_\_ Date of Request \_\_\_\_\_

Duty Station \_\_\_\_\_ Seniority Date \_\_\_\_\_

**Reason for Requesting an Exemption:**

List the medical documentation provided, if applicable:

*Certification: I understand that the Agency may extend a temporary assignment an additional 30 days beyond the duration set forth in the announcement for the temporary assignment, as well as direct an additional extension, based on mission needs. (See Article 14.)*

---

Signature of Employee

---

Date

Approved

Denied

**APPENDIX F**  
**Employee Decision Period Work Schedule Request Form**

Employee's Name: \_\_\_\_\_ EDP: \_\_\_\_\_

Employee's Signature: \_\_\_\_\_ Seniority Date: \_\_\_\_\_ (see CBA, Article 2)

**Available Duty Hours:**

6:00 a.m. to 7:30 p.m.

**Core Hours:**

9:00 a.m. to 3:00 p.m.

**Meal Period:**

30 minutes – 60 minutes

<p><b>Preference #</b> _____</p> <p><input type="checkbox"/> <b>5/4/9 Compressed</b>  Arrival Time: _____  Departure Time: _____  <i>Requested Day Off:</i> _____  Week One: _____  <u>OR</u>  Week Two: _____</p> <p><input type="checkbox"/> <b>4/10 Compressed</b>  Arrival Time: _____  Departure Time: _____  <i>Requested Days Off:</i> _____  Week One: _____  <u>AND</u>  Week Two: _____</p> <p><input type="checkbox"/> <b>Maxiflex in 9 Days</b>  <i>Requested Day Off:</i> _____  Week One: _____  <u>OR</u>  Week Two: _____</p> <p><input type="checkbox"/> <b>Maxiflex in 8 Days</b>  <i>Requested Days Off:</i> _____  Week One: _____  <u>AND/OR</u>  Week Two: _____</p> <p><input type="checkbox"/> <b>Variable Week [No Days Off]</b></p> <p><input type="checkbox"/> <b>Core Telework</b>  <i>Requested Telework Day(s):</i> _____  Week One: _____  <u>AND/OR</u>  Week Two: _____</p>	<p><b>Preference #</b> _____</p> <p><input type="checkbox"/> <b>5/4/9 Compressed</b>  Arrival Time: _____  Departure Time: _____  <i>Requested Day Off:</i> _____  Week One: _____  <u>OR</u>  Week Two: _____</p> <p><input type="checkbox"/> <b>4/10 Compressed</b>  Arrival Time: _____  Departure Time: _____  <i>Requested Days Off:</i> _____  Week One: _____  <u>AND</u>  Week Two: _____</p> <p><input type="checkbox"/> <b>Maxiflex in 9 Days</b>  <i>Requested Day Off:</i> _____  Week One: _____  <u>OR</u>  Week Two: _____</p> <p><input type="checkbox"/> <b>Maxiflex in 8 Days</b>  <i>Requested Days Off:</i> _____  Week One: _____  <u>AND/OR</u>  Week Two: _____</p> <p><input type="checkbox"/> <b>Variable Week [No Days Off]</b></p> <p><input type="checkbox"/> <b>Core Telework</b>  <i>Requested Telework Day(s):</i> _____  Week One: _____  <u>AND/OR</u>  Week Two: _____</p>	<p><b>Preference #</b> _____</p> <p><input type="checkbox"/> <b>5/4/9 Compressed</b>  Arrival Time: _____  Departure Time: _____  <i>Requested Day Off:</i> _____  Week One: _____  <u>OR</u>  Week Two: _____</p> <p><input type="checkbox"/> <b>4/10 Compressed</b>  Arrival Time: _____  Departure Time: _____  <i>Requested Days Off:</i> _____  Week One: _____  <u>AND</u>  Week Two: _____</p> <p><input type="checkbox"/> <b>Maxiflex in 9 Days</b>  <i>Requested Day Off:</i> _____  Week One: _____  <u>OR</u>  Week Two: _____</p> <p><input type="checkbox"/> <b>Maxiflex in 8 Days</b>  <i>Requested Days Off:</i> _____  Week One: _____  <u>AND/OR</u>  Week Two: _____</p> <p><input type="checkbox"/> <b>Variable Week [No Days Off]</b></p> <p><input type="checkbox"/> <b>Core Telework</b>  <i>Requested Telework Day(s):</i> _____  Week One: _____  <u>AND/OR</u>  Week Two: _____</p>
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Preference # \_\_\_\_\_ Approved

All Preferences Disapproved

Supervisor's Signature \_\_\_\_\_

If none of an employee's preferences are approved, the employee is assigned to a Variable Week Schedule. An employee should use a continuation sheet or another copy of this form if submitting more than 3 schedule preferences.

## **APPENDIX G**

### **NOTIFICATION OF CONDITIONS OF PART-TIME EMPLOYMENT**

Employees approved to work a part-time schedule should review the Professional Employees Agreement 2019 (Collective Bargaining Agreement), Article 16, “Part-Time Employment,” as well as the information provided by the U.S. Office of Personnel Management, available at:

www.opm.gov  
Policy  
Hiring Information  
Part-Time & Job Sharing

Part-time employees are required to work core hours consistent with Article 15, Section 5, typically 9 a.m. to 3 p.m.

Part-time employment is at the discretion of the Agency; in the event that the Agency requires an employee to modify his or her work schedule, the part-time schedule may be modified by the Agency in compliance with Article 16.

A part-time employee must request renewal of the part-time schedule, modification of the part-time schedule, or conversion to a full-time schedule by submitting a brief written explanation of the reasons for the request to his or her immediate supervisor once a year during the month of July in compliance with Article 16.

The Agency makes no explicit or implicit guarantee of a return to a full-time position in the event an employee requests a return to full-time employment. Any request to modify the current part-time schedule will be considered as outlined in Article 16.

I have read and understand this notification of part-time employment.

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Employee

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Date

## **APPENDIX H**

### **TELEWORK PROGRAM AGREEMENT**

The following constitutes an agreement between the Agency and \_\_\_\_\_ [Name of Employee] on the terms and conditions of the employee's participation in the telework program, consistent with Article 17 of the Collective Bargaining Agreement (CBA). The employee certifies that:

1. The employee's Alternate Duty Station (ADS) is located at the following address:

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Telephone #\_\_\_\_\_

2. The ADS may not be changed without prior approval of the Authorizing Official.
3. The ADS has the workspace, utilities, and equipment necessary to perform official business.
4. The employee's home ADS complies with reasonable safety standards and is free from obvious safety hazards. This includes, but is not limited to, the following: the building's electrical system is grounded and all equipment is free of hazards that would cause physical harm (frayed, bare, loose, or exposed wiring); telephone lines, electrical cords, and extension wires are secured under a desk or alongside a baseboard; the work area is free of obstructions and hazardous materials; the temperature is conducive to health, comfort, and proper equipment maintenance; and equipment and furniture are in good condition and ergonomic. Additionally, the employee will ensure that the ADS is conducive to productivity, comfort, safety, and health.
5. When performing work at the ADS, the employee will adhere to the work schedule approved pursuant to the EDP (*i.e.*, duty hours and days remain the same).
6. If the employee has children, elderly family members, or other dependents who require care, the employee has made arrangements that permit full concentration on work duties. The employee acknowledges that telework is not to be used as a substitute for dependent care.
7. The employee will record time and attendance for work performed at the ADS in the Agency's system of reporting time and attendance (*e.g.*, WebTA).
8. The employee will follow established procedures for requesting and obtaining approval for leave at the ADS.
9. On a day when the employee is scheduled to work at the ADS and the employee's official duty station is closed for all or part of the day as a result of an emergency, the employee will perform work at the ADS as scheduled unless the emergency prevents the work from being performed at the ADS or causes the employee to be unable to perform his or her duties. If an emergency or other situation occurs that affects the employee's ability to perform official duties at the ADS, the employee will notify a supervisor as soon as practicable.

10. An employee performing work at the ADS on a core basis will work in accordance with an approved Telework Program Work Plan (see Appendix I). Upon reasonable notice, employees may be required to report to the primary worksite for training programs, conferences, meetings, or other Agency needs.
11. The employee will be responsible for home maintenance and any other incidental costs (*e.g.*, furniture, lockable storage, insurance, telephone, electricity) associated with the use of the employee's home as the ADS.
12. The employee retains entitlement to reimbursement for appropriately authorized expenses incurred while conducting business for the Agency, as provided for by law and implementing regulations.
13. The Agency will provide, maintain, and repair any electronic equipment it deems necessary (*e.g.*, computers, printers, scanners, FAX machines) for the employee to perform the portable work at the ADS.
14. Any accident or injury occurring at the ADS must be brought to the attention of a supervisor as soon as practicable. Where the ADS is the employee's home, the employee will allow timely inspection of the telework site. The Agency will give the employee reasonable notice prior to any inspection of the telework site where the ADS is the employee's home. An injured employee will be provided information on submission of a claim to the Office of Workers' Compensation Programs, U.S. Department of Labor.
15. All government-issued equipment will be used for official purposes only. The employee will exercise care and due diligence in safeguarding such equipment.
16. Teleworking employees must be vigilant in maintaining information security. The employee will adhere to DHS and ICE policies and applicable government regulations governing information management and electronic security procedures for safeguarding data. Attachment 1 to this Telework Program Agreement summarizes some of the more pertinent requirements applicable to a telework environment.
17. I have read and will abide by the requirements and conditions for telework as stated above.

EMPLOYEE: \_\_\_\_\_  
(Signature of Employee)

Date \_\_\_\_\_

APPROVED: \_\_\_\_\_  
(Signature of Authorizing Official)

Date \_\_\_\_\_

**SUMMARY STATEMENT OF  
U.S. DEPARTMENT OF HOMELAND SECURITY AND  
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT  
INFORMATION SECURITY ASSURANCE REQUIREMENTS**

**Teleworking Employees Must Be Vigilant in Maintaining Information Security:**

- A. Consistent with government-wide, DHS, and ICE security and information technology policies, only government-furnished computer equipment shall be used to create, store, receive, and transmit government information for all telework. All government-issued equipment such as laptops, desktop computers, or removable media, including mobile devices, USB data ports, thumb drives, and portable or removable hard drives, used in a telework arrangement shall be encrypted in compliance with DHS encryption requirements in order to protect their contents in case of loss or theft. Employees who have been granted the opportunity to telework are responsible for the security of all government information and the protection of all government-issued equipment at the Alternate Duty Station (ADS).
- B. Personally Identifiable Information (PII). PII is DHS-owned information in any form that permits the identity of an individual to be directly or indirectly inferred, including any other information that links or is linkable to that individual regardless of whether the individual is a U.S. citizen, a lawful permanent resident, a visitor to the United States, or an ICE employee or contractor.
- C. Sensitive PII is personally identifiable information that, if lost, compromised, or disclosed without authorization, could result in substantial harm, embarrassment, inconvenience, or unfairness to an individual. Information that is always considered Sensitive PII includes social security numbers and biometric identifiers, such as fingerprints and iris scans. Except when used as a case number, an alien registration number is considered Sensitive PII. In addition, groupings of information which contain an individual's name or other unique identifier plus certain other information (*e.g.*, full date of birth, financial account number, driver's license number, medical information, and account passwords or personal identification numbers) may be considered Sensitive PII. Other PII may be "sensitive" depending upon its context, such as a list of employees with less than satisfactory performance ratings or an unlisted home address or phone number. In contrast, a business card or a public phone directory of Agency employees contains PII but is not "sensitive."
- D. Sensitive but Unclassified or "For Official Use Only" (FOUO) Information. FOUO is information not otherwise categorized by statute or regulation that, if disclosed, could have an adverse impact on the welfare or privacy of individuals, the conduct of federal programs, or other programs or operations essential to the national interest. FOUO is unclassified but due to its nature must be protected from loss, misuse, modification, and unauthorized access.

Examples of FOUO include Sensitive PII, trade secrets, system vulnerability information, pre-solicitation procurement documents, and law enforcement investigative methods.

E. Teleworking employees:

1. shall not remove and transfer any classified data from their primary worksite to their ADS.
2. shall not physically remove Sensitive PII or FOUO from a DHS facility or their primary worksite unless it is properly secured during transport to and storage at their ADS. For information that requires explicit permission for removal, *e.g.*, electronic PII, the information may not be removed from a DHS facility without such permission.
  - a. Sensitive PII and FOUO in electronic form shall be encrypted during transport to and from the ADS and shall be encrypted while stored on government-issued equipment or portable media at the ADS. Portable media that once contained Sensitive PII and FOUO must be destroyed or appropriately wiped of all data once retention of the information is no longer necessary. Portable media may not be reused by employees for other non-work purposes. Program Office Information System Security Officers (ISSOs) can assist employees with appropriate means to encrypt, wipe, or destroy Sensitive PII and FOUO.
  - b. Sensitive PII and FOUO in paper form shall be secured at the ADS by keeping the materials in a locked container when not in use and protecting the information from access by others present at the site (such as family members, roommates, visitors, *etc.*). Employees shall secure Sensitive PII and FOUO in paper form during transport to and from the ADS by enclosing the paper in a closed container or opaque envelope that is sealed to prevent inadvertent opening and show evidence of tampering. Such documents must remain in the employee's possession or in a safe, locked container at all times. Materials no longer needed at the ADS shall be shredded or returned to the primary worksite for appropriate disposal.
  - c. Sensitive PII and FOUO that was physically removed or extracted from an information technology (IT) system (printouts, CDs, *etc.*) shall be properly disposed of within 90 days, unless it is appropriately deemed necessary to retain such information for a longer period.
3. must ensure that any records subject to the Privacy Act, DHS Privacy Policy Guidance Memorandum 2007-01, and FOUO are not disclosed to anyone except those who have been authorized to access such information in order to perform their duties.
4. may not, under any circumstances, allow any unauthorized person who may have access to their ADS to use any government-issued electronic equipment.

## **APPENDIX I**

### **TELEWORK PROGRAM WORK PLAN**

(Note: This Telework Program Work Plan is to be completed jointly by the employee and immediate supervisor.)

1. The employee's portable work, as described in Section 3.A of Article 17 of the Collective Bargaining Agreement, is as follows:

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2. The employee is scheduled to perform work at the ADS on the following day(s) of each pay period (circle as appropriate):

First week:    Mon.    Tues.    Wed.    Thurs.    Fri.

Second week:    Mon.    Tues.    Wed.    Thurs.    Fri.

3. The following is an inventory of equipment and/or reference material that will be provided by the government in order for the work to be performed at the ADS. The inventory is guided by the responsibilities or assignments, or portion thereof, that the employee will perform at the ADS.

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Signature of Employee

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Date

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Signature of Authorizing Official

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Date

## **APPENDIX J**

### **EQUAL EMPLOYMENT OPPORTUNITY COMPLAINT INFORMATION**

If you are a federal employee (current or former) or an applicant for federal employment, you have a right to initiate a complaint of discrimination. If you believe that you have been subjected to unlawful discrimination in an employment matter within the control of the Agency, you may begin the complaint process by choosing an administrative process that addresses your concern. The bases for discrimination include the following:

- Race
- Color
- Sex (includes pregnancy, equal pay, gender identity, and sexual orientation)
- Religion
- National origin
- Age (40 and over)
- Disability
- Genetic information
- Retaliation (for having participated in activity protected by the various civil rights statutes)
- Parental status

To begin the Equal Employment Opportunity (EEO) complaint process, you must contact an EEO official, typically within the Office of Diversity and Civil Rights' Complaints and Resolution Division, within **45 calendar** days of the alleged incident or effective date of the personnel action.

#### **Contact Information:**

<b>By e-mail:</b>	EEO-ADR-ICE@ice.dhs.gov
<b>By telephone:</b>	(202) 732-0192/93
<b>By FAX:</b>	(202) 732-0104
<b>By mail:</b>	U.S. Immigration and Customs Enforcement 801 I Street, NW, Suite 800 Mail Stop 5010 Washington, DC 20536

You must state your intention to begin the EEO complaint process or state that you believe that you have been subject to unlawful discrimination.

**APPENDIX K**  
**AGENCY-INITIATED – AUTHORIZATION FOR COMPENSATORY TIME OFF FOR  
WORK TO BE PERFORMED OUTSIDE THE TOUR OF DUTY**

Supervisor:	Employee:  Duty Location:	
<b>I. Pursuant to Article 33 of the negotiated agreement, compensatory time off is hereby ordered as follows:</b>		
Date Ordered:	Estimated Amount of Compensatory Time Off Ordered ( <i>excluding any local travel time</i> ):  Estimated Total Local Travel Time:	Employee's Phone Number and Address While Performing the Work for Which Compensatory Time Off Is Being Ordered:
<b>Work to Be Performed (Explain how the event/assignment advances the mission of the Agency and, if applicable, provide a detailed itinerary that includes the proposed times of travel and the start and end times of the event/assignment):</b>		
<b>II. Completed by Authorizing Official</b>		
<b>Compensatory time off is ordered as follows:</b>		
Approved maximum number of hours/minutes of compensatory time off ( <i>including any approved local travel</i> ): _____		
Approved timeframe in which the work is to be done: _____		
Authorizing Official: _____		
Signature of Authorizing Official: _____		Date: _____
Notes/Comments:		
<b>III. Final Reporting by Employee</b>		
For Pay Period:	Actual Date/Time Began ( <i>including local travel</i> ):	Actual Date/Time Ended ( <i>including local travel</i> ):
Total Compensatory Time Off Earned:	Employee Signature: _____ Date: _____	
<b>IV. Final Management Approval: Hours to be Recorded on Time and Attendance Report (WebTA)</b>		
Date:	Total Compensatory Time Off Approved ( <i>WebTA Transaction Code 32 - Comp Time Earned</i> ):	
Approving Official: _____		
Approving Official Signature: _____		

**ADDITIONAL INFORMATION / INSTRUCTIONS:**

- Compensatory time off may only be earned and used in 15-minute increments.
- Employees must take one uncompensated meal break of at least 30 minutes for every 6 hours worked; this time must be excluded from the total amount of compensatory time off ordered or approved.
- Employees must submit a Premium Pay Request in WebTA for compensatory time off within the Pay Period for which it was earned so that the request can be approved prior to validation and certification of the time card for that Pay Period.

**APPENDIX L**  
**EMPLOYEE-INITIATED – AUTHORIZATION FOR COMPENSATORY TIME OFF**  
**FOR WORK TO BE PERFORMED OUTSIDE THE TOUR OF DUTY**

Supervisor:	Employee:  Duty Location:	
<b>I. Pursuant to Article 33 of the negotiated agreement, compensatory time off is hereby requested as follows:</b>		
Date Requested:	Estimated Amount of Compensatory Time Off Requested ( <i>excluding any local travel time</i> ):  Estimated Total Local Travel Time:	Employee's Phone Number and Address While Performing the Work for Which Compensatory Time Off Is Being Requested:
<b>Work to Be Performed (Explain how the event/assignment advances the mission of the Agency and, if applicable, provide a detailed itinerary that includes the proposed times of travel and the start and end times of the event/assignment):</b>		
<b>II. Completed by Authorizing Official</b>		
Compensatory time off is: <input type="checkbox"/> Approved <input type="checkbox"/> Denied		
Approved maximum number of hours/minutes of compensatory time off ( <i>including any approved local travel</i> ): _____		
Approved timeframe in which the work is to be done: _____		
Authorizing Official: _____		
Signature of Authorizing Official: _____		Date: _____
Notes/Comments:		
<b>III. Final Reporting by Employee</b>		
For Pay Period:	Actual Date/Time Began ( <i>including local travel</i> ):	Actual Date/Time Ended ( <i>including local travel</i> ):
Total Compensatory Time Off Earned:	Employee Signature: _____ Date: _____	
<b>IV. Final Management Approval: Hours to be Recorded on Time and Attendance Report (WebTA)</b>		
Date:	Total Compensatory Time Off Approved ( <i>WebTA Transaction Code 32 - Comp Time Earned</i> ):	
Approving Official: _____		
Approving Official Signature: _____		

**ADDITIONAL INFORMATION / INSTRUCTIONS:**

- Compensatory time off may only be earned and used in 15-minute increments.
- Employees must take one uncompensated meal break of at least 30 minutes for every 6 hours worked; this time must be excluded from the total amount of compensatory time off ordered or approved.
- Employees must submit a Premium Pay Request in WebTA for compensatory time off within the Pay Period for which it was earned so that the request can be approved prior to validation and certification of the time card for that Pay Period.

