

2016 Collective Bargaining Agreement



U.S. Citizenship and Immigration Services



Master Agreement

Between U.S. Citizenship and Immigration Services

and

American Federation of Government Employees - National Citizenship and Immigration Services Council

June 17, 2016

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PREAMBLE

This Agreement is entered into by and between the US Department of Homeland Security, Citizenship and Immigration Services (hereafter referred to as “the Agency”), and American Federation of Government Employees, National Citizenship and Immigration Council (hereafter referred to as “the Council”). Collectively they shall hereafter be referred to as “the Parties”.

The Parties enter into this Master Agreement in the spirit of 5 USC 7101(a), which states:

(a) The Congress finds that—

(1) experience in both private and public employment indicates that the statutory protection of the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them—

(A) safeguards the public interest

(B) contributes to the effective conduct of public business, and

(C) facilitates and encourages the amicable settlements of disputes between employees and their employers involving conditions of employment; and

(2) the public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the Government.

Therefore, labor organizations and collective bargaining in the civil service are in the public interest.

It is the purpose of this chapter to prescribe certain rights and obligations of the employees of the Federal Government and to establish procedures which are designed to meet the special requirements and needs of the Government. The provisions of this chapter should be interpreted in a manner consistent with the requirement of an effective and efficient Government.

Pursuant to these principles, the parties have agreed upon the various articles hereinafter set forth. This Agreement constitutes a Collective Bargaining Agreement between the Agency and the Union.

ARTICLE 1 – RECOGNITION

- (a) Bargaining Unit. US Citizenship and Immigration Services (hereafter referred to as the “Agency”), recognizes the American Federation of Government Employees (“AFGE”) as the exclusive collective bargaining representative of all non-professional employees of the Agency. All professional employees, managers, supervisors, and those excluded from coverage by the Civil Service Reform Act, Federal Services Labor Management Relations Statute, 5 USC Chapter 71, are not subject to this agreement. This Agreement covers all employees in the bargaining unit certified by the Federal Labor Relations Authority (“FLRA”) in Case No. WA-RP-06-0008 for the purpose of collective bargaining.
- (b) The Agency recognizes AFGE’s right to delegate its authority under this section to the National Citizenship and Immigration Services Council for matters that are broader than local in scope, and to the Local Unions for matters that are local in scope and within their jurisdictions. The Agency will honor such delegations throughout the life of this Agreement.
- (c) Gender Language. All references to members in this Agreement designate both sexes, and whenever the male gender is used, it shall be construed to include male and female members as appropriate.
- (d) Coverage. For purposes of this Agreement, the term “employee” refers to a bargaining unit employee unless otherwise stated.

ARTICLE 2 – GOVERNING LAWS & REGULATIONS

(a) EXISTING OR FUTURE LAW

Except as provided by law, the parties are governed by existing or future laws and statutes.

(b) GOVERNMENT - WIDE RULES AND REGULATIONS

The parties are governed by existing or future government-wide rules and regulations as defined in 5 U.S.C. § 7100 et seq., and by subsequently prescribed government-wide rules and regulations implementing 5 U.S.C. 2302 (the prohibited personnel practices). 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 (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) AGENCY POLICY

Should any conflict arise between the terms of this Master Agreement and any USCIS or Departmental Management Directives, regardless of the date of issuance, the terms of this Agreement will supersede.

(d) PAST PRACTICES, LOCAL AND NATIONAL AGREEMENTS

This Agreement supersedes any prior benefits, practices, memoranda of agreement, and any other agreements in conflict with it. Otherwise, all benefits, memoranda of agreement, and any other agreements that have not expired by their express terms will continue unless otherwise bargained by the parties to the extent required by law.

(e) SCOPE OF COVERAGE

The provisions of this article shall apply to all supplemental agreements and subsequently negotiated national and local agreements between the parties.

(f) INTENT OF RESTATEMENT

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. No language contained in such restatements is intended in any way to change the meaning of the statutes or regulations.

(g) SEVERABILITY

Upon such determination that any term or other provision is deemed invalid, illegal or incapable of being enforced by law, the parties hereto shall negotiate the term or other provisions to the extent required by law. The rest of the agreement shall remain in full force and effect.

ARTICLE 3 - EMPLOYEE RIGHTS

(a) RIGHT TO JOIN AND PARTICIPATE

(1) Right to Join and Participate. 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. Except as otherwise provided in the Civil Service Reform Act of 1978, such rights include the right to:

(A) Representation. 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

(B) Collective Bargaining. To engage in collective bargaining with respect to conditions of employment through the Union as provided by law and this Agreement.

(2) Management Non-Participation. 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 in the Civil Service Reform Act of 1978, 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.

(b) PRIVATE COUNSELING

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

(c) RIGHT TO COMMUNICATE AND TO BE REPRESENTED

An employee has the right to communicate with the appropriate member of the following concerning individual personnel matters:

(1) The servicing Human Resources Office(s) including local, Regional and Headquarters Offices;

(2) The EEO Office;

(3) A supervisor or management official of a higher rank than the employee's immediate supervisor;

- (4) EEO Counselors;
- (5) The Safety and Health Office;
- (6) Union Officials.

Employees are encouraged (but not required) to initiate such individual personnel matters with first-line supervisors and to follow the chain of command where appropriate. Additionally, all parties should conduct themselves in a professional manner and refrain from abusive conduct and language when communicating with each other. This is not intended to limit or restrain robust discussion by Union officials in the course of their representational duties.

(d) RIGHT TO MEET WITH UNION

Employees have the right to discuss representational matters with a Union representative. If an employee(s) wishes to discuss a representational matter with a Union representative during duty time, the representative and/or employee(s) involved shall obtain approval of the employee's supervisor for any meeting during the employee's duty time. In the event the time requested cannot be granted, the representative and supervisor will arrive at a mutually-agreeable time to reschedule the meeting – normally within twenty-four hours.

(e) INVESTIGATORY INTERVIEWS (AKA: WEINGARTEN MEETINGS)

Employees have the right to be represented by a Union representative at any investigatory interview by a representative of the Agency, as required by law and the Investigations Article of this Agreement, if the employee reasonably believes that disciplinary action may result and the employee requests such representation.

(f) PERSONAL RIGHTS

- (1) EEO. All employees shall be treated fairly and equitably without regard to political affiliation, race, color, religion, national origin, sex, marital status, sexual orientation, parental status, genetic information, age, or disabling conditions. Additionally, the Agency will not require employees to disclose their marital status, race, sex, national origin, religion, parental status, genetic information, sexual orientation, age, or political affiliation unless required to do so by law, directive, or higher authority.
- (2) Professionalism. Employees shall be treated with courtesy, dignity, and respect. Supervisory guidance and/or instruction shall be provided in a reasonable and constructive manner to subordinate employees and in an atmosphere that will avoid embarrassment or ridicule.

- (3) If an employee is to be served with a warrant or subpoena, it will be done in private without the knowledge of other employees to the extent that such service is within the agency's control.

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- (4) No disciplinary or adverse action will be taken against an employee upon unsubstantiated rumors or gossip.
- (5) No employee will be subjected to intimidation, coercion, harassment, or unreasonable working conditions as reprisal or be used as an example to threaten other employees.
- (6) Recognizing that productivity is enhanced when employee morale is high, managers, supervisors, and employees shall endeavor to treat one another in a professional, respectful and dignified manner.

(g) FIRST AMENDMENT RIGHTS

Employees have the right to present their views to Congress, the Executive Branch, or other authorities and to otherwise exercise their First Amendment rights consistent with applicable laws, rules, regulations and policies without fear of penalty or reprisal.

- (h) Employees shall have the right to direct and fully pursue their private lives, personal welfare, and personal beliefs without interference, coercion, or discrimination by the Agency so long as such activities do not conflict with job responsibilities or applicable laws, rules, regulations, and policies.
- (i) The Agency will make every reasonable effort to provide for secure storage of personal belongings.
- (j) The Agency shall instruct employees on how to file a claim for reimbursement under 31USC 3721 (Claims of personnel of agencies and the District of Columbia government for personal property damage or loss) and related regulations where such a claim is authorized and will make forms available in case of loss if some personal item is damaged, irretrievably lost, or destroyed.

(k) CONTRIBUTIONS/GIFTS

- (1) Voluntary Participation. The Agency agrees that participation in the Combined Federal Campaign, United States Bond Drives, Blood Donor Drives, and other worthy programs will be on a voluntary basis.
- (2) Gifts. Contributions for gifts for supervisors, management officials or fellow employees will be strictly voluntary and will meet the limited exceptions of 5 C.F.R. § 2635.304. Except as provided for in 5 CFR § 2635.204, an employee shall not solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests

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may be substantially affected by the performance or nonperformance of the employee's duties.

ARTICLE 4 – MANAGEMENT RIGHTS

STATUTORY RIGHTS

This article shall be interpreted in accordance with management's rights under 5 USC 7106.

- (a) Subject to subsection (b) of this section, nothing in this Agreement shall affect the authority of any management official of the Agency -
 - (1) to determine the mission, budget, organization, number of employees, and internal security practices of the Agency; and
 - (2) in accordance with applicable laws -
 - (A) to hire, assign, direct, layoff, and retain employees in the Agency or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;
 - (B) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which Agency operations shall be conducted;
 - (C) with respect to filling positions, to make selections, for appointments from:
 - (i) among properly ranked and certified candidates for promotion; or
 - (ii) any other appropriate source; and
 - (D) to take whatever actions may be necessary to carry out the Agency mission during emergencies.
- (b) Nothing in this section shall preclude the Agency and the Union from negotiating -
 - (1) 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;
 - (2) procedures which management officials of the Agency will observe in exercising any authority under this section; or

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

ARTICLE 5 – UNION RIGHTS

(a) EXCLUSIVE REPRESENTATIVE

The Union is the exclusive representative of the employees in the unit and is entitled to act for, and represent the interests of, all employees in the unit in all matters relating to terms and conditions of employment as set forth in 5 USC Chapter 71. Unless specified differently, for the purposes of this agreement, when the term District Office is used it is understood that it will include Service Centers, Asylum Offices, Administrative Centers, Regional Offices, Headquarters and any other Agency facilities.

(b) REPRESENTATION AT FORMAL DISCUSSIONS

- (1) Formal Discussions. 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 practice or other general condition of employment.
- (2) Notice. The Union representative will receive reasonable advance notice of such formal discussions. For regularly scheduled formal discussions, the notice and the subject of the meeting will be provided no less than five (5) workdays in advance. Except in circumstances in which an urgent operational need to act quickly requires a shorter period or a shorter period is mutually agreed to by the parties, reasonable notice will mean not less than 24 hours.
- (3) Each new employee, including transfers, as part of his or her orientation, will be given a presentation not to exceed thirty (30) minutes by the local Union representative. The identified Agency New Employee Orientation Program (NEOP) POC will simultaneously notify the local manager and the Union representative of all new employees scheduled to enter on duty before the orientation date. The Union Representative will be in a duty status, and the orientation will cover only the labor relations law, the provisions of the Contract and Union/Agency Agreements. No recruiting or other internal Union business may be conducted during the orientation, including the distribution of SF-1187 forms.

(c) REPRESENTATION AT INVESTIGATORY INTERVIEWS

The Union shall be given the opportunity to represent employees in investigative interviews as provided in the Investigations Article of this Agreement.

(d) RIGHT TO PRESENT VIEWS

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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.

ARTICLE 6 – STATUS OF UNION REPRESENTATIVES

(a) NO RESTRAINT

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, Labor- Management Relations, or upon duly designated employee representatives acting on behalf of an employee or group of employees within the bargaining unit.

(b) DESIGNATION OF UNION REPRESENTATIVES

A reasonable number of representatives may be designated by the Union or its affiliated Locals and shall be recognized as employee representatives for employees in the District or other agency facility in which they are designated to be stewards. The Union will supply the Agency with the representatives' names, titles, addresses, telephone numbers and the period for which they have been designated as representatives. This information may be posted on the USCIS intranet or appropriate bulletin boards. The Union shall notify Management of any changes in the roster of representatives. The Agency will only recognize those Union representatives identified on the roster or those otherwise designated in writing by the authorized Union Official.

(c) DESIGNATION OF PERSONAL REPRESENTATIVES

Nothing in this article will infringe upon the right of individual employees to represent themselves or designate a personal representative in appropriate matters to include, but not limited to: EEO, Grievance, MSPB, and disciplinary or adverse actions.

(d) AUTHORIZATION FOR REPRESENTATIONAL DUTIES

Upon request and approval in advance, Union officials are authorized to perform and discharge the duties and responsibilities that may be properly assigned to them under the terms of the Civil Service Reform Act of 1978 by the Union in accordance with this Agreement and any supplemental agreement or agreements hereunder. Official time will be authorized for these purposes in accordance with the Official Time Article of this Agreement. Union officials shall be relieved from their regular Agency duties during the period they are serving as union officials on approved official time. Nothing shall require a Union official to perform authorized official time duties at an agency location unless required by the representational duties performed and/or required by the official duties from which the employee is relieved.

ARTICLE 7 – OFFICIAL TIME

(a) PURPOSE

- (1) The purpose of official time is to provide bargaining unit employees time in which to perform union representational functions during normal working hours, without loss of pay or charge to annual leave. This Article provides an equitable process for the allocation and approval of official time and recognizes that the appropriate use of official time benefits both Management and Labor.
- (2) Official time in the Agency shall be administered in accordance with 5 United States Code ("U.S.C.") Chapter 71, "The Federal Service Labor-Management Relations Statute" (the Statute) as amended and this Agreement.

(b) DEFINITIONS

- (1) Official time means all time, regardless of Agency nomenclature, granted to an employee by the Agency to perform representational functions under 5 U.S.C. Chapter 71 or by collective bargaining agreement when the employee would otherwise be in a duty status.
- (2) Official Time Categories are the transaction codes used by Union Representatives (Transaction codes 35, 36, 37 and 38) to track official time usage. These categories will be further defined on the official time request form (G-1161 or its successor).
- (3) Representational Functions refers to activities undertaken by employees acting on behalf of the labor organization or fulfilling the organization's responsibility to represent bargaining unit employees in accordance with 5 U.S.C. Chapter 71 or the collective bargaining agreement.
- (4) Lobbying refers to activities undertaken by employees acting on behalf of the labor organization (i.e. visiting, phoning and writing to elected representatives) on matters concerning bargaining unit employees' conditions of employment.

(c) REPRESENTATIONAL FUNCTIONS

- (1) Elected or appointed Union representatives may use official time for representational functions as provided by the Statute and this Agreement during such time as they would otherwise be in a duty status. This time will be without charge to leave, subject to Section E of this Article.

- (2) Official time is prohibited for any activities performed by any employee relating to the internal business of the Union including the solicitation of membership, elections of Union officials, and collection of dues.
- (3) Official time for employees and Union representatives is provided under separate authority to participate in certain statutory appeal procedures. This includes, but is not limited to, proceedings before the Federal Labor Relations Authority and the Equal Employment Opportunity Commission. Such official time is not limited by this Article, and will not be charged against any amount of official time granted to the Union, under Section D of this Article.
- (4) Credit Hours. Union representatives may earn credit hours for all time spent on representational business if otherwise in a credit earning status, subject to advance supervisory approval.
- (5) Nothing shall require a Union representative to perform authorized official time duties at an agency location unless required by the representational functions performed and/or required by the official duties from which the employee is relieved.
- (6) Official time duties may be performed during Telework in accordance with the Telework Article of this Agreement.

(d) ALLOTMENT AND DISTRIBUTION OF OFFICIAL TIME

Each year, a bank of official time will be made available to the National Citizenship and Immigration Services Council for all non-statutory representational functions, to include approved travel and training except where expressly excluded in paragraph F below. The annual bank will be comprised of a base of 10,000 hours plus 2.7 hours per bargaining unit employee to be allotted on a quarterly basis pursuant to paragraph (2) below. The Council President will distribute these hours on a quarterly basis.

The Agency will notify the Council President or designee of the number of bargaining unit employees on board as of the allotment date and the corresponding number of bank hours to be allotted on a quarterly basis. Quarterly hours will be allotted on or about:

- (1) September 15;
- (2) December 15;
- (3) March 15; and
- (4) June 15

Quarterly allotments are calculated as follows:

| |
|--|
| Calculation to Determine Quarterly Allotment to the Council |
| $2,500 + ((\text{Number of Bargaining Unit Employees} \times 2.7) \div 4)$ |

Each quarter, the Council President or designee is responsible for the distribution of bank hours between the National Council executive board and AFGE USCIS locals. On or about the first day of each quarter, the Council President or designee will notify the Agency of the hours distributed to the National Council Representatives and the number of hours distributed to each AFGE USCIS local. This notice will include a list(s) of each Union Representative’s name, position, Local number, duty location, email address and, where available, a telephone number.

(e) AUTHORIZED USES OF OFFICIAL TIME

Upon request and approval, Union officials may use official time to conduct representational functions where such use 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 for representational functions performed by Union officers and stewards will be authorized for:

- (1) Labor-Management Meetings. For representation of the Union in Labor-Management meetings with the Agency pursuant to the National Consultations and Labor- Management Forums Article of this agreement. Local presidents or USCIS- employed designees shall be authorized up to three (3) hours for preparation prior to each meeting.
- (2) Arbitrations & Appeals. For representation at arbitrations and statutory appeal hearings.
- (3) Adjustment of Grievances. Representation at adjustment of grievances, adverse actions and any EEO matters that affect general conditions of employment of bargaining unit employees.
- (4) Committee Meetings. Attendance at committee meetings as the designated Union representative.
- (5) Respond to Management. Review of and response to memoranda, letters, and requests from the Employer, as well as proposed new instructions, manuals, notices, etc., which affect personnel policies, practices or working conditions.
- (6) Technical Representative. To act as a technical advisor or assistant employee representative in hearings. The technical advisor or assistant employee representative will be granted official time to prepare for the hearing.

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- (7) Observer. To attend hearings or meetings in the capacity of an observer where bargaining unit employees have elected to pursue a grievance without Union representation.
 - (8) Respond to Congress. To respond to requests for information from members of Congress and/or testify before Congress.
 - (9) EEO Briefings. To participate in status briefings of the Agency's EEO program.
 - (10) Treasurer. To complete reports required by other federal agencies (this authorization is limited to reports required under 5 U.S.C. 7120(c)).
 - (11) Other Functions. To perform those functions stated elsewhere in this Agreement for which official time has been expressly provided.
- (f) OFFICIAL TIME EXCLUDED (non-chargeable to the official time bank)
- (1) Time spent performing representational functions as the designated representative(s) in direct engagement meetings (in-person, video conference or teleconference) with management officials will not be charged to the official time bank. Such meetings include but are not necessarily limited to the following examples:
 - (A) Joint Labor-Management training.
 - (B) Formal meetings between Management Officials and bargaining unit employees on matters related to any personnel policy or practices, or other general condition of employment.
 - (C) Investigative interviews.
 - (D) Labor-Management Forums or equivalent, including pre-decisional discussions about possible changes to personnel policies, practices and working conditions.
 - (E) Grievance meetings.
 - (F) Oral replies to proposed disciplinary or adverse actions based on misconduct or performance.
 - (G) Arbitration hearings.

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- (2) Term agreement bargaining in accordance with 5 U.S.C. 7131(a) and this Agreement, and any related third party proceedings;
- (3) Mid-term bargaining on management-initiated or Union-initiated changes in conditions of employment, impact and supplemental bargaining, and any related third party proceedings;
- (4) Time spent by employees, including designated Union officials, representing employees in statutory EEO complaints is official time under 29 CFR 1614 et. seq. and not countable towards the bank hours.
- (5) Time spent by designated Union Officials performing representational functions before the Federal Labor Relations Authority when authorized by 5 U.S.C. 7131(c).
- (6) Agency-approved travel time for designated Union representatives to attend any meeting covered by the above exclusions.

(g) RESTRICTIONS ON OFFICIAL TIME USAGE.

The hours of official time authorized for use is intended and shall be interpreted as authorizing official time for all representational functions performed during normal duty hours. However, it does not authorize official time during normal duty hours for the following activities:

- (1) Internal Union Business. For example, the solicitation of membership, elections of Union officials, and collection of dues.
- (2) Leave. Activities for which the employee would normally be required to charge his or her time to annual, sick or other appropriate leave if he or she were not a Union representative (e.g. annual leave for a vacation or sick leave for an illness).
- (3) Recall to Duty. Notwithstanding the provision of this Section, the Union representatives may be assigned official duties (and appropriately compensated) in situations of emergency.

(h) OFFICIAL TIME REQUEST AND RELEASE PROCEDURES

Form G-1161 will be used by all employees authorized to request and use official time. This request will document, among other items, the nature of the duties to be performed, location where the duties are to be performed, the estimated amount of time to be used, and contact information for the representative. Within 90 days of signing this Agreement, the Union and the Agency will mutually develop and/or modify the Form G-1161 as appropriate for the administration of this Article. The Agency and the Union may

collectively develop a new electronic system to replace the Form G-1161. Once the electronic system is fully deployed, it will replace the Form G-1161.

- (1) All Union representatives will make every effort to schedule the use of official time as early as possible. Prior to beginning the use of official time, a requesting representative will submit a request to his or her supervisor or designee to be released from his or her duties. Official time requests will be made in advance utilizing the Form G-1161 or the new electronic system unless the Union representative and his or her supervisor mutually agree that the G-1161 will be completed at a later time.
- (2) National Council Executive Board officers and local union presidents (or lead USCIS representative where the President is not a USCIS employee) may submit one Form G-1161 (or the electronic equivalent) outlining their anticipated official union activities before the start of the pay period.
- (3) When requesting official time, the Union official shall not be required to identify a possible grievant at the informal stage of the grievance procedures of this Agreement until such time as the grievance is officially filed.
- (4) The Union representative will be released unless the representative's absence will adversely impact customer service and the work of the office at the time.
- (5) If granting official time will adversely impact customer service or the work of the office requirements at the time requested, keeping in mind the interests of the Union and employees as well as the needs of the employer, management will ensure that, within 1 business day, an alternate time will be permissible for use of the requested official time.
- (6) If management is unable to approve a request for official time, the reason for denial will be provided in writing on Form G-1161.
- (7) In the case of a delay, the Union representative will be given time to inform any bargaining unit employees involved of the delay.
- (8) Upon entering a work area other than his or her own to meet with an employee, the representative will advise the immediate supervisor of his or her presence, the employee to be contacted, and the estimated duration of the meeting.
- (9) The employee involved in any representational meeting, or the Union representative on his or her behalf, shall also obtain approval from the employee's supervisor for any meeting during the employee's duty time.

(10) On occasion, discussions between the Union representative and the employee may take longer than originally anticipated. In these cases, both will contact their supervisors telephonically or by e-mail to notify them of the need to extend the anticipated return time.

(11) Upon completion of the authorized activity and upon his or her return to duty, the Union representative will advise his or her supervisor in writing (e-mail) as to the date and time of his or her return to duty and total number of hours used if different from the original request.

(i) TRAVEL FOR UNION REPRESENTATIVE

(1) A Local President or designee may be granted reasonable and necessary bank hours for the purpose of traveling to assist in representing bargaining unit employees at offices within the Local union's area of responsibility.

(2) Union representative official time and travel and per diem provisions of this Agreement shall normally apply only to designated Union representatives. However, it is also understood that the Union at the local level may from time-to-time designate other employees to represent its interests and to participate in activities including rating panels, labor management forums, consultations or any other meetings called by management. Such employees shall be authorized official time, travel and per diem as necessary for participation in such activities consistent with the needs of the Agency. The Union shall make every practicable effort to rely on employees who are locally available for participation in such activities.

(3) Council and Local Union bargaining team members will be provided official time for travel to attend term, midterm and supplemental bargaining within their jurisdiction if they would otherwise be in a duty status. This time will not be charged to the official time bank. Official time may be used for council travel in accordance with the National Consultations and Labor-Management Forums Article of this Agreement.

(j) TRAINING

(1) The Agency agrees that official time may be authorized for Union representatives to attend training approved by management which is designed to advise representatives on matters within the scope of the Title 5 U.S.C. Chapter 71 and is of mutual concern to the Agency and the Union.

- (2) The Union representative wishing to attend such training will request official time and present an agenda to include a written description of the course to the Agency designee at least fifteen (15) work days before the date training is scheduled to commence.
- (3) The Agency will respond to the request no later than five (5) work days from the date the request is made.
- (4) When a request for official time for training is denied for any reason, the reason for such denial will be furnished to the Union representative who made the request.
- (5) The Agency's sole expense for all Union sponsored training will be official time.
- (6) Where available, the Agency may permit the use of Agency training space.

(k) ALLEGATIONS OF ABUSE

Each Union representative is responsible for utilizing official time only for authorized purposes, consistent with 5 U.S.C. 7131 and this Agreement. Alleged abuses of official time shall be brought on a timely basis to the attention of the Chief of LER or designee, who will then notify the Council President of the allegation.

(l) RETURN TO DUTY

To the extent required by law, upon conclusion of their labor-management duties, full time Union representatives will return to positions in the same series and grade they occupied before assuming full time union duties.

ARTICLE 8 – UNION FACILITIES AND SERVICES

The purpose of this article is to provide those facilities and services that are necessary and reasonable for the Union to carry out its legitimate activities as the exclusive representative of USCIS bargaining unit employees covered by the Agreement.

(a) **FACILITIES FOR INTERNAL UNION BUSINESS**

- (1) **Definition of Internal Union Business.** As set forth in 5 U.S.C. § 7131(b), any activities performed by any employee relating to the internal business of a labor organization (including the solicitation of membership, elections of labor organization officials and collection of dues) shall be performed during the time the employee is in non-duty status.
- (2) **Meeting Space.** Upon reasonable advance request by the Union of not less than five (5) days and at no additional cost to the Agency, the Agency will provide meeting space, if available, for meetings and elections during non-duty, building operation hours. The Union will comply with all security, safety and housekeeping rules in effect at the time and location of the meeting. The Union acknowledges that no responsibility for the safety or security of the ballot boxes is assumed by the Agency.
- (3) **Non-duty Hours.** Employees attending meetings under Subsection (2) will do so only during non-duty hours or while they are in a leave status.
- (4) **Membership Drives & Materials.** Upon reasonable advance request by the Union of not less than five (5) days and at no additional cost to the Agency, the Agency will provide space, if available, for the purpose of membership drives and distributing Union issued materials. These activities will be conducted only when the union representatives and/or participating employees are in non-duty status (e.g. during lunch periods and other non-duty hours) and shall not interfere with the mission of the Agency.

(b) **FACILITIES FOR REPRESENTATIONAL ACTIVITIES**

- (1) **Definition of Representational Activities:** Those activities undertaken by Union officials for the purpose of representing bargaining unit employees in matters related to 5 U.S.C. Chapter 71, and this Agreement, for which official time is appropriate.
- (2) **Meeting Space.** Upon reasonable advance request by the Union, the Agency will provide meeting space, if available, for the following purposes:
 - (A) Preparing or discussing a grievance or appeal;

- (B) Caucusing immediately before, after, and during scheduled meetings with the Agency;
 - (C) Discussing matters directly related to the administration of this Agreement.
- (3) Nothing in this section shall be construed as permitting meetings or the use of management-supplied equipment for the purpose of conducting internal union business.

(c) BULLETIN BOARDS

- (1) In Headquarters, the National Benefits Center, the National Records Center, and in each District Office, Service Center, , Asylum Office, Regional Office, Telephone Center, and Verification Operations Center, the Agency will provide to the Union for its exclusive use one locked bulletin board (of approximately three feet by four feet) where available.
- (2) In the absence of a locked bulletin board, the Agency will provide bulletin board space in a place of prominence and reasonably accessible for posting material published by the Union or its affiliated Locals. A designated and recognized Union official, including stewards, shall sign all material before posting on the bulletin board to ensure compliance with the provisions of this article.
- (3) In offices other than those listed above and new facilities, the Union may, subject to availability of suitable space and Agency approval, install at its own expense bulletin boards (of approximately three feet by five feet).
- (4) All bulletin boards will be permanently attached to the walls where building regulations permit such permanent installation.
- (5) No material that violates law, contains libelous material or personal attacks may be posted on union bulletin boards.
- (6) The Agency will provide a link on the USCIS intranet site to the National CIS Council 119 website.

(d) ACCESS TO EMPLOYEES

Upon request, but no more than quarterly, the Agency will furnish to the Council, for internal use only, a list which will contain the names, grades, position titles, series, posts of duty of employees in the bargaining unit. The parties recognize that errors may occur

from time to time in regard to input and coding of data, and that the listings will not be construed as action by the Agency to unilaterally deny bargaining unit status to any employee, or to confer it. The agency will make a concerted effort to ensure that the lists provided are current, accurate and up-to- date.

(e) CONTRACT COPIES

The Agency shall make this Agreement available electronically through an Agency authorized link. New employees shall be notified of the link during the employee orientation referenced in the Union Rights article of this Agreement.

(f) UNION REPRESENTATIVES PERMITTED ON GOVERNMENT PROPERTY

- (1) This Agreement shall be carried out consistent with the Agency's applicable security policies and procedures, including local and/or facility-specific security policies and procedures.
- (2) National, Council, and Local Union representatives shall normally be permitted in all Agency facilities to conduct representational activities. When necessary, Union representatives will be issued appropriate building access cards.
- (3) Union representatives shall provide the supervisor in charge of the facility with reasonable advance notice of the need for access to the facility. If the supervisor cannot approve the visit for valid operational reasons, the supervisor will make alternative arrangements for the Union official.
- (4) Upon arrival, the Union representative shall advise the supervisor of his or her presence. Union representatives shall not interfere with the work of employees at the facility.

(g) TELEPHONES

Telephones will be made available to Union officers to conduct Union representational activities while on official time. Additionally, the CIS National Council President and Vice President (or their designee), if employed by the Agency, will each be provided a mobile telephone device (e.g. Smartphones) capable of sending and receiving Agency e-mail at the Agency's expense for the duration of their term. These devices may not be used for internal Union business.

(h) UNION SPACE AND EQUIPMENT

Arrangements for Union offices and reasonable access to space and equipment that are in place on the effective date of this Agreement will continue until the assignment of Union office space is renegotiated. The parties will address Union office space as part of the

negotiations over implementation of the DHS space standards. When completed, the new space standards will be incorporated as an appendix to this Master Agreement. The provisions of the appendix will be controlling for this article.

(i) INTERNET AND ELECTRONIC MAIL

- (1) The Agency will provide internet and email access to the Union for representational purposes. The Union shall comply with the Agency's IT policies concerning the use of internet and email.
- (2) The Union may use the email system to communicate with bargaining unit employees and Agency officials.
- (3) Internal union business is prohibited when using email or government-provided access to the Internet. Consistent with the Agency's IT policy, electronic mail messages are considered government records.

(j) COPIERS, FAX MACHINES AND SCANNERS

Upon request and with management approval, access to copiers, fax machines, and scanners will be made available to Union Representatives to carry out representational duties. Agency copiers, fax machines, and scanners will not be used to conduct internal union business under any circumstances.

ARTICLE 9 – IMPACT, IMPLEMENTATION, SUPPLEMENTAL & MID-TERM BARGAINING

(a) NOTICE OF PROPOSED CHANGE / PROCEDURES

This article shall be administered in accordance with Title 5, United States Code, Chapter 71 and this Agreement. The parties recognize that from time-to-time during the life of the Agreement, the need will arise for either party to propose changes to existing personnel policies, practices, and/or working conditions not covered by this Agreement.

- (1) The written notice of the proposed change shall include:
 - (A) The nature and scope of the proposed change;
 - (B) Identification of the employees impacted by the proposed change;
 - (C) A description of the change;
 - (D) An explanation of the initiating Party's plans for implementing this change;
 - (E) An explanation of why the proposed change is necessary;
 - (F) The proposed implementation date;
 - (G) The initiating Party's Point of Contact.
 - (H) Any other relevant information that is necessary to facilitate bargaining, as required by law.

If the written notice of proposed change does not contain the above items, then the receiving party may request the missing information and time frames will be extended until the information is received, in accordance with this agreement.

Notification of the proposed change will be served in accordance with the Service of Notice Article of this agreement.

- (2) Nothing herein shall be deemed to waive the Agency's authority as provided by law to implement proposed changes in conditions of employment before satisfying an obligation to bargain.
- (3) When notice of change is required, the Proposing Party shall serve its notice of the proposed change upon the Receiving Party in accordance with the Service of Notice article of this agreement.

- (4) Within fifteen (15) calendar days of receipt of the 9(A) Notice the receiving party must submit in writing, its demand to bargain, its written bargaining proposals and any request for a briefing.

Either Party may request a briefing session to explore or explain the change and its impact on unit employees. If either Party requests a briefing, the briefing will be conducted within seven (7) calendar days of receipt of the written request. Briefings may be held using the Agency's teleconference, video conference, or web conference equipment in lieu of in-person meetings. After the briefing, the requesting party will have the opportunity to amend (add to or delete from) its bargaining proposals. The requesting party must submit its amended proposals as soon as possible, but no later than seven (7) calendar days after the briefing. Bargaining shall commence as soon as possible, but no later than seven (7) calendar days after the final proposals are due or, absent a request for a briefing, fourteen (14) calendar days from receipt of the demand to bargain.

- (5) In addition to submitting bargaining proposals, the Union may request information in accordance with the Statute or case law of the Federal Labor Relations Authority. The Agency will provide any requested information as required by law. If the Union has requested information related to the proposal, the Union may amend its proposals

(b) PRE-DECISIONAL INVOLVEMENT

The Union will have pre-decisional involvement (PDI) to the fullest extent practicable, without regard to whether those matters are negotiable subjects of bargaining under 5 U.S.C. 7106. This is not intended to have the Union involved in day-to-day matters of the Agency but an effort to work collaboratively on issues of mutual concerns. Furthermore, it is in the best interest of all Parties to make a good-faith attempt to resolve issues concerning proposed changes in conditions of employment, including those involving the subjects set forth in 5 U.S.C. 7106(b) (1), through discussion in its labor-management forums. Pre-decisional involvement does not waive Management's or Union's statutory rights.

- (1) Where the Union has PDI over an issue and the parties agree that the issue has been resolved, bargaining over the issue is no longer required provided all matters / issues were addressed during the PDI process. Issues resolved by the parties will be reflected in an agreement signed by the Local Union or National Council President or his/her designee and the responsible Management Representative. If the issue involves two or more locals it is considered National in scope and PDI will be held at the national level.

- (2) (2) If PDI does not result in an agreement for proposed changes to working conditions for bargaining unit employees, the Agency will provide the Union notice and opportunity to bargain in accordance with this Agreement.

(c) EXTENSIONS

All time limits stated in this article may be extended by mutual consent of the parties involved.

(d) MANAGEMENT-INITIATED CHANGE

- (1) The Agency shall pay for the travel and per diem expenses for all Union bargaining team members who have been authorized official time.
- (2) The Agency shall select the site and provide the facility for bargaining when face- to-face negotiations are held.
- (3) Management will provide the Union bargaining team with access to office equipment as may reasonably be needed by the Union team in its negotiations with Management.
- (4) If the Union does not submit written bargaining proposals within the required time frame, (including any agreed upon extensions of time), Management will have satisfied its obligation to bargain under the Statute and may proceed to implement the change(s) on the proposed date.

(e) UNION-INITIATED CHANGE

- (1) Union initiated changes can only be served by the National Council regarding National issues and the Local presidents regarding local issues. All written notices of Union initiated changes must be served on the Chief of Labor and Employee Relations (LER) for appropriate delegation for bargaining. Where the Agency delegates to Local Management, that Local Management shall be authorized to negotiate on behalf of the Agency for the purposes of this Article.
- (2) Where travel is required, the Union shall pay for the travel and per diem expenses for all Union bargaining team members who have been authorized official time.
- (3) The Union shall select the USCIS Office within the contiguous United States and the jurisdiction of the change and the Agency will provide the USCIS facility for bargaining when face-to-face negotiations are held.

- (4) Management will provide the Union bargaining team with access to office equipment as may reasonably be needed by the Union team in its negotiations with Management.

(f) SUPPLEMENTAL AGREEMENTS / PROCEDURES

- (1) By mutual agreement, the parties may retain or modify previously-negotiated LSAs provided their terms are in compliance with F(4) below. The parties agree that any time after this agreement has been in effect for 30 days, but not more than six (6) months, either the agency or local union may request to retain an existing or negotiate a new Local Supplemental Agreement(s) (LSAs) covering all eligible employees within the jurisdiction of the local. A request to negotiate an LSA by a local union must be directed to the Chief of Labor Employee Relations (LER), or designee. A request to negotiate an LSA by the Agency must be directed to the Local President.
- (2) By mutual agreement, the parties may negotiate either a single LSA to cover all Agency components within a Union Local's jurisdiction, or separate LSAs for specific Agency components within a Union Local's jurisdiction.
- (3) By mutual agreement, the parties may negotiate National Supplemental Agreements (NSA). An NSA is a supplemental agreement that specifically addresses the concerns of employees occupying the same position (i.e. paralegals, OIT employees, Verification employees, etc.). Locals will maintain jurisdiction regarding all representational matters. Employees will not be covered by more than one LSA or NSA. To the extent that any NSA covers the same employees as an LSA, those employees will be covered only by the NSA to the exclusion of the LSA. LSAs and NSAs may cover all negotiable matters regarding conditions of employment. LSA and NSA articles shall not include, repeat or paraphrase articles in the Master Agreement or other national agreements.
- (4) Local presidents or their designees will immediately forward all signed LSAs (via email with return receipt) simultaneously to the Council President and the Chief of LER for review and approval.
- (5) Review of the LSA by the Council President and the Agency will be restricted to whether the LSA conflicts with or is covered by the master agreement.
- (6) The Council President and the Chief of LER will have thirty (30) calendar days from the date of receipt to review the LSA. Extensions will be granted by mutual agreement of the parties. On or before the thirty-first (31) day the Agency will submit the local supplemental agreement for Agency head

review. For the purposes of Agency head review, the thirty-first (31) day after LER review will be considered the first day for Agency head review. LSAs will be effective upon the Agency Head's approval or on the 31st day after the Agreement was submitted for Agency Head review – whichever comes first.

- (7) If the LSA does not pass review by the union or the agency, the reviewing party will notify the local union and management official of the particular provisions found to be contrary to the Master agreement in writing. Where the LSA is returned, the negotiating parties will have thirty (30) calendar days to submit the revised LSA for review in accordance with this article (see above paragraph). In the event the parties at the national level cannot agree on the approval or disapproval of the re-submitted and revised LSA, the revised LSA will be submitted for Agency head review.
- (8) Supplemental Agreements automatically go into effect upon the Agency Head's approval or on the 31st day after the Agreement was submitted for Agency Head review – whichever comes first.
- (9) Master Agreement Controlling. The Master Agreement is governing and controlling and nothing may be included in the LSA which is in conflict with this Agreement. Where provisions of a Supplemental Agreement are in conflict with the terms of this Master Agreement, the terms of the Master Agreement shall govern. It is further understood that LSAs shall not repeat or paraphrase any provisions of this Master Agreement.
- (10) Subject Matter. Matters appropriate for local supplemental bargaining may include matters of local concern as may be identified by each party to the particular local supplemental negotiations. For example, appropriate subjects may include, but are not limited to:
 - (A) physical working conditions such as safety, sanitation, heat, air conditioning, ventilation, smoking policy, lockers, eating facilities, work clothing where applicable, etc.;
 - (B) employee seating arrangements; and
 - (C) employee parking arrangements.
- (11) Furthermore, local supplemental bargaining may be pursued in accordance with the following articles:

Article 11: Seniority

Article 12: Office Moves

Article 25: Telework

Article 26: Hours of Work

Article 29: Standards of Dress and Appearance

(g) EXPIRATION AND RENEGOTIATION

Any Supplemental Agreement negotiated under the provisions of this Article shall continue through the term and any extensions of the master agreement and thereafter shall expire.

(h) BARGAINING EXCEPTIONS

Unless otherwise permitted by law, no changes will be implemented until all negotiations have been completed, including impasse proceedings. The Parties agree that, prior to the conclusion of bargaining, the Agency may implement changes to conditions of employment where:

- (1) there is an emergency;
- (2) compelled to do so by higher law or authority; or
- (3) for the necessary functioning of the Agency.

The Parties agree to be bound to the resolution of submitted issues imposed by the formal resolution dispute procedures of 5 U.S.C. 7119 provided it survives Agency Head review.

(i) IMPASSES DURING NEGOTIATION

During bargaining, when either party has 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.

(j) MEDIATION

If such consideration does not resolve the impasse, the assistance of the Federal Mediation and Conciliation Service may be requested by either party.

(k) AGREEMENTS ALLOWED

The use of the negotiations process does not preclude the parties from agreeing on any issue(s) or from entering into a complete agreement with the assistance of the Mediator or the Federal Services Impasses Panel. However, any agreement reached with such assistance must comply with the terms of this Agreement. If a provision of an agreement conflicts with this Agreement or any other national agreement, such provision will be void.

(1) GROUND RULES FOR MID-TERM, IMPACT AND SUPPLEMENTAL BARGAINING

The Parties acknowledge that ground rules bargaining stems from 5 U.S.C. 7103(a) (12). Mid-term, impact and supplemental bargaining shall be conducted in accordance with these ground rules. By mutual agreement, the parties may negotiate additional ground rules and/or different ground rules other than those set forth under this Section.

The following ground rules apply to all mid-term, impact and implementation and supplemental bargaining entered into as a result of changes initiated by either Party and any corresponding obligation to bargain over such changes under 5 U.S.C. Chapter 71.

- (1) Facilities. Except in the cases of LSA's sections D and E of this Article will be followed for selecting facilities for negotiations. In the case of face-to-face LSA negotiations, The parties will determine the location for negotiations. Negotiations will be held in a suitable meeting room provided by the Agency. The Agency will furnish the Union negotiating team with a caucus room, such as a conference room or other private meeting space which is in close proximity to the negotiation room.
- (2) Equipment. Where negotiations are held at a USCIS facility, the Agency will provide the Union negotiating team with customary and routine office equipment, supplies, and services, including but not limited to computer(s) with Internet access, telephone(s), desks and/or tables and chairs, office supplies, scanner and access to at least one printer and one photocopier.
- (3) The starting date and the daily schedule for negotiations will be established by the Chief Negotiators.
- (4) Alternates may substitute for bargaining team members. Such alternates will be entrusted with the right to speak for and to bind the members for whom they substitute.
- (5) The Parties may invite subject matter experts (SME) to the negotiations to more fully explain specific proposals, policies, or procedures.
- (6) During negotiations, the Chief Negotiator for each Party will signify agreement on each section by initialing the agreed-upon section. The Chief

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Negotiator for each Party will retain his/her copies and will initial the other Party's copy. An agreed upon section may be modified only by mutual agreement.

- (7) It is agreed that either team may request a caucus, and may leave the negotiation room to caucus at a suitable site provided by the Agency. There is no limit on the number of caucuses that may be held; however, each party will make every effort to limit the number and duration of caucuses.
- (8) The Agreement shall not be completed and finalized until all proposals have been agreed upon or otherwise disposed of by mutual consent. Negotiation disputes, including questions of negotiability and resolution of impasses, will be processed in a manner consistent with 5 U.S.C. Chapter 71 and implementing regulations, and this will not serve as a bar to the Parties concluding by mutual consent a general agreement on those items which have been or remain to be negotiated.
- (9) Each Party shall be represented at the negotiations at all times by one duly authorized Chief Negotiator/Chief Spokesperson who is prepared and authorized to reach agreement on all matters subject to negotiations and to sign off on agreements for their respective Party.
- (10) The Union will be authorized the same number of Union representatives on official time as the Agency has representatives at the negotiations table, however, there will be no less than three (3) representatives for national negotiations and no less than two (2) representatives for local negotiations. The designated Union negotiators will be on official time, where the representatives would otherwise be in a duty status, during the actual negotiations, including attendance at impasse proceedings, and for other related duties during negotiations, such as preparation time and time spent developing and drafting proposals, .
- (11) If any proposal is claimed to be nonnegotiable by either Party and subsequently determined by the FLRA to be negotiable, or the declaring Party withdraws its allegations of non-negotiability, the proposal will, upon request, be reopened within a reasonable period of time. Such reopening request must be made within fifteen (15) calendar days from when the proposal is declared to be negotiable or the claim that the proposal is nonnegotiable is withdrawn. Nothing in this section will preclude the right of judicial appeal.
- (12) This procedure does not preclude the Parties from revising any proposals to overcome questions of scope of bargaining or duty to bargain during the period of negotiations.

- (13) All time frames in these ground rules may be modified by mutual consent.
- (14) The Agency will pay travel and per diem expenses for Union negotiators as provided for in this Article.
- (15) Absent mutual agreement, the alternate work schedules and flexiplace schedules of the Union bargaining team employees will be converted to regular tours of duty (i.e., Monday through Friday) and work hours adjusted according to the agreed upon hours of negotiations.
- (16) No official transcript or electronic recordings will be required during the negotiations except by mutual agreement. Each Party may designate a note taker to keep notes and records during the sessions.
- (17) Observers/representatives shall be permitted in negotiating sessions. The Chief Negotiators for each Party may permit observers at their own expense for travel and per diem, to attend the negotiation sessions. Observers will not participate in discussions and will otherwise abide by these ground rules.
- (18) Whenever possible, the parties will exchange lists of bargaining team members at least ten (10) calendar days prior to the scheduled bargaining date.
- (19) All agreements reached pursuant to this Article are subject to Agency Head Review. Agreements will be effective upon the Agency Head approval or on the 31st day after the Agreement was submitted to Agency Head review— whichever comes first.
- (20) Travel. Except in the cases of LSAs, sections D and E of this Article will be followed for travel expenses related to negotiations. In the case of LSA negotiations, where travel is required, the Agency shall pay for the travel and per diem expenses for Union bargaining team members who have been authorized official time.
- (21) Union Ratification. Prior to the start of negotiations, the Union will notify the Agency whether the Agreement will be subject to ratifications. If the Agreement is subject to ratification, then after agreement is reached in its entirety, and prior to agency head review, Chief of LER review, and/or Union Council President review, the Union shall have a reasonable amount of time, not to exceed thirty (30) calendar days in which to secure appropriate ratification from membership and/or executive boards as is appropriate to the circumstances of the particular agreement.

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If the Union notifies the Agency that the agreement was not ratified, the Union will provide the Agency written reasons for the ratification failure and will have fifteen (15) calendar days to request to reopen negotiations and submit their bargaining proposals.

The parties will resume negotiations within 15 calendar days of the Agency's receipt of the Union's request to reopen negotiations.

ARTICLE 10 – NATIONAL CONSULTATIONS AND LABOR-MANAGEMENT FORUMS

(a) PURPOSE

The Agency and the Union are committed to developing and fostering a constructive and cooperative labor-management relationship. The parties will work together to develop meaningful solutions to workplace problems at the national and local levels.

The parties may establish a National Labor-Management Forum (LMF) with a charter to guide its activities. The purpose of an LMF shall be to promote satisfactory labor-management relations and improve the productivity and effectiveness of the Agency. The LMF is intended to promote the effective accomplishment of the USCIS mission through the active participation of employees, through their Union representatives, in the decisions that affect them. Where a national LMF is established, the parties shall encourage the formation of local LMFs based upon the procedures outlined in the National LMF Charter.

(b) EXCHANGE OF INFORMATION AND VIEWS

The parties recognize that the regular exchange of information and discussion of matters of mutual interest will contribute to a positive and effective labor-management relationship. The Agency will provide the Union with the opportunity for briefings and consultation meetings at the national and local levels.

(c) NATIONAL LABOR-MANAGEMENT FORUM

Where a National Labor-Management Forum is established, it shall operate pursuant to the joint memorandum dated April 7, 2011, and the Amended USCIS Labor-Management Forum Charter dated April 16, 2014.

(d) NATIONAL CONSULTATIONS

- (1) Representatives of the Agency and the Union shall meet quarterly, at the national level -- or at such other times as may be mutually agreed to. These consultative meetings shall be conducted under the auspices of the USCIS National Labor-Management Forum, in Washington, D.C. The purpose of these meetings is to review, discuss, consider, and make recommendations on matters relating to working conditions, employee morale, and the efficiency of the agency's operations.
- (2) National consultations shall be conducted for two (2) days. Union representatives, not to exceed five (5) will be in official time status, where the representatives would otherwise be in a duty status, while traveling to and attending such meetings. Travel and per diem will be paid by the Agency, consistent with the Federal Travel Regulations. Unless approved in advance

by the Chief of LER (or designee), no compensatory travel time may be accrued or authorized for travel to and from these meetings.

- (3) Additional Union representatives (not to exceed four (4)) designated by the Council President may attend the consultations, on official time, at the Union's expense. Additional Union representatives designated by the Council President may attend these national consultations as observers, on official time, via video conferencing.

(e) LOCAL CONSULTATIONS

Agency officials and the Union representatives at the local office level shall meet semi-annually -- or at such other times as may be mutually agreed to. The purpose of these meetings is to exchange views and information, informally resolve problems, and improve communications, understanding and cooperation between Management and the Union. The meetings will be conducted in person, or by video conferencing if agreed to by the local parties. When face-to-face consultations occur, they will not exceed two (2) days, with travel being accomplished on official time, provided it occurs during the regular workweek. Where the Local President (or the principal USCIS union representative) is located away from the local office, the Agency shall pay travel and per diem when travel is required, to attend these meetings. Other Union representatives designated by the Local President -- not to exceed four (4) -- may attend these meetings in official time status, at Union expense. The local parties may, by mutual agreement, substitute meetings of a local Labor-Management Forum, for the meetings specified by this paragraph.

(f) JOINT MASTER AGREEMENT TRAINING

The parties will jointly provide Master Agreement training, in an on-line format. Training materials will be prepared jointly. The cost of this training will be borne by the Agency. When travel is required for the development of the joint-training, the Union's designated representatives shall be in official time status, with travel and per diem paid for by the Agency. Nothing in this article shall preclude the parties from developing and presenting additional, independent training materials and activities at their own expense.

(g) COUNCIL TRIPS

The Council President, Executive Vice President, or Council Officers designated by the Council President, will be authorized up to a combined total of up to ten (10) trips per fiscal year. The purpose of these trips shall include, but not be limited to: improving the labor-management relationship within the Service; assisting local unions in labor-management consultations; assisting local unions with term and mid-term negotiations; or assisting locals with the presentation of grievances or oral and written replies to proposed disciplinary and adverse actions; or to serve as advocates or technical representatives in arbitration cases. The trips must be authorized in advance by and coordinated with the USCIS Chief of Labor and Employee Relations or designee.

ARTICLE 11 – SENIORITY

- (a) The terms of Section B of this Article shall apply in all instances where Seniority is referenced in this Collective Bargaining Agreement and in all questions of seniority as it relates to bargaining unit employees at the national and local levels, unless otherwise noted in this Agreement, and with the following exceptions:

Under the provisions of Article 9 of this Agreement, the parties may negotiate seniority provisions in a local supplemental agreement (LSA), memorandum of agreement (MOA), or national supplemental agreement (NSA) to define seniority for local matters that are not covered by this Agreement. In addition, the local parties may define seniority where seniority is referenced in the following articles:

- (1) Overtime
- (2) Office Moves
- (3) Telework
- (4) Details and TDY Assignments
- (5) Hours of Work

Nothing precludes the local parties from defining seniority in terms of turn-taking, selection wheels, and/or similar arrangements.

- (b) Seniority will be determined by:

- (1) The length of service with the Agency (USCIS) and/or its predecessor Agency (INS) commencing with the first (1st) day of employment.
- (2) In the event of a tie, the service computation date (SCD) for retirement purposes of the employee.
- (3) In the event of a tie after step two above, the grade and step of the employee with the higher graded employee having greater seniority.
- (4) In the event it is necessary to resolve a tie after step three, the default methodology will be a random event (i.e. coin flip).

- (c) Within 60 days of the effective date of this Agreement and on a quarterly basis thereafter (January 1, April 1, July 1, and October 1), the Agency will provide the

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Union a list of bargaining unit employees with their SCD and entrance on duty (EOD) date with USCIS (and Legacy INS).

ARTICLE 12 – OFFICE MOVES

This article applies in all instances where one or more employees are required to move. Nothing in this Article affects the rights of individual employees with respect to reasonable accommodations. Any applicable agreements between the parties governing facilities and work space standards with respect to new buildings, constructions, and renovations will apply to any move covered by this article.

- (a) Prior to the office move, the Agency will provide reasonable advance notice (no less than fifteen (15) days) to the affected bargaining unit employees and the Union. The time frame for notice may be adjusted for exigent reasons.
- (b) Where the requirements of the move are not specifically covered by the terms of this article, pursuant to the Impact, Implementation, Supplemental and Mid-Term Bargaining Article of this Agreement, the Agency will provide the Union notice and an opportunity to bargain to the extent required by law.
- (c) Employees who currently have standing desks will have the option to have similar desks at their new work stations, subject to space and configuration constraints. Prior to the move, employees may request the setting of the desk top surfaces in the new cubicle to any available height.
- (d) Impacted employees will be allowed to select their work stations among the choices designated by Management. The order of workstation selection will be on the basis of the criteria set forth in the Seniority Article of this Agreement or any applicable local agreement regarding seniority.
- (e) Employees will be provided up to four (4) hours to pack and up to four (4) hours to unpack. Employees may request additional time if necessary.
- (f) Employees will be allowed to dress down (e.g. jeans or other clothing appropriate to the activity) on their packing and move-in days in accordance with the Standards of Dress and Appearance and Workplace Safety article of this Agreement.
- (g) The Agency will provide all necessary packing/moving supplies.
- (h) The employees who are moving will not be required to move furniture or equipment. Management will arrange for these items to be moved and shall ensure IT equipment is installed and operational.
- (i) Where instructed by their supervisors, employees will place government-issued work items in a box and place a label that includes the employee's name, supervisor, workstation number being vacated and new workstation number.

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Work items include: reference books, staplers, pens, writing paper tablets and other such office items provided by the Agency. Employees will ensure that all work in progress is accounted for and packed. Employees will not be required to move these packed boxes.

- (j) Employees are responsible for packing and moving their personal possessions.
- (k) If a workstation is not ready for occupancy as scheduled and the current workstation is unavailable, the employee will be provided alternate, temporary space. If the employee is currently on a Telework Agreement, the affected employee, with management approval, may be allowed to telework.

ARTICLE 13 – GRIEVANCE PROCEDURE

(a) PURPOSE

- (1) The purpose of this Article is to provide a fair, simple and expeditious means of processing grievances. The parties recognize that many grievances arise from misunderstandings that can be settled promptly and satisfactorily on an informal basis. The Agency and the Union will make every effort to resolve grievances informally or the lowest level possible.
- (2) This negotiated procedure shall be the exclusive procedure available to the Union and employees in the unit for resolving grievances which fall within its coverage, except as specifically excluded in section B below. However, any employee may present such grievances to the Agency and have them adjusted, without the representation of the union. The Agency will provide a copy of the grievance to the union as soon as practicable after the filing date. The Agency will provide the Union reasonable advance notice of and opportunity to attend any grievance meeting/discussion when the Union is not the designated representative. There will be no adjustment that is inconsistent with the terms of the Agreement and the exclusive representative.
- (3) Where the grievant elects Union representation, meetings and communication with regard to the grievance and any attempts at resolution shall be made through the designated Union representative. The initiation or presentation of a grievance by employees will not cause any reflection on their standing with or their loyalty to the Agency.

(b) DEFINITION

A grievance means a complaint by:

- (1) A bargaining unit employee concerning any matter relating to conditions of the employment of the employee;
- (2) The Union concerning any matter relating to conditions of employment of any employee;
- (3) Any bargaining unit 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;
- (4) Any bargaining unit employee or the Union concerning a claimed violation, misinterpretation, or misapplication of the Agency’s policies affecting conditions of employment.

(c) EXCLUSIONS

This procedure does not cover grievances concerning:

- (1) Political Activities. Any claimed violation of Subchapter III of Chapter 73 of Title 5 of the United States Code (relating to prohibited political activities);
- (2) Benefits. Retirement, life insurance, or health insurance;
- (3) National Security. A suspension or removal under Section 7532 of Title 5 of the United States Code in the interest of national security;
- (4) Hiring Authority. Any examination, certification, or appointment;
- (5) Classification. The classification of any position which does not result in a reduction in grade or pay of any employee;
- (6) Statutory Complaint. Any matter that the affected employee has elected to appeal through a statutory or regulatory process, e.g., the EEOC (by filing a formal complaint), the MSPB (by filing an appeal to the MSPB), the FLRA (by filing an FLRA unfair labor practice charge (ULP)) or the OSC (by filing a complaint with the OSC);
- (7) Adverse Action Appeal. An appeal of an adverse action under 5 U.S.C. § 4303 or 5 U.S.C. § 7512 if the employee has elected to file an appeal under the statutory appeal procedure provided under 5 U.S.C. § 7701 and its implementing regulations;
- (8) Already Filed. Where the relief requested is the same, matters which can be raised under the grievance procedure or as an unfair labor practice may, in the discretion of the aggrieved party, be raised under either procedure but not under both procedures;
- (9) Probation. The separation of an employee during his/her probationary (as defined in the probationary Employees Article of this Agreement) or trial period;

- (10) Appointments. The Agency's determination not to extend the appointment of individuals serving under term, international rotational assignment, or other temporary appointment (e.g. Pathways Intern Program);
- (11) Proposed Actions. Notices of proposed disciplinary/adverse actions, furloughs, or removals. Issues relating to such proposal notices may, however, be raised in connection with any grievance over the final decision on the proposed action.
- (12) Denial of a Within Grade Increase (WIGI).

(d) SUBSTANTIALLY SIMILAR OR GROUP GRIEVANCES

- (1) In the case of a substantially similar grievance involving a group of employees, one employee's grievance may be selected by the Union for processing as the "lead grievance" provided all relevant facts and circumstances are substantially similar. In such cases, all decisions on the "lead grievance" will be binding on the other grievance(s). Substantially similar grievances are those arising from a common set of circumstances which adversely affect the grievants in the same manner where all of the witnesses would be testifying to the same or substantially similar facts. The term "substantially similar" means facts which 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. Grievances may be consolidated by either party or amended by the moving party under appropriate circumstances.
- (2) When processing such a consolidated grievance or a grievance involving a group of employees, no more than three (3) employees, excluding designated Union representatives, covered by the grievance will be permitted to attend any meeting concerning the grievance.

(e) RESOLUTION AT LOWEST POSSIBLE LEVEL

The Agency and the Union agree that every effort will be made by Management and the aggrieved party(s) to settle grievances at the lowest possible level. The employee will be given a reasonable amount of duty time in accordance with the Employee Rights Article of this Agreement to present the grievance. The Union representative presenting the grievance will be on official time in accordance with the Official Time Article of this Agreement. At any time during the grievance process, a grievant or his or her representative may attempt to resolve a grievance informally. If the requested relief is granted, the grievance will be closed at that step, and no further processing will take place.

(f) GENERAL PROCEDURES FOR FILING AND RESPONDING TO GRIEVANCES

- (1) The Union maintains the right, on its own behalf or on behalf of any bargaining unit employee to present and process grievances under this Article.
- (2) Any resolution of a grievance filed by an employee who proceeds without Union representation will be consistent with law and the terms of this Agreement. The Union will be provided a copy of all grievance replies by electronic mail, delivery receipt requested. The Union will be provided an opportunity to be present at all meetings between management and the grievant concerning the grievance at every step of the grievance procedure.
- (3) Relevant evidence may be introduced at any stage of the grievance procedure.
- (4) A grievance filed by Management under this Article shall be presented to the appropriate designated Union official.
- (5) All written submissions made under this Article shall be delivered using one of the agreed upon methods listed in the Service of Notice Article of the Agreement.
- (6) All references to “days” in this article mean calendar days, unless otherwise expressly provided herein.
- (7) Grievance meetings are encouraged to help resolve grievances, but are not required. Either party, at any step, may request to meet about a grievance with the request directed to the responding grievance official. Absent mutual agreement, all grievance meetings will be held at the employee’s work location during regularly scheduled work hours. Participating in such meetings may include but is not limited to: the employee who is raising the issue, the designated Union representative, the individual alleged to have taken the grieved action, and/or the individual who has the authority to resolve the grievance. Individuals may participate in grievance meetings face-to-face, through telephone conferencing or some other audio-visual technology. The Agency will not be required to pay travel or per diem expenses incurred as a result of these meetings. Either party may choose to have an additional advisor/representative participate.
- (8) At any step of the negotiated grievance procedure, when any management deciding official designates someone to act on his/her behalf, that designee

will have the complete authority to render a decision at that step and will render the decision. The Agency will strive to assign a designee other than someone who decided the issues at any previous step.

- (9) If the requested remedy is provided at any step, the grievance shall not be elevated to the next step.

(g) GRIEVANCE PROCESS

(1) Step I Grievances (Informal Grievance)

- (A) Step I is for a grievance filed by an employee or by the local Union on behalf of the employee. The grievant may, but is not required to, file at Step I as provided below or may proceed directly to Step II.
- (B) Informal grievances must be presented within thirty-five (35) days after the incident occurs or the grievant becomes aware of the incident, and must identify the name(s) of the grievant, nature of the complaint, and the remedy requested. This time limit will not apply where it is established that the employee had no way of being aware of the incident. When the grievance is made in writing, it shall state: (1) that it is being filed at Step I; (2) the date of the incident if known; (3) the name(s) of the grievant(s); (4) the nature of the complaint; (5) the identified contract articles, laws, rules, regulations, and/or policies alleged to be violated; and (6) requested remedies. The grievance may first be presented verbally by the concerned employee (or the employee's representative acting on his/her behalf) with the first level supervisor in an attempt to settle the matter. The grievant may, at his or her option, reduce the grievance to writing. This written grievance may be in any form including email, a letter, memorandum or on a Form CIS 827 at the Grievant's or Union Representative's option. If the first line supervisor lacks the authority to resolve the complaint, he/she will immediately forward the request to the appropriate official and notify the employee and the Union representative of the name and location of the appropriate official where the grievance was forwarded.
- (C) The grievant may, if he or she desires, be assisted in the presentation by a Union representative. The Union representative must be present if the employee so desires. Any resolution of a grievance filed by an employee who proceeds without Union

representation will be consistent with law and the terms of the parties' Agreement. The Agency will provide the Union copies of all grievance resolutions in such cases.

- (D) Within fourteen (14) calendar days after receiving a timely filed grievance, the first level supervisor (or designee) shall render his or her decision to the grievant's representative, if any. Failure to respond in the allotted time shall permit the employee to proceed to the next step. If the supervisor fails to render his/her decision within 14 days, or if the grievant or the Union is dissatisfied with the Step I decision, then the grievant or the Union may file a Step II grievance with the Step II Official. Relevant evidence may be introduced at any stage of the grievance procedure.

(2) Step II Grievances

- (A) Grievances initiated at Step II by the employee or the local Union on its own behalf or on behalf of the employee, where the step I official is the subject of the grievance, must be submitted to the appropriate Step II official within thirty- five (35) days after the incident occurs or the date upon which the employee should have become aware of the incident. If the grievance was initiated at Step I, the Step II grievance must be submitted within fourteen (14) calendar days after receiving the Step I grievance response.
- (B) The Step II Grievance must be in writing and shall state: (1) that it is being filed at Step II; (2) the date of the incident if known; (3) the name(s) of the grievant(s); (4) the nature of the complaint; (5) the identified contract articles, laws, rules, regulations, and/or policies alleged to be violated; (6) the reason for rejecting the Step I grievance decision, and (7) all requested remedies based on the information available at the time. This written grievance may be in any form of including email, a letter, memorandum or on a Form CIS 827 at the Grievant's or Union Representative's option. Relevant evidence may be introduced at any stage of the grievance procedure.
- (C) If a dispute arises between a Local Union and an Office, either the President of the Local or the Office Director (or their respective designees) may file a written grievance within 35 calendar days after the event giving rise to the grievance.

- (D) Step II officials for grievances filed by employee or on behalf of employees or the Union are designated as follows:

| | |
|---------------------------|--------------------------------------|
| Headquarters: | Appropriate Program Head or designee |
| Regional Offices: | Regional Director or Designee |
| Service Centers: | Director or Designee |
| Field/District Offices: | District Director or Designee |
| Asylum offices: | Director or Designee |
| International Offices | Director or Designee |
| Telephone Service Centers | Director or Designee |
| National Records Center | Director or Designee |
| National Benefits Center | Director or Designee |
| Verification Center | Director or Designee |
| Other Agency Branch | Deputy or Equivalent or Designee |

Merit Promotion Grievance. Grievances on Merit Promotion violations may be filed either with the Head of the Human Resources Office (or designee), or with the official designated above where the relevant position is located.

- (E) The Step II Official for grievances filed on behalf of Management shall be the Local President or designee.
- (F) Within twenty (20) days after receiving a timely filed grievance, the Step II Official shall render a written decision. The decision shall set forth, in precise terms, the basis of the decision and identify the Step III grievance responding official. If the Step II Official fails to render his/her decision within 20 days, or if the aggrieved party is dissatisfied with the Step II decision, then the aggrieved party may file a Step III grievance.

(3) Step III Grievances

- (A) A Step III grievance filed by the grievant or the local Union on its own behalf or on behalf of a grievant must be filed with the appropriate Step III official within fourteen (14) days after receiving the Step II decision.
- (B) The Step III grievance must be in writing. This written grievance may be in any form including email, a letter, memorandum or on a Form CIS 827 at the Grievant's or Union Representative's option and shall state: (1) that it is being filed at Step III; (2) the date of the incident if known; (3) the name(s) of the grievant(s); (4) the

nature of the complaint; (5) the identified contract articles, laws, rules, regulations, and/or policies alleged to be violated; (6) the reason for rejecting the step II grievance decision, and (7) all requested remedies based on the information available at the time. Relevant evidence may be introduced at any stage of the grievance procedure.

- (C) The Step III officials for employees or on behalf of employees or the Union are the HQ Associate Directors or Program Office Chiefs (for those not within a Directorate) or designee.
- (D) The Step III Official for grievances filed on behalf of Management shall be the Council President or Designee
- (E) Within twenty (20) days after receiving a timely filed grievance, the Step III Official shall render a written decision. The decision shall set forth, in precise terms, the basis of the decision.
- (F) If the Step III Official fails to render his/her decision within 20 days, or if the aggrieved party is dissatisfied with the Step III decision, then the aggrieved party may invoke arbitration in accordance with Arbitration Article of this Agreement.

(h) NATIONAL GRIEVANCES

- (1) National grievances are grievances over subjects that affect more than one local. National grievances should be submitted as soon as practical, but no later than thirty- five (35) days of the date that the aggrieved party knew or should have known of the incident giving rise to the grievance. Union National grievances must be filed with the LER Division Chief or designee located at USCIS Headquarters. Agency National grievances must be filed with the National Council President or designee. The grievance shall state: (1) that the grievance is a national grievance; (2) the date of the incident if known; (3) the name(s) of the grievant(s); (4) the nature of the complaint; (5) the identified contract articles, laws, rules, regulations, and/or policies alleged to be violated; and (6) requested remedies.
- (2) In an effort to resolve the grievance expeditiously, the receiving party will schedule a meeting with the aggrieved party within fifteen (15) days of receiving the grievance. If the grievance is not resolved, the receiving party will issue a written decision within thirty (30) days of the grievance meeting that includes the point of contact.

- (3) If the aggrieved party is dissatisfied with the decision, the aggrieved party may invoke arbitration within thirty (30) days in accordance with the Arbitration Article of this Agreement.

(i) SUSPENSIONS AND ADVERSE ACTIONS

- (1) Grievances concerning Letters of Reprimand and short Suspensions of fourteen (14) days or less shall be initiated at the Step III level, within thirty (30) days of the effective date of the disciplinary action, or where the informal EEO process has been initiated, within fifteen (15) days after receipt of a notice of right to file a formal EEO complaint.
- (2) Grievances concerning suspensions of more than fourteen (14) days and other adverse actions must be initiated at the arbitration stage of the grievance procedure as provided in the Arbitration Article of this Agreement, or where the informal EEO process has been initiated, within fifteen (15) days after receipt of a notice of right to file a formal EEO complaint.

(j) GRIEVANCES BASED ON DISCRIMINATION

Except as provided above in Section I, grievances concerning allegations of discrimination under laws enforced by the EEOC shall be initiated as follows:

- (1) Incident. A Step II grievance must be initiated at thirty-five (35) calendar days from the date of the alleged discriminatory incident; or
- (2) Awareness. A Step II grievance must be initiated at thirty-five (35) calendar days from the date upon which the aggrieved became aware of the alleged discriminatory incident or situation; or
- (3) Final Interview. A Step III grievance must be initiated at fifteen (15) calendar days after receipt of the notice of right to file a complaint of discrimination. Election of this option does not toll the time limit for filing a grievance over alleged contract violations or violations of laws that are not enforced by the EEOC.

(k) TIME LIMITS

All time limits herein may be extended by mutual agreement of the parties involved. If the last day of a time limit falls on a Saturday, Sunday or holiday, or on a day when the applicable government office is closed, the limit shall be extended to the next business day. 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 deciding official 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 deciding official should have rendered his or her decision. A grievance concerning a continuing violation may be presented at any time where an occurrence took place within the timeframes of this grievance procedure.

(l) INFORMATION REQUESTS

The Union may request information related to a grievance under 5 USC 7114 (b)(4) and the Agency will provide the information as required by law. Pending an information request, the parties may mutually agree to extend deadlines under this article.

(m) Grievability/Arbitrability

When the Agency or Union has reason to believe that a grievance is not grievable, it will inform the other party in the grievance response. In the event either party declares a grievance non-grievable or non-arbitrable, the original grievance shall be considered amended to include this issue, which will become a threshold issue in arbitration where invoked.

ARTICLE 14 – ARBITRATION

(a) PURPOSE

This article shall be administered in accordance with the Federal Service Labor-Management Relations Statute, 5 U.S.C. Chapter 71, and this Agreement. This article establishes arbitration procedures for disputes between the Union and Agency that are not satisfactorily resolved by the negotiated grievance procedure in Grievance Procedure article of this Agreement.

(b) CALCULATING DEADLINES

As used in this Article, “days” refers to calendar days unless otherwise expressly provided herein. If the day an action must be completed under this Article falls on a Saturday, Sunday or Federal holiday, the due date shall be the next regular business day (Monday through Friday).

(c) INVOKING ARBITRATION

If the parties fail to settle any grievance processed under the negotiated grievance procedure, the grieving party (i.e., Union or Agency) may invoke arbitration within thirty (30) days from the date the final grievance decision is received. In cases involving adverse actions, arbitration must be invoked within thirty (30) days after the effective date of the action. Only the Local union may invoke arbitration on behalf of an employee within its jurisdiction.

(d) SERVICE OF ARBITRATION INVOCATIONS BY THE UNION

Invocations of arbitration must be submitted in accordance with the Service of Notice Article of this Agreement. Where the Union invokes arbitration, the invocation must be served to the Servicing Labor Relations Office, with a copy concurrently provided to the National Citizenship and Immigration Services Council President and the Chief of LER. Invocations of arbitration over matters involving employees represented by more than one local, or requiring Agency-wide interpretation or application of this agreement must be filed with the Chief of Labor Employee Relations at Headquarters or designee. All invocations must be made in writing. All invocations must include an FMCS Form R-43, with the following information included:

- (1) Section 2: Union
- (2) Site of Dispute
- (3) Type of Issue
- (4) Payment - The Union may include either their credit card information on the Form R-43, or may provide a check made payable to the FMCS for one half

of the applicable FMCS Panel Fee (e.g., current fees are: \$30 for electronic filing and \$50 for paper filing. Fees are subject to change).

- (5) Special Requirements - The Union must denote whether or not they are requesting expedited arbitration in accordance with this Article (not the FMCS expedited arbitration procedures).

Failure to provide the information and payment required above will render the invocation insufficient and no further processing of it will be required.

(e) SERVICE OF INVOCATIONS OF ARBITRATION BY THE AGENCY

Invocations of arbitration must be submitted in accordance with the Service of Notice Article of this Agreement. The invocation must be served to the local president, with a copy concurrently provided to the National Citizenship and Immigration Services Council President and the Chief of LER. Invocations of arbitration over matters involving employees represented by more than one local, or requiring Agency-wide interpretation or application of this agreement must be served to the National Citizenship and Immigration Services Council President.

(f) REQUESTING A PANEL AND SELECTION OF ARBITRATORS

Within seven (7) calendar days of the servicing LER office's receipt of the Union's invocation and Form R-43, the Agency will complete and submit the Form R-43 to the Federal Mediation and Conciliation Service (FMCS). For arbitrations invoked by the Agency, the Union will provide the Agency with either their credit card information or a check made payable to the FMCS within ten (10) calendar days of receipt of the Agency's invocation.

The parties jointly agree that the following terms will be included on the R-43 for all arbitrations:

- (1) Area of Panel;
 - (A) The area of the panel shall be no greater than Regional for all local arbitrations;
 - (B) The area of the panel shall be Nationwide for all national arbitrations;
- (2) Panel Size - The Panel size shall be 7 members for all arbitrations;
- (3) Type of Industry - Federal government;

- (4) Under Additional Requirements, the daily fee for arbitrators provided in the panel must be \$1,500 or less, excluding travel and travel-related expenses; and
- (5) Issue Specialization – Experience with the Federal Labor-Management Relations Statute.

The Agency will complete and submit the Form R-43 to the FMCS and provide a copy of the form to the Union. By providing a list of arbitrators, FMCS has not ruled on the arbitrability of the grievance. Within fourteen (14) calendar days of receiving the list of arbitrators from FMCS, the Parties shall meet to select an arbitrator. If the parties cannot agree upon an arbitrator, the Parties shall each strike one (1) name from the list alternately and then repeat the procedure until only one name remains. The person whose name remains shall be selected as the arbitrator. The Party striking the first name shall be chosen by a coin toss. The cost of obtaining a list of arbitrators from the FMCS shall be shared equally by the Parties. At any time, the Parties may, by written mutual consent, agree to reject the initial list of arbitrators from the FMCS and request a new list of arbitrators from the FMCS.

(g) TRANSCRIPTS

Each party will inform the other no later than fourteen (14) days prior to the start of the arbitration hearing whether it desires a transcript of the hearing. If the parties mutually agree upon 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 or after the close of the arbitration hearing and indicate its desire for a copy, it shall then be responsible for half of the costs of the court reporting services and the transcripts.

(h) PROCEEDINGS

- (1) Within nine (9) months from the invocation date, the parties must make a reasonable effort to schedule the arbitration hearing. The parties may, by mutual agreement, extend this timeframe. Each party is obligated to cooperate with the arbitrator in setting a hearing date. Failure of either party to proceed with due diligence in responding to an offer of dates may result in the arbitrator establishing the hearing date or dismissing the grievance.
- (2) Hearings will be held on regular business days (Monday through Friday) between the hours of 9:00 a.m. to 5:30 p.m., with a 30-minute lunch break.
- (3) Postponement/Cancellation. The parties may mutually agree to postpone or cancel an arbitration hearing at any time. Absent mutual agreement, either party may request that the arbitration be postponed or cancelled for good cause shown.

- (4) The arbitrator will schedule a pre-arbitration conference call no later than ten (10) days prior to the arbitration hearing. The parties will attempt to stipulate the issue(s) and undisputed facts to be presented to the arbitrator. By mutual agreement, the parties may forego the pre-arbitration conference or the hearing and request that the arbitrator render a decision based on the parties' written submissions.
- (5) Prior to the pre-arbitration conference call, or no later than ten (10) days prior to the hearing if no pre-arbitration conference call is held, the parties shall submit electronically (delivery receipt requested) its pre-arbitration submission to the arbitrator with a copy served electronically (delivery receipt requested) simultaneously on the opposing party. The submission shall include:
 - (A) A complete list of the witnesses whom the party intends to call at the hearing with a synopsis of each witness' testimony;
 - (B) a copy of the documentary evidence that the party intends to offer at the hearing;
 - (C) absent a stipulated issue jointly submitted by the parties, a statement of the issue(s) to be addressed at the hearing; and
 - (D) threshold issues of jurisdiction, grievability or arbitrability, if any.
- (6) If either party desires to file a closing brief, that brief will be due within thirty (30) days of the parties' receipt of the transcript or the completion of the arbitration hearing – whichever is later.
- (7) The arbitrator will be requested to render a decision no later than thirty (30) days after the record is closed unless the parties mutually agree to extend the time limit. The record will be considered closed upon receipt of briefs, receipt of transcript, or completion of hearing, whichever is later.
- (8) Either party may file exceptions to an arbitrator's award with the FLRA in accordance with applicable FLRA regulations. If neither party timely files exceptions, the arbitrator's award will be final and binding. In adverse action arbitrations, the impacted employee may file an appeal to the Federal Circuit. The Agency may request that the Director of OPM file a petition for judicial review in the Federal Circuit. If an exception or appeal is filed, the arbitrator's award will not be implemented until all appeals are exhausted and

a final decision is rendered by the FLRA, appropriate administrative body, or the court of highest authority to which the case has been appealed.

- (9) Upon the completion of every arbitration hearing, the Agency will supply the USCIS Council President with a copy of the arbitrator's decision.

(i) EXPEDITED PROCEDURE

Expedited arbitration may be invoked in cases involving demotions, suspensions of more than fourteen (14) days, and removals, or in any other case where the parties mutually agree to use these procedures.

- (1) The Local Union President or designee shall invoke expedited arbitration within fifteen (15) days of the effective date of the Agency's action. The Union, however, may withdraw its request for expedited arbitration any time before a hearing date is set, and proceed under the regular procedures set forth in this Article.
- (2) The arbitrator shall adhere to the following time lines, absent mutual agreement of the parties:
 - (A) Hearing. Arbitrators will conduct a hearing within thirty (30) days of selection.
 - (B) Briefs. Post hearing briefs will be submitted within twenty-one (21) days after completion of the hearing or receipt of the transcript – whichever is later.
 - (C) Decision. Arbitrators will render a decision within twenty-one (21) days after the record is closed. The record will be considered closed upon receipt of briefs, receipt of transcript, or completion of hearing, whichever is later.

(j) COSTS

- (1) Payment of Costs. Arbitrator fees and expenses of arbitration, if any, shall be borne equally by the Agency and the Union.
- (2) Fees to be paid by the Agency will be governed by existing laws, rules, and regulations.
- (3) The Agency will pay travel and per diem to attend an arbitration hearing for the following individuals:

- (A) Employee grievant(s) who is not located within the commuting area of the hearing site;
 - (B) An agency-employed designated Union representative whose duty station is within the National or Local jurisdiction where the grievance arose; and/or
 - (C) A witness employed by the Agency who is not located in the local commuting area of the hearing site and is approved by the Arbitrator to testify in person at a hearing.
 - (D) Otherwise, each party is responsible for their own travel expenses. Travel and per diem paid by the Agency shall not exceed that authorized by government-wide regulations.
- (4) Where the parties mutually agree to postpone or cancel an arbitration hearing, the parties will equally pay any postponement or cancellation fees due to the arbitrator. Absent mutual agreement, the party requesting postponement or cancellation shall pay any postponement or cancellation fees due to the arbitrator.

(k) DOCKET REVIEW/SETTLEMENT

Discussion of any cases where arbitration has been requested and pending will be conducted upon advance request. Such discussions may include possible settlements in pending cases or in pending grievance matters. The content of such settlement discussions is confidential. Any statements made during settlement discussions specific to the settlements, and any portions of written materials revealing the contents of such settlement discussions, may not be introduced in proceedings before the arbitrator.

(l) AUTHORITY OF THE ARBITRATOR

- (1) The arbitrator shall resolve all threshold issues of jurisdiction, grievability and arbitrability in accordance with applicable laws, rules and regulations, and this Agreement.
- (2) The Arbitrator's decisions shall be final and binding subject to the Parties' right to take exceptions to an award in accordance with law, or the grievant's right, if applicable, to initiate court action.
- (3) The arbitrator shall be bound by the terms of this Agreement and shall have no authority to add to, subtract from, alter, amend or modify any provision of this Agreement.

- (4) The arbitrator's authority to resolve the grievance is limited to those issues raised in the grievance. The arbitrator's remedy must be limited to the grievant(s) encompassed by the grievance, and must be reasonably related to the violation found and the harm to be remedied.
- (5) (5) The arbitrator may expressly retain jurisdiction for the purpose of interpreting and clarifying the award, to consider a timely filed petition for attorney fees, or where exceptions or an appeal is filed, which results in a remand to the parties. For remanded cases, the parties may resubmit the case to the same arbitrator or, by mutual agreement, select a different arbitrator.

(m) LOCATION OF HEARINGS

The arbitration hearing will be held, if possible, on the Agency's premises during the regular day shift of the basic workweek. The arbitration will normally be held within the grievant's commuting area unless the grievant has transferred from the site of the dispute. In such cases, the hearing will be held at the site of the dispute unless both parties agree to hold it in another location.

(n) DUTY STATUS OF PARTICIPANTS

All USCIS bargaining unit employees who are approved participants in the hearing shall be on duty time or official time, if they would otherwise be in a duty status. If a hearing is scheduled on what would otherwise be a participant's day off, the Agency will adjust the employee's schedule so that the employee would be in a duty status.

(o) NO EX PARTE COMMUNICATIONS

There will be no ex parte communications with the arbitrator except to discuss scheduling a hearing in accordance with this Agreement and other administrative matters (e.g., arranging payment of invoices, etc.).

(p) ATTORNEY FEES

- (1) Reasonable attorney fees and costs may be awarded in accordance with 5 U.S.C. Section 5596 or other applicable law.
- (2) The Union may file a petition for attorney fees within thirty (30) days after an award becomes final and binding if the Union was represented by a licensed attorney. The Union's petition shall be simultaneously served on the Arbitrator and the Agency representative in accordance with this Agreement. The petition must be accompanied by sufficient documentation to enable the arbitrator to determine the reasonableness of the Union's fee request and the amount, if any, to be awarded.

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- (3) The Agency may file objections to the Union’s petition for attorney fees within twenty (20) days of receipt of the Union's request. The objections must be accompanied by supporting documentation and served simultaneously electronically (delivery receipt requested), on the Arbitrator and the Union in accordance with this agreement.
- (4) The Arbitrator shall render a decision on the Union’s petition for attorney fees within thirty (30) days of receipt of the Agency's objections, or within thirty (30) days of receipt of the initial request if no objections are filed.

ARTICLE 15 – DUES WITHHOLDING

(a) DEFINITIONS

- (1) Dues: The regular, periodic amount determined by the Union to be required of the member to maintain good standing in the Union. This amount is certified by the Union on the SF-1187 form and excludes special assessments, back dues, fines, and similar items not considered to be dues.
- (2) SF-1187: "Request and Authorization for Voluntary Allotment of Compensation for Payment of Employee Organization Dues."
- (3) SF-1188: "Revocation of Voluntary Authorization for Allotment of Compensation for Payment of Employee Organization Dues."
- (4) Payroll Office: National Finance Center, Department of Agriculture.
- (5) Servicing Human Resources Office: Human Capital and Training – Human Resources Division (or its equivalent).

(b) ELIGIBLE EMPLOYEES

To be eligible to make a voluntary allotment for the payment of Union dues, an employee must:

- (1) Be in the Unit covered by this Agreement;
- (2) Be a member in good standing with the Union;
- (3) Have a regular net salary, after other legal and required deductions, sufficient to cover the amount of the authorized allotment for dues; and
- (4) Request the allotment on the prescribed form (SF-1187), which has been certified by the authorized Union official.

(c) UNION RESPONSIBILITIES

The Union shall:

- (1) Inform and educate its members on the voluntary nature of the dues allotment program, including conditions governing revocation of allotments;
- (2) Purchase and distribute the SF-1187 Form to its members;

- (3) Certify on the SF-1187 Form the amount of dues to be withheld each pay period, and identify the Local to receive the dues deductions;
- (4) Promptly forward completed SF-1187 forms to the appropriate servicing Human Resources Office;
- (5) Furnish written notification to the servicing Human Resources Office concerning the names and titles of Local Union officials authorized to certify the SF-1187 form; and
- (6) Provide the appropriate servicing Human Resources Office with written notification concerning:
 - (A) Changes in the amount of Union dues;
 - (B) The name of any employee who has been expelled or ceases to be a member in good standing in the Union within ten (10) days of such determination; and
 - (C) The name of any employee on check off who transfers from one Local to another; any change in the Local who receives dues deducted from check; and any change in the amount to be deducted occasioned by the transfer to a new Local.
- (7) In Districts where there are more than one Local, each Local in a District shall have the right to process SF-1187s.

(d) AGENCY RESPONSIBILITIES

The Agency shall:

- (1) Screen each Form SF-1187 to ensure that only eligible employees are on the dues withholding listing. The servicing Human Resources Office will also screen each promotion action to remove employees who are promoted or transferred out of the unit.
- (2) Receive in the appropriate servicing Human Resources Office the SF-1187 form from the Union; certify on the SF-1187 form that the employee is a member of the bargaining unit; stipulate the bargaining group the employee is a member of by certifying the appropriate group in the upper right-hand corner of the SF-1187; and promptly forward the SF-1187 Form to the Payroll Office for processing.

- (3) Automatically reinstate the dues withholding of a bargaining unit employee returning to a bargaining unit position from a temporary reassignment or a temporary promotion to a position outside the bargaining unit.
- (4) Automatically reinstate the dues withholding of a bargaining unit employee returning to pay status from a non-pay status (for example, leave without pay).

(e) PROCEDURES

It is agreed that the following procedures will govern the voluntary allotment of dues:

(1) Withholding of Dues.

- (A) Arrange Withholding. Upon receipt of a properly completed SF-1187 form from the servicing Human Resources Office, the Payroll Office shall arrange to withhold the Union dues in accordance with existing pay periods (26 biweekly periods) and procedures under which employees are regularly compensated.
- (B) Effective Date. The dues deduction will be effective as soon as possible, but in no case will be later than two (2) full pay periods following receipt of the SF-1187 form by the Payroll Office.
- (C) Existing Withholdings. Employees who meet the eligibility requirements for dues withholding (stated in Section B) and who have a current dues withholding agreement in effect on the date this Agreement is approved, need not execute a new SF-1187 form to come under the provision of this Agreement, provided that this Agreement does not necessitate any change being made to their current allotment.

(2) Changes in Dues.

- (A) Union Certification Required. The amount of dues certified on the original allotment form (SF-1187) will remain unchanged until an authorized Union official provides written certification to the servicing Human Resources Office that the amount of dues has changed. New SF-1187 forms will not be required.
- (B) Once per Year. Changes in the amount of the allotment due to changes in the amount of Union dues will not be made more than once every twelve (12) months.
- (C) Effective Date. Changes in the amount deducted for Union dues will be effective as soon as possible, but in no case will it be later than two (2) full

pay periods following receipt by the Payroll Office of the Union's certification of changes in its dues.

(f) TERMINATION OF ALLOTMENTS

- (1) Automatic Termination. Allotments will automatically terminate when any one of the following occurs:
- (A) Loss of exclusive recognition by the Union, effective at the beginning of the first full pay period after such loss of recognition;
 - (B) The dues withholding agreement is terminated;
 - (C) An employee ceases to be eligible for inclusion in the Union in good standing, effective with the first complete pay period after receipt by the Payroll Office of written notice from the authorized Union official; and
 - (D) An employee ceases to occupy a bargaining unit position.
- (2) Voluntarily:
- (A) Should an employee wish to voluntarily terminate their allotment, the employee will submit the SF-1188, in duplicate, to the servicing Human Resources Office. No revocation can occur before the employee's first anniversary following the commencement of Union dues. Thereafter, revocations will be effective the first full pay period the following March 1, if the request is received in the servicing Human Resources Office by March 1. An employee may submit a written request, SF-1188, for the revocation of an allotment at any time.
 - (B) The servicing Human Resources Office shall provide the names and local numbers of voluntary terminations to the Council Secretary Treasurer on an annual basis.

(g) REMITTANCE OF DUES

- (1) All Locals which indicate composite participation will neither receive checks nor employee listings. However, if the Union code in the employee's master record does not indicate composite participation, the Local will continue to receive a check and listing. A maximum of three (3) composite checks (one from each payroll computation cycle) with supporting summary listings will be forwarded to NST AFGE, 80 F Street, N.W., Washington, D.C. 20001.

- (2) Magnetic Tape. A magnetic tape for the Locals will be made available to AFGE. This tape will contain detailed information to support all deductions and charges reflected on the three (3) composite checks, as well as those employees in the composite Locals who did not have sufficient funds to allow a deduction. The magnetic tape will also contain a code indicating the employee's current pay status, and a code indicating whether the deduction resulted from the processing of a Time and Attendance Report or as a result of a payroll adjustment.
- (3) Code Combinations. The expected code combinations to be recorded on the SF- 1187 for proper processing are as follows:
 - (A) 1 — NCISC Council, to be included in composite check to AFGE.
 - (B) 01 — NCISC Council, to be included in check to Local.

(h) COST OF WITHHOLDING

The service of withholding the Union dues shall be provided at no cost to the Union by the Agency.

(i) UNDER PAYMENTS AND OVER PAYMENTS

- (1) Rejections. The Agency does not assume responsibility for the maintenance in good standing in the Union of the employee. Any SF-1187 submitted to the servicing Human Resources Office that Management does not process will be returned to the Union with the reasons why this was not accepted. The Union reserves the right to discuss the exclusions with Management personnel.
- (2) Administrative Errors. Administrative errors in remittance will be corrected by reductions and corrections in subsequent remittance checks. If the employee organization is not scheduled to receive a remittance check after discovery of the error, the employee organization agrees to promptly refund the amount of erroneous remittance.

ARTICLE 16 – SERVICE OF NOTICE**(a) PURPOSE**

The purpose of this Article is to establish the means and methods associated with the proper service of notices, requests, demands, or documents as presented throughout this Agreement, unless specifically denoted otherwise elsewhere in this Agreement.

(b) METHOD OF SERVICE

Service of all notices, requests, demands or documents provided for under this Agreement shall be accomplished either by personal service, by email, U.S. Mail with delivery confirmed by signature, or by commercial courier such as FedEx, DHL, UPS with delivery confirmed by signature. The parties, at the national, regional and local levels, shall notify each other of the names and contact information of those officials, and their designee(s), who are authorized to receive service of official documents or of other correspondence for which verification of service is required.

- (1) Personal service shall be accomplished by hand delivery to the appropriate management or union official or their designated representative. The recipient shall sign as acknowledgment of receipt of service at time of delivery.
- (2) Where certified mail is used, a signed return receipt shall be deemed sufficient proof of service. In the case of mail or courier service, electronic confirmation of signature will be deemed adequate proof of service.
- (3) Where the parties mutually agree, electronic mail service may be used as a means of service. When used, service is accomplished when the email is sent.
- (4) On a case-by-case basis and by mutual agreement, service may be accomplished by facsimile or other alternate means when there are no viable means for communicating via hand delivery, certified mail or email (i.e., an emergent situation calling for immediate action). Service is accomplished when the recipient sends back a written message acknowledging receipt.
- (5) Reasonable requests for extension as a result of the recipient being unavailable due to approved leave or Agency training will be approved. Reasonable requests for extension are no more than the length of the approved leave or Agency training.

(c) TIME LIMITS

In accordance with paragraph B of this Article, time limits for the sender are accomplished when the required document is personally served, postmarked by the USPS, electronically tracked by the USPS or commercial courier, transmitted by electronic mail, or otherwise transmitted by mutually-agreed alternative method within the specified limit.

In accordance with paragraph B of this Article, time limits for the recipient start when the required documents are served in accordance with paragraph B of this Article.

The parties agree that they will act in good faith and will not attempt to evade the service of documents upon them.

(d) APPROPRIATE RECIPIENTS OF SERVICE

Except as provided elsewhere in this Agreement,

(1) Service of notice at the national level will be made to:

- (A) For the Union: the National Council President, or designee(s), and
- (B) For the Agency: the Chief, Labor and Employee Relations or designee(s)

(2) Service of notice below the national level will be made to:

- (A) For the Union: the Local President, or designee(s), and
- (B) For the Agency: the Director of the District Office, Service Center, Telephone Center, Asylum Office or other Agency activity, or designee(s).

(e) EMPLOYEE NOTICES

- (1) The Union will be provided copies of any annual notices to bargaining unit employees prior to or upon release to the bargaining unit.
- (2) Joint notices will be discussed, agreed upon and signed by both parties prior to release to the bargaining unit at either the National or Local level.
- (3) The Notices will be posted on official bulletin boards in locations frequented by BUEs (e.g., break rooms, cafeterias, office buildings), or sent by email (e.g., USCIS Broadcast) to all employees.
- (4) Annual notices will be included as part of the new employee orientation package provided during in-processing of BUEs.

ARTICLE 17 – PROTECTING AGAINST PROHIBITED PERSONNEL PRACTICES

(a) DEFINITIONS

- (1) Prohibited Personnel Practice. For the purpose of this Article, "prohibited personnel practice" means any action described in Section B.
- (2) Personnel Action. For the purpose of this Article, "personnel action" means:
 - (A) An appointment;
 - (B) A promotion;
 - (C) An adverse action, disciplinary action or other corrective action;
 - (D) A detail, transfer, or reassignment;
 - (E) A reinstatement;
 - (F) A restoration;
 - (G) A reemployment;
 - (H) A performance evaluation under Chapter 43 of Title 5 of the United States Code;
 - (I) A decision concerning pay, benefits, or awards, or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other action described in this subsection;
 - (J) Any other significant change in duties or responsibilities, or working conditions;
 - (K) A decision to order psychiatric testing or examination; and
 - (L) The implementation or enforcement of any nondisclosure policy, form, or agreement.

(b) PROHIBITED ACTIONS

Any employee of the Agency who has authority to take, direct others to take, recommend, or approve any personnel action, shall not with respect to such authority:

- (1) Discriminate for or against any employee or applicant for employment on the basis of:

- (A) Race, color, religion, sex, or national origin, as prohibited under Section 717 of the Civil Rights Act of 1964 (42 U.S.C. § 2000e-16);
 - (B) As prohibited under Sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. §§ 631, 633a);
 - (C) Sex as prohibited under Section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. § 206(d));
 - (D) Disability or handicapping condition, as prohibited under Section 501 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 791); or
 - (E) Marital status or political affiliation, as prohibited under any law, rule, or regulation.
- (2) Solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of -
- (A) An evaluation of the work performance, ability, aptitude or general qualifications of such individual; or
 - (B) An evaluation of the character, loyalty, or suitability of such individual.
- (3) Coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity.
- (4) Deceive or willfully obstruct any person with respect to such person's right to compete for employment.
- (5) Influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment.
- (6) Grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment.
- (7) Appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative

(as defined in Title 5 of the United States Code) of such employee if such position is in the agency in which such employee is serving as a public official (as defined in Title 5 of the United States Code) or over which such employee exercises jurisdiction or control as such an official.

- (8) Take or fail to take (or threaten to take or fail to take) a personnel action with respect to any employee or applicant for employment because of-
- (A) Any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences-
 - (i) A violation of any law, rule, or regulation; or
 - (ii) Gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs; or
 - (B) Special Counsel/ Inspector General. Any disclosure to the Special Counsel or to the Inspector General or another employee designated by the head of the Agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences -
 - (i) A violation of any law, rule, or regulation; or
 - (ii) Gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.
- (9) Appeal Reprisal. Take or fail to take any personnel action against any employee or applicant for employment because of the exercise of any appeal, complaint or grievance right granted by any law, rule, or regulation, or testifying, or assisting in the exercise of any such right, cooperating with the Inspector General or Special Counsel, or refusing to obey an order that would require a violation of law.
- (10) Outside Conduct. Discriminate for or against an employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others, except that nothing in this subsection shall prohibit an agency from taking into account in determining suitability or fitness any conviction of the employee or applicant for any crime under the laws of any State, of the District of Columbia, or of the United States.

- (11) Veteran's Preference. Knowingly take, recommend or approve, or fail to take, recommend or approve any personnel action in violation of a veteran's preference requirement.
- (12) Violation of Merit System Principles. 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 the Civil Service Reform Act of 1978 (5 U.S.C. § 2301).
- (13) Implement or enforce any nondisclosure policy, form, or agreement, if such policy, form, or agreement does not contain the following statement: “These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.

(c) INFORMATION TO CONGRESS

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

(d) EEO AFFIRMATIVE ACTION

Nothing in Section B above, 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) Section 717 of the Civil Rights Act of 1964 (42 U.S.C. § 2000e-16) prohibiting discrimination on the basis of race, color, religion, sex, or national origin;
- (2) Sections 12 and 15 of the Age Discrimination in Employment Act of 1967(29 U.S.C. § 631, 633a), prohibiting discrimination on the basis of age;
- (3) Under Section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. § 206(d), prohibiting discrimination on the basis of sex;
- (4) Section 501 of the Rehabilitation Act of 1973 (29 U.S.C. §791), prohibiting discrimination on the basis of disability or handicapping condition; or

- (5) The provisions of any law, rule, or regulation prohibiting discrimination on the basis of marital status or political affiliation.

(e) REDRESS PROCEDURES

- (1) An employee aggrieved under Section B(1), above, may raise the matter under a statutory procedure or the grievance and arbitration procedure provided in this Agreement, but not under both.
- (2) 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.
- (3) In the case where an employee elects the negotiated grievance procedure and alleges discrimination as described in Section B(1) above (or in 5 USC 2302(b)(1))
 - (A) where the matter could have been appealed to the MSPB, the employee may ask the Board to review any final decision issued under the negotiated grievance procedure.
 - (B) where the matter could not have been appealed to the MSPB, the employee may ask the EEOC to review any final decision issued under the negotiated grievance procedure unless the sole basis of discrimination alleged was marital status or political affiliation under B(1)(e).
- (4) Appeals to the Merit Systems Protection Board or the Equal Employment Opportunity Commission shall be filed pursuant to such regulations as the Board or the commission may prescribe.

(f) EXCLUSIVE GRIEVANCE PROCEDURE

Except as provided in Section E, above, an employee may only file his or her complaint under the grievance and arbitration provisions contained in this Agreement.

ARTICLE 18 – SAFETY AND HEALTH

(a) SAFE AND HEALTHFUL WORKING CONDITIONS

The Agency agrees to provide safe and healthful working conditions, taking into account the mission of the Agency and the inherent hazards of the job performed. Other factors to be considered include, but are not limited to, proper heating, air conditioning, ventilation, air quality, lighting and water quality. The parties shall be governed by the Safety and Health laws, rules and regulations, including departmental and/or Agency regulations and policies, and this Agreement.

(b) SAFETY AND HEALTH COMMITTEES

Safety and Health Committees consisting of union and agency representatives will meet at the national and Office level. With respect to Safety and Health Committees, the term Office will include District Offices, Service Centers, the National Benefits Center, the National Records Center, Training Facilities, Regional Offices, Asylum Offices, Telephone Centers, and Headquarters Office. Field Offices, Satellite Offices, and Application Support Centers may form their own committees or may participate in committees at higher levels as determined by management. To the extent possible, all committee members will be appointed from the local commuting area. Upon request, management will provide travel and per diem expenses to a union-appointed committee member to attend a required site visit only if there is no union - appointed committee member assigned to the facility or within the local commuting area. Where such offices are co-located, the formation of a unified committee is appropriate if mutually agreeable to the union local and the responsible management official (i.e., Director or equivalent).

- (1) **Membership.** Each Safety and Health Committee shall be composed of at least one representative of Management and at least one representative of the Union per local. The Management representative shall be designated by the Agency. The Union representative shall be selected by the Union.
- (2) **Training.** Consistent with 29 CFR 1960.58-59, all committee members shall be provided training commensurate with the scope of their assigned responsibilities. Training may be provided online. If the Agency decides that off-site training is necessary, it will provide travel and per diem expenses as appropriate.
- (3) **Meetings.** The Safety and Health Committee will meet as often as necessary upon the request of either party. Copies of the minutes of the meeting will be furnished to the appropriate management official(s) and to the committee.
- (4) **Purpose of Meetings.** Committees will meet to discuss methods for protecting the safety and health of employees, promoting safety and health education, promoting and implementing the Agency's Safety and Health Programs, conducting annual inspections of facilities, and recommending deserving employees for safety awards.
- (5) **Inspections.** The committee will meet once every year to inspect facilities. The annual inspection will include a review of ergonomic conditions in the workplace. Copies of the inspection report will be submitted to the responsible management official to

determine what, if any, correction of unsafe/unhealthful working conditions or practices observed or reported is necessary. A copy of the inspection report will be furnished to the committee and forwarded to other responsible management officials as appropriate.

(c) UNION PARTICIPATION

The Union agrees to participate on the Committee and will encourage its members to observe all safety rules and use all equipment and safeguards provided. Members of the Committee, upon request and with Management's approval, shall be allowed to leave work where required to perform their duties as outlined in this Article, without loss of pay or charge to leave.

(d) DUTY TO REPORT UNSAFE CONDITIONS

In the course of performing their normally assigned work, employees are responsible for using safety equipment furnished by the Agency and observing unsafe practices and conditions. If an unsafe condition is observed, the employee should report it to his/her supervisor or a member of the Safety and Health Committee.

- (1) Review and Report Unsafe Conditions. The Committee shall meet within seven (7) calendar days of notification that a question has arisen and shall issue its recommendations, in writing, to the Responsible management official no later than fourteen (14) calendar days after the meeting. In the event that the members of the Committee do not agree on the recommendations, any of the members shall have the right to submit a written minority view within fourteen (14) calendar days after the meeting.
- (2) Decision. The written decision or an interim response shall be rendered within fourteen (14) calendar days after receipt of the Committee's recommendations and any timely submitted minority views.
- (3) Injury Logs. Copies of the OSHA 300 log maintained by each office will be provided to the Safety and Health Committee for investigation of related unsafe conditions. The parties agree that any confidential or private information contained in the OSHA 300 Log may be redacted prior to submission to the committee.

(e) VEHICLE SAFETY

Agency policy prohibits the use of vehicles not in safe operating condition. The Agency will continue to require periodic inspection of all vehicles in order to ensure a safe operating condition. Any vehicle operator must report, in writing, all vehicle malfunctions or deficiencies to the appropriate Agency Fleet Management point of contact as soon as practicable, normally no later than the end of the tour of duty. The Agency will ensure that needed repairs are made. Failure to report vehicle damages or accidents may be grounds for disciplinary action.

(f) SPECIAL HAZARDS/IMMINENT RISK

When duties involving special hazards must be performed, the Agency will inform the employees involved concerning the hazards/risks and the proper work methods to be used. When an employee or the Union believes that the employee is being required to work 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. This may include situations where staffing levels are not in keeping with the demonstrated levels of risk. The supervisor will make an evaluation of the working conditions and direct that the work either be continued or stopped. If the supervisor directs that the work continue, the employee (or Union official) may, if time permits, immediately escalate the request for review of the matter to the second line supervisor. However, if time does not permit such an escalation, the employee must obey the order of the supervisor unless the employee reasonably believes that obeying the order would expose the employee to a health or safety hazard presenting an imminent risk of death or serious bodily harm.

(g) LUNCH ROOMS

The Agency shall provide clean and healthful lunch rooms for the consumption of food, to the maximum extent possible, for all Agency employees.

(h) IMMUNIZATIONS

Subject to the availability of funds, the Agency will provide appropriate immunizations, including but not limited to flu shots, post-exposure hepatitis B, and post-exposure tetanus, in accordance with established service-level agreements, at no expense to the employee.

(i) TUBERCULOSIS SCREENING

Subject to the availability of funds, the Agency will offer a post-exposure voluntary screening program for Tuberculosis.

(j) SAFE STAFFING

The safety and health of all employees is a foremost concern of the Agency, and will be considered when employees are required to work after normal business hours or overtime. Ensuring adequate staffing is an essential part of maintaining a safe and healthy workplace. When overtime assignments are required to ensure safety, such assignments shall be made in accordance with the Overtime Article of this Agreement.

(k) ASSISTANCE FOR EMPLOYEES

The Agency shall maintain procedures to ensure that employees are provided appropriate assistance to evacuate buildings in case of emergencies.

(l) FEDERAL EMPLOYEE HEALTH BENEFITS

The Agency agrees to timely notify employees of, and provide electronic access to, open season instructions, information for choosing a health plan, and biweekly health benefits rates.

(m) PERSONAL SECURITY

When an employee, in the performance of official duties, has been subjected to threats, harassment or other conduct leading to a reasonable fear for the employee's safety or the safety of his or her family:

- (1) The employee will notify management of the threat as soon as possible and follow up with a written statement outlining the threat, which will be used by management as the basis for conducting a review.
- (2) When management becomes aware that an employee has been subjected to threats or harassment in the performance of official duties, the Agency shall:
 - (A) Promptly discuss the matter with the employee and authorize the removal of a name plate for a period of up to 120 days while the incident is reviewed. Management may grant extensions in 30-day increments pending the outcome of the review.
 - (B) The Agency may take other action as appropriate, including, but not limited to, contacting local and Federal law enforcement authorities and/or relocating the employee upon request, if the Agency determines there is a bono fide need to relocate the employee.

ARTICLE 19 – INJURY COMPENSATION

This Article will be applied in accordance with 5 USC 8118 and its implementing regulations.

(a) WORKPLACE ILLNESS / INJURY

When employees or their representatives report an illness or injury has occurred in the performance of official duties, the employees will be promptly advised as to their right to file for worker's compensation program benefits, which includes payment of medical expenses and wage loss. The employees also shall be advised as soon as possible that Continuation of Pay (COP) and/or compensation benefits can be used in lieu of sick or annual leave. The Agency will give appropriate assistance to the employee in filing a compensation claim.

(b) INFORMATION AND FORMS

- (1) Upon notification of a workplace injury, the Agency will provide the employee who was injured while in a duty status with the necessary information and forms to file a Worker's Compensation Claim.
- (2) The injured employee shall complete and submit a CA-1, Claim for Traumatic Injury form, to his/her supervisor. Where the injured employee is requesting COP, this form must be completed and submitted within thirty (30) calendar days of the injury.
- (3) The Agency will make information about Worker's Compensation and forms available on its intranet site.
- (4) If an employee requires medical treatment because of a work-related traumatic injury, the supervisor should complete the front of Form CA-16 "Authorization for Examination and/or Treatment" within 4 hours of the request. In an emergency, where there is not time to complete the form, the Employer may authorize medical treatment by telephone and then forward Form CA-16 to the medical facility within 48 hours. Form CA-16 may not be used to authorize treatment for occupational disease or illness except if the Department of Labor's Office of Worker's Compensation Program authorizes such use in an individual case.

(c) CONTINUATION OF PAY / LEAVE

- (1) COP is the continuation of an employee's regular pay for up to 45 calendar days when the employee is absent from work due to disability or medical treatment. In accordance with 5 U.S.C. 8118, an employee who suffers a traumatic injury, should be informed of the right to elect COP for absences caused by the traumatic injury as well as advised of their responsibility to submit medical evidence of disability within ten (10) calendar days of making a claim for COP.

- (2) The Agency and Union understand that COP cannot be paid for any period when an employee is on paid leave. A request to elect COP retroactively in lieu of leave must be made within one year of the date the leave was used or the date of written approval of the claim by the Office of Workers' Compensation Programs (OWCP), whichever is later.
- (3) Compensation, based on loss of wages, is payable after COP ends or from the beginning of pay loss. When an employee uses their sick or annual leave to cover an injury-related absence from work, they may elect to receive compensation instead. In order for leave to be reinstated, the employee must refund to the agency the difference between the compensation entitlement and the total amount of leave paid by the agency. The employee may repay, in a lump sum or by any other plan acceptable to the payroll office, the amount collected while on annual or sick leave.

(d) RESTORED TO DUTY

An employee who suffers a compensable illness or injury and later, within one year after commencement of benefits, recovers from such injury or illness and meets the physical requirements of the position to which he or she is being assigned, will be restored to duty in the former or an equivalent position in accordance with 5 U.S.C. 8151 and 5 CFR 353.301.

(e) DOCUMENT REVIEW

Employees will be permitted to review documents relating to their claim, which the OWCP has authorized the appropriate USCIS local Worker's Compensation Program Coordinator to make available. Employees may be accompanied by their designated representative if they so desire.

ARTICLE 20 – EQUAL EMPLOYMENT OPPORTUNITY**(a) STATEMENT OF POLICY**

The Agency will provide equal opportunity in employment for all qualified persons and will prohibit discrimination in employment because of race, color, religion, sex, national origin, age, reprisal, disability, status as a parent, genetic information, and sexual orientation, except where required by statute or pursuant to bona fide occupational qualifications. The employer will also provide religious and disability accommodations in accordance with law and the agency's reasonable accommodation procedures.

(b) EEO RESPONSIBILITIES

- (1) **Manager and Supervisors.** Supervisors and managers have a responsibility to maintain a discrimination-free environment consistent with law and Agency policies.
- (2) **Employees.** Employees have a responsibility to conduct themselves in a non-discriminatory manner consistent with law and Agency policies.
- (3) **Sexual Harassment.**
 - (A) The Agency will provide a work environment free from sexual harassment.
 - (B) Employees will promptly report conduct believed to be sexual harassment to their supervisors or other appropriate management official. Where an allegation of sexual harassment is brought to the attention of Management, the Agency will promptly investigate the allegations.
 - (C) Where an employee has brought an allegation of sexual harassment to the attention of management, the Agency will treat the allegations as confidential and reveal no more information concerning the allegation than is necessary to conduct the investigation.
 - (D) Any employee who believes that he or she has been subjected to sexual harassment or deprived of a benefit of employment because of sexual harassment, may file a claim consistent with Section C below.

(c) DISCRIMINATION CLAIM AVENUES

- (1) Any employee who believes that he or she has been discriminated against on the grounds set forth in this Article, may file any one of the following:
 - (A) A grievance pursuant to the provisions of the Grievance Article of this Agreement;

- (B) A formal complaint of discrimination with the Agency as permitted by applicable EEO laws, rules and regulations. In order to file a formal complaint, an employee must first seek EEO counseling within forty-five (45) days of the alleged discriminatory incident.
 - (C) An appeal to the Merit Systems Protection Board (MSPB) where an action is otherwise appealable to the Board and the employee alleges that the basis for the action was discrimination prohibited by race, color, religion, sex, national origin, age, reprisal or disability.
- (2) Elected Procedure. An employee shall be deemed to have exercised his or her option under this section at such time as the employee timely files either a formal complaint of discrimination, an MSPB appeal, or a grievance in writing in accordance with the provisions of this Agreement.
 - (3) Grievance Appeal. 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 Merit Systems Protection Board to review the final decision in the case of any personnel action that could have been appealed to the Board, or, where applicable, to request the Equal Employment Opportunity Commission to review a final decision in any other matter involving a complaint of discrimination of the type prohibited by any law administered by the Commission. Appeals to the Merit Systems Protection Board or the Equal Employment Opportunity Commission shall be filed pursuant to such regulations as the Board or the Commission may prescribe.
 - (4) Closed Arbitration Hearing. Where a grievance under this Article is advanced to arbitration, the arbitration hearing - at the option and request of the grievant - shall be conducted as a closed hearing.

(d) RIGHT TO REPRESENTATION

At any stage in the processing of an EEO complaint, the employee shall have the right to be accompanied, represented, and advised by a representative of his or her choosing. The employee shall also have the right to present the EEO complaint without representation.

(e) USE OF EEO COUNSELORS

- (1) The Agency will make known the telephone number and email address of the Agency's EEO Office on its Outlook Email Directory and Intranet site.
- (2) The EEO Counselor will:
 - (A) Counsel the aggrieved employee concerning the issues in the matter;

- (B) Make whatever inquiry into the matter that he or she believes necessary;
 - (C) Seek a solution of the matter on an informal basis;
 - (D) Keep a record of his or her counseling activities;
 - (E) Submit a written report to the Equal Employment Opportunity Officer, with a copy to the aggrieved employee, summarizing his/her actions concerning the allegations of discrimination; and
 - (F) Advise the aggrieved employee that he or she has the right to have a Union representative or other representative of their own choosing present, throughout all stages of the EEO complaint process.
- (3) Unless the employee agrees to a longer counseling period, the EEO Counselor will conduct a final interview with the aggrieved employee within thirty (30) days of the date that the employee contacted the Agency’s EEO office to request counseling.
 - (4) If the final interview is not concluded within thirty (30) calendar days and the matter has not been previously resolved to the satisfaction of the employee, the Counselor shall at that time inform the aggrieved employee of his or her right to immediately file a formal complaint of discrimination.
 - (5) The EEO Counselor shall not in any way attempt to restrain an employee from filing an EEO complaint, nor may an EEO Counselor encourage an employee to file an EEO complaint.
 - (6) The EEO Counselor shall not 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 EEO complaint has been filed.
 - (7) EEO Counselors shall be free from restraint, interference, coercion, discrimination, or reprisal in connection with the performance of their duties.

(f) UNION RIGHTS

- (1) If at any stage of the complaint process under procedures covered by this article, the Employer determines to make changes to resolve the complaint with respect to personnel policies and practices or matters affecting the general working conditions of unit employees, the Union will be afforded reasonable notification. Likewise, where the development and implementation of the Employer's Management Directive 715 Plans and Programs involve changes in personnel policies, practices, or working conditions,

the Employer will fulfill its bargaining obligations consistent with the requirements set forth in 5 USC Chapter 71.

- (A) 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 Employer shall afford the Union reasonable notification and opportunity to negotiate the impact of the Employer's action effectuating the decision.
- (B) The provisions of this Agreement may not serve to prevent implementation of statutory equal employment opportunity decisions (of, i.e., the Merit Systems Protection Board, the Equal Employment Opportunity Commission or the Federal courts) where the provisions:
 - i. Violate applicable law, order, or regulations in effect at the time this Agreement was approved; or
 - ii. Are themselves discriminatory in their impact on employees; or
 - iii. Leave no reasonable alternative for taking required action.

- (2) If the employee elects to pursue the complaint under the grievance procedures of this Agreement, and he or she elects to process the grievance without representation, the Union has the right to be present at any meeting between Management and the employee concerning the grievance.

(g) ANNUAL REPORT

The Agency will furnish the Council President a copy of the annual 462 Report on EEO complaints and a copy of the MD715, Plans to Identify/Eliminate EEO Barriers on an annual basis.

(h) ANNUAL ANNOUNCEMENT

The Agency will issue an annual EEO Policy Statement to the workforce reaffirming its commitment to the principle of equal opportunity and fair treatment for all its employees. The annual announcement will include the contact information for the Office of Equal Inclusion and Opportunity.

(i) EEO ADVISORY COMMITTEES.

- (1) The Agency and Union reaffirm their commitment to the principles of EEO, and to that end agree to support a positive program which has as its objective the realization of that commitment.
- (2) An EEO Advisory Committee will be established in each office, at the request of either party. The following provisions shall apply to EEO committees established under this

Article. The term Office will include the District Offices, Service Centers, the National Benefits Center, the National Records Center, Training Facilities, Regional Offices, Asylum Offices and Headquarters Office. The Committee will be composed of up to two (2) Management representatives, up to two (2) Union representatives per local, up to two (2) Special Emphasis Program Managers, and up to two (2) non-management representatives who are not SEPMs. For the purposes of this Article, the SEPMs will not be management or union representatives.

- (3) Meetings. Office committees may meet as frequently as quarterly, but shall meet at least annually. Committee participants not within the local commuting area will participate via telephone, video-conference or other electronic means, unless their physical presence is necessitated by the duties to be performed.
- (4) Duty Hours. All Committee meetings will be during regular duty hours and the Agency will, to the maximum extent possible, make shift changes to accommodate attendance by Union representatives.
- (5) Time, Travel and Per Diem. Because EEO Committees are established as Management Advisory Committees, all Union representatives shall receive official time while attending such meetings for the time they would have otherwise been in a duty status. The cost of travel and per diem for a Union representative to attend District EEO meetings in person will be borne by the Service. Any travel required by a Union representative will be on official time if otherwise in a duty status.
- (6) Committee Responsibilities. Advisory Committees established under this Article are to be advisory and consultative in nature. The committee is advisory to the Office of Equal Employment and Inclusion and management. Specifically, they serve as a continuing link of communication on matters of an EEO nature. Operations and functions of EEO Advisory Committees will consist of:
 - (A) Identify Issues. Identifying and bringing to the attention of local management any personnel policy, practice or procedure which denies quality of opportunity to any group or individual on the basis of race, color, religion, sex, national origin, age or disability.
 - (B) Exchange Ideas/Proposals. Acting as a forum for an exchange of ideas and action proposals on sensitive issues, and matters of concern of an EEO nature.

The Committee or its members shall not be involved in any individual EEO issues where a pre-complaint or complaint has been filed.

- (7) EEO Statistics. The Agency agrees to furnish semiannually to the Council President a copy of the annual 462 Report on EEO complaints and a copy of the MD715 Plans to identify/eliminate EEO barriers.

ARTICLE 21 – EMPLOYEE WELLNESS AND EMPLOYEE ASSISTANCE PROGRAM

The parties recognize that physical and mental well-being of the workforce is important. In that regard, the Agency may establish and administer physical and mental fitness programs. Additionally, the Agency will continue to publicize the Employee Assistance Program (EAP) and provide an annual briefing to the Union regarding the yearly statistical report and general program effectiveness.

Through this Article, the Agency will enhance workplace flexibilities and work-life programs.

(a) EMPLOYEE ASSISTANCE PROGRAM

- (1) Under the EAP the Agency will provide free, confidential, in-person counseling sessions with EAP-approved service providers for the purpose of assessment and referral, and/or for preliminary attempts to assist employee's and their family members in dealing with life's challenges.
- (2) The Agency's EAP will designate the number of free counseling sessions per issue (currently six sessions, which is subject to change through the Agency's contract with the service provider) to help identify and resolve specific issues of concern. Employees should refer to the Agency's EAP intranet site to determine the contracted number of free counseling sessions per issue.
- (3) Employees may consult with a Union representative at any time regarding EAP services.

(b) COUNSELING

- (1) Employees, at their option, may avail themselves of free, confidential telephonic assessment and referral sessions with EAP professionals in lieu of in-person clinical visits. In such cases, the Agency will make appropriate arrangements for administrative leave in accordance with this Article, including travel time to an appropriate site to make such calls. For employees who lack access to confidential telephone facilities at a work site or home location, the Agency will make appropriate arrangements at no expense to the employee.
- (2) The Agency's EAP shall provide the full range of services including, but not limited to: counseling, referral, training and critical incident response.

(c) LEAVE

- (1) EAP. Every year, employees will be granted up to 8 hours administrative leave for initial assessment/referral, or contacts with EAP, including travel time. Once the

employee has been referred by EAP to a private provider, sick leave, annual leave or leave without pay may be used for visits to the private health care provider.

- (2) Rehabilitation/Treatment. Employees undergoing a prescribed program of treatment will be granted sick leave upon request for this purpose on the same basis as any other illness which requires absence from work.

(d) CONSIDERATION OF EAP

The Agency and the Union jointly agree 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.

(e) CHILD CARE AND ELDER CARE

- (1) Through the EAP, the Agency will continue to provide and support various activities in order to meet the ongoing child and elder care needs of employees. These may include, but are not limited to, such things as child care, elder care, and parenting information, resources, workshops, and counseling.
- (2) The Agency recognizes that it may be necessary for employees to contact child care and elder care providers during duty hours.

(f) NURSING MOTHERS

The Agency will provide a clean, healthy and private environment other than a bathroom (such as the temporary utilization of a private office) and flexibility on non-duty time for nursing mothers to express milk.

(g) TOBACCO USE CESSATION

The Agency may promote programs for the cessation of tobacco use by employees desiring assistance in this area. To the extent consistent with law, the Agency may also make reasonable efforts to provide educational resources, web sites, activities, and events supporting tobacco cessation.

ARTICLE 22 – ANNUAL LEAVE

(a) POLICY.

The following shall apply to annual leave.

- (1) ACCRUAL AND RIGHT TO USE. An employee is entitled to accrue and use annual leave in accordance with Government-wide rules and regulations and this Agreement. Use of accrued annual leave is a right of the employee and not a privilege.
- (2) PROCEDURES FOR REQUESTING ANNUAL LEAVE . Except in an emergency situation or in the event of an unanticipated absence, annual leave will be requested in advance utilizing WebTA or its successor. Where WebTA is not available, the request will be made using Office of Personnel Management Form 71 (OPM-71) (former SF-71), "Request for Leave or Approved Absence".
- (3) INCREMENTS OF ANNUAL LEAVE. All absences shall be charged in 15-minute increments.
- (4) TIMELY LEAVE DECISIONS. Except for annual leave scheduled in advance as described in section six (6) below, the supervisor will update WebTA, or the OPM-71 where required, within three business days of the employee's request being submitted via WebTA, or the OPM-71. However, barring operational need, a request submitted for early departure will be decided within 2 hours of submission.
- (5) USE OF ANNUAL LEAVE IN ASSOCIATION WITH UNION MEMBERSHIP RECRUITMENT. If the Union provides Management with reasonable advance notice of any Union membership recruitment drive, Management agrees to apply a liberal annual leave policy, consistent with work requirements, to allow union officials and interested employees to attend the union membership drive.
- (6) PROCEDURE TO SCHEDULE IN ADVANCE. Each employee shall be responsible for planning and making a timely request for annual leave. Leave preferences in excess of five days, or that span more than one work week (regardless of duration) shall be submitted no later than February 1 of each calendar year. Employees who do not request leave by February 1 will be allowed to take leave at a later date, provided it does not interfere with the annual leave schedule.
- (7) PRIORITY APPROVAL. When all requests for annual leave for a given period cannot be granted, the supervisor shall give consideration to the following factors:
 - (A) Restored Annual Leave. Must be used within two years of restoration according to 5 CFR 630.306 et seq.

- (B) **Accrued Leave.** Amount of leave to the employee's credit.
 - (C) **Seniority:** For the purpose of the Article, seniority is defined as the length of service with the Agency and/or its predecessor Agency commencing with the first (1st) day of employment.
 - (D) **Children's Vacation.** Whether employee has children of school age and cannot benefit from a vacation taken when his or her children are in school.
 - (E) **Previous Requests.** Whether the employee is able to take leave at desired time during a previous scheduling period.
- (8) **THREE CONSECUTIVE WEEKS.** The Employer agrees to grant annual leave in a manner which permits each employee, if he or she wishes, to take at least three (3) consecutive weeks of annual leave each year.
- (9) **NO SEASONAL EXCLUSION.** In no case will any particular time of the year or season be excluded from consideration for the granting of annual leave only because it is a particular time or season of the year.
- (10) **RELIGIOUS HOLIDAY.** An employee may request annual leave for an established religious holiday of his or her faith which occurs on a regularly scheduled workday of the employee's basic workweek, in accordance with the provisions set forth in this Article and Holidays and Religious Observances article of this Agreement.
- (11) **REASON FOR LEAVE.** An employee is not required to specify the reason for a request of annual leave unless the employee is requesting leave under the emergency procedures of Section (14) below.
- (12) **CANCELED / CHANGED LEAVE.** Both the needs of the employee and the Agency will be considered prior to any cancellation of annual leave. An approved annual leave request for two (2) days or more will be canceled only for valid operational reasons which require the employee not to take leave. Valid operational reasons include such matters as illness or death of another employee, directed details by authority outside the Agency, special mission requirements which do not lend themselves to normal scheduling, and other events which create an actual necessity for personnel and not reasons which may make canceling leave merely desirable. Whenever possible, the employee whose leave is canceled will be notified at least forty-eight (48) hours in advance. Such notice will be given in writing or by e-mail.
- (13) **RESTORATION OF CANCELED LEAVE.** Use-or-Lose annual leave that has been canceled for valid operational reasons shall be restored in accordance with the provisions of the governing regulations.

- (14) EMERGENCIES AND UNANTICIPATED ANNUAL LEAVE. Use of annual leave for an emergency is applicable when an unforeseen emergency situation arises in a manner such that an employee is unable to give adequate advanced notice of his or her request for leave. In the event of an emergency situation or unanticipated absence, at the earliest opportunity, the employee will attempt to first contact his or her first-line supervisor to notify management of the reason for the absence, the type of leave being requested, the expected duration of the absence and a call back number. If the immediate supervisor is not available, the employee will leave an email and/or voice message at the phone number provided by the first-line supervisor and then attempt to contact the second-line supervisor to notify them of the emergency, if the second-line supervisor is unavailable, then the employee will leave an email and/or voice message. Upon return, the employee will request the appropriate leave upon return using WebTA , its successor system or OPM-71 if an electronic system is unavailable upon return to duty.

If the emergency extends beyond the period for which leave was originally requested, the employee must again notify the employer and request additional leave.

- (15) HABITUAL TARDINESS. Habitual tardiness may be corrected by counseling followed by appropriate discipline if necessary. Occasional and infrequent tardiness of less than sixty (60) minutes may be excused at the discretion of the supervisor. Depending on the circumstances the time may be charged in multiples of fifteen (15) minutes to annual leave, compensatory leave, leave without pay or AWOL. An employee cannot be required to perform work for the period of leave charged against his or her account.

- (16) ADVANCE ANNUAL LEAVE. Following an employee's request, annual leave may be granted and used in advance of accrual, not to exceed the amount that the employee is expected to accrue during the remainder of the same leave year.

ARTICLE 23 – SICK LEAVE

(a) **PURPOSE OF SICK LEAVE.** When requested and approved as provided in this Article and in 5 CFR 630.401 or its successor employees may use sick leave for the following purposes:

(1) Sick Leave Related to Self.

- (A) Medical Appointments. To receive medical, dental, or optical examination or treatment;
- (B) Incapacity. When incapacitated for duty by physical or mental illness, injury, pregnancy, or childbirth;
- (C) Communicable Disease. When, as determined by health authorities having jurisdiction or by a health care provider, the employee's presence on the job would jeopardize the health of others as consequence of the employee's exposure to a communicable disease;

(b) **SICK LEAVE REQUEST PROCEDURES.**

(1) Anticipated and Unanticipated Sick Leave:

- (A) Anticipated Sick Leave. An employee may use sick leave for personal medical needs, appointments, or medical attention, bereavement, care of a family member in general, care of a family member with a serious health condition, and adoption related purposes. If the employee knows in advance of their need to use sick leave, the sick leave should be requested as far in advance as possible using WebTA unless WebTA is unavailable. For absences in excess of four (4) consecutive workdays, medical documentation may be required. If leave use patterns demonstrate possible abuse, the Employer may request documentation if the absence is less than 5 days.
- (B) Unanticipated Sick Leave. In the event of emergency situations or unanticipated absences, employees will attempt to first contact their first-line supervisor to notify management of the reason for the absence, the type of leave being requested, the expected duration of the absence and a call back number. If the immediate supervisor is not available, the employee will leave an email and/or voice message at the phone number provided by the first-line supervisor and then attempt to contact the second-line supervisor to notify them of the emergency, if the second-line supervisor is unavailable, then the employee will leave a voice message. Upon return, the employee will request the appropriate leave upon return using WebTA , its successor system or OPM-71 if an electronic system is unavailable upon return to duty.

Employees are expected to provide notification of illness prior to the start of an assigned shift, but in no event later than one hour after the start of the shift unless the illness or incapacitation precludes such request. In such instances, the employee shall provide notification as soon as possible.

(2) Evidence of Illness

- (A) If medical documentation is required due to an absence that is in excess of four (4) consecutive workdays, the employee is expected to provide medical documentation (see below) upon return to duty or, in extenuating circumstances, within a maximum of 15 days of the agency's request. If the employee fails to provide the required evidence within the specified time period, he or she may be denied leave.
- (B) Medical documentation when required will include information from a health care provider stating the employee has a condition that prevents the employee from performing work, how long the employee will be away from work, the expected date of return, and any information concerning restrictions on resuming work activities or temporary accommodations such as telework, adjustable schedule, more convenient parking, light duties, or as determined in an approved medical accommodation.
- (C) The following is a sample of the type of documentation that may be obtained:

This is to inform you that, John Doe, is under my care and has a medical condition that will preclude him from working over the next 2 weeks. Mr. Doe is expected to return to work on June 1, 2013. Upon return, Mr. Doe can continue his regular duties.

- (3) PATTERN OF SICK LEAVE ABUSE. Supervisors will counsel employees in accordance with Counseling for Performance and Misconduct article of this Agreement whose leave use could be considered inappropriate. In a situation in which an employee has demonstrated an abuse of sick leave, for example, periods of sick leave usage:
 - (A) Before and/or after holidays.
 - (B) Before and/or after weekends or regular days off.
 - (C) After pay days.
 - (D) Any one specific day.
 - (E) Absence following overtime worked.

- (F) Half days.
- (G) Continued pattern of maintaining zero or near zero leave balances.
- (H) Excessive absenteeism - use of more sick leave than granted.

the employee may be subject to leave restriction.

When leave restriction becomes necessary, the supervisor will provide written notification of the specific procedures for future leave requests and leave use by employee for a period of one year, or less if a determination is made by the supervisor that the leave abuse has ceased. The employee will be notified, in writing, at the end of the one year of the reasons if the leave restriction is to continue beyond one year. If the leave restriction is not continued, the employee will be notified of the cancellation of the leave restriction. Records of the leave restriction shall be expunged if there is no recurrence of the problem within six (6) months, except as otherwise required by rule or regulation.

- (4) OTHER LEAVE FOR ILLNESS. Upon request by the employee, an approved absence which would otherwise be chargeable to sick leave may be charged to annual, credit hours, compensatory time, or time off awards if the request is made at the time the request for approval of the leave is submitted and such other leave is available.
- (5) USE OF SICK LEAVE DURING ANNUAL LEAVE. An employee may request sick leave during a period of annual leave for any of the purposes described above.
- (6) ADVANCED SICK LEAVE.
 - (A) When an employee's sick leave balance has been exhausted, the Employer will approve requests for advanced sick leave in cases of serious disability or ailment of the employee or a family member, bereavement, or for purposes relating to the adoption of a child if:
 - i. The application is supported by medical documentation.

Medical documentation when required will include information from a health care provider stating the employee or a qualified family member has a condition that prevents the employee from performing work, how long the employee will be away from work, the expected date of return, and any information concerning restrictions on resuming work activities or temporary accommodations such as telework, adjustable schedule, more convenient parking, light duties, or as determined in an approved medical accommodation. Additional information may be requested

consistent with privacy and confidentiality laws, rules and regulations including HIPA regulations; and

- ii. Repayment is reasonably expected; and
 - iii. The absence on account of illness must be for a period of five (5) or more consecutive workdays, but the actual advance may be for any part of the total absence.
- (B) **Maximum Advance.** A supervisor or designee may advance a maximum of 240 hours of sick leave to a full-time employee, up to 104 hours of which may be used for general family care or bereavement purposes, or to care for a family member with a serious health condition. (for a part time employee or an employee on an uncommon tour of duty, the amounts must be prorated according to the number of hours in the employee’s regularly scheduled work-week) Requests for advanced sick leave should be submitted by employees to their immediate supervisor or designee.
- (C) **Restrictions on Approval.** Advanced sick leave will not be approved under the following circumstances:
- i. When the employee has filed an application for disability retirement or has indicated there is an intention to resign for disability;
 - ii. When a separation date has been established which would preclude the employee enough leave to repay the advanced sick leave; or
 - iii. When there is other evidence that the employee will not return to duty in order to repay the advanced sick leave.
- (D) **Repayment of Advanced Sick Leave.** The total sick leave advanced must be charged against sick leave subsequently earned. In case of separation of any employee who is indebted for advanced sick leave (except in case of death, disability supported by an acceptable medical certificate, retirement for disability, or for active military service with restoration rights) recovery shall be made in accordance with 5 CFR 630.209 or its successor.
- (E) **Temporary Employees.** Temporary employees are not normally eligible for advanced sick leave. In cases where advanced sick leave is approved for a temporary employee, advanced sick leave may not be provided in excess of the amount which they will earn during the period of temporary employment.

ARTICLE 24 – OTHER LEAVE CATEGORIES

(a) ADMINISTRATIVE LEAVE.

- (1) Definition. Administrative leave is an excused absence from duty administratively authorized without loss of pay and without charge to accrued leave.
- (2) Voting in Civil Election.
 - (A) General Rule. As a general rule, where the polls are not open at least three (3) hours either before or after an employee's regular hours of work, he or she may be granted an amount of excused leave to vote in a civil election which will permit him or her to report for work three (3) hours after the polls open or leave work three (3) hours before the polls close, whichever requires the lesser amount of time off.
 - (B) Additional Time. Depending upon exceptional circumstance in an individual case, an employee may be excused for such additional time as may be needed to enable him or her to vote, depending upon the particular circumstances in his or her individual case, but not to exceed a full day.
 - (C) Travel Time. If an employee's voting place is beyond normal commuting distance and vote by absentee ballot is not permitted, the employee may be granted the time necessary to make the trip to the voting place to cast his or her ballot. Time off in excess of one (1) day shall be charged to annual leave or if annual leave is exhausted, then to leave without pay.
 - (D) In-person Registration. For employees who vote in jurisdictions which require registration in person, time off to register may be granted on the same basis as for voting, except that no time shall be granted if registration can be accomplished on a non-workday and the place of registration is within reasonable one (1) day round trip travel distance of the employee's place of residence,
 - (E) Costs. All costs incurred for travel in cases described in Sections D2(a), (b), (c) and (d) will be borne by the employee.
- (3) Blood Drive. An employee donating blood at an officially authorized blood bank or in emergencies to individuals, will be granted administrative leave for the time necessary to make the blood donation and necessary time for travel and recuperation. The time authorized under this section shall be limited to four (4) hours on the day the blood is donated.

- (4) Bone Marrow/Organ Donation. Administrative Leave may be granted for bone marrow or organ donation in accordance with law and regulation.
- (5) Change of Duty Station. Employees effecting changes in a residence in connection with a change in duty station within the Agency will be granted administrative leave of five (5) workdays. The first two (2) days will be provided by the losing activity and the remaining three (3) days will be provided by the gaining activity. The purpose of this leave is to make all arrangements, preparations, and actions relating to preparing for and actually effecting the changes in station. An additional one (1) workday of administrative leave will be granted by the gaining activity when the changes in station will not be at government expense.
- (6) Court Leave. Employees will be granted court leave to serve as a juror, or as a witness in a judicial proceeding in which the Federal, State, or local government is a party, regardless of shift. An employee is responsible for informing his or her supervisor as soon as he or she is excused from jury or witness service, but shall not be required to return to work unless a substantial part of the workday remains.
- (7) Agency Interviews / Examinations. Employees being interviewed for positions within the Agency or taking examinations for positions within the Agency will be granted administrative leave for the actual time of the interview or examination.

(b) HOME LEAVE.

- (1) Home Leave: A period of approved absence with pay authorized by 5 USC Section 6305 for employees stationed abroad.
- (2) Accrual. Home leave shall be accrued, credited, and granted in accordance with applicable laws, rules and regulations and this Agreement.
- (3) Granting. Upon request, home leave will be granted to an employee who has completed an initial tour of overseas duty of at least twenty-four (24) months and who has been approved for an additional assignment overseas of at least twelve (12) months.
- (4) Limited Use. Home leave may be used only in the United States, the Commonwealth of Puerto Rico, or a territory or possession of the United States, or at other locations, in accordance with regulations.
- (5) Combined with Annual Leave. Home leave may be taken in combination with annual leave.
- (6) Management Discretion. The discretion to approve an employee's home leave request will rest with the Headquarters. Home leave will be approved in a fair and objective manner devoid of personal favoritism.

(c) LEAVE WITHOUT PAY.

- (1) Definition. Leave without Pay (LWOP) is a temporary non-pay status and absence from duty which has been requested and approved in advance by the Employer.
- (2) Matter of Right. The following employees are entitled, as a matter of right, to take leave without pay for the following purposes:
 - (A) Disabled Veteran. A disabled veteran for medical treatment when he or she presents an official statement from a duly constituted medical authority that medical treatment is required. The disabled veteran must give prior notice of the period during which his or her absence for treatment will occur.
 - (B) Military Reservist. A military reservist or national guardsman for the period he or she is required to perform active duty training if he or she has exhausted his or her military leave or he or she is not entitled to military leave.
 - (C) Family Necessity. An employee who requests leave under the Family And Medical Leave Act (FMLA) (5 USC 6381 et seq.) and as set forth in section E below will be granted up to 12 weeks of leave without pay during any 12 month period as necessary to manage one or more of the following circumstances: the birth, adoption, or foster care of a child; a serious health condition of the employee that renders the employee unable to perform the essential functions of his or her position; to care for a spouse, son, daughter, or parent of the employee when that person has a serious health condition. It is understood that the definitions as set forth at 5 CFR Part 630, Subpart L, shall apply to the terms of this subsection to the extent such terms are so defined.
- (3) For Union Purposes: The Employer may approve leave without pay in the following circumstances:
 - (A) National Union Office; For three (3) years to any employee elected a National Officer of AFGE. Such leave may be extended in three (3) year increments and will be terminated when the employee leaves office.
 - (B) Council Convention. Local Officers, duly elected delegates, and National Officers at their option may substitute LWOP for annual leave for the purpose of attending the regularly scheduled Council Convention.
 - (C) Union Representatives. Upon request of the National President of AFGE, employees who are selected to serve in the capacity of AFGE Union

representative or officer, which requires absence from the job, may be granted annual and/or leave without pay for a period of up to three (3) years. Extension for an additional year may be considered. For short absences, not exceeding two (2) weeks of annual leave or LWOP, upon request of the Local President or the Council President, Executive Vice President, or Regional Vice President, the Local Director may approve such absences for a reasonable number of employees consistent with workload requirements.

- (4) Administrative Discretion. Recognizing that LWOP is a matter of administrative discretion and may not be demanded as a right, the Employer may approve requests for LWOP in the following circumstances:
- (A) Education. When requested at least sixty (60) days in advance (a response will issue within thirty (30) days of receipt thereof), an employee may be granted up to one (1) year to participate in full-time study at an accredited institution of higher learning when the following conditions are met:
 - i. Related to Position. The proposed course of study is directly related to the employee's position with the Agency and the employee has completed a minimum of five (5) years of service with Agency.
 - ii. Acceptable Performance / Expected Return. The employee has demonstrated an acceptable level of competence through past performance and it can reasonably be expected that the employee will return to work with the Agency upon completion of the study period. Such LWOP will be automatically terminated without further notice when the employee withdraws or is terminated from the study program.
 - (B) Injury/Illness. For up to six (6) calendar months (including leave taken under FMLA) when an employee has an illness or injury, that would otherwise be covered with sick leave when the employee's annual and sick leave have been exhausted and there is reasonable assurance that the employee can and will return to work with the Service at the end of the leave period.
- (5) Substitute for Annual Leave. An employee at his or her option may substitute leave without pay for annual leave in the following situation:
- (A) Family Death. For leave granted in conjunction with death in the immediate family,
 - (B) Religious Holiday. For leave on an established religious holiday which occurs on a regularly scheduled workday of the employee.
 - (C) Family care as provided under the FMLA and in section E below.

(d) VOLUNTARY LEAVE TRANSFER PROGRAM.

An employee who has no leave balance may apply for the Voluntary Leave Transfer Program for the purpose of caring for himself or herself or a family member in a medical emergency.

(e) LEAVE FOR FAMILY RESPONSIBILITIES.

- (1) Family Considerations. The Parties recognize that, consistent with Department and government-wide policies concerning family-friendly working conditions, the Employer encourages its managers, to the maximum extent consistent with efficient and effective mission accomplishment, to grant leave requested by its employees in connection with employee family responsibilities. Such family responsibilities may include childbirth, adoption, caring for an ill or disabled family member, or one with a serious health condition, attending to a family member who is receiving medical, dental, or optical examination or treatment, or in connection with the death of a family member, including attending funerals. The Employer shall approve or disapprove such requests for leave consistent with law and applicable regulations.
- (2) Sick Leave for Family Care. Employees are entitled to use sick leave to enable them to provide care for family members as set forth in 5 CFR 630.201, subject to the limitations set forth therein.
- (3) FMLA Leave. Employees are also entitled to use up to 12 weeks of leave without pay ("LWOP") during any 12 month period due to the birth, adoption, or foster care of a child, to care for a spouse, son, daughter, or parent who has a serious health condition, or due to a serious health condition which makes the employee unable to perform the essential functions of his or her position. FMLA leave is in addition to other paid time off available to an employee. However, employees may elect to substitute annual leave and/or sick leave for unpaid leave under the FMLA, where consistent with law and regulations. The leave may be intermittent or may be scheduled so as to result in a reduced work schedule. While on FMLA leave, the employee is entitled to maintain health benefits coverage in accordance with rules and regulations.
- (4) Procedure for requesting FMLA Leave. The employee must provide notice of his or her intent to take FMLA leave not less than 30 days before leave is to begin, or as soon as practicable. The Agency may request medical certification for FMLA leave requests, where requested for the purpose of dealing with a serious health condition.
- (5) Return to Work/ Continuation of Employment. Upon return from FMLA leave, an employee must be returned to the same position or to an equivalent position with equivalent benefits, pay, status and terms and conditions of employment.
- (6) Leave for other Family Purposes. Employees may request annual leave in accordance with the Annual Leave Article of this Agreement for the purposes of participating in events with family members that do not meet the criteria described elsewhere in this

article, such as participation in school activities, volunteer work, or attending weddings, sports and cultural events.

(7) Voluntary Leave Transfer Program. An employee who has no leave balance may apply for leave under the Voluntary Leave Transfer Program, for the purpose of caring for a family member, in accordance with the requirements of the program.

(8) Leave for Maternity or Paternity Purposes:

- (A) Employees may request, and the employer may evaluate and approve leave for maternity and paternity, in accordance with the terms of this article.
- (B) Requests under this section may be for periods of up to six (6) months, and include a combination of sick leave, annual leave, and LWOP (including under FMLA) in accordance with related sections of this agreement.
- (C) Nothing in this section requires an employee to exhaust accrued annual leave and/or sick leave prior to requesting LWOP under this section.

(f) BEREAVEMENT

(1) Purpose. To make arrangements in connection with the death of a family member, attend the funeral of a family member, or for bereavement purposes in conjunction with the death of a family member. Under this section, "family member" is defined as a spouse or parents thereof; children, including adopted children, and spouses thereof; parents; brothers and sisters, and spouses thereof; and/or any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship as defined in OPM Regulations (5 CFR 630.201).

(2) A full-time employee may not use more than 104 hours of sick leave (or for part-time employees the amount of sick leave the employee normally accrues in a leave year) for this purpose within any leave year;

(3) For leave granted in conjunction with death of a family member as defined in this Article, the employee may request any accrued leave or leave without pay.

(4) Employees may also request advanced leave for this purpose, in accordance with applicable laws, rules, and regulations, using the process set forth in this Agreement.

(g) Compensatory Time:

(1) Regular compensatory time may be used in accordance with law, rule and regulation (currently 5 CFR 550.114 and 551.531).

(2) Travel compensatory time may be used in accordance with law, rule and regulation (currently 5 CFR 550, Subpart N).

(3) Compensatory time off (regular or travel) shall be requested and approved in accordance with the procedures for requesting annual leave.

(h) CREDIT HOURS

(1) Where approved by the employee's supervisor, or designee, credit hours may be accrued in accordance with 5 USC 6126.

(2) The use of credit hours shall be requested and approved in accordance with the procedures for requesting annual leave.

(i) Time Off Awards. When an employee is granted a time-off award, he or she must take the awarded time-off within one year of receiving the award.

ARTICLE 25 – TELEWORK

(a) GENERAL

- (1) Telework is a voluntary program that may be authorized when an employee's officially assigned duties can be performed at an alternate location and the criteria specified in this article can be met. The purpose of this Article is to ensure that eligible employees may participate in telework to the maximum extent possible without diminishing employee's performance or mission accomplishment. Participation in a telework arrangement is not an employee entitlement or right.
- (2) The parties recognize that core and episodic/situational telework arrangements benefit employees and the Agency by, among other things providing for Continuity of Operations (COOP). Teleworkers may be called upon to telework during times of COOP and are responsible for being familiar with Agency and workgroup COOP plans and individual expectations during COOP events.
- (3) Teleworkers may not provide care for children and/or other family members during work hours while participating in a telework arrangement; teleworkers must make other arrangements for dependent care. This provision shall not be interpreted to mean that such family members may not be present in the teleworker's alternative work site during times of telework.
- (4) USCIS employees who telework continue to be bound by DHS and USCIS standards of conduct and policies while working at the alternative worksite and/or using government furnished equipment. Teleworkers shall be treated the same as those working at the traditional worksite for purposes of appraisals, training, rewards, reassignments, promotion and reduction in force. Unless otherwise specifically addressed herein, all conditions of federal employment, performance of assigned duties, adherence to applicable policies, participation in required training, and satisfaction of standards of conduct apply in full measure.
- (5) The use of electronic communications technologies may be required to promote effective communication when an employee is on duty.
- (6) Employees with a disability who are not eligible or approved for telework under the Telework Program may be entitled to telework as a form of reasonable accommodation under USCIS MD 3090-1 and may apply for telework under those separate procedures.

(b) POSITION ELIGIBILITY

The Agency will determine which positions are suitable for telework. The Agency will review these determinations on a regular, recurring basis to ensure that positions are included in the telework program to the extent possible and will communicate any determination changes to

affected employees. While Agency telework eligibility decisions are normally made by position classification, the actual substantive determination is to be made by the actual duties and tasks performed by the position. The appropriate Agency Approving Official or designee is responsible for determining “Position-related” eligibility. The parties recognize that some positions are not eligible for Telework. These positions involve tasks that are not suitable to be performed away from the traditional work site, including, but not limited to, tasks that:

- (1) require the employee to have daily face-to-face contact with the supervisor, colleagues, clients, or the general public in order to perform his or her job effectively, which cannot otherwise be achieved via email, telephone, fax or similar electronic means;
- (2) require daily access to classified information; or
- (3) are part of trainee positions.

The Agency may, at any time, determine or re-determine whether job duties or positions are suitable for telework.

(c) EMPLOYEE ELIGIBILITY

An employee must meet the following eligibility requirements:

- (1) The employee is in a position that has been designated as suitable for telework;
- (2) The employee is performing at least at the “Achieved Expectations” level or its equivalent in each of his or her core competencies and performance goals;
- (3) The employee has signed a written telework agreement;
- (4) The employee has completed all mandatory telework training;
- (5) Unless waived by the telework Approving Official, the employee’s conduct has not resulted in disciplinary action within the last year;
- (6) The employee has worked for the federal government for at least one year—Approving Officials may approve exceptions on a case-by-case basis by considering the employee’s experience and background;
- (7) The employee’s record of attendance shows no pattern of leave abuse or excessive absence, as determined by USCIS Management; and the employee is not under a letter of leave restriction.

(d) TYPES OF TELEWORK

Telework may be defined as core, episodic/situational, or ad hoc as described below. The Agency will determine the types of telework and the number of days for which telework is available for each position. The number of days of telework is based upon workload requirements, ability to

maintain effective communications in the workplace, implementation of new work processes, and accomplishment of the mission of the Agency. The Agency has the sole discretion to determine the number of days per week a teleworker is approved to work.

- (1) Core Telework. The employee teleworks on a routine, regular, and recurring basis one or more days per pay period.
- (2) Episodic or Situational Telework. The employee teleworks on an occasional, non-routine, irregular basis. Episodic or situational telework for COOP and emergency response purposes will be executed in accordance with applicable procedures.

(e) TELEWORK APPLICATIONS AND AGREEMENTS

An eligible employee's request to telework for a specific period of time will be approved to the maximum extent possible, as long as approval does not diminish employee performance or agency operations.

(1) Application.

In order to participate in any type of telework as described above, an employee must submit a telework application. Employees may apply for telework during the ten (10) business days prior to the beginning of a quarter by completing Form G-1129, Telework Program Application and Agreement. Quarters begin the first work day in January, April, July, and October. An employee who is on leave or TDY during the entire application period may apply in advance or within five (5) days of returning to work. The application timeframes may be waived by management for compelling unforeseen circumstances that prevented timely submission.

Employees must include Form G-1129A, Employee Certification of Safety for the Telework Program with their telework application.

(2) Decision.

Within twenty (20) working days of receipt of the telework application, the employee's immediate supervisor, or designee, will provide a written decision to the employee by completing Section C of the G-1129 Telework Application. The supervisor or designee will maintain the signed and approved original Agreement, and provide a copy to the employee.

If an application is denied, the reason for denial will be documented on the Form G-1129 and a copy will be provided to the employee.

(3) Denials Due to Agency Constraints.

When it is not possible for Management to approve all telework requests due to a lack of government furnished equipment, employees will be ranked in accordance with the Seniority Article of this Agreement or the applicable local agreement for Seniority.

(4) Expiration.

Individual telework agreements will expire one calendar year after the date specified in

Section C of the Form G-1129, Telework Application.

(f) GOVERNMENT FURNISHED EQUIPMENT (GFE)

In addition to office supplies routinely used at the traditional worksite, the Agency will provide necessary GFE, as determined by the Agency, to accomplish work assignments.

Supervisors will approve administrative time for employees to resolve issues related to GFE such as training, installation, configuration, and repair services, consistent with existing management policies as applied at the traditional worksite.

(g) COSTS

Apart from furnishing and maintaining GFE, the Agency will not be responsible for operating costs (such as telephone line usage fees, internet installation or connection fees, monthly service charges), maintenance, or any other costs incurred by the employee as a result of participation in the telework program.

(h) ALTERNATIVE WORKSITE

(1) Minimum Requirements.

Employees must have a designated workspace or workstation for performance of their work. Employees are responsible for ensuring that the alternative worksite:

- (A) Has telephone access;
- (B) Has high-speed internet access; and
- (C) Has a designated location in which GFE and/or Sensitive But Unclassified (SBU) materials must be stored under lock and key when not in use. Examples of sufficient access control measures include a locked room, desk drawer, safe, and/or file cabinet.

These requirements may be waived at the discretion of the Supervisor/Manager depending on the specific nature of the work to be performed at the alternative worksite.

(2) Handling Sensitive Materials.

- (A) Teleworkers must comply with the Privacy Act of 1974 (the “Privacy Act”), codified in 5 U.S.C. § 552a, by ensuring that sensitive data are not disclosed to anyone except those who are authorized access to such information and have a need-to-know in order to perform their duties. Employees must demonstrate that the appropriate administrative, technical and physical safeguards are available at their telework locations to ensure the security and confidentiality of records protected by the Privacy Act.

- (B) Files, materials, and equipment shall be handled in accordance with the Agency policies for safeguarding property and sensitive information. If an employee transports A-files, T-files or receipt files to the alternative worksite, before leaving the traditional worksite, he or she must update the National File Tracking System (or its equivalent) to reflect that the files are located at the employee's alternative worksite. Additionally, all A-files, T-files or receipt files must be manifested where required.
- (C) Employees may not remove classified data from the traditional worksites to alternative worksite locations.

(i) REPORTING TO THE TRADITIONAL WORKSITE

Employees who Telework must be available to work at the traditional worksite on Telework days if necessitated by work requirements. Requests by employees to change scheduled Telework days in a particular week or bi-weekly pay period may be accommodated by the supervisor consistent with mission requirements.

(1) Employer Request.

Employees may be required to report to their traditional worksite for scheduled trainings, conferences, or meetings, or to perform work on a short term basis that cannot otherwise be performed at the alternative worksite or accomplished via telephone or other reasonable alternative methods. When requested, employees who telework must be available to report to the traditional worksite on telework. Supervisors will make every effort to provide at least 24 hours' notice in such cases.

When advance notice of 24 hours or more is not possible, employees will be provided a reasonable amount of time to report to the traditional worksite. Employees should make every effort to report as soon as possible but no later than two hours from the time of the request. With good and sufficient reason, the time for reporting may be extended. The normal commute time for such employees will be taken into consideration in the event they are required to report to the traditional worksite on short notice. Employees who live outside the two-hour report timeframe shall not be precluded from any telework eligibility option solely for that reason. In cases in which employees are called into the traditional worksite after the start of their scheduled workday, travel time to the traditional worksite will be considered duty time.

(2) Employee Request.

Requests by the employee to work at the traditional worksite on scheduled telework days may be accommodated by the supervisor consistent with mission requirements and workspace availability. A permanent change in the telework arrangement must be reflected in the form of a new telework agreement.

(3) Work Interruption.

Before participating in the telework program, all employees and their immediate supervisors will identify tasks that could be completed at the alternative worksite when there is a temporary

limitation related to working at the alternate worksite, such as a local power failure, that impacts an employee's ability to complete work on an assigned project. Employees will promptly inform supervisors whenever problems such as equipment failure, power outages, and telecommunications difficulties adversely affect their ability to work at the alternative worksite. In such cases, the employee may be required to report to the traditional worksite or, if requested by the employee and approved by the supervisor, may take appropriate leave.

(j) SUSPENSION OR TERMINATION OF TELEWORK AGREEMENT

(1) Procedures.

- (A) Supervisors or managers may suspend or terminate a telework agreement for the reasons specified below. Unless legitimate business reasons dictate otherwise, the supervisor or manager will provide written notice to the employee at least fourteen (14) days before suspension or termination of a telework agreement. The written notice of suspension or termination will inform the employee when he or she may re-apply for or resume telework.
- (B) An employee may terminate a telework agreement for any reason by giving written notice to his or her supervisor at least fourteen (14) calendar days in advance. In such cases, the employee may be assigned a temporary workspace at the traditional worksite until such time as permanent workspace becomes available.
- (C) Regardless of which party initiates termination, the reason for termination will be documented in Part 2 of the Form G-1129, Telework Agreement.

(2) Reasons.

Managers or supervisors may suspend or terminate participation in telework for the following reasons:

- (F) The employee no longer meets the eligibility requirements;
- (G) The employee has breached the telework agreement;
- (H) The telework arrangement diminishes Agency operations;
- (I) Performance standards are not being met;
 - i. If the employee is subjected to a Performance Improvement Plan (PIP), the employee's participation in the telework program will be terminated.
 - ii. Managers or supervisors will comply with the Performance Management System Article of this Agreement before suspending or terminating the employee's participation in telework.

- (J) On three or more occasions in a twelve (12) month period, the employee fails to contact a manager or supervisor within two (2) hours of the manager's or supervisor's request. Either party may make contact by phone or email, however, if contact is made by phone and the party is not reached, the individual initiating contact should leave a voicemail indicating the date and time of the call. Employees are expected to be as available at the alternate worksite as they are at the traditional worksite.
- (K) Reassignment causes a change of work such that the duties cannot reasonably be performed at the alternate worksite. If the reassignment of job duties is permanent, then the telework agreement must be terminated. If the reassignment is temporary, the supervisor or manager may suspend participation in telework for the duration of the project or assignment. Upon completion of the temporary assignment, the employee may resume telework under the original agreement without submitting a new application, provided that the agreement has not expired. The supervisor or manager will determine whether a telework agreement is terminated or suspended as a result of reassignment on a case-by-case basis.
- (L) The alternate worksite did not pass a site inspection.
- i. When an alternate worksite fails to pass a site inspection, a supervisor will notify the employee of the failure to pass the site inspection and provide the employee with a copy of the inspection results. At the same time, the supervisor will notify the employee of the intent to suspend or terminate the telework agreement fourteen (14) days from the date of the notification. The supervisor will provide the employee with two copies so that the employee may provide one copy to a Union representative if so desired. However, if the notification is by e-mail, only one copy of the notice need be attached to the e-mail and the employee may print out an extra copy to provide to a Union representative if so desired.
 - ii. Employee rebuttals will be submitted to their immediate supervisor for consideration no later than seven (7) calendar days after issuance of the negative site inspection report. Employees may ask a Union representative for assistance in preparing a rebuttal. Employee rebuttals may include a statement that the reason stated for the failure to pass a site inspection has been fully remediated. Employee rebuttal may include a statement that the reason stated for failure to pass a site inspection has been fully remediated. The supervisor has discretion to extend the rebuttal period for good cause.
 - iii. The supervisor will make a final determination no later than seven (7) calendar days after receipt of any rebuttal received or, if no rebuttal

received within fourteen (14) calendar days of the initial notice of failed inspection.

- iv. If the reason the alternate worksite did not pass a site inspection poses immediate threat to the employee's safety or reveals a failure to comply with privacy protection requirements, the employee may be required to return to the traditional worksite even during the rebuttal period. The employee must be given a reasonable period of time to make necessary arrangements.

(k) EARLY DISMISSALS AND OFFICE CLOSURE

Telework allows a greater number of Federal employees to work during emergency situations and allows the Federal Government to maximize operational efficiency to the extent practicable without compromising the safety of its employees and the general public during heavy snow accumulation, significant road closures due to various events, and other emergency situations.

(1) Emergency Closure of Traditional Worksite.

If the traditional worksite closes due to an emergency (such as inclement weather, pandemic health crisis, manmade or natural disasters) a telework-ready-employee (an employee with an approved telework agreement and the work and equipment necessary to perform duties) is required to telework consistent with Agency policy.

Supervisors may exercise their authority to grant excused absence to teleworking employees on a case-by-case basis. Management discretion will be reserved for situations that were not predicted in advance of the emergency closure. Typically, an employee should use local weather forecasts, etc. to plan accordingly for telework.

If the traditional or alternative worksite other than the employee's home is subject to early dismissal due to an emergency, employees who are on scheduled telework during that timeframe who are able to perform their assigned work at the alternate worksite, are expected to continue working or request appropriate leave, unless instructed otherwise by the designated Supervisor/Manager.

(2) Non-Emergency.

When the office announces an early dismissal of employees for non-emergency conditions such as on the day prior to a federal holiday, employees who are scheduled to telework during that same time will be excused from work/telework.

(l) ALTERNATIVE WORKSITE INSPECTIONS

Employees are responsible for allowing for inspections of the alternate worksite, if required by the organization to which they are assigned.

Minimum standards for home (alternative work site) inspections:

- (1) Management will provide reasonable advance notice to employees of not less than two (2) hours.
- (2) The focus of the inspection shall be the designated work area.
- (3) Upon request, the employee will be provided a copy of the completed site inspection check list or report. The check list or report will include only information that is germane to the compliance inspection.

(m) SHARED WORKSPACE

Telework participants may be required to share workspace at the traditional worksite with other staff members or be assigned to varying work stations on the days they work at the traditional worksite.

(n) LOCAL SUPPLEMENTAL BARGAINING

The parties agree that telework may be implemented throughout the Agency consistent with the terms of this Article. By mutual agreement or where otherwise required by law, the parties will negotiate additional telework procedures consistent with the Impact, Implementation, Supplemental and Mid-term bargaining Article of this Agreement.

ARTICLE 26 – HOURS OF WORK

It is agreed that except in cases of emergency, or where otherwise authorized by law or applicable government-wide rule or regulation, or where the Agency determines that it would be limited in carrying out its functions or that the cost would be substantially increased, it will establish work schedules consistent with applicable laws, rules and regulations.

(a) DEFINITIONS

- (1) **Adverse Agency Impact:** The condition for which the Agency may cancel an AWS, or exclude some positions or employees from any particular AWS. Adverse agency impact means a reduction of the Agency's productivity, a diminished level of services furnished to the public, or an increase in the cost of Agency operations (other than reasonable administrative cost to process the establishment of an AWS program).
- (2) **Alternative Work Schedule (AWS):** An umbrella term that refers to both flexible work schedules (FWS) and compressed work schedules (CWS).
- (3) **Basic Workweek:** Five consecutive days, Monday through Friday when possible. The two days outside the basic workweek will be consecutive. The occurrence of holidays shall not affect the designation of the basic workweek.
- (4) **Basic Work Requirement:** The number of hours, excluding overtime hours, that an employee is required to work or to account for by charging leave, credit hours, excused absence, holiday hours, compensatory time off, or time off as an award. For a full-time employee, the basic work requirement is 80 hours per biweekly pay period. For part-time employees the basic work requirement is the number of hours the employee is scheduled to work in a biweekly pay period.
- (5) **Biweekly Pay Period:** The two-week period for which an employee is scheduled to perform work.
- (6) **Core Hours:** The time periods during the workday, workweek or pay period that are within the tour of duty, during which an employee covered by a flexible work schedule is required to be present for work.
- (7) **Credit Hours:** The hours that an employee elects to work, within limits set by the supervisor, in excess of the employee's basic work requirement under a flexible work schedule.
- (8) **Compressed Work Schedule (CWS):** In the case of a full-time employee, an 80- hour biweekly basic work requirement that is scheduled by the Agency for less than 10 workdays. In the case of a part-time employee, a biweekly basic work requirement of less than 80 hours that is scheduled by the Agency for less than 10 workdays and that may require the employee to work more than 8 hours in a day.

- (9) Flexible Hours: Also referred to as “flexible time bands,” are the times during the workday, workweek, or biweekly pay period within the tour of duty during which an employee covered by an FWS may choose to vary his or her times of arrival to and departure from the worksite consistent with the duties and requirements of the position, and subject to the approval of the employee’s immediate supervisor.
- (10) Flexible Work Schedule (FWS): A work schedule established under 5 U.S.C. § 6122, that provides: 1. In the case of a full-time employee, an 80-hour biweekly basic work requirement that allows an employee to determine his or her own schedule within the limits set by management; and, in the case of a part-time employee, a biweekly basic work requirement of less than 80 hours that allows an employee to determine his or her own schedule within the limits set by management.
- (11) Meal Breaks: A non-pay, non-work period, a minimum of 30 minutes long scheduled for employees working more than 6 consecutive work hours.
- (12) Mid-Day Flex: A midday flex is a period of time, up to two hours, utilized in 15 minute increments that can be used to extend the scheduled unpaid meal period beyond 60 minutes. Mid-day flex is only available to employees on an approved flexible work schedule.
- (13) Night Pay Differential: A 10 percent differential paid to an employee for regularly scheduled work performed at night. Generally, night work must be performed between the hours of 6:00 PM and 6:00 AM.
- (14) Overtime Hours: When used with respect to FWS programs, “overtime hours” refers to all hours worked in excess of eight hours in a day or 40 hours in a week officially ordered in advance (i.e., ordered prior to the performance of overtime work). Overtime hours do not include credit hours worked voluntarily by an employee on an FWS. For CWS programs, “overtime hours” refers to all hours of work officially ordered in advance and which exceed the scheduled hours for a day or for the week that constitute the CWS for full-time employees. For part-time employees, overtime hours are hours worked in excess of the hours scheduled for the day if the hours worked exceed eight or hours worked in excess of the hours scheduled for the week if the hours worked exceed 40.
- (15) Part-time Career Employment: Part-time employment of 16 to 32 hours a week (or 32 to 64 hours during a biweekly pay period in the case of an FWS or a CWS).
- (16) Shift Work (Off Tour Shift): A tour of duty not fully accomplished between 6:00AM. and 6:00PM, Monday-Friday (e.g. evenings, and/or nights).

- (17) Tour of Duty: Tour of duty refers to an employee’s basic workweek, i.e., the days and hours within which the employee is expected to be on duty, e.g., day shift Monday through Friday.

(b) ALTERNATIVE WORK SCHEDULES (AWS)

It is management’s discretion whether to offer any or all of the options under the AWS program to employees. In offering schedules under the Agency’s AWS program, USCIS will adhere to all governing laws, rules and regulations. Concerning the terms and conditions of employee participation, Management will determine which AWS is appropriate for each office. Existing local and national agreements regarding alternative work schedules remain in effect but may, by mutual agreement, be re-opened. The procedures for implementing management-offered alternative work schedules are to be negotiated subject to bargaining consistent with the Mid-Term Bargaining and/or Supplemental Bargaining article of this Agreement.

The Agency may not establish a work schedule or continue such a schedule if the schedule would result in “Adverse Agency Impact”: Adverse Agency Impact includes:

- (i) A reduction in the productivity of the Agency;
- (ii) A diminished level of services furnished to the public by the Agency; or
- (iii) An increase in the cost of Agency operations (other than a reasonable administrative cost relating to the process of establishing an alternative work schedule).

If the DHS Secretary or USCIS Director finds that a particular AWS schedule has an adverse agency impact, as defined in 5 U.S.C. § 6131(b), prompt action will be taken to discontinue the schedule.

Employees on an AWS may be required to revert to a regular, 40-hour, five-day workweek for the entire pay period due to training, temporary duty, travel, jury duty, etc.

Employees working AWS who voluntarily elect to work nighttime hours are not entitled to night differential.

On holidays, an employee is normally excused from work and entitled to basic pay for the number of hours of his or her basic work requirement on that day.

Newly hired or transferred Federal employees must follow a basic workweek schedule for their position for a reasonable period of time to facilitate their orientation, training and evaluation.

An employee must be performing at or above the achieved expectations (or its equivalent) level in all areas to be eligible to participate in or continue on an AWS.

- (1) The following are examples of flexible work schedules:

- (A) Flexitour Schedule - An FWS in which an employee is allowed to select starting and stopping times within the flexible hours of the work schedule. Once approved, the work schedule is fixed until the next selection period as

determined by the supervisor. At the employee's request, the supervisor may approve temporary or continuing changes in start and stop times or require use of appropriate leave.

- (B) Gliding Schedule - Work schedule in which a full-time employee has a basic work requirement of 8 hours in each workday and 40 hours in each week, may select a starting and stopping time each day, and may change starting and stopping times daily within the established basic work schedule.
 - (C) Maxiflex - Flexible work schedule that contains core hours on fewer than 10 workdays in the biweekly pay period and in which the employee has a basic biweekly work requirement of 80 hours. The employee may vary the number of hours worked on a given workday or the number of hours each week within the established basic work schedule.
 - (D) Variable Day Schedule - Type of flexible work schedule containing core hours on each workday in the week and in which a full-time employee has a basic work requirement of 40 hours in each week of the biweekly pay period, but in which an employee may vary the number of hours worked on a given workday within the established basic work schedule.
 - (E) Variable Week Schedule- Flexible work schedule containing core hours on each workday in the biweekly pay period and in which a full-time employee has a basic work requirement of 80 hours for the biweekly pay period, but in which an employee may vary the number of hours worked on a given workday or the number of hours each week within the established basic work schedule.
- (2) Credit Hours. Credit hours will be accrued and used in accordance with the Other Leave Categories article of this Agreement.
- (3) The following are examples of compressed work schedules:
- (A) Five Day/Four Day Compressed Plan (5/4-9): The full-time (FT) employee must work eight nine-hour days and one eight-hour day for a total of 80 hours in a biweekly pay period. The part-time (PT) employee must work a nine-day, or fewer, biweekly pay period and nine or fewer hours a day as approved by his or her supervisor. Non-Scheduled (NS) work indicates the day(s) the employee is not scheduled to work.
 - (B) Four Day Workweek (4/10): The full-time employee works a 4-day workweek, 10 hours per day, 40 hours per week and 80 hours in a biweekly pay period. The part-time employees must work a 3 or 4-day workweek and may work 10 or fewer hours per workday as approved by their supervisor.

(c) BREAKS

(1) Meal Periods.

All meal periods are unpaid.

Meal periods must be a minimum of 30 minutes but may also be scheduled for 45 or 60 minutes as part of an approved work schedule. Employees who take more than 30 minutes for lunch must extend their workday by the same amount of time.

To the maximum extent possible, a meal period should be incorporated into any workday that exceeds 6 regular work hours. Unpaid meal periods should be scheduled between the third and fifth hours of duty. Meal periods may fall outside the third (3rd) and fifth (5th) hours of duty in offices where alternative work schedule arrangements are in place.

Meal breaks cannot be taken at the beginning (first half-hour) or at the end (last half-hour) of the work shift.

If a non-exempt employee is not excused from job duties for the purpose of taking a meal break, or if he or she is recalled to job duties within the unpaid meal period, the employee is entitled to pay for compensable work. This includes employees required to perform work that is de minimis in nature.

Employees on a flexible work schedule who participate in a midday flex must combine the midday flex time with the meal break period. Midday flex time cannot be used as a separate and distinct break in the scheduled workday. Utilizing a midday flex must be approved in advance.

(2) Unpaid Breaks.

Any breaks taken while in overtime status are unpaid.

(3) Paid Breaks.

Employees may be authorized up to two 15-minute periods of time to take a rest period or break during each 8-hour workday.

Rest periods may not be taken during the first or last 15 minutes of the workday, and may not be combined. Additionally, rest periods may not be taken in conjunction with meal periods. No paid rest periods are authorized during periods where credit hours or compensatory time are being earned or during overtime work.

(d) SHIFT WORK

- (1) When the accomplishment of the USCIS mission requires more than one shift over the course of a work day, Management will determine numbers and types of positions that are required to be on duty for more than one shift.

- (2) When management decides to staff a shift on a rotating basis, the following procedures will be used:
- (A) Management will determine the qualifications necessary for each position required for an off-tour shift.
 - (B) Each time off-tour shift assignments become necessary, Management will prepare a roster of employees determined to be qualified for each position and will rank affected employees by applying the seniority procedures of this agreement or the locally-negotiated seniority provision, if any. Prior to any solicitation of volunteers, the roster will be made available to the Union and all employees placed on the roster. The roster shall be maintained by management for the duration of any off tour shift assignments. As employees become eligible or ineligible for inclusion on the roster, changes to the roster will be made as appropriate.
 - (C) Management will first seek qualified volunteers from the employees on the roster.
 - (D) If the sufficient numbers of qualified volunteers to satisfy mission requirements are obtained, no further solicitation will be necessary.
 - (E) If more than a sufficient number of qualified volunteers to satisfy mission requirements are obtained, selections shall be based on seniority in accordance with the Seniority Article of this Agreement or the locally-negotiated seniority provision, if any.
 - (F) If there is an insufficient number of qualified volunteers to satisfy mission requirements, selections shall be made in reverse seniority.
 - (G) After six months of duty on a scheduled off tour shift, an employee may request to rotate to a day shift or a different off-tour shift. The six-month clock restarts at the beginning of each new shift assignment.
 - (H) An employee who completes an off-tour shift and returns to a day shift will not be assigned involuntarily for another off-tour shift for at least six months, provided other equally qualified employees are available. Thereafter, the employee resumes his or her position on the roster.
- (3) Where mutually agreeable to all employees affected, employees may temporarily trade shifts or tours of duty out of the normal rotation, consistent with the needs of the Agency, and with the approval of the affected employees' supervisors.

- (4) Employees, while serving on federal, state, or local jury duty, shall be considered as being assigned to the normal day shift tour (6:00AM-6:00PM) with Saturdays and Sundays off until the completion of such duties. The change in work schedule shall be for the weeks during which such duties are performed.
- (5) Management will ordinarily give employees at least two weeks advance written notice before changing tours or shifts.

ARTICLE 27 – OVERTIME AND COMPENSATORY TIME

(a) GENERAL

Overtime for “non-exempt” employees is governed by the Fair Labor Standards Act (FLSA), government-wide rules and regulations, and this Agreement.

Overtime for “exempt” employees is governed by 5 USC 5542 (Title 5 Overtime), government-wide rules and regulations and this Agreement.

The Agency will assign overtime impartially without bias, favoritism, arbitrariness or consideration of reasons not relating to merit or mission.

Hours worked on a Holiday above and beyond the prior approved Holiday schedule are considered overtime hours.

Employees who are assigned overtime are required to report to the overtime assignment. If assigned employee cannot report to the overtime assignment, the employee must notify the supervisor and may be relieved of the assignment. A phone number with voice mail capacity will be provided by management for employee use in the event that said employee is unable to work voluntary overtime.

- (1) The Agency will comply with applicable laws, rules, regulations, and policies in the payment of overtime to employees.
- (2) Regular Overtime must be authorized in advance and recorded using the current time and attendance system in place (e.g. WebTA).
- (3) All employees in an overtime status will perform the overtime assignment duties to which they are assigned provided such employees are qualified to perform the duties. This article will be implemented pursuant to applicable laws, government-wide rules and regulations to include the Fair Labor Standards Act (FLSA).
- (4) In general, overtime is work that exceeds eight hours in a day or 40 hours in a work week. Special rules apply to employees on flexible work schedules and employees covered by the FLSA.
- (5) Overtime hours may not be worked during any one week (Sunday through Saturday) of the bi-weekly pay period during which an employee has served an unpaid suspension or is absent without leave (AWOL).
- (6) Work performed while in overtime status will be reported and accounted for by the employee in a manner consistent with office requirements. Hours worked will be tracked using the current time and attendance system in place (e.g. WebTA).

(b) FLSA DETERMINATION

All bargaining unit positions will be determined to be FLSA “exempt” or “non-exempt” at the time the position is classified. When classification actions are performed and results in a change to the FLSA determination, the changed FLSA determination for the affected employees will be made available to the employees and the Union within thirty (30) calendar days of the classification decision.

When overtime work is performed, personnel will be compensated for overtime hours worked in accordance with the provisions of the FLSA, other applicable statutes, government-wide regulations, and provisions of this Agreement. When a given work situation is covered by the FLSA and another statutory procedure, the employee will receive the more favorable treatment.

- (c) Supervisors shall not assign overtime or withhold overtime work to employees as a reward or penalty, but solely in accordance with the Agency’s need. There are no overtime earnings limitations (caps) for FLSA non-exempt employees. FLSA exempt employees are subject to earning limitations set forth in 5 CFR 550.105-107.
- (d) Overtime pay for FLSA non-exempt employees is equal to one and one-half times the employee’s hourly rate of pay.
- (e) Overtime pay for FLSA exempt employees is equal to one and one half times the employee's hourly rate of pay, up to GS-10 step 1. However, if the employee's rate of pay exceeds the minimum applicable rate for a GS-10, Step 1, including any applicable locality-based comparability payment, or any applicable special rate of pay, the overtime rate is the greater of:
 - (1) 1 1/2 times the applicable minimum hourly rate of basic pay for GS – 10; or
 - (2) The employee’s hourly rate of basic pay.

(f) REGULAR OVERTIME

Any overtime work scheduled in advance of the administrative workweek as part of an employee's regularly scheduled workweek is considered regular overtime. An employee shall be compensated for overtime in quarter of an hour increments. Upon request, compensatory time may be approved in lieu of overtime for both FLSA exempt and non-exempt employees.

(g) IRREGULAR OR OCCASIONAL

Overtime work that was not scheduled in advance of the administrative workweek and made a part of an employee's regularly scheduled workweek is considered irregular or occasional overtime. Irregular or occasional overtime work is paid in the same manner as regular overtime work, except that, at the employee's option and upon management approval, the employee may receive compensatory time off in lieu of overtime premium pay in accordance with this article. A quarter of an hour shall be the largest fraction of an hour used for crediting irregular or occasional overtime work. When irregular or occasional overtime work is performed in other than the full fraction, odd minutes shall be rounded up or down to the nearest full quarter fraction of an hour. Overtime

worked for seven (7) minutes or less will be rounded down, and overtime worked for more than seven (7) minutes will be rounded up.

(h) CALL BACK

Call-back overtime is a form of irregular or occasional overtime work performed by an employee on a day when work was not scheduled for the employee or for which he is required to return to his place of employment after having already concluded his tour of duty and departed the work site. In all callback situations, the employee will be paid a minimum of two (2) hours of overtime, as provided for by government-wide regulation. This applies whether the employee is released or other work has been assigned.

(i) DISTRIBUTION

When management offers overtime opportunities, it will first seek qualified volunteers. Employees within an organizational unit who are qualified will be offered overtime in accordance with the Seniority Article of this Agreement or applicable local agreements on seniority. If the number of volunteers exceeds the number of overtime opportunities, the opportunities will be filled by seniority pursuant to the Seniority article of this Agreement or applicable local agreements on seniority. In the absence of sufficient qualified volunteers for overtime work, mandatory overtime assignments will be made to qualified employees in reverse seniority pursuant to the Seniority article of this Agreement or applicable local agreements on seniority. Employees will be afforded the opportunity to swap overtime assignments when the need arises with management approval.

(j) VOLUNTARY & MANDATORY OVERTIME

- (1) Management will determine the eligibility and qualification criteria for overtime and include it in the solicitation for overtime volunteers.
- (2) Overtime assignments will be distributed in accordance with this Agreement.
- (3) A qualified employee means one that possesses the knowledge, skills and abilities necessary to perform a particular assignment/job category.
- (4) An eligible employee for voluntary overtime means one that is able to perform the full range of duties needed for the overtime.
- (5) The Agency has the right to direct mandatory overtime. Mandatory overtime will be assigned in reverse seniority or applicable local agreements on seniority.

(k) NOTICE

The Agency will notify all qualified employees, as early as practicable, of all available overtime including overtime on days outside of the basic workweek (i.e. weekends, holidays). Employees on leave will be notified upon their return to work. If overtime is available on a weekend, or a federal holiday, the agency will notify qualified employees at least three (3) business days in advance.

An employee on light duty is not precluded from participating in overtime if there is a need for those light duties to be performed on an overtime basis.

(l) LEAVE

Leave usage or balance will not be a factor in offering employees overtime. However, employees in a leave status will not be assigned overtime until they return to duty. Overtime in conjunction with paid leave in the same pay period is permitted. Hours of leave without pay (LWOP) must be made up at the employee's current rate of pay on an hour for hour or day for day basis in the same day or week, respectively, as the LWOP was taken before any hours can be counted towards overtime for that day or week.

(m) MILITARY LEAVE AND COURT LEAVE

Employees on Military Leave under 5 USC 6323(a) or Court Leave under 5 USC 6322 taken at a time at which the employee would otherwise be required to perform regularly scheduled overtime, will be compensated at the overtime rate of pay.

(n) PRE AND POST SHIFT ACTIVITIES

Pre and post shift activities must be approved in advance. Employees who are directed to perform preparatory or concluding activities per daily tour of duty that are related to the principal activities of the position of an employee, are compensated in fifteen (15) minute increments for the purposes of this Article.

(o) COMPENSATORY TIME IN LIEU OF OVERTIME PAY

Compensatory time is time off from work that may be granted to an employee in lieu of payment for irregular and occasional overtime. Compensatory time earned is equal to the amount of time spent in overtime work, e.g., one hour and fifteen minutes of overtime work yields one hour and fifteen minutes of compensatory time. The following pertain to such compensation for overtime work:

(1) FLSA Non-Exempt Employees:

The Agency will normally provide overtime pay for all overtime work performed by non-exempt employees. After considering mission requirements, the Agency may grant compensatory time off for overtime work performed, but non-exempt employees may not be required to accept compensatory time off in lieu of payment for overtime work performed. The Agency will consider employee requests for compensatory time off in lieu of overtime pay.

(2) FLSA Exempt Employees

- (A) Employees whose rate of pay does not exceed the maximum rate for GS-10 (GS-10, Step 10) may request to receive compensatory time off in lieu of overtime pay for irregular or occasional overtime. Such requests will normally be granted, subject to mission requirements.

(B) The Agency may require that employees whose rate of pay exceeds the maximum rate for GS-10 (GS-10, Step 10) be compensated for irregular or occasional overtime with compensatory time in lieu of overtime pay.

(p) The Agency shall announce three (3) day in advance of offering overtime whether compensatory time will also be available in lieu of overtime pay, at the employee's option.

(q) USE OF COMPENSATORY TIME

(1) Compensatory time earned by FLSA non-exempt employees will be used within twenty- six (26) pay periods from the date it was accrued. All compensatory time not scheduled and used by the employee within twenty-six (26) pay periods from the date it was accrued will be converted to overtime pay, computed using the employee's rate of pay as of when the compensatory time was earned.

(2) If accrued comp time for FLSA exempt employees is not used within 26 pay periods after it is earned, or the employee separates from federal service, the comp time is subject to forfeiture. The exception is that comp time when unused due to an exigency of the service beyond the employee's control. Comp time earned by FLSA non-exempt employees is not subject to forfeiture.

(3) Travel comp time is forfeited if not used by the end of the 26th pay period after the pay period in which it was earned. Management will notify the employee by email at least thirty (30) days prior to the expiration of their travel comp time.

(4) Employees who fail to use their compensatory time by the end of the 26th pay period after it was earned due to an exigency of the service beyond the employees control may have their time limit extended for using such compensatory time off for travel up to an additional 26 pay periods if approved by the Agency.

(r) COMPENSATION FOR TIME SPENT IN TRAVEL

For purposes of this article, the terms "official duty station" and "official worksite" are both defined to mean the location of an employee's position of record where the employee regularly performs his/her duties.

(s) TIME SPENT IN TRAVEL FOR FLSA NON-EXEMPT EMPLOYEES

Time spent in travel will be considered hours of work, and thus compensable, if:

(1) The employee is required to travel during regular working hours;

(2) The employee is required to drive a vehicle or perform other work while traveling;

- (3) The employee is required to travel as a passenger on a one-day assignment away from the official duty station; or
- (4) The employee is required to travel as a passenger on an overnight assignment away from the official duty station during hours on nonworking days that correspond to the employee's regular working hours.

(t) TIME SPENT IN TRAVEL FOR FLSA EXEMPT EMPLOYEES

Time spent on official travel during non-working hours (i.e., hours outside the scheduled tour of duty for leave purposes) is considered travel comp time. If travel occurs during regularly scheduled overtime, such travel may be deemed compensable hours of work if any condition set forth in 5 C.F.R. 550.112 (g)(2) is satisfied.

(u) EFFECT ON PERFORMANCE

The participation or non-participation of an employee in overtime work, where such work is voluntary, shall not in any manner reflect adversely on his or her appraisal. All employees in an overtime status are expected to successfully perform the assigned work of the position to which assigned.

(v) COLLATERAL DUTIES

Performing collateral duties, such as Union representation, will have no effect on an employee's ability to participate in overtime.

(w) COMPENSATORY TIME FOR TRAVEL

The Agency shall credit an employee, on an hour-for-hour basis, with compensatory time off for time in a travel status if

- (1) The employee is required to travel away from the official worksite; and
 - (2) The travel time is not otherwise compensable hours of work.
- (x) Time in a travel status includes the time an employee actually spends traveling between the official worksite and a temporary worksite, or between two temporary worksites, and the usual waiting time that precedes or interrupts such travel. Time spent at a temporary worksite between arrival and departure is not time in a travel status. Bona fide meal periods during actual travel time or waiting time are not creditable as time in a travel status. A delay between actual periods of continuous travel that includes overnight lodging during which the employee is free to rest, sleep, or otherwise use the time for his or her own purposes, is not creditable as time in a travel status.
- (y) If an employee is required to travel directly between his or her home and a temporary worksite outside the limits of the employee's official worksite, the travel time is creditable as time in a travel status. However, the time that employee normally would spend in home-

to-work or work-to-home travel is deducted from that amount. The travel time outside regular working hours directly to or from a temporary worksite or transportation terminal (e.g., airport or train station) is creditable as time in a travel status. However, if the travel occurs on a day that the employee is regularly scheduled to work, the time the employee would have spent in normal home-to-work or work-to-home commuting must be deducted.

- (z) Only travel from home to the temporary duty station on the first day and travel from the temporary duty station to home on the last day must be considered as creditable in the case of an employee who is on a multiple-day travel assignment and who chooses not to use temporary lodging at the temporary duty station, but to return home at night or on a weekend. Travel to and from home on other days is not creditable travel time unless the authorized management official determines that credit should be given based on the net savings to the Agency from reduced lodging costs, considering the value of lost labor time attributable to compensatory time off. For cost comparison purposes, the dollar value of an hour of compensatory time off for travel equals the employee's hourly adjusted rate of pay.
- (aa) In the case of an employee who is offered one mode of transportation, and who is permitted to use an alternative mode of transportation, or who travels at a time or by a route other than that selected by the Agency, the Agency must determine the estimated amount of time in a travel status the employee would have had if the employee had used the mode of transportation offered by the Agency or traveled at the time or by the route selected by the Agency.

ARTICLE 28 – DETAILS AND TEMPORARY DUTY STATIONS

Management has the right to set the eligibility and qualification criteria for any detail assignment. The procedures, requirements and rights outlined in this Article will be followed by the Agency when filling details and temporary duty assignments to bargaining unit positions within USCIS. Details to non-bargaining unit positions and detail opportunities outside of USCIS are not governed by the terms of this Article. This Article does not preclude employees from applying for or being selected to details and temporary assignments outside the scope of physical locality or jurisdiction of the Agency.

The procedures, requirements and rights outlined in this article do not apply to positions where temporary changes in duty station, the temporary change in location of the performance of core duties, or rotations are part of a bargaining unit employee's regularly assigned duties (e.g. refugee officers, asylum officers, international rotational assignments, and international operation headquarters officers with the International Adjudication Support Branch). Rather, the procedures for such positions are appropriate subject matter for local bargaining.

(a) DEFINITIONS

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

- (1) **Temporary Assignment:** The change of an employee from one position or duty station for a fixed or limited duration of time, upon the expiration of which the employee is expected to return to the original position or duty station. A temporary assignment may be in the form of either a temporary promotion or a detail.
- (2) **Detail:** Temporary assignment of an employee to a different position or duty station without change of pay, regardless of grade, for a specified period, with the employee returning to his or her assigned position at the end of the detail.
- (3) **Rotation:** The recurring assignment of employees to different work locations or position. This does not include rotations that are part of an employee's regular duties such as within International Operations and Refugee Affairs Division.
- (4) **Day:** Means a calendar day, unless otherwise specified.

(b) PROCEDURES TO ASSIGN

- (1) The Agency retains the right to detail employees and to determine the scope of any solicitation for volunteers to serve on a detail and the area of consideration.
- (2) The Agency shall exercise this authority:
 - (A) In accordance with applicable law, appropriate regulations, and this Agreement;

- (B) By giving as much advance notice as possible to employees selected for detail.
 - (C) When practical, the Agency should notify the Union in advance of possible details.
 - (D) Absent a particularized need for specific skills or qualifications the Agency shall utilize volunteers before requiring employees to participate on details involuntarily unless the Agency determines that there is a need for a specific volunteer to continue to perform his or her regular duties.
- (3) The following procedures shall apply when offering temporary assignments, noncompetitive details, or rotations of forty- five (45) consecutive workdays or more:
- (A) The Agency will canvass the qualified employees to determine if anyone wishes to be detailed. Selection will be made based upon the established selection criteria from the pool of qualified volunteers.
 - (B) If more employees volunteer than vacancies exist, the Agency will select from the most qualified volunteers. Seniority will be the selection criteria from among equally qualified volunteers.
 - (C) If there are fewer qualified volunteers than vacancies, additional vacancies will be filled by assigning the least senior qualified employee(s).
 - (D) If there are no volunteers, then the least senior employee(s) will be selected from among equally qualified employees.
 - (E) Absent local agreement on seniority, Seniority shall be defined by the Seniority Article of this Agreement.
- (4) Among equally qualified candidates, management will select employees for details of less than forty-five (45) workdays on a fair and equitable basis.
- (5) The procedures in this Section shall apply except in the following circumstances:
- (A) When management can demonstrate in writing that there is an operational emergency or that the position to which an employee must be detailed requires unique skills and abilities that are not possessed by any other qualified employee;
 - (B) When a bona fide medical or operational emergency precludes the detail of a particular employee;

- (C) When the Agency makes a detail to accommodate a substantiated medical or health problem.
- (D) When the Agency assigns an employee to a noncompetitive detail or temporary work assignment pending the outcome of an investigation or proposed disciplinary or adverse action.
- (E) Details and temporary assignments of less than forty-five (45) work days.

(c) TEMPORARY PROMOTIONS

Temporary Promotions and details to higher graded positions will be handled in accordance with the Agency Merit Promotion and Reassignment Plan and the related Articles of this Agreement.

(d) RECORD OF DETAIL

The parties recognize that details to other positions and activities are necessary and integral part of mission accomplishment. Details for thirty (30) calendar days or more will be documented with a copy to the employee and his or her Official Personnel Folder.

(e) PROHIBITIONS

- (1) Details will not be made on the basis of personal favoritism.
- (2) The Agency will not temporarily assign or detail an employee solely for harassment purposes or reprisal.

(f) LOWER GRADED DUTIES

Should the requirements of the Agency necessitate an employee being detailed to a lower graded position or to perform lower graded work, this will in no way adversely affect the employee's salary, classification or job standing.

(g) TIME LIMIT

Except for training courses, and details outside the 50 United States, details away from the employee's normal duty station will not exceed ninety (90) calendar days, unless the employee volunteers for a longer period or the Agency determines that there is a valid operational need for a specific employee to continue on the detail.

(h) UNION REPRESENTATIVES

The Agency will make every effort to avoid placing a Union Representative on a detail that would prevent that official from performing his or her representational functions, unless the Union Representative volunteers for the detail.

(i) ROTATION PROCEDURES

The Agency will use the selection criteria outlined in section B(3) of this article when assigning rotations of forty-five (45) consecutive work days or more to members of the bargaining unit. See the Hours of Work article of this Agreement for procedures addressing rotations on shift work.

ARTICLE 29 – STANDARDS OF DRESS AND APPEARANCE

(a) DRESS AND APPEARANCE

- (1) Employees will maintain a professional and business-like appearance when in the traditional workplace, consistent with norms prevailing in the local community. Employees shall be attired in a manner appropriate for their position and the duties being performed. This provision shall not preclude employees from participating in casual dress days such as "casual Fridays" or where bona fide reasons exist warranting deviation from the guidelines, e.g., medical, religious or for special occasions or projects; including but not limited to, holidays, CFC and assignments requiring unusual or differing dress (office moves, etc.).
- (2) Except for pre-approved exceptional circumstances as described above, the following is deemed unacceptable manner of dress for all USCIS employees while in duty status:
 - (A) Shorts;
 - (B) Ripped jeans;
 - (C) Athletic or workout clothes;
 - (D) Beach wear;
 - (E) Clothing that contains obscene language and/or obscene graphics; and
 - (F) Offensive or disruptive attire.

(b) LOCAL BARGAINING

Local bargaining may address additional dress code policies that are not specifically covered by this Article.

ARTICLE 30 – OUTSIDE EMPLOYMENT AND ACTIVITIES**(a) PERMISSION**

Employees may engage in outside employment, including self-employment, with or without compensation only with the written permission of the Agency. Such employment must not result in or create the appearance of a conflict of interest with official duties or raise questions of an employee's impartiality as he or she performs those duties.

(b) REQUEST

Employees desiring to engage in outside employment, including self-employment, shall request permission in writing using Form G-843, Outside Employment or Business Request, and obtain written authorization from the Agency prior to commencement of any outside employment.

(c) VOLUNTARY WORK

Employees can engage in voluntary work, except that an employee must obtain written approval from their chain of command with concurrence from the Agency's Ethics Office before engaging in voluntary work involving a subject matter, policy or program that is in the area of responsibility of the Agency or any other court, department or agency of the Federal Government.

(d) TIMEFRAMES

An employee's request must be submitted to the Agency at least fourteen (14) calendar days, prior to the proposed commencement of the outside employment or business activity. This time period is three (3) calendar days in those cases where an employee has received a furlough notice. Newly hired employees must report outside employment or business activity on their entrance on duty date with the Agency and may request to continue the employment.

(e) APPROVAL

The Agency will respond to the employee, approving or denying the request, as soon as possible but not later than ten (10) calendar days, after receipt of the request. If there is no response within ten (10) calendar days from receipt, the employee may assume there is no objection and begin in the outside employment or self-employment, provided it does not result in or create the appearance of a conflict of interest with official duties or raise questions of the employee's impartiality as he or she performs those duties. However, employees who have received less than ten (10) calendar days advance notice of a furlough without pay may assume their requests have been approved if they have not received a response within three (3) calendar days from the Agency's receipt of their request. When the Agency denies a request, the employee will be advised of the reason in writing. An approval to engage in outside employment (whether expressed or implied) may be withdrawn at any time, provided the Agency has a valid basis, as described above, for ordering the employee to cease his or her outside employment. Failure to request approval prior to obtaining outside employment may result in disciplinary action.

ARTICLE 31 – RETIREMENT**(a) RETIREMENT TRAINING AND COUNSELING**

- (1) The Union may recommend professional pre-retirement training programs (FERS and CSRS) to the Agency. The Agency will provide pre-retirement seminars or equivalent information (e. g., web conference, video conference and/or online training) to employees who are within five (5) years of retirement eligibility. The Agency will attempt to provide pre-retirement seminars in physical locations in each of the USCIS domestic regions. Upon request and approval, employees who are not near retirement, but would like to attend pre-retirement seminars to obtain information, will be allowed based on availability.
- (2) The Agency will provide a retirement counseling program, describing benefits and eligibility, to be made available on an as-needed basis, in which all employees in the unit nearing eligibility for retirement may voluntarily participate. Employees nearing eligibility for retirement who have questions concerning retirement benefits will, upon request, receive an oral or written response. Employees within one (1) year of their first retirement eligibility may request and receive their retirement estimate.

(b) DISABILITY AND DEFERRED ANNUITY

Each employee who separates voluntarily or involuntarily (except by retirement) will be informed by the Agency of the possibility of applying for a discontinued service annuity and eligibility for deferred annuity at sixty-two (62), provided he or she has at least five (5) years of civilian service and leaves his or her money on deposit with the Office of Personnel Management. Upon the employee's request, the Agency will inform an employee of his or her right to file an application for disability retirement provided the employee meets the length of service required for disability retirement (5 years for those under the CSRS or CSRS Offset System and 18 months for those under the FERS or FERS-RAE system).

(c) WITHDRAWAL

An employee's decision to resign or retire (if eligible for optional retirement) shall be made freely and in accordance with prevailing government-wide regulations. An employee may request to withdraw a retirement application at any time prior to its effective date., and the Agency's determination to accept or reject such a request must be made in accordance with 5 C.F.R. 715.202 and applicable legal precedent.

(d) DEFINITIONS

- (1) Phased Retirement - allows full-time employees to work part-time schedules while beginning to draw retirement benefits.
- (2) Civil Service Retirement System (CSRS) - a defined benefit, contributory retirement system in which employees share in the expense of the annuities to which they become entitled.
- (3) Federal Employees Retirement System (FERS) - a retirement plan that provides benefits from three different sources: a Basic Benefit Plan, Social Security and the Thrift Savings Plan (TSP).
- (4) Fed HR Navigator website for employees to calculate their estimated retirement annuity (as of January 2016 – link subject to change) - <https://fhrnavigator.com/frbweb/logon.do?operation=index&client=USCIS&redir=0>

ARTICLE 32 – DEVELOPMENT AND TRAINING**(a) GENERAL PROVISIONS**

The Agency and the Union agree that the training and development of employees is important in carrying out the mission of the Agency. The Agency is responsible for ensuring that all employees receive the training necessary for the performance of their assigned duties.

(b) NON-DISCRIMINATION

The parties agree that nomination and/or selection of employees to participate in training and career development programs and courses shall be nondiscriminatory and made without regard to sex, race, color, gender identity, genetic information, religion, age, marital status, ethnic group, disability, sexual orientation, parental status and Union membership or activity, and shall be in accordance with equal employment opportunity guidelines, and consistent with other applicable laws.

(c) TRAINING – JOB RELATED (TECHNICAL AND GENERAL)

- (1) The Agency will pay for any approved Agency-required training necessary for the performance of their assigned duties.
- (2) When training is required as part of a career ladder plan, the Agency is responsible for ensuring that it is provided.
- (3) Employees may initiate discussions regarding individual training needs. Such discussions may or may not be directly linked to an Individual Development Plan (IDP).
- (4) At the conclusion of formal, long-term training sessions, participants will be offered the opportunity to evaluate the training based on a survey prepared by the Agency.

(d) CAREER DEVELOPMENT

Employees shall be encouraged to establish an Individual Development Plan (IDP).

- (1) The Agency agrees, on an annual basis, normally the first quarter of the calendar year, to provide information and assistance, if necessary, to employees for the purpose of establishing IDPs.
- (2) Because of the nature of their appointments, IDPs may not be appropriate for term or temporary employees.
- (3) Employees may initiate IDPs through their supervisor. The supervisor will review the completed IDP with the employee to assure conformance with organizational needs and individual career goals. The employee will be notified of approval/disapproval or the need for modification of the IDP.

- (4) IDP information will be available to employees on an agency website.
- (5) Approval of an IDP does not guarantee future approval of training requests included on the IDP.

(e) TRAINING AND PROFESSIONAL DEVELOPMENT PROGRAMS

The parties are committed to an ongoing professional development program that ensures that USCIS employees are empowered and motivated to grow and develop their careers.

- (1) The Agency will provide information via the intranet concerning USCIS- sponsored training and professional development programs.
- (2) Where the Agency nominates employees for training, nominations will be made based on the potential use of the training in the employee’s current position. Nominating and approving officials will apply such criteria equitably.
- (3) When an employee is nominated for training, the employee may submit a copy of the IDP, if any, to be attached to the nomination. Employees will be notified in writing of the approval or disapproval of their nominations and the reason for disapproval. To the extent feasible, employees will be notified of the approval or disapproval prior to the starting date of the training. Should an employee’s nomination for training, including training courses contained in an IDP, be disapproved for lack of resources, the employee may be re-nominated as funds later become available, and the nomination will be given first consideration.
- (4) The Union shall be provided, on an annual basis, a spreadsheet of all applications for professional development programs of bargaining unit employees. The spreadsheet will contain: duty title, grade, duty station, and the total amount of funds dispensed for the fiscal year.

(f) MENTORING

The Agency may establish mentoring programs in accordance with the following terms.

- (1) Technical Skills Mentoring is defined as providing appropriate on the job assistance to employees new to particular jobs.
- (2) Mentors should be highly motivated, knowledgeable employees with good interpersonal skills.
- (3) Management will make every reasonable effort to allow interested, qualified employees to volunteer to be mentors. Where management denies the request to volunteer, they will provide the reason(s) to the employee, if requested.

- (4) An employee may withdraw from mentoring at any time.
- (5) Management recognizes that mentoring may consume a portion of the mentor's time and consideration will be given to adjusting workloads as deemed necessary.
- (6) Management recognizes the importance of continuity and will make every reasonable effort to ensure that the mentoring process is completed without interruption.
- (7) Trainees who believe they need additional assistance or training at the conclusion of their mentoring period may make a request for management's consideration.

(g) TRAINING EXPENSES

When training is approved, the Agency will pay authorized expenses to include tuition, required textbooks and other expenses as appropriate, and may pay travel costs, subject to travel regulations and fiscal considerations.

(h) ADVISORY COMMITTEE

The Union and the Agency will establish an advisory committee to submit recommendations concerning employee training needs and programs. The committee may consist of no more than six members – no more than three from the Union and no more than three from the Agency. The committee will meet annually in person at Agency expense, and as needed via remote conferencing, no more than quarterly basis.

ARTICLE 33 – POSITION CLASSIFICATION AND POSITION DESCRIPTIONS

Position classification is a process through which Federal jobs (i.e., positions) are assigned a pay plan, occupational series, title, and grade based on consistent application of position classification standards.

(a) POSITION DESCRIPTIONS

- (1) Position descriptions (PD's) shall accurately state the major duties and responsibilities of the position. The Agency will make available to every bargaining unit employee of the Agency a copy of his or her PD. The employee will be encouraged to discuss any changes or inaccuracies with the supervisor, who will also continually review his or her employees' duties.
- (2) The Agency will maintain a complete and up-to-date library of PD's of all classified positions in the bargaining unit and will make that library available on the Agency's intranet site to employees and their Agency-employed Union representatives.

(b) REQUEST FOR POSITION REVIEW (CLASSIFICATION APPEALS)

- (1) A classification appeal is a written request by an employee for their agency, or OPM to review the classification of his/her position. Issues which may be appealed include the pay plan, occupational series, grade, and official position title. An employee may not appeal the content or accuracy of an official PD, the adequacy of a classification standard, the classification of other employees' PDs, or the classification of a position to which they are temporarily detailed or temporarily promoted.
- (2) An employee who has a question concerning his or her position classification or job description should discuss the matter with his or her supervisor. If the employee and the employee's supervisor cannot come to a resolution, the employee may submit a classification appeal to the Human Resources Operation Center.
- (3) An employee may request in writing to cancel his or her appeal to the Agency at any time during the appeal process prior to the Agency's issuance of the appeal decision.

(c) POSITION REVIEWS

The Agency's Classification Section will acknowledge receipt of the request in writing and will provide the employee and the employee's supervisor with the results of the position review. Position reviews may be conducted in-person or remotely. Classifiers may make visits or telephone calls to position locations during the classification appeal process.

(d) UNION REPRESENTATION

When the employee designates the Union as the employee's representative in a

classification appeal, the representative may discuss the classification appeal with the classifier prior to the beginning of a position review. Sufficient time shall be allowed prior to the beginning of the position review for the designated representative and the classifier to arrange a mutually agreeable meeting date to discuss the classification appeal. The classifier will provide a copy of the appeal decision to the employee and the Union representative.

(e) EFFECT OF OTHER DUTIES AS ASSIGNED

Where lower graded duties not addressed in the employee's PD are assigned to an employee on a continuing basis to meet the needs of the Agency, these other duties assigned will be appropriately considered in the employee's performance appraisal.

ARTICLE 34 – FITNESS FOR DUTY EXAMINATION

(a) FITNESS FOR DUTY EXAMINATION

- (1) The Agency may direct an employee to undergo a fitness for duty examination only under those conditions authorized by applicable government-wide regulations (currently 5 CFR 339.301).
- (2) The Agency may offer an employee a medical examination to make an informed management decision regarding an employee’s continued ability to perform his or her job. Nothing in the Article shall compel an employee to accept an offer of medical examination.
- (3) Any medical examination directed pursuant to Section A(1) of this Article shall be at no cost to the employee and performed on duty time at no charge to leave.

(b) RIGHT TO UNION REPRESENTATION

Employees will be advised of their rights to have a Union representative at any time allowed, or not prohibited, by applicable rules and regulations. Employees may also be represented by an attorney or any other person of their choice, where permitted by law.

ARTICLE 35 – LIMITED AND LIGHT DUTY

- (a) This Article is intended to address non-workplace injuries/illnesses that require temporary modifications of an employee's work assignment.
- (b) An employee may request limited or light duty through the employee's first line supervisor. A request for limited or light duty shall be made in writing and be supported by medical documentation.
- (c) The medical documentation will include certification from the treating physician of the employee's limitation or injury, will outline the employee's work restrictions, and state the expected duration of the restriction.
- (d) The Agency will provide a response to the employee's request as soon as possible. Where the Agency denies the request, the denial will be in writing.
- (e) When approved, the employee will be assigned limited or light duty work consistent with the work restrictions. The Parties understand that this provision does not obligate the Agency to create limited or light duty work. Limited or light duty work will only be assigned temporarily to qualified employees to the extent that it is available and necessary.
- (f) The Agency may temporarily assign same or lower-graded work to an employee, including work outside of the employee's branch or work site, without loss of pay or benefits (consistent with regulations), to accommodate the employee's medically necessary restrictions. The continuation of this temporary accommodation will periodically be reviewed by management, as needed.

ARTICLE 36 – PERSONNEL RECORDS**(a) ACCESS TO RECORDS**

The Agency will comply with all applicable disclosure provisions of the Freedom of Information Act (FOIA), the Privacy Act, and 5 USC 7114(b)(4), with regard to any and all employee records, whether electronic or paper, maintained by the Agency.

(b) COPY OF DOCUMENTS AND RIGHT TO RESPOND

Each employee or his or her personal representative designated in writing will, upon request, and in accordance with the provisions of the Freedom of Information Act, the Privacy Act, and 5 USC 7114(b)(4), be given a copy of any document contained in his or her eOPF or Employee Performance Folder (EPF) with the exception of records restricted by law or regulations. Procedures for responding to disciplinary and adverse actions are covered in the Disciplinary and Adverse Actions Based on Misconduct Article of this Agreement.

(c) OFFICIAL PERSONNEL FOLDERS

Official Personnel Folders (OPF) will be maintained in accordance with applicable laws and regulations. Only information authorized by law or regulation will be maintained in the OPF.

- (1) All official personnel records will be maintained in an electronic OPF (eOPF) system. Under the eOPF system, employees may access their personnel records at any time through a secure internet site. An employee who does not have access to a computer may request in writing a copy of his or her record through the Agency's Human Resources Office.
- (2) Corrections to an eOPF. If an employee believes that information contained in the eOPF is incorrect, the employee should contact the Human Resources Office in writing and include:
 - (A) Enough information to identify the record (employee name and social security number, the name and date of the record).
 - (B) Explanation of what is believed to be wrong with the record including any evidence supporting the position.
 - (C) Description of how the employee believes the record should be corrected.
- (3) Upon confirmation of any errors the Agency has up to thirty (30) days to correct errors when possible and to the extent the records are within Agency's control.
- (4) Derogatory Material. No derogatory material of any nature which might reflect adversely upon the employee's character or career will be placed in his or her permanent or temporary part of the eOPF or EPF without his or her knowledge.

(d) RETENTION OF RECORDS

All records contained in the eOPF shall be maintained and/or purged in accordance with 5 CFR 293.106, 5 CFR 432.107 and any other applicable record retention regulations.

(e) EMPLOYEE NOTIFICATION

- (1) The employee will be notified when documents are added to his/her eOPF. This is done through the automated eOPF notification system.
- (2) Upon expiration of the adverse material, the Agency shall remove it from the eOPF.

(f) REQUEST TO RECONSTRUCT PERSONNEL FOLDER

In the event of the loss or destruction of the employee's eOPF or OPF, the file will be reconstructed pursuant to Office of Personnel Management procedures.

ARTICLE 37 – PERFORMANCE MANAGEMENT SYSTEM

(a) INTRODUCTION

- (1) This Article sets forth procedures and appropriate arrangements for administering the Agency's Performance Management Program. The Performance Management Program will:
 - (A) Plan work and communicate expectations;
 - (B) Monitor performance and provide assistance to improve performance when necessary;
 - (C) Develop the capacity to perform through training, developmental opportunities, and work assignments;
 - (D) Periodically rate performance in a summary fashion; and
 - (E) Reward good performance.

(b) DEFINITIONS

The following terms used in this article shall be interpreted consistent with the Office of Personnel Management guidance and government-wide regulations:

- (1) Appraisal: The act or process of reviewing an employee's performance against the performance standards.
- (2) Appraisal Period: The established period of time that an employee's performance will be reviewed and assessed, resulting in a rating of record.
- (3) Core Competency: The observable behaviors, skills, knowledge, and abilities required by a position that have been validated by the Department and apply broadly to all or many jobs within the Agency. Each core competency is a critical element in an employee's performance plan.
- (4) Critical Element: A work assignment or responsibility contributing towards accomplishing organizational goals and objectives, generally described in the form of a performance goal or core competency, of such importance, that unacceptable performance on the element would result in a determination that the employee's overall performance is unacceptable. All performance goals and core competencies are critical and will be directly related to the employee's assigned position description and grade level; and communicated to the employee at the beginning of the rating period or whenever elements or expectations change during the rating period.

- (5) **Interim Evaluation:** A written narrative assessment of performance that does not result in a summary rating.
- (6) **Interim Rating:** An appraisal of performance that results in a summary rating completed at times other than at the end of the appraisal cycle.
- (7) **Performance:** The actual results versus the desired results, as compared to the expectations described in the performance plan. It is the employee’s accomplishment of assigned work and responsibilities.
- (8) **Performance Goals:** Specific goals assigned to an employee by the employee’s supervisor or manager that describe the results to be achieved. Performance goals are documented in the performance plan.
- (9) **Performance Standard:** A statement of the performance threshold(s), requirement(s), or expectation(s) at a particular level of performance including, but not limited to, quality and manner of performance.
- (10) **Progress Review:** A formal documented discussion between the employee and the Rating Official about the employee’s progress compared to performance expectations outlined in the performance plan. The required mid-cycle review is a type of progress review.
- (11) **Quality Step Increase:** An increase in an employee's rate of basic pay from one step of the grade of his or her position to the next higher step of the grade in accordance with 5 USC §5336. The term "quality step increase" is used in 5 USC §5336.
- (12) **Ratings Calculator:** An approved USCIS form that is used to calculate the overall summary rating that will provide both a numerical rating and a summary rating level.
- (13) **Rating of Record:** An appraisal that is prepared at the end of the appraisal period, covering an employee’s performance of assigned duties against performance expectations over the applicable period, which includes the assignment of a summary rating.
- (14) **Summary Rating:** The performance rating level that describes an employee’s overall performance during the appraisal period and is a weighted calculation derived mathematically from an employee’s performance on both performance goals and core competencies.

(c) CORE COMPETENCIES AND PERFORMANCE GOALS

- (1) All Core Competencies and Performance Goals will be in writing and related to the employee's assigned work.

- (2) In no instance will the employee be rated on performance goals and core competencies not specified in the performance plan under which the employee will be rated.
- (3) To the extent required by law, the Agency will provide the Union with notice and an opportunity to bargain prior to making any changes to performance standards.

(d) PERFORMANCE PLAN

- (1) Normally, the performance plan will be issued to the employee within thirty (30) days of:
 - (A) The beginning of a new appraisal period;
 - (B) The employee entering on duty in or transferring to a new, permanent position; or
 - (C) The Agency changing a performance plan that has already been issued.
- (2) When issuing a new performance plan, the rating official will:
 - (A) Meet with the employee to discuss the employee's job duties and responsibilities.
 - (B) Explain how the job duties and responsibilities contained in the performance plan relate to the Agency's mission.
 - (C) Explain the expected performance necessary to achieve an acceptable level of performance under each core competency and performance goal.
 - (D) Sign and date the finalized performance plan.
 - (E) Provide the employee with a copy of the signed performance plan.
- (3) When issued a new performance plan, the employee will:
 - (A) Meet with the supervisor to discuss his or her job duties and responsibilities.
 - (B) Review the performance plan and seek clarification as needed.
 - (C) Sign and date the finalized performance plan to acknowledge that the discussion occurred and that he/she received a copy of the performance plan. If the employee declines to sign, the effective date of the plan is the date the

Rating Official attempted to obtain the employee's signature. Employees are still held accountable for performance even if they don't sign the PPA.

(e) PROGRESS REVIEW

- (1) Rating officials will give employees a written progress review at least once during the appraisal period, normally at the approximate midpoint of the appraisal period.
- (2) Additional progress reviews may be made at any time during the appraisal period and may be initiated by the supervisor, rating official (if not the immediate supervisor), or the employee.
- (3) A progress review is required if the rating official believes the employee is not performing successfully in any critical element.
- (4) Throughout the appraisal period, employees are encouraged to contribute, discuss and communicate their ideas regarding the competencies, goals and standards in their performance plan.
- (5) Discussions should be candid dialogues between the supervisor or rating official and the employee to assess performance.

(f) INTERIM EVALUATIONS AND RATINGS

An interim rating may be issued whenever an employee:

- (1) Completes a detail or temporary promotion of 90 or more days;
- (2) Moves to a new position within DHS; or
- (3) Is reassigned to a new supervisor.

(g) PERFORMANCE RATING

- (1) Each employee's performance will be judged solely against his or her performance standards.
- (2) In no event will an employee be rated if he or she has not been covered by a performance plan for at least 90 calendar days.
- (3) When completing a performance rating, the Agency may consider and make allowances for factors beyond the employee's control that affected performance during the appraisal period.

- (4) The employee is strongly encouraged, but not required, to provide the rating official with a written self-assessment prior to the issuance of the performance rating. If an employee chooses to do a self-assessment, he or she may use up to two (2) hours of duty time to do so. The self-assessment will be attached to the rating of record. Employee self-assessments submitted in a timely manner shall be given consideration in developing the performance rating for that employee.
 - (5) Time spent performing Union representational functions shall not be taken into consideration (nor will it be held against the representative), when evaluating performance. Union representatives who spend 100% of the appraisal period on official time will not receive a rating for the appraisal period. Union Representatives will be rated for only that time that they devote to their official Agency duties provided they are covered by performance plans for at least the minimum 90-day requirement, referenced above in (G)(2).
 - (6) A written performance rating will normally be issued within 30 days after the end of each appraisal period.
 - (7) Performance ratings will be reviewed and approved by both the rating and reviewing official prior to the rating being provided to the employee.
 - (8) When a copy of the rating is given to the employee, the rating official will discuss it with the employee and respond to any questions the employee may have.
 - (9) The employee will sign the performance rating to indicate that the discussion occurred and that the employee received a copy of the rating. It does not constitute agreement with the rating.
- (h) DETERMINATION OF UNACCEPTABLE PERFORMANCE DURING THE RATING PERIOD.
- (1) If, at any time during the appraisal period, the rating official concludes that an employee's work is unsuccessful in any critical element, the rating official will meet with the employee to:
 - (A) Inform the employee of performance deficiencies in the particular critical element, which may lead to an unsuccessful performance rating;
 - (B) Recommend specific ways for the employee to correct the performance deficiencies;
 - (C) Inform the employee of the potential consequences of an unsuccessful performance rating;

- (2) Any such meeting will be memorialized in writing, with a copy provided to the employee.
- (3) Failure to comply with any of the provisions in this section will not preclude management from rating an employee unsuccessful.

(i) USES OF RATINGS OF RECORD

Possible uses of performance ratings include but are not limited to:

- (1) Eligibility for Within-Grade Increases (WIGI). To determine whether an employee has achieved the acceptable level of competence to be entitled to the appropriate within-grade increase.
- (2) Award, Promotions and Personnel Actions. In consideration for appropriate awards, including quality step increases, promotions, and other personnel actions.
- (3) Reductions in Force (RIF) In making RIF determinations in accordance with applicable laws, rules, regulations and the RIF Article of this Agreement.
- (4) The rating of record may be used in evaluating candidates under the Merit Promotion Article of this Agreement.

ARTICLE 38 – CONTRACTING OUT

(a) DUTY TO BARGAIN

- (1) The Agency's right to contract out work and functions currently performed by bargaining unit employees is non-negotiable. The Union's right to negotiate the impact of the Agency's decision is covered by this Agreement and 5 U.S.C. 7106 and 7114.
- (2) The Agency agrees to comply with this Agreement and all applicable laws, rules, and regulations concerning contracting out. To the extent required by law, contracts may not be used for the performance of inherently governmental functions.

(b) BRIEFINGS

- (1) In accordance with the Impact, Supplemental and Mid-Term Bargaining article of this agreement, the Agency will inform the Union in writing as early as practical regarding any decision to contract out work and/or functions of bargaining unit employees.
- (2) Management will brief Union representatives of the affected employees concerning any decisions to contract out work and/or functions currently performed by bargaining unit employees, consistent with the provisions of the Labor-Management Forum and Consultations article of this Agreement.

(c) SITE VISITS

The Agency will notify the Union if a site visit is going to be conducted for potential Bidders seeking contracts for work performed by bargaining unit employees. A Union Representative may attend such a site visit.

ARTICLE 39 – HARDSHIP TRANSFERS

(a) PURPOSE

This Article sets forth the procedures to be followed when, as a result of a personal hardship, an employee requests a transfer to a new position and/or duty station within USCIS.

(b) DEFINITIONS

- (1) Hardship: A personal, non-work-related situation that is significantly difficult for the employee and outside of his/her control that necessitates the employee to relocate to the designated location, for example:
 - (A) Health of employee or employee's family member;
 - (B) Involuntary transfer of the employee's family member;
 - (C) Care of disabled or elderly relatives; or
 - (D) Child custody.
 - (E) Hardships are not situations created by the employee (e.g. an employee voluntarily applies and accepts a position in a different geographic location and moves to that location without his or her family).
- (2) Family Member: An individual with any of the following relationships to the employee: (1) spouse and parents thereof; (2) sons and daughters, 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 and parents thereof, including domestic partners of any individual in paragraphs (2) through (5) of this definition; (7) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.
- (3) Hardship Transfer: A voluntary reassignment or change to lower grade at the employee's request and expense intended to help alleviate or minimize a hardship by placing him/her in a position at the same or lower grade level and promotion potential in a different geographic area within USCIS.

(c) ELIGIBILITY AND GUIDELINES

The provisions of this Article apply only to current, full-time and part-time, USCIS employees holding a permanent (career or career conditional) appointment under the General Schedule who have been continuously employed for at least one year.

Hardship transfer requests will be carefully considered and reviewed on a case-by-case basis, and the decision to approve or deny the request will be solely at management's discretion with the

operational interests and needs of the Agency serving as the primary criteria. There is no guarantee the request will be approved, and nothing in this article shall be construed as an entitlement to a transfer. All relocation costs associated with transfers granted under this provision are the responsibility of the employee. Should an employee receive a hardship transfer to a new duty station, the employee's salary will be adjusted in accordance with the applicable locality rate, if any.

(d) PROCEDURES

- (1) An employee seeking a hardship transfer shall submit their request in writing to the Office of Human Capital and Training (HCT) via email to USCISHardshipRequest@uscis.dhs.gov and include the following:
 - (A) A cover letter or memorandum that provides the following information:
 - i. Employee's hardship;
 - ii. Requested geographic location(s) – in order of preference;
 - iii. How the transfer will help to alleviate the employee's hardship;
 - iv. What other available alternatives the employee has sought to address the hardship;
 - v. Employee's availability date for transfer;
 - vi. Employee's willingness to be considered for available positions in other occupational series and pay grades; and
 - vii. The names, titles, office addresses, and office telephone numbers of the employee's first and second-level supervisors;
 - (B) An updated resume;
 - (C) A copy of the employee's most recent Standard Form (SF) 50, Notification of Personnel Action, to include name, job title, series, grade, step, total salary, name and location of employment. If the SF-50 provided does not contain sufficient information, it is the employee's responsibility to furnish one that includes the necessary information. The appropriate SF-50 can be downloaded from the employee's electronic Official Personnel Folder (eOPF);
 - (D) A copy of the employee's most recent rating of record; and
 - (E) Any other pertinent and verifiable documentation supporting the request.

- (2) An employee, at his or her discretion, may provide a copy of their request for a hardship transfer to a Union representative.
- (3) Upon receipt of the employee's hardship transfer request, HCT will review the request to ensure all required documentation is included.
- (4) HCT will refer the request to the appropriate management officials for consideration.
- (5) The Agency shall review and provide the employee a written response to the request within 30 calendar days of receiving either the request or any Agency- requested supplemental information. The written response will indicate whether the request has been granted or denied. If denied, an employee may re-apply.
- (6) Under this Article, the Agency may consider a request for an expedited transfer when the employee establishes that the transfer is necessary due to a sudden life- threatening event.

ARTICLE 40 – MERIT PROMOTION AND REASSIGNMENT FOR BARGAINING UNIT POSITIONS

Merit Promotion and Reassignment principles and procedures for bargaining unit employees, are governed by Agency policies (USCIS Management Directive 255-001 (MD 255-001) or its successor). In those instances in which this agreement is in conflict with MD 255-001 or its successor, the terms of this agreement will take precedence.

(a) PURPOSE

The purpose of this Article is to communicate the Agency's obligation to follow merit promotion principles outlined in law, government-wide rules and regulations, and Agency policies. The Agency will:

- (1) Ensure that merit system principles are applied without regard to race, color, religion, sex (including pregnancy and gender identity), national origin, political affiliation, sexual orientation, marital status, disability, genetic information, age, membership in an employee organization, retaliation, parental status, military service, or other non-merit factor; and shall be based solely on job-related criteria;
- (2) Provide employees the opportunity for career growth through promotion and internal placement opportunities; and
- (3) Inform employees of available positions.

(b) TEMPORARY PROMOTIONS

- (1) Bargaining unit employees will not be detailed or temporarily promoted to higher grade positions for more than a cumulative total of 120 calendar days during any 12-month period without the use of competitive procedures, unless the higher grade or higher promotion potential was previously held on a permanent basis in the competitive service (or in another merit system with which OPM has an interchange agreement) from which the employee was separated or demoted for other than performance or conduct reasons.
- (2) Temporary promotions of more than 120 calendar days for qualified and eligible bargaining unit employees will become effective upon their entry on duty.

(c) PRIORITY CONSIDERATION BEFORE USING COMPETITIVE PROCEDURES

- (1) Involuntarily Demoted Employees. Employees who are involuntarily demoted in the Agency without personal cause or who are in grade retention status are entitled to consideration for re-promotion before using competitive procedures. This applies to positions at the employee's grade held immediately prior to demotion or at any intervening grades that are to be filled under competitive procedures. The right to this

consideration does not apply to a position with promotion potential higher than that of the position held at the time of demotion.

(2) For Employees Not Given Proper Consideration.

- (A) Employees are entitled to priority consideration when, as determined by the Human Resources Operation Center (HROC), a regulatory, program, or procedural violation from a previous merit promotion action has occurred. The HROC will notify the candidate that he or she missed consideration for a position for which the candidate applied. The candidate, per such notification, must let the HROC know which locations and grade levels (equivalent or lower to those he or she missed consideration) he or she is interested in for priority consideration. The HROC will refer the candidate to the selecting official prior to posting job opportunity announcements for vacant positions. The number of priority considerations is equal to the number of missed considerations. Priority consideration requires the selecting official to give serious consideration to the affected candidate. If non-selected, the record must explain the reasons for non-selection. Priority consideration does not guarantee selection.
- (B) Notification. The employee shall be notified in writing of his or her non-selection under this section. The Agency recognizes the need to make notification as early as practicable.

(d) SCOPE OF COMPETITION

In determining the area of consideration for a vacancy announcement, the Agency will consider the Federal Equal Opportunity Recruitment Program (FEORP), a recruiting initiative established by the Civil Service Reform Act and administered by OPM. The program is designed to eliminate under-representation of minorities and women in the federal service. The area of consideration will be sufficiently broad to ensure the availability of high quality candidates, taking into account the nature and level of the positions covered. Area of consideration determinations must be made prior to announcing the position(s), documented in the promotion file, and clearly specified in the vacancy announcement.

(e) VACANCY ANNOUNCEMENTS

- (1) The Agency shall post a link to its vacancy announcements on the Agency's website. Utilization of daily employee email broadcasts to advertise vacancy announcements is encouraged.

Announcements shall be posted for at least ten (10) calendar days before the closing date.

- (2) Vacancy announcements, at a minimum, will include the following information:

- (A) The name of the Agency and the announcement number;
- (B) Opening and closing dates;
- (C) Statement of nondiscrimination;
- (D) Position title(s), series, pay plan, and grade(s);
- (E) Number of anticipated vacancies to be filled;
- (F) Area of Consideration;
- (G) Test requirements, if any;
- (H) Promotion potential/full performance level of position;
- (I) Minimum qualification and eligibility requirements, including any selective placement factors, knowledge, skills, abilities, competencies or other factors that will be evaluated (e.g., experience and/or education, training, time-in-grade, etc.);
- (J) How to apply, including the name and telephone number of the HROC point of contact for additional information relating to the announcement; and
- (K) Any other information as may be required by MD 255-001 and successor management directives.

- (3) If a vacancy announcement has been posted and any information is later found to be in error or subsequently changed, (i.e. area of consideration, duty station, grade, full performance level), or if there is a change in the factors by which the candidates will be evaluated, the announcement must be re-posted, citing the change and whether or not the original applicants need to re-apply in order to be considered. Posting time and distribution shall be the same as in the original vacancy announcement.

(f) EMPLOYEE APPLICATIONS

- (1) Submitting an Application. To be considered for a vacancy, an employee must submit his or her resume, responses to the assessment questionnaire and supporting documents as required by the announcement. USCIS does not accept applications by mail.
- (2) Electronic Application. The Agency will provide bargaining unit employees access to Agency computers during non-working hours to complete automated applications under this Article.

- (3) Time Limits. The application deadline for a posted vacancy will be 11:59 PM Eastern Time on the closing date reflected in the vacancy announcement.
- (4) Absence during Posting Period. Exceptions may be granted to employees who are unable to apply to an announcement by the closing date due to unique circumstances, such as extended military service. In these situations, the employee may be allowed to apply and receive consideration after the closing date of an announcement, provided no selection has been made.
- (5) Multiple Applications. When an employee applies for more than one announcement, full consideration will be given for each vacancy applied for, regardless of selection to one or more vacancies.

(g) SELECTION PROCEDURES

- (1) Selecting officials will comply with all laws, rules, and regulations to prevent prohibited personnel practices on selections.
- (2) Selecting officials may select any applicant referred as best-qualified regardless of whether fewer vacancies are filled than initially identified.
- (3) Release and Notification of Applicants.

The Human Resources Operation Center will work with program officials to establish mutually agreeable release dates based on mission and program requirements. Normally, an employee will be released no later than one (1) complete pay period for promotions, following the selection. When local workforce and program conditions permit, an employee will be released no later than two (2) complete pay periods for reassignments, following the selection. When an employee is nearing the end of a waiting period for a within-grade increase, consideration should be given to releasing the employee at the beginning of a pay period on or after the effective date of the within-grade increase, not to exceed four pay periods, provided such an action would benefit the employee.

(h) EMPLOYEE INFORMATION

- (1) At a minimum, applicants will be notified of application receipt and the final status of their application. To the extent possible, the announcement status will be made available to applicants. An applicant may request and receive the name, title, organization, and geographic location of the person who was selected for the position. In addition, an applicant may request, and receive, information regarding his or her qualifications relative to the rating and ranking criteria and the name of the selecting official. In order to receive this information, an applicant must submit a Freedom of Information Act (FOIA) request. An applicant may not receive the weights of the assessment questionnaire.

- (2) Selecting officials, or their designees, are strongly encouraged to reach out to bargaining unit candidates who were interviewed, but not selected, to offer feedback regarding their non-selection. Additionally, the non-selected candidate may request this information from the selecting official (or their designee).

- (3) The following information may NOT be released regarding a selection:
 - (A) Confidential examining materials (e.g., answer keys, rating schedules and crediting plans, rating sheets, test booklets, etc.);

 - (B) Any information that may intrude upon the privacy of other individuals; and

 - (C) Any other materials that would compromise the objectivity or fairness of the examination and evaluation process.

ARTICLE 41 – HOLIDAYS AND RELIGIOUS OBSERVANCES

(a) HOLIDAYS

The following days are treated as holidays for the purpose of pay and leave of Agency employees:

- (1) New Year's Day - January 1;
- (2) Martin Luther King's Birthday – 3rd Monday in January;
- (3) Washington's Birthday/Presidents' Day – 3rd Monday in February;
- (4) Memorial Day - Last Monday in May;
- (5) Independence Day - July 4th;
- (6) Labor Day – 1st Monday in September;
- (7) Columbus Day – 2nd Monday in October;
- (8) Veterans Day - November 11th;
- (9) Thanksgiving Day – 4th Thursday in November;
- (10) Christmas Day - December 25th;
- (11) Inauguration Day - January 20th quadrennial (in the Washington, D.C. metropolitan area only);
- (12) Any other day designated as a holiday by Federal Statute or Executive Order.

(b) HOLIDAYS FALLING ON A WEEKEND

- (1) Federal Statute. For employees working a Monday through Friday workweek, holidays falling on a weekend will be celebrated as defined by Federal Statute.
- (2) Sunday. When a holiday falls on a Sunday or an employee's day off in lieu of Sunday, the employee is excused from work on the next workday of his or her basic workweek. Holiday pay is authorized for the next workday if the employee is not excused on that day.
- (3) Saturday. When a holiday falls on Saturday or an employee's day off in lieu of Saturday, the employee is excused from work on the previous day of his or her basic workweek. Holiday pay is authorized for the previous workday if the employee is not excused from duty on that day.

(c) HOLIDAYS WORKED

The handling of compensation for hours worked during a holiday as listed above is covered in the OVERTIME AND COMPENSATORY TIME Article of this Agreement.

(d) RELIGIOUS HOLIDAYS

- (1) Employees who wish to attend or participate in the observance of the established religious holidays of their faith (e.g., Good Friday, Yom Kippur) may be granted leave in accordance with provisions set forth in the Annual Leave and Other Leave Articles of this Agreement.
- (2) An employee whose personal religious beliefs require the abstention from work during certain periods of the work day or work week, may elect to work compensatory overtime for time lost for meeting those religious requirements.
- (3) To the extent that such modifications in work schedules do not interfere with the efficient accomplishment of the Agency's mission, the Agency will afford the employee the opportunity to work compensatory time and will grant compensatory time off to an employee requesting such time off for religious observances in accordance with section E below.
- (4) Leave Procedures. Where an employee is granted leave for religious observance, the employee may perform compensatory overtime work before or after the compensatory time off. Time off taken in advance must be repaid by an equal amount of compensatory overtime work within six (6) pay periods following the pay period in which the employee was absent; otherwise, the time off will be charged to annual leave or leave without pay, as appropriate. When compensatory overtime work is performed in advance, the time off for religious observance must be taken within six (6) pay periods of the pay period in which it was earned; otherwise, it will be forfeited. Compensatory time will be credited to an employee on an hour to hour basis or authorized fractions thereof (15 minutes).

(e) COMPENSATORY TIME FOR RELIGIOUS OBSERVANCES

- (1) An employee whose personal religious beliefs require the abstention from work during certain periods of the work day or work week, may elect to work compensatory overtime for time lost for meeting those religious requirements.
- (2) To the extent that such modifications in work schedules do not interfere with the efficient accomplishment of the Agency's mission, the Agency will afford the employee the opportunity to work compensatory time and will grant compensatory time off to an employee requesting such time off for religious observances.

- (3) Leave Procedures. Where an employee is granted leave for religious observance, the employee may perform compensatory overtime work before or after the compensatory time off. Time off taken in advance must be repaid by an equal amount of compensatory overtime work within six (6) pay periods following the pay period in which the employee was absent; otherwise, the time off will be charged to annual leave or leave without pay, as appropriate. When compensatory overtime work is performed in advance, the time off for religious observance must be taken within six (6) pay periods of the pay period in which it was earned; otherwise, it will be forfeited. Compensatory time will be credited to an employee on an hour to hour basis or authorized fractions thereof (15 minutes).

(f) STATE AND LOCAL HOLIDAYS

State and local holidays will normally be treated as regular workdays if they fall within an employee's basic workweek. However, the Employer may release employees on administrative leave for a state or local holiday when the employees of the Agency office, installation, or post of duty are actually prevented from working by one of the following circumstances:

- (1) Building Closures. The building or office in which the employees work is physically closed; or building services essential to proper performance of work are not operating.
- (2) Local Transportation. Local transportation services are discontinued or interrupted to the point where employees are prevented from reporting to their work location.
- (3) Related Duties. The duties of the employees consist largely or entirely of dealing directly with employees or industrial establishments or local government offices and all such establishments are closed in observance of the holiday, and there are no other duties (consistent with their normal duties) to which the employees can be assigned on the holiday.

ARTICLE 42 – COUNSELING FOR CONDUCT AND PERFORMANCE

Counseling is not a disciplinary action. It shall be conducted in a professional manner and used to encourage an employee's improvement in areas of conduct and performance.

(a) PRIVACY AND NOTICE

Both written and oral counseling will be conducted in private and will place the employee on notice of the deficient conduct or performance. The supervisor will notify the employee in advance if more than one management official is to attend the counseling session. The employee will also be informed of the potential consequence if the conduct or performance issue persists.

(b) UNION REPRESENTATION

The employee may request Union representation when the counseling involves an examination under 5 U.S.C. § 7114(a)(2)(B) and the Investigative Interviews Article of this agreement.

(c) WRITTEN COUNSELING

- (1) Not all counseling will be in writing. When counseling is confirmed in writing (whether electronic or paper), the employee will be given a copy. The counseling letter will include, if appropriate, any references to prior related oral counseling.
- (2) Counseling letters for misconduct will be retained in the supervisor's file for a period not to exceed one year.
- (3) Counseling letters for performance will be retained for the duration of the rating period for which they are issued. If the performance appraisal for that year incorporates information from the counseling record in the narrative section, or the counseling is incorporated into a performance improvement plan notice, it may be retained for a longer period.

ARTICLE 43 – CAREER LADDER PROMOTIONS AND WITHIN-GRADE INCREASES**(a) PROMOTIONS**

Career ladder promotions shall be processed in a timely manner once an employee has met the criteria for promotion eligibility. Once the criteria are met, the promotion will be made effective at the beginning of the following pay period. If the determination is delayed, and that determination is that the employee met the criteria on the date of eligibility, the promotion will be retroactive where allowed by law. Promotions will be processed retroactively if a delay occurs after the supervisor's determination.

If a determination is made that the employee did not meet the criteria for the career ladder promotion, the supervisor must provide the employee with written notice of specific reasons for the determination.

(b) WITHIN GRADE INCREASE (WIGI)

A WIGI shall be effective on the first day of the first pay period following the completion of any required waiting period except when the supervisor makes a determination that the employee is not performing at an acceptable level of competence (ALOC). A WIGI may also be delayed when the employee has not served 90 days in the performance standards or the employee was reduced in grade because of poor performance in the new position.

If a WIGI is delayed and the employee is subsequently found to be performing at the ALOC, the increase will be granted retroactively to the beginning of the pay period following the completion of the waiting period.

Denial of a WIGI is not to be used as a punitive measure or for an act of misconduct in lieu of appropriate disciplinary actions.

(c) DENIAL OF WIGI

WIGI determinations will be made in accordance with applicable regulations. If at the end of the required waiting period, the employee's performance is not at an acceptable level of competence for the purpose of approving the WIGI, the employee will receive a written notice offering the following information:

- (1) A statement that the employee has the right to request, in writing, a reconsideration of the negative determination, provided the request is made within 15 calendar days of the employee's receipt of the negative determination;
- (2) The name and title of the reconsideration official to whom the employee may submit a request; and
- (3) A statement that the employee may have a Union representative in presenting a request to the reconsideration official.

A decision on reconsideration will be made within 30 calendar days from the date of the written request for reconsideration. If the reconsideration official determines that the employee has met the acceptable level of competence, the WIGI will be effective as of the first day of the first pay period after that determination.

If the decision on reconsideration is to withhold the WIGI, decision letter will advise the employee of applicable appeal rights, including the right to file an appeal to the Merit Systems Protection Board (MSPB).

After a WIGI has been withheld, the Agency may grant the WIGI at any time after it determines that the employee has demonstrated sustained performance at an acceptable level of competence. In such cases, the WIGI will become effective the first day of the first pay period after the acceptable determination is made. Performance at or above the achieved expectations level for 90 consecutive days is sufficiently sustained performance to warrant the granting of a WIGI.

ARTICLE 44 – ACTIONS BASED ON UNACCEPTABLE PERFORMANCE

(a) COVERAGE

- (1) Actions covered by this Article include the reduction in grade and removal for unacceptable performance under 5 U.S.C. 4303, of employees in bargaining unit positions at the time the action was initiated.
- (2) This Article does not apply to the reduction in grade and removal of an employee in the competitive service who is serving a probationary or trial period under an initial appointment.
- (3) The reduction in grade or removal of an employee in the competitive service serving in an appointment that requires no probationary or trial period who has not completed one (1) year of current continuous employment in the same or similar position under other than a temporary appointment limited to one (1) year or less.
- (4) No bargaining unit employee will be subject to removal or reduction in grade based on unacceptable performance unless that employee's performance fails to meet established performance standards in one or more critical elements of his or her position.

(b) PERFORMANCE IMPROVEMENT PLAN

Before a performance-based action is taken against an employee, the employee will be given an opportunity to improve his or her performance through, for example, training and mentoring opportunities. The employee will receive a written Performance Improvement Plan (PIP), which normally will:

- (1) Identify each critical element in which the employee is performing at an unacceptable level and provide specific examples of the performance deficiencies for each element/standard for which performance has been determined to be unacceptable;
- (2) Explain the performance requirement(s) and standard(s) that must be attained in order to demonstrate acceptable performance for each element to successfully complete the PIP;
- (3) Offer detailed assistance designed to improve the employee's performance;
- (4) Inform the employee that failure to attain and sustain an acceptable level of performance in the deficient critical element may result in a reduction in grade or removal;
- (5) Indicate the length of the PIP to include the beginning and ending date. (Unless otherwise indicated in a collective bargaining agreement, the supervisor shall afford a

reasonable opportunity, but not less than (60) days). The length of the PIP may depend on the position of the employee, the nature of work, and the deficiencies involved;

- (6) Identify how the employee's work will be monitored;
- (7) Establish a time, place, and degree of frequency for meetings to be held with the supervisor and the employee to discuss the employee's progress; and
- (8) Identify who will be available (e.g. the supervisor, or another individual) to provide assistance if needed (e.g. answer questions, provide guidance).

(c) PROCEDURES FOR TAKING A PERFORMANCE BASED ACTION

An employee whose reduction in grade or removal is proposed under this Article shall be provided with at least a thirty (30) days advance written notice, which will:

- (1) Be based on instances of unacceptable performance that occurred within a one (1) year period ending on the date of the notice of proposed action;
- (2) Identify the specific instances of unacceptable performance by the employee on which the proposed action is based;
- (3) Identify each critical element of the employee's position involved in each instance of unacceptable performance;
- (4) Include all supporting evidence that the proposing official relied upon in proposing the action;
- (5) Inform the employee of the right to provide a written and oral answer, which may include affidavits and/or other documentary evidence in support of the answer within ten (10) calendar days, which may be extended for a reasonable time upon request, from receipt of the proposed action, and identify the Agency official to whom the answer must be presented;
- (6) Inform the employee of the right to be represented by the Union or an attorney or other person of his or her choosing in responding to the proposed action;
- (7) Provide the employee with a reasonable amount of duty time, up to a minimum of eight (8) hours, to review the material on which the action is based and to prepare an answer orally and/or in writing; and
- (8) Inform the employee that the Agency will provide a written decision with specific reasons for the action taken within thirty (30) days after the expiration date of the notice period.

(d) FINAL DECISION

The final decision regarding a proposed action based on unacceptable performance will fully set forth the basis of the decision and the effective date of the action to be taken, if any. In most cases, the proposing and deciding official will not be the same person. If a performance based action is sustained, the decision letter will advise the employee of the applicable appeal rights, including right to appeal the decision to the Merit Systems Protection Board in accordance with applicable law or under the grievance/arbitration procedures provided in this Agreement. Under no circumstances may an employee appeal an action under this Article to both the MSPB and the grievance/arbitration procedures in this Agreement.

ARTICLE 45 – INVESTIGATIONS

(a) SCOPE

- (1) This article does not apply to investigations conducted by the Office of the Inspector General.
- (2) Nothing in this article shall require the Agency to disclose its investigative techniques in the course of any investigation conducted in accordance with this article.
- (3) All interviews will be conducted in a fair and impartial manner and all participants in the interview will conduct themselves in a respectful manner.

(b) RIGHT TO REPRESENTATION

- (1) As exclusive representative, the Union shall be given the opportunity to be present at any examination of an employee in the bargaining unit by a representative of the Agency in connection with an investigation if:
 - (A) the employee reasonably believes that the examination may result in disciplinary action against the employee; and
 - (B) the employee requests representation.
- (2) The right to Union representation is not intended to interfere with the routine interaction between supervisors and employees in the normal course of a workday.
- (3) The Agency shall annually inform its employees of their right to union representation under 5 USC 7114(a)(2)(B) by posting notice of such rights on bulletin boards and through other appropriate means.

(c) INTERVIEWS

- (1) Consistent with 5 U.S.C. 7114(a)(2)(B), employees have the right to be represented by the local union while being questioned in a formal investigation or while being required to provide a written or sworn statement. Before such questioning begins or a statement is given, the employee will be informed in writing of the reason(s) he/she is being questioned or asked to provide a statement.
 - (A) During the interview, the employee or the union representative may, upon request, take a break, provided it does not interfere with the integrity of the investigation.

- (B) Upon request, the agency will make available to employees the most current version of the published procedures for conducting interviews.
- (2) In any interview where the employee is not the subject of a criminal investigation, or when an employee has been advised of his/her rights:
 - (A) The employee must disclose any information known to him/her concerning the matter being investigated;
 - (B) The employee must answer the investigator’s questions truthfully. An employee or the union may object to a question in which he/she believes the Agency has no official interest. However, a response must be provided at the investigator’s request;
 - (C) The employee's failure or refusal to answer such questions may result in disciplinary or adverse action;
 - (D) The employee may discuss the matters raised in the interview with the Union but not with other employees until the investigation is completed; and
 - (E) When an employee refuses to answer a question, in accordance with this section, the Agency representative shall inform the employee of his/her obligation to answer.
 - (3) The parties may not disrupt an investigation by transforming the interview into an adversarial proceeding.
 - (4) The Union may not question or cross-examine the interviewee on the record, or speak on behalf of the interviewee in response to questions posed by the investigating agent. This shall not preclude the union representative from seeking clarification to ensure the employee fully understands the questions posed by the investigator.
 - (5) At the conclusion of an audio recorded investigative interview, the Agency will notify employees that they have the opportunity to submit a written statement, to request an additional oral interview, and to submit additional evidence related to the substance of the investigation. While there is no deadline to do so, employees are encouraged to submit additional information and statements as soon as possible subsequent to the interview. Employees will be provided a reasonable amount of administrative time to submit additional information.
 - (6) The content of any audio recording of an investigative interview will not be altered subsequent to the interview.

(d) DISCLOSURE

- (1) Supervisors, employees, and local union representatives will abide by the requirements of any non-disclosure instructions they receive from investigators.
- (2) The Agency will abide by all applicable laws, rules, and regulations regarding the handling and disclosure of the audio recording, and will ensure it is disclosed only on a need-to-know basis.
- (3) Where an employee is asked to certify the correctness of a transcript of a prior investigative interview or to supplement his or her testimony, he or she will be afforded, the opportunity to review any recording of the prior interview.

(e) PROVISION OF COPIES OF INVESTIGATIVE MATERIALS TO EMPLOYEE

In accordance with the Disciplinary and Adverse Action article of this Agreement:

- (1) An employee shall receive a complete copy of all evidence used to support the Agency proposed action. This may include, but is not limited to, copies of all tapes, testimony/transcripts, recommendations and/or findings, and photographs.
- (2) The Agency will provide a written explanation of any denial of any additional information requested in a timely manner.

(f) EMPLOYEE WEINGARTEN RIGHTS

- (1) In conducting investigations under the auspices of the Office of Security and Integrity (or successor), the Agency, in taking a sworn statement from the employee based on allegations which could result in disciplinary action against the employee, will provide sufficient advance written notice to the subject of the interview to allow him/her time to secure Union representation if he/she so desires. The Union will make reasonable efforts to minimize delay in providing representation. Upon request, a reasonable extension of time will be granted when the Union cannot be present. Where the employee requests Union representation, the Union will also be informed of where and when the interview will take place.
- (2) When an employee receives a Notice to Appear for an investigative interview, the notice shall advise the employee of his/her right to union representation prior to the commencement of questioning. This notice shall be signed by the employee and returned to the investigating agent.
 - (A) If the employee exercises his or her option to have union representation present, the employee will have a reasonable period of time to secure Union representation.

- (B) The arrangements made to accommodate Union representation in subsection 2(a) may not cause an unnecessary delay prompting an obstruction of the Agency’s investigation.
- (C) Where a representative of the Agency denies an employee the opportunity to be represented by the Union during an interview, the employee will, upon request, be provided with the reason for the denial in writing.
- (D) Interviews that continue beyond the employee’s regular duty hours shall constitute hours of work and be compensated for by the Agency.

(g) WITNESS INTERVIEWS

Where, prior to or during an interview, a representative of the Agency denies an employee-witness’s request for Union representation pursuant to 5 USC 7114(a)(2)(B), the employee- witness will, upon request, be provided with the reason for the denial in writing.

An employee who is directed to give testimony against another employee and who refuses to do so may be subject to discipline. Therefore, during any subsequent interview regarding the employee’s refusal, the employee will be entitled to Union representation upon request..

(h) INVESTIGATION RESULTING IN NO ACTION

At the conclusion of an investigation governed by this Article, when the Agency closes the investigation without action, a “no action “ notice will be provided to the employee informing him/her of that decision.

(i) PERIODIC REINVESTIGATIONS

The following procedures are applicable to bargaining unit employees undergoing Periodic Re-Investigation (PRI):

- (1) Upon notification of the investigation from OSI, the employee may be given a reasonable amount of administrative time to complete the periodic reinvestigation forms. It is understood that some employees may need more time than others to complete the forms. Employees will not be expected to complete the form on accrued leave or personal time. Employees may be granted sufficient administrative leave to collect data necessary to complete the forms. All time must be arranged with the employee’s supervisor in advance.
- (2) Administrative time may not necessarily be taken consecutively. It may need to be scheduled an hour or two at a time, based on workload and staffing requirements.
- (3) If the investigator requires the employee to provide specific documents, the employee may, upon request, be granted administrative leave to obtain the documents.

- (4) Upon request, employees will receive assistance from the USCIS Office of Human Capital and Training to enable them to access and use the electronic Official Personnel File (eOPF) to assist them in completing the PRI.
- (5) Copies of the certification of investigation will be inserted into the employees' eOPF and the Agency will take necessary steps to notify the employee of the completion of PRI simultaneous to the entry in the eOPF.

(j) RIGHT TO AN ATTORNEY

Nothing in this Agreement interferes with an employee's right to seek the assistance of an attorney for representation.

(k) TRAVEL FOR INTERVIEW

When an employee is required to travel for the purpose of participation in an investigative interview or any hearing appeal process, the Agency will pay the travel and per diem for the employee.

ARTICLE 46 – DISCIPLINARY AND ADVERSE ACTIONS BASED ON MISCONDUCT**(a) PURPOSE**

- (1) The objective of discipline is to promote the efficiency of the service.
- (2) The Agency will administer disciplinary and adverse action procedures and determine appropriate penalties to all employees in a fair and equitable manner, taking into account the relevant factors associated with each case.
- (3) In most cases, the proposing and deciding official will not be the same person.
- (4) Disciplinary and adverse actions shall be taken only for just cause.

(b) DEFINITIONS

- (1) Adverse Actions. Removals, suspensions for more than fourteen (14) days, reductions in grade or pay for conduct reasons, and furloughs of thirty (30) days or less for non-conduct reasons. Adverse actions based on 5 USC Chapter 43 are specifically covered in the Actions Based Upon Unacceptable Performance article of this Agreement.
- (2) Disciplinary Actions. Letters of reprimands and suspensions of fourteen (14) days or less.
- (3) Day. A calendar day, unless otherwise specified. If a due date falls on a Saturday, Sunday, or Federal Holiday, then the due date will be the next business day (Monday through Friday).
- (4) Furlough. The placing of an employee in a temporary status without duties and pay because of lack of work or other non-disciplinary cause.
- (5) Harmful Error. Error by the agency in the application of its procedures that is likely to have caused the agency to reach a conclusion different from the one it would have reached in the absence or cure of the error. The burden is upon the employee to show that the error was harmful, i.e., that it caused substantial harm or prejudice to his or her rights.

(c) PRELIMINARY PROCEDURES

Prior to issuing a written reprimand or proposal for disciplinary or adverse action, the Agency will make an effort to discover whether the employee did in fact engage in the alleged misconduct. This effort, at a minimum, will include the following:

- (1) The Agency gathering supporting evidence and documentation as appropriate;

- (2) Notifying the employee of any proposed disciplinary or adverse action within a reasonable amount of time after the alleged offense has been committed and made known to the employer and, if appropriate, investigated;
- (3) Honoring the Union’s right to attend any examination of a bargaining unit employee by a representative of the agency in connection with an investigation if the employee reasonably believes that the examination/interview may result in disciplinary action against the employee, and the employee requests representation; and
- (4) Informing employees, at the start of any investigative interview concerning alleged misconduct, the purpose for the interview.

(d) DISCIPLINARY ACTION PROCEDURES

A disciplinary or adverse action proposal will include a notation, on both the employee’s original copy and the Agency’s receipt copy, of the number of pages that are enclosed which compose the material which was relied on to support the reasons in that proposal.

- (1) Oral Admonishment and/or Counseling. An Oral Admonishment and/or Counseling will not normally be used as a basis for any disciplinary action, unless it is confirmed in writing and a copy furnished to the employee.
- (2) Letters of Reprimand:
 - (A) A letter of reprimand may be issued without formal advance notice or proposal;
 - (B) The letter will inform the employee of the conduct for which the employee is being reprimanded;
 - (C) The letter will inform the employee of the right to file a grievance over the reprimand under the negotiated grievance procedure, and the right to Union representation;
 - (D) The letter will remain in the employee's electronic Official Personnel Folder (e-OPF) for a period not to exceed two (2) years unless the employee leaves the Agency, in which case the letter will be removed. If the employee leaves the Agency, the reprimand will be removed from the e-OPF;
 - (E) When a letter of reprimand is issued, the employee will be informed that he or she shall have the right, within fourteen (14) calendar days, to prepare and submit a concise statement of disagreement. The Agency will consider the statement and, if appropriate, modify or withdraw the letter of reprimand. If the letter of reprimand is not withdrawn, the statement of disagreement will be filed with the letter of reprimand on the temporary side of the e-OPF. The

employee does not waive his or her right to grieve the reprimand in accordance with the Grievance Procedures article of this Agreement.

- (3) Short-Term Suspensions. An employee against whom a suspension for fourteen (14) days or less is proposed is entitled to:
- (A) An advance written notice of at least thirty (30) days stating the specific reasons for the proposed action;
 - (B) A complete copy of all evidence relied upon in support of the proposal. Such evidence shall be provided at the time the proposal is served;
 - (C) A minimum of fourteen (14) calendar days after receipt of the notice and the evidence relied upon to support the proposed action, to respond orally and/or in writing, and to furnish affidavits and other documentary evidence in support of the response to the deciding official;
 - (D) Be represented by an attorney or other representative; and
 - (E) Upon request, a reasonable amount of duty time to prepare and present a response to the proposal.
 - (F) Consideration of his or her response, if any, and a written decision letter that informs the employee of the right to file a grievance in accordance with the grievance procedures of this Agreement.

(e) ADVERSE ACTION PROCEDURES

When taking any adverse action, the following procedures will apply:

- (1) Provide the employee with advance written notice of a minimum of thirty (30) days stating the specific reasons for the proposed action, unless there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed. For these situations, the employee shall only be provided advance written notice of ten (10) days.
- (2) Provide the employee with a complete copy of the evidence relied upon by the proposing official. Such evidence shall be provided at the time the proposal is served.
- (3) Inform the employee of the right to respond orally and in writing and to furnish affidavits and other documentary evidence in support of the response and that written replies and requests for oral replies must be submitted to the deciding official within fourteen (14) calendar days of receipt of the proposal and supporting evidence.

- (4) Inform the employee of the right to be represented by an attorney or other representative.
- (5) Upon request, provide the employee with a reasonable amount of duty time to prepare and present a response to the proposal.
- (6) After considering the employee's response, issue a decision letter. The decision letter will set forth the employee's appeal rights, including the right to file a grievance in accordance with the grievance procedures of this Agreement.

(f) NEW OR AMENDED CHARGES

If the Agency wishes to amend or add additional charges to a proposed disciplinary or adverse action, the Agency will rescind the original proposal and issue a new one which starts the clock anew thus restarting the procedures for disciplinary or adverse actions.

(g) EXTENSION OF TIME LIMITS

Upon a timely request, the Agency may, on a case-by-case basis, grant a reasonable request for extension of time to file a written and/or oral reply.

(h) HARMFUL ERROR

The parties recognize that disciplinary and adverse actions are time-consuming. Any assertion that too much time elapsed between the alleged offense and issuance of either the proposed notice or decision on a disciplinary or adverse action must be supported by proof of harmful error.

(i) RECORD OF UNWARRANTED ALLEGATION OR DISCIPLINE

- (1) No record of an allegation of misconduct determined to be unfounded will be placed in the employee's e-OPF.
- (2) Any disciplinary or adverse actions and all copies thereof that are later found to have been unwarranted shall be removed from the e-OPF and destroyed within five (5) business days once the finding that the action was unwarranted becomes final and binding.

(j) UNION REPRESENTATION

When the Union is designated as the representative in a disciplinary or adverse action and the employee has furnished a proper written designation to the Agency in accordance with this Agreement;

- (1) The Agency will provide a copy of any subsequent correspondence to the employee concerning that action directly to the Union designee;

- (2) In circumstances where the oral reply is transcribed by a transcription service, the Agency will ensure a copy of the oral reply transcript is simultaneously provided to the designated Union representative and the Agency designee;
- (3) If the Union questions the accuracy of the oral reply transcript, a copy of the Agency's audio recording will be furnished to the Union upon request as soon as possible;
- (4) Specifically regarding decision letters, once an employee has been served a decision letter, a copy will be electronically provided to the designated Union representative.
- (5) Any hand delivered notice, including a disciplinary/adverse action proposal or decision letter, will be given to an employee in such a manner as to preserve his or her privacy to the greatest extent possible; and
- (6) If the employee elects not to be represented by the Union, correspondence will be addressed only to the employee and the employee's representative, if any.

(k) ADMINISTRATIVE HEARING TRAVEL

When an employee is required to travel for the purpose of participation in an administrative hearing concerning a matter covered by this article, the Agency will pay travel and per diem, consistent with government-wide rules and regulations.

(l) NOTICE OF PROPOSED ACTION

An original and one (1) copy of all proposed notices of disciplinary actions and adverse actions shall be furnished to the affected employee.

(m) LAST CHANCE AGREEMENTS

Last Chance Agreements refer to situations in which the Agency agrees to forgo or mitigate taking a disciplinary or adverse action against an employee in exchange for the employee agreeing to set terms, including conforming to certain conduct expectations for a set period of time. The understanding is that if the employee does not meet his/her obligation under the agreement, then the Agency is free to reinstate the disciplinary or adverse action. The employee will not be compelled to waive his or her right to grieve or appeal an alleged breach of a Last Chance Agreement.

(n) ALTERNATIVE TO FORMAL DISCIPLINE

Alternative forms of discipline in lieu of formal discipline may be appropriate in some circumstances and of benefit to both the employee and the Agency. Alternative discipline is an option only in cases in which non-alternative disciplinary action would result in an official reprimand or a suspension of fourteen (14) days or less. However, if used, all provisions of this agreement must be followed, such as but not limited to notice periods, complete copies of evidence considered by the proposing official, etc. The objectives of alternative discipline may include, but are not limited to:

- (1) Improving communications and interpersonal working relationships between supervisors and employees;
- (2) Correcting behavioral problems;
- (3) Reducing the costs and delays inherent in traditional disciplinary actions; and
- (4) Decreasing the contentiousness between the parties.

ARTICLE 47 – PROBATIONARY EMPLOYEES

(a) PROBATIONARY PERIODS

All probationary periods will be established in accordance with applicable Federal laws. Probationary periods will also be governed by government-wide rules and regulations. Prior federal service qualifies towards the probationary period to the extent consistent with applicable law and regulation

(b) PERFORMANCE STANDARDS AND REVIEW

Probationary employees will be advised in writing of the applicable critical elements and performance standard at the beginning of the employee's probationary period. The supervisor will explain the requirements of each probationer's position and answer any questions the employee may have. The supervisor will review the performance of the probationary employee and provide counseling regarding any performance deficiencies. If the employee is not performing satisfactorily, the employee will be so advised by the supervisor. The supervisor will counsel the employee in a timely manner on how to correct the unsatisfactory performance.

(c) NON-RETENTION AND RIGHT TO RESIGN

- (1) When terminating a probationary employee, the Agency will do so in a respectful manner.
- (2) Nothing will prohibit an employee serving a probationary period from resigning prior to an Agency-initiated termination.

(d) UNION RIGHTS

The Union may represent probationary employees in connection with any matter consistent with law or regulation and this Agreement.

ARTICLE 48 – REDUCTION IN FORCE, TRANSFER OF FUNCTION, REORGANIZATION AND FURLOUGH

(a) WORKFORCE ADJUSTMENTS

The Agency and the Union jointly recognize that occasions may arise where adjustments of the work force may be necessary either by reduction-in-force, transfer of function or reorganization, and that lapses in appropriations or other circumstances may result in a furlough of bargaining unit employees.

(b) DEFINITIONS.

- (1) Reduction-in-Force. A reduction-in-force means the release of employees from their competitive level by separation, demotion, furlough for more than thirty (30) days, or reassignment requiring displacement; when lack of work or shortage of funds, reorganization, insufficient personnel ceiling, reclassification due to change in duties, or the need to replace a person exercising reemployment or restoration rights requires the Agency to release the employee.
- (2) Transfer of Function. Transfer of function means the transfer of the performance of a continuing function from one competitive area and its addition to one or more other competitive areas, except when the function is virtually identical to functions already being performed in the other competitive areas affected; or the movement of the competitive area in which the function is performed to another commuting area.
- (3) Reorganization. For the purpose of this article, reorganization means the planned elimination, addition, or redistribution of functions or duties in an organization that results in an employee's release from a competitive level by separation, furlough for more than thirty (30) days, demotion or reassignment.
- (4) Furlough. The placement of an employee in a temporary non-duty, non-pay status due to an emergency situation, lack of work or funds or other non-disciplinary reasons.
 - (A) Emergency Furlough. A furlough due to unforeseeable circumstances, such as equipment breakdown, act of God or sudden emergencies requiring the immediate curtailment of activities. Consistent with 5 CFR 752.404, advance written notice to employees is not necessary.
 - (B) Lapse in Appropriation Furlough. A furlough is necessary when an agency no longer has the necessary appropriated funds to operate and must shut down those activities which are not excepted pursuant to the Anti-deficiency Act. Consistent with 5 CFR 752.404, advance written notice to employees will be provided if sufficient time allows.

(c) APPLICABLE LAWS

All reductions-in-force, transfer of function, reorganizations, and furloughs will be carried out in compliance with applicable laws, and any alleged failure to comply with such laws and regulations will be processed in accordance with the Grievance Procedure Article of this Agreement, or for cases appealable to the MSPB, in accordance with its rules.

(d) UNION NOTIFICATION

Except in the case of furloughs due to unforeseeable circumstances beyond the control of the Agency, prior to official notification of employees, the Union will receive ten (10) days advance notice of any pending reduction-in-force, transfer of function or reorganization. This notice, in writing, will include the reasons for the reduction-in-force, transfer of function or reorganization, the approximate number and types of positions affected, the approximate date of the action, and an invitation to the Union to a meeting conducted by the Agency to explain the reduction-in-force, transfer of function or reorganization procedures, and answer relevant questions.

(e) REDUCTION IN FORCE

- (1) Notice to Employees. The Agency agrees to provide affected employees as much advance notice of reduction-in-force as is administratively possible but in no case will such notice be less than sixty (60) calendar days. All such notices shall contain the information required by Office of Personnel Management (OPM) regulations.
- (2) Retention Registers. Employees receiving a reduction-in-force notice have the right to review retention lists pertaining to all positions for which they are qualified. This includes the retention register for their competitive level and those for other positions for which they are qualified, down to and including those in the same or equivalent grade as the position offered by the Agency. If separation occurs, this includes all positions equal to or below the grade level of their current positions. Affected employees shall have the right to the assistance of the Union when reviewing such lists of records.
- (3) Offers of Employment. Affected employees shall have a minimum of five (5) calendar days in which to accept or reject, in writing, an offer of another position. Failure of employees to respond, in writing, to the offer within the time limits will be considered a rejection of the offer. If the offer to the new assignment is accepted, training as determined by the Agency will be given to the employee to enable him or her to perform the duties of the new position.
- (4) Minimize Adverse Action. The Agency will attempt to minimize actions that adversely affect employees which often follow a reduction-in-force by using, to the extent possible, attrition to accomplish reductions. In the event career or career-conditional employees are separated by reduction-in-force, the Agency will refer these names to the Department of Homeland Security for inclusion on the appropriate reemployment priority list in accordance with governing regulations.

- (5) Employees will be given preference for reemployment consistent with governing regulations. The Agency will provide affected employees information regarding employment possibilities with other government agencies, retirement, severance pay and other benefits available to them.

(f) TRANSFER OF FUNCTION

- (1) Notice to Employees. The Agency will inform employees of plans for the transfer of function and the governing regulation after a decision has been made.
- (2) Written Notice. The Agency will notify each affected employee of the proposed plan, in writing, so that the employee will be able to consider the action and give a reasonable answer. Where the transfer of function is to another commuting area, the employee shall have no less than thirty (30) calendar days to accept or reject the position offered.
- (3) Placement Assistance. The Agency will assist and counsel affected employees in seeking placement opportunities with other Federal agencies or elsewhere in the community.
- (4) Retirement and Severance. The Agency will counsel employees on individual rights relating to such matters as retirement and severance pay.
- (5) Transfer of Function to Another Agency. In the event of a transfer of function of Agency activity to another government entity, the Agency will solicit the cooperation of the gaining agency in explaining the ramifications of such a change to the Union.

(g) FURLOUGH

- (1) Notice to Employees. If time permits before a furlough is enacted, advance written notice will be given to affected employees. In the event that advance written notice is not possible, then employees will be notified via public announcements or written notice will be mailed to the address of record promptly after the furlough becomes effective.
- (2) Health Coverage. Consistent with the provisions promulgated by OPM and 5 CFR 890.303, full employer contributions to health benefits under the Federal Employees Health Benefit (FEHB) program continues for employees affected by a furlough. Any employee contributions missed due to a furlough will be made up when the employee returns to work.

- (3) Life Insurance. Consistent with the provisions promulgated by OPM and 5 CFR 870.601, employees' coverage of life insurance benefits under the Federal Employees Group Life Insurance (FEGLI) program continues for employees affected by a furlough, up to twelve (12) consecutive months in a non-pay status.
- (4) Performance Ratings. Rating officials will make appropriate adjustments when evaluating employees' performance to compensate for employee absences during a furlough.
- (5) Work Adjustments. Supervisors will take into account the due dates of work products that became due while the furlough was on-going, and make appropriate allowances.
- (6) Employee Status. While in furlough status, affected employees may not be subject to supervisory orders or other work-related instructions to carry out in compliance with the Anti-deficiency Act. Employees will remain vigilant regarding public announcements pertaining to the continuation or termination of the furlough.
- (7) Employee Assistance. Furloughed employees may contact the Employee Assistance Program (EAP) for assistance, e.g. counseling and coaching, to include covered legal and financial consultations.

ARTICLE 49 – EFFECTIVE DATE AND DURATION

(a) EFFECTIVE DATE

This Agreement shall take effect on July 1, 2016.

(b) DURATION

This Agreement shall remain in full force and effect for three (3) years from its effective date. Thereafter, this Agreement shall expire and may be renewed for one year only upon mutual, written agreement of both parties within 30 calendar days of the expiration date. The renewal shall be in the form of a signed and dated memorandum of agreement and is effective on the date the memorandum of agreement is signed.

(c) RENEGOTIATION

If either party desires to renegotiate any terms of this Agreement, it will furnish written notice to the other party, identifying the Articles that it wishes to change, not more than one hundred and twenty (120) or less than ninety (90) days prior to the expiration date.

In the event such notice is given by either party, the parties will begin negotiating ground rules for the new negotiations within sixty (60) days from the date of receipt of notice of the proposed changes. If negotiations are not completed by the anniversary date, the Agreement will be automatically extended until a new agreement is negotiated.

(d) AMENDMENTS AND MODIFICATIONS

This Agreement may only be amended or modified upon written, mutual agreement of the parties.