

Collective Bargaining Agreement

Between

American Federation of State, County, and
Municipal Employees

Local 3925



and

Farm Service Agency (FSA)
Risk Management Agency (RMA)

(Revised Copy)

February 18, 2013

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PREAMBLE

- A. The PARTIES agree to mutually establish and maintain a work environment that ensures the integrity of the Federal Service, promotes the most effective and efficient delivery of Agency programs and services, protects the interests of American taxpayers, promotes good workmanship and the principles of good management, protects human dignity, assures equal and fair treatment of employees, and to the extent practicable provides a work experience for all employees that is personally challenging, rewarding, and that provides equal opportunity for professional growth and success.
- B. Employees and managers shall conduct themselves in a professional and business-like manner, characterized by mutual courtesy and consideration in their day-to-day working relationship.
- C. The Parties, especially Union representatives and first-line supervisors, are encouraged to meet as necessary to informally discuss and attempt resolution of matters or problems of concern to either party, including, but not limited to, employees' concerns or dissatisfactions and problems of Agreement interpretation and administration.
- D. It is the intent of the Parties to establish procedures to accommodate the Union's legitimate need to perform representational activities specified in this Agreement and as permitted by law. It is also the intention of the Parties to accommodate the Employer's legitimate interest in ensuring no unreasonable disruption of the Employer's ability to carry out its critical day to day operations and perform its overall mission.
- E. The Parties agree that most grievances and complaints should be resolved in an orderly, prompt, and equitable manner that will maintain the self-respect of the employee and be consistent with the principles of good management and public interest.
- F. The definitions of all terms in this agreement shall be consistent with definitions of identical terms at 5 U.S.C. 7103, or other relevant provision of law, as applicable, unless otherwise specified in this Agreement.

ARTICLE 1: PARTIES TO THE AGREEMENT, RECOGNITION, AND DEFINITION OF BARGAINING UNIT

Section A. Parties to the Agreement

The parties to this Agreement are the U.S. Department of Agriculture (USDA), Farm Service Agency (FSA), and Risk Management Agency (RMA) in the Washington, D.C. metropolitan area, hereinafter known as the “Employer” and the American Federation of State, County and Municipal Employees (AFSCME) Local 3925, hereinafter known as the “Union.”

Section B. Unit of Recognition

The unit of recognition covered by this Agreement is that unit certified by the Federal Labor Relations Authority in Case No. WA-RP-70063. The Employer recognizes the American Federation of State, County and Municipal Employees, Local 3925, as the exclusive representative of all employees (hereinafter sometimes referred to as "employees" or "bargaining unit employees") in the bargaining unit as defined below.

A copy of the certification is in the appendix.

Section C. Bargaining Unit Coverage

1. This agreement covers “All professional and nonprofessional employees employed by the U.S. Department of Agriculture, Farm Service Agency and Risk Management Agency in the Washington, D.C. metropolitan area, but excluding all management officials, supervisors, and employees described in title 5, U.S.C. Section 7112(b) (2), (3), (4), (6) and (7).”
2. Employees on temporary appointments will be designated as part of the bargaining unit. Employees on temporary promotions will be designated in accordance with the position held.

ARTICLE 2: EMPLOYEE RIGHTS

- A. Each employee shall have the right to form, join or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided, such right includes the right:
 - 1. to act for AFSCME in the capacity of a representative and the right, in that capacity, to present the views of AFSCME to heads of agencies and other officials of the Executive Branch of the Government, the Congress, or other appropriate authorities;
 - 2. to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees.
- B. An employee has the right to be represented by the Union at any meeting when the employee has a complaint concerning conditions of employment.
- C. Employees will be provided annual notification during the month of September, of the right to have Union representation at any Management-initiated investigative meeting that may result in disciplinary action. See sample letter in Appendix 2.
 - 1. Each employee has the right to be represented by the Union at any Management-initiated investigative meeting that may result in disciplinary action, or that the employee believes may result in disciplinary action, and shall be given the opportunity to obtain such representation, upon request.
 - 2. Each employee will be notified of his or her right to Union representation prior to, and no later than, the onset of any Management-initiated investigative meeting that may result in disciplinary action.
- D. An employee may be represented by a representative of the employee's own choosing, in any employment-related appeal action not under the negotiated grievance procedure. The employee may exercise grievance or appellate rights established by law, rule, or regulation. When exercising these rights and the rights under the negotiated Agreement, employees shall be granted a reasonable amount of official time for initiating, reviewing, preparing, presenting, and participating in the grievance process, in accordance with Article 40.
- E. Employees covered by this agreement may, without fear of penalty or reprisal, engage in the disclosure of information which the employee reasonably believes evidences a violation of law, rule, or regulation; or evidences mismanagement, a waste of funds, an abuse of authority, or a danger to health or safety, in accordance with applicable laws and regulations.

- F. Each employee has the right to file a complaint or grievance, act as a witness, and exercise any appeal or other right granted by law, rule, regulation or this Agreement without fear of restraint, coercion, discrimination, or reprisal.
- G. Employees shall have the right to conduct their private lives as they see fit, and to engage in outside activities and employment of their own choosing, in accordance with applicable law and government wide regulations.
- H. Copies of the rules, regulations, and policies under which employees are obligated to work will be available at each building in which employees regularly work.
- I. Employee counseling or cautions on conduct or unacceptable performance, or verbal warnings will be conducted in a setting that protects the employee's confidentiality.
- J. In accordance with applicable law, an employee may review any and all records about himself/herself upon request, and shall be given copies of the records upon proper request. Records maintained on an employee that are not maintained on a permanent basis, will be removed from official records in accordance with the Government's retention schedule unless otherwise specified in this Agreement. Records that exceed the applicable retention schedule shall not be used to initiate disciplinary or other adverse action. The removed records will be destroyed, or given to the employee upon the employee's request.
- K. Employees have the right to use official time to meet with their Union representative for the purposes and under the procedures established in Article 43 of this Agreement.
- L. Each employee has the right to choose whether to participate in Federally-sanctioned charitable and/or investment activities including, but not limited to, CFC, Savings Bond drives, and the like, freely, without coercion, and without fear of reprisal. Each employee also has the right to have his or her choices made and held in confidence.
- M. Equal Employment Opportunity - See Article 27 for additional information on employee rights.

ARTICLE 3: UNION RIGHTS AND RESPONSIBILITIES

- A. The Union is the exclusive representative of the employees in the bargaining unit and is entitled to act for, and negotiate collective bargaining agreements covering these employees. The Union is responsible for representing the interests of all employees in the bargaining unit without discrimination and without regard to Union membership, in accordance with the Federal Labor Management Relations Act (FLMRA) and interpretive case law.
- B. For the purpose of administration of this Agreement, the Employer agrees to recognize representatives of AFSCME Council 26, AFSCME International and/or AFSCME designated or recognized private counsel.
- C. The Union has the right to represent an employee or group of employees at any formal discussion between one or more representatives of the agency and one or more employees in the bargaining unit or their representatives concerning any personnel policy or practices or other condition of employment; or any examination of an employee in the unit by a representative of the agency in connection with an investigation if: 1) the employee reasonably believes that the examination may result in disciplinary action against the employee, and 2) the employee requests Union representation.
- D. The Union has exclusive right to represent employees under the negotiated grievance procedure in this Agreement. An employee or group of employees may present a grievance or complaint without representation by the Union, provided that the Union is a party to all formal discussions and grievance proceedings. For written grievances, the Union will be given all grievance-related written documents within one (1) business day after they are received or written by Management. The Union will be given copies of all decisions within one (1) business day after Management signs the decisions. See Article 38 for additional information on Union Rights in this area.
- E. Reasonable Notice: The Union will be given reasonable notice of, and provided reasonable time to be present at, formal discussions concerning any grievance, personnel policy or practice, or other conditions of employment.
- F. Restraint: Union officials and representatives performing duties in consonance with this Agreement and the FLMRA will not be the subject to restraint, coercion, or reprisal, or discrimination as the result of performing such duties.
- G. Equal Employment Opportunity: See Article 27, Section C, for additional information on Union Rights in this area.

ARTICLE 4: MANAGEMENT RIGHTS AND RESPONSIBILITIES

In accordance with applicable law and this agreement, the Employer retains the right:

- A. To determine the mission, budget, organization, number of employees, and internal security practices of the Agency;
- B. To hire, assign, direct, layoff, and retain employees, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against employees;
- C. To assign work, to make determinations with respect to contracting out, and to determine the personnel by which the Employer's operations shall be conducted;
- D. With respect to filling positions, to make selections for appointments from among properly ranked and certified candidates for promotion or from any other appropriate source; and
- E. To take whatever actions may be necessary to carry out the Agency's mission during emergencies.

ARTICLE 5: DUES WITHHOLDING

Section A. Except as provided for below, members of the bargaining unit are authorized to effect voluntary allotment for the payment of dues to the Union subject to the provisions outlined in the Memorandum of Understanding between AFSCME Council 26 and the U.S. Department of Agriculture dated May 3, 1993.

Section B. Revocation of Union Dues

(1) An employee may voluntarily revoke an allotment for the payment of dues by completing a SF-1188, "Cancellation of Payroll Deductions for Labor Organization Dues" or by memorandum in duplicate, and submitting it to the appropriate SPO. If the employee uses a written request other than the SF-1188, such request must contain all the information required by the SF-1188 form.

(2) If the employee has been a Union member for a period exceeding 365 calendar days, a request for revocation of Union membership submitted under the procedures specified above, regardless of when it has been received, shall not become effective until the first full pay period after September 1 of each year, provided that the revocation was received by the SPO on or before August 29 of that year.

(3) However, for first-year Union members only, an SF-1188 may be filed by an employee during the thirty calendar days period prior to the anniversary date of his or her first dues withholding. The revocation shall become effective on the pay period beginning on or before the anniversary date in which the dues deduction went into effect. Subsequent to having had the option of electing to revoke their dues deductions on or before the anniversary, the employee will be subject to the same revocation procedures as outlined in Subsection (2) above.

(4) The Agency does not process employee requests for dues revocation, it will provide the employee with an explanation as to why such request has been not been processed

(5) Termination due to separation, moving into a position outside the bargaining unit, or expulsion from the Union shall automatically go into effect at the end of the pay period after which the separation, transfer, promotion, or expulsion occurred.

(6) Should the Agency erroneously continue deducting an employee's dues after the date at which those deductions should have been terminated, any excess payment to the Union shall be subtracted from the next payment to the Union after the error has been detected; but only if the Union has first been provided with a written statement explaining the reasons that the error occurred.

ARTICLE 6: WORK SCHEDULES/TOURS OF DUTY

Section A. General

1. Employees and managers work to carry out the overall mission of the Agency, by providing professional, technical, and clerical services to internal and external customers. This article has been developed to give recognition to the mutual need for coverage and flexibility and to address issues and concerns that have arisen and, to the extent foreseeable, will arise as employees and managers continue working together to accomplish the work of the Agency.
2. Employees may request authorization to work one of the four schedules established in this Article. The variety of schedules provides for more flexibility than has previously been available to employees, but has the potential to require employees to increase their span of responsibility.

Section B. Definitions

1. Agency Business Hours: The official business hours of the Agency are 8:15 a.m. to 4:45 p.m., Monday through Friday.
2. Core Hours: The core hours of the Agency are 9:30 a.m. to 3:00 p.m. Core hours are the hours for which each employee is required to account on scheduled work days by being on duty, scheduling some form of approved leave, or use of credit hours, or compensatory time off.
3. Regular Workday:
 - a. For employees on a fixed schedule (Compressed Work Schedule 5/4/9 or 4/10): 6:00 a.m. to 6:00 p.m.
 - b. For employees on a flexible work schedule (Maxiflex or Variable Day Schedule): 6:00 a.m. to 6:30 p.m.
 - c. Employees shall begin work each day no earlier than 6:00 a.m. but no later than 9:30 a.m. Employees must have completed their tour of duty no later than 6:00 p.m. or 6:30 p.m., as applicable. Any time worked before 6:00 a.m. or after 6:00 p.m. or 6:30 p.m., as applicable, must be approved overtime or compensatory time, unless approved as a special situation under procedures in Section G of this article.
4. Standard Work Schedule: In the absence of any other approved work schedule, the standard work schedule will be 8:15 a.m. - 4:45 p.m. daily.
5. Workday Continuity: Unless otherwise approved, the workday must be completed in one shift.
6. Lunch Break: A manager may not require an employee to work more than 6 hours without a lunch break. Lunch breaks must ordinarily be taken between 11:00 a.m. and 2:00 p.m.
7. Lunch Band: 11:00 a.m. to 2:00 p.m.

8. Flexilunch: Employees on a Maxiflex or Variable Day Schedule may, with advance supervisory approval, expand their lunch break within the lunch band on any given day, provided arrival and/or departure times are adjusted an equivalent amount on that day.
9. Temporary Schedule Change: A temporary work schedule change, as used in this Article, means two pay periods or less time, except as noted in Section G.
10. Permanent Schedule Change: A permanent work schedule change, as used in this Article, means a time period that exceeds 2 pay periods.

Section C. Alternative Work Schedules

Note: See summary chart of available work schedules at the end of this subsection.

1. The alternative work schedules for full-time and part-time employees, except as noted, are as follows:
 - a. Compressed Work Schedule (CWS): Employee works a fixed schedule which is established by the employee and approved by the supervisor. Employees must work an 80-hour pay period of fewer than ten (10) workdays per pay period (Monday-Friday). Workdays must begin no later than 9:00 a.m. and must end no later than 6:00 p.m. Starting and ending times once established are fixed and do not change. Student temporary employees (restricted to 20 hours per week), summer aides, and intermittent personnel are not eligible for CWS. Employees shall establish a schedule according to one of the following:
 - (1) 5/4/9: Employee establishes a schedule to work eight 9-hour days, one 8-hour day, and designates one (1) fixed compressed day off.
 - (2) 4/10: Employee establishes a schedule to work eight 10-hour days and designates two (2) fixed compressed days off.
 - b. Maxiflex: Employee must work an 80-hour pay period of ten (10) or fewer workdays per pay period (Monday - Friday). An employee on a maxiflex schedule may take two (2) days off in the same week. Workdays must be 6 to 10 hours in length and must include all core hours on days scheduled to work, except for the last day of the schedule once the 80-hour requirement has been met. Employee requests to establish a schedule according to Section D below and may request to change the schedule as often as each pay period, choosing the time he/she will arrive each day no earlier than 6:00 a.m. and no later than 9:30 a.m. Once a schedule is approved, employee must account for hours in the schedule except that arrival time may be flexed earlier or later up to 30 minutes on any given day, provided departure time is flexed an equivalent amount on that day. Actual arrival time under this 30-minute glide may only occur from 6:00 a.m. to 9:30 a.m. and actual departure time must occur between 3:30 and 6:30 p.m.

Maxiflex (Flexible Tour)

Tour: **Works** 6- to 10-hour days
Nonwork day: 1 or more as scheduled
Glide: 30 minutes
Credit Hours; Yes up to 1 hour per day
Flexilunch: Yes
Holiday Pay: 8 hours

Variable Day (Flexible Tour)

Tour: Varies daily with 6- to 10-hour days
Nonwork day: Ineligible
Glide: 3-1/2 hours (6:00 a.m. - 9:30 a.m.)
Credit Hours: Yes
Flexilunch: Yes
Holiday Pay: 8 hours

Section D. Procedures for Requesting Work Schedules

1. Employees who want to establish or make a permanent change to an alternative work schedule shall request their preferred work schedule from the available options listed in Section C of this article by submitting the appropriate form to their supervisors no later than close of business on the Tuesday before the pay period for which they wish the schedule to be effective. Employees who want to make a temporary change to an alternative work schedule must submit the appropriate form to their supervisors no later than close of business five days prior to the day for which they wish the schedule to be effective.
2. Employees on Maxiflex Schedules may request a temporary schedule change for any pay period in which a Federal holiday or in-lieu-of-holiday as defined in Section F2 falls on a day that, in the absence of the Federal holiday, would have been otherwise scheduled as a 9- or 10-hour workday so that only 8 hours are scheduled on the holiday or in-lieu-of-holiday
3. Supervisor shall approve or disapprove requested schedule no later than close of business Wednesday before the pay period for which the employee wishes the schedule to be effective. It is the employee's responsibility to ensure the supervisor's actual, timely receipt of the request. If a work schedule request is disapproved, the specific reasons for such disapproval must be provided in writing to the employee on the work schedule form or an attachment. Schedule requests submitted more than 1 pay period in advance may be approved on a first-come, first-served basis provided all other requirements of this Section and Section C are met.
4. If no request is submitted by the employee by close of business on Tuesday before a pay period begins, the previous pay period's schedule will remain in effect.
5. A supervisor may deny an employee's specific request for an alternative work schedule (AWS) if:
 - a. the employee would be unable to complete the requirements of the position;

- b. the office would have inadequate coverage during established Agency business hours;
 - c. the work unit's business operations would be unduly delayed or interrupted; or
 - d. a critical mission of the Agency would not be accomplished or would be unduly delayed or interrupted.
6. Employees promoted, detailed, transferred, or reassigned from one work unit to another must submit a new request to their new supervisor. Unless necessitated by essential work requirements, neither an employee hired, promoted, detailed, transferred, or reassigned into a different work unit, nor an employee seeking to change their work schedule within the same unit, may cause another employee in that work unit to be bumped involuntarily off their approved work schedule. This is irrespective of the provisions of D7 below.
7. Schedule Request Conflicts
- a. If two or more employees' work schedule requests conflict so that to approve both/all the requests would result in inadequate office coverage during the work day, or undue delays or interruptions to Agency business operations, or the failure, delay, or interruption in completing a critical mission of the Agency, the supervisor should meet with the affected employees and return the form to each employee with the request that the employees reach agreement among themselves, if possible.
 - b. If the employees are unable to reach agreement by noon on the Thursday before the pay period in which the employees wish the requested schedules to be effective, the supervisor by close of business on Thursday will approve or disapprove the work schedules by giving priority to the employee with seniority based on the service computation date for leave.
8. Temporary Work-Related Schedule Changes
- a. A supervisor may, after giving timely notice to affected employees, make a temporary change to an employee's work schedule (including scheduled days off) for any work-related exigency -- including, but not limited to, to ensure required attendance at meetings, training, travel; to alleviate inadequate office coverage during the established work day; to provide required services to internal or external customers; to compensate for temporary staffing shortages or changes; or to fulfill special needs of the Agency.
 - b. An employee may request a temporary change to the work schedule (including scheduled days off) for any work-related exigency -- including, but not limited to, ensuring required attendance at meetings, training, travel; providing required services to internal or external customers; or fulfilling special needs of the Agency. Such request for change must be submitted on the appropriate form and approved by the supervisor in advance.
 - c. Timely notice as used in this paragraph, is defined to mean as soon as is practicable after the supervisor has determined a change in the work schedule is required for the current or any subsequent work day for any of the reasons noted in 8a above or similar requirements. It is understood by the parties that the amount of notice practicable in each instance will vary

according to the circumstances. Supervisors shall consider the affected employees' need to make corresponding changes in their personal affairs to accommodate the Employer.

- d. For supervisory initiated changes according to 8a, an employee who is required to work on their scheduled day(s) off will, if possible, be permitted to schedule alternative day(s) off during the pay period. If this is not possible, the employee will be paid overtime or permitted to accrue compensatory time for future use.

9. Permanent Work-Related Work Schedule Changes

- a. Subject to 9b below, a supervisor may direct a permanent work schedule change for an employee, work unit, or part of a work unit when:
 - (1) an employee would be unable to complete the requirements of the position;
 - (2) the office would have inadequate coverage during established Agency business hours;
 - (3) the work unit's business operations would be unduly delayed or interrupted; or
 - (4) a critical mission of the Agency would not be accomplished or would be unduly delayed or interrupted.
- b. For Agency-directed permanent work schedule changes, except in Emergency situations, a change to an employee's schedule may not be implemented without first giving the employee and the Union at least 2 weeks notices prior to the change. In particular circumstances, the Union may waive its right to the 2-week notice period. Because of the potential effects of a permanent change of schedule on other bargaining unit employees in the same or a related work unit, notice to the Union of a permanent change is necessary even when an employee, or group of employees, and a supervisor may agree on the necessity or acceptability of a specific permanent change.

Section E. Credit Hours

1. Credit hours are credit for work performed by an employee on a Maxiflex or Variable Day schedule in excess of their scheduled tour of duty on any scheduled workday for work performed between 6:00 a.m. and 6:30 p.m. Monday through Friday in order to vary the length of a subsequent workday or workweek. Employees covered by a fixed tour (standard and compressed work schedule) cannot earn credit hours.
2. Work performed for credit hours is differentiated from overtime work, which is ordered or directed by the Employer. Work performed for credit hours will not be converted to or compensated as, overtime work, nor is it subject to the rules and regulations of overtime work.
3. Employees on a Maxiflex or Variable Day schedule will be permitted to earn credit hours, subject to the following limitations:
 - a. "The working of credit hours is conditioned on the availability of appropriate work and the supervisor reserves the right to determine what work is appropriate for earning credit hours. Prior supervisory approval is required for working credit hours."

- b. Employees may earn up to one (1) credit hour on any workday and up to ten (10) credit hours in any biweekly pay period. Credit hours will not be earned on a nonworkday. Credit hours can be earned and used in fifteen (15) minute increments.
 - c. Credit hours can be earned for union representational activities only for a management initiated meeting.
 - d. No credit hours can be earned for travel outside of an employee's regular duty hours
4. Employees shall indicate their times worked for the credit hour period through applicable time and attendance procedures.
 5. An employee cannot carry over from one pay period to the next more than twenty-four (24) unused credit hours.
 6. Employees cannot be forced to use credit hours. Employees cannot be forced to earn credit hours. Employees approved to work overtime may elect to earn credit hours consistent with this article.
 7. Employees who have earned credit hours may request time off during their regularly scheduled work hours. Use of credit hours shall be subject to advance supervisor approval, in the same manner as leave, and will be scheduled so as to avoid disruption to the work of the work unit and to minimize the number of employees in a work unit who are off on any given workday (e.g., Supervisors may take into account scheduled leave of other employees in the work unit and scheduled days off for employees in the work unit in considering an employee's request to use accumulated credit hours).
 8. Use of credit hours may be requested in combination with approved leave and/or compensatory time off. Credit hour use may be requested in fifteen (15) minute increments. Credit hour use will be requested in the Time and Attendance System.
 9. Credit hours may not be earned for working during the lunch period. Use of credit hours may be requested to extend a lunch period.
 10. Credit hours must be earned before they are used.
 11. Unused credit hours will be compensated at the applicable rate in effect at the time of separation of the employee from the Agency, for whatever reason, including retirement.
 12. Credit hours may not be used to create an entitlement for a shift differential or other premium pay.

Section F. Holidays

1. When a Federal holiday falls on an employee's scheduled workday, the employee is entitled to holiday leave according to the following:
 - a. for employees on a Compressed Work Schedule, the total number of hours scheduled for that day. For example, if a holiday falls on Monday and the employee is scheduled to work nine (9) hours, the employee will be paid nine (9) hours for the holiday.
 - b. or employees on Maxiflex, Variable Day, or Standard Work Schedules, are entitled to 8 hours holiday leave.

2. When a Federal holiday occurs on a full-time employee's scheduled day off or compressed day off, the employee is entitled to holiday leave according to Section F1a or 1b, as applicable, for the workday immediately preceding the holiday as their "in lieu of holiday", with the following exceptions:
 - a. If the nonworkday is Sunday (or an "in lieu of" Sunday), the next basic workday is the "in lieu of" holiday.
 - b. If Inauguration Day falls on a nonworkday, there is no provision for an "in lieu of" holiday.
 - c. If the Head of the Agency determines that a different "in lieu of" holiday is necessary to prevent an "adverse Agency impact", he or she may designate a different "in lieu of" holiday for full-time employees under compressed work schedules.
 - d. An employee is not entitled to another day off as an "in lieu of" holiday if a Federal office or facility is closed on a holiday because of a weather emergency or when employees are furloughed on a holiday.
3. When a federal holiday occurs on a day that a part-time employee is:
 - a. not scheduled to work, the employee is not entitled to holiday leave;
 - b. scheduled to work, and then provisions of Sections F1 and F2 of this Article will apply, except that the part-time employee is entitled to the smaller of the number of hours scheduled for that day or 8 hours.

Section G. Special Situations

To facilitate completion of certain educational and/or training programs and/or complete unusual work or developmental assignments or details that will improve an employee's value to the Agency, or to address other special mission-related situations, an employee may request their work schedule be changed for a temporary period so as to accommodate these special circumstances. The Employer agrees to consider such changes and to work with the employee to work out an agreeable schedule, if possible, that will allow the employee to pursue these types of opportunities while ensuring completion of the required functions of the work unit. Each request will be evaluated on its own merits on a case-by-case basis. As used in this section, temporary period is understood by the parties to generally be 180 days, or less.

Section H. Court/Military Leave

1. When an employee goes on court/military leave, the employee shall be paid for a standard 8-hour workday for each day for which court/military leave is required. For military leave purposes, employees will be charged military leave to the extent to which it is earned.
2. If an employee receives notification after starting the pay period that the employee is scheduled for military/court leave later during the same pay period, or if the military/court leave requirement is not for an entire pay period, the employee may request to use provisions of one of the available alternative work schedules in Section C1 to complete the pay period.

Section I. Shift Work

1. Swing shift employees may use an hour of annual leave or work an added hour at the time of conversion to daylight savings time so as to maintain their regular eight-hour shift.
2. Employees will not have more than two (2) different tours of duty within a period of seven (7) consecutive days beginning with Sunday, unless it is required for the Employer to accomplish its mission.
3. Employees will be given at least fourteen (14) days notice prior to any significant change in their shifts.
4. The Employer shall grant an employee's request to change shifts due to hardship if other approaches to accomplishing the agency's mission will permit the change.

ARTICLE 7: OVERTIME AND COMPENSATORY TIME

Section A. Definitions

1. Work unit - the organizational structure under the direction of the FIRST LINE SUPERVISOR. In some instances, this may be a staff, a section, a branch, or even a division if the division director is the first line supervisor.
2. Qualified employee - any person assigned to the agency that meets personnel classification standards and possesses specialized knowledge or skills necessary for the assignment requiring overtime/compensatory time.

Section B. General

1. Overtime/compensatory time will be earned in accordance with the applicable law and/or regulation that applies to the employee.
2. For employees on a fixed or flexible schedule, work in excess of the established number of hours on a specific day is considered overtime, if ordered and approved in advance.
3. Time under this Article will be earned or used in increments of 15 minutes, subject to the same approval procedures as apply to annual leave in Article 8.
4. Overtime shall be paid at the overtime rate. When compensatory time is used, the procedures in Section D apply.
5. Overtime will be awarded for time expended in transit during normal non-duty hours in accordance with the provisions of controlling laws, rules and regulations.
6. Call back overtime shall be compensated at a minimum of two (2) hours payable in overtime or compensatory time for both Title 5 and FLSA employees.
7. Subject to law, including Comptroller General/OPM decisions, the Agency shall reimburse employees for parking and/or transportation expenses that are in addition to costs normally incurred to commute to and from work, and are incurred as a direct result of overtime work. Additionally, subject to, and to the extent permissible under applicable laws, Comptroller General/OPM decisions and guidance, the Agency will take all necessary actions within its authority to reimburse employees for transportation expenses incurred to commute to and from work for call back overtime when the employee is dependent on public transportation for such travel, when (a) highly unusual circumstances are present that constitutes a clear and present danger, an emergency, or a compelling operational consideration as those terms are defined by 31 U.S.C. 1344. FMR. Subchapter A. Part 102-5, and Comptroller General decisions: or (b) reimbursement is authorized pursuant to independent statutory authority.
8. The Employer will make every reasonable effort to ensure the safety and security of

employees during overtime assignments.

9. Employees shall not be required to work overtime if, by doing so, they would be in violation of any law.
10. The Employer determines the need for, approves and assigns all overtime work, and determines the required qualifications of employees to perform it.
11. The assignment or denial of overtime work will not be made as a reward or penalty to an employee, but solely in accordance with the terms of this agreement.

Section C. Procedure for Assignment of Overtime/Compensatory Time

1. The Employer will ensure that work units share staff resources, where appropriate, and that overtime/compensatory assignments are equitably distributed among qualified employees ensuring that undue burden is not placed on any one work unit or employee.
2. The Employer will give an employee as much advance notice as possible in making overtime assignments, but the parties acknowledge that emergencies, operational exigencies, and unanticipated workload requirements may result in the Employer's inability to give advance notice. However, employees will be allowed reasonable time under the circumstances to make arrangements necessary to minimize personal hardship.
3. All qualified employees will be provided the opportunity to work overtime using the following procedure:
 - a. Establish a rotational list of qualified employees in order by seniority based on SCD for leave. New employees will be placed on the list according to SCD for leave.
 - b. The employee at the top of the list has the first right of refusal for overtime/compensatory time. Whether the employee works the overtime/compensatory time or refuses, the employee's name then goes to the bottom of the list.
 - c. Employees remaining on the list who have not worked overtime/compensatory time move up the list.
 - d. In the event of a tie, the employee with the greatest current continuous service with the Agency is entitled to work the overtime.
4. If all employees on the list refuse or in the absence of sufficient qualified volunteers within the work unit, supervisors may direct qualified employees to work overtime, based on inverse seniority (among qualified employees within the work unit) as determined by Federal service computation date.

5. Fully qualified employees in training or on details may be considered for overtime in their regular work unit if they are reasonably available as to time, workload, and location.
6. The availability of other equally qualified employees in the work unit may be considered if an employee has a demonstrated hardship in a particular instance.

Section D. Compensatory Time

1. Compensatory time is a form of overtime. All rules and procedures established in this article that govern the assignment and accrual of overtime are applicable to compensatory time, except as noted herein.
2. FLSA "nonexempt" employees may be allowed to earn compensatory time rather than overtime provided that the employee requests in writing, at the time overtime is assigned, that compensatory time be granted in lieu of overtime. Compensatory time for FLSA nonexempt employees is granted at the discretion of the Employer; however, the Employer may not require that the employee earn compensatory time in lieu of overtime.
3. Title 5 "FLSA exempt" employees may be allowed to earn compensatory time rather than overtime provided that the employee requests in writing, at the time overtime is assigned, that compensatory time be granted in lieu of overtime. Compensatory time for FLSA exempt employees is granted at the discretion of the Employer. Compensatory time in lieu of overtime may be made mandatory at the discretion of the Employer for FLSA exempt (Title 5) employees whose basic rate of pay (including locality pay and special pay rates) exceeds the established rate of a GS-10/10.
4. Whether an employee may earn or work compensatory time shall not depend upon the employee's leave balance or the amount of compensatory time already accrued, but is consistent with the provisions of this Article and the needs of the Federal Service.
5. Compensatory time not used by the end of the following year in which it was earned or by the time of separation will be payable at the overtime rate the compensatory time was earned.
6. Compensatory time will be used before annual leave unless the forfeiture of annual leave will occur.

Section E. Federal Holidays

1. When the Employer requires the services of employees on a designated Federal holiday, the Employer will fill its needs using the procedures established under this article.
2. To minimize the effect of assigning employees to work on designated Federal holidays, the Employer will make every reasonable effort to provide a minimum of seven (7) calendar days notice to affected employees.

Section F: Official Time for Union Representation

Union representatives when on official time may not receive overtime pay or compensatory time off for labor-management activities performed outside of their regularly scheduled tour of duty.

ARTICLE 8: LEAVE

Section A. General Rules

1. Employees will earn annual and sick leave in accordance with applicable laws and regulations.
2. Denial of leave requests will not be used in lieu of disciplinary or adverse actions.
3. Leave will be charged in fifteen (15) minute increments.
4. It is the employee's responsibility to ensure requests for use of leave are received by the approving official and approved prior to taking leave. Approving officials will timely consider requests for leave and make every reasonable effort to ensure that responses are promptly received by the employee. Management approval is required for the following procedures:
 - a. All requests and approval or disapproval of leave for one day or more will be submitted in the Time and Attendance System.
 - b. For requests and approval or disapproval of leave for less than one day, each supervisor shall establish its own procedures concerning documentation and approval of such leave.
5. If the needs of the Employer do not permit the approval of leave requested in advance, the employee and the employer will work together to schedule leave at an agreed upon time.
6. When unscheduled leave is necessary, employees and supervisors shall be guided by the following:

Step	Action
(1)	Employee determines necessity for unscheduled leave (e.g., unanticipated illness, personal emergency, etc.).
(2)	<ol style="list-style-type: none">(a) Employee notifies first-level supervisor to request leave.(b) If the first level supervisor is unavailable, the second level supervisor shall be contacted.(c) If the second level supervisor is unavailable, the employee shall leave a message for the supervisor with a co-worker, including a telephone number at which the employee may be reached, if necessary, by the supervisor.(d) If notification is via electronic mail or voice mail, then it is the employee's responsibility to timely verify the receipt of

Step	Action
	the voice or electronic message.
(3)	any other documentation required under this Article will be submitted as soon as is reasonably possible under the applicable circumstances.

- a. If an employee is incapacitated or otherwise not reasonably able to comply with the notification requirements provided in the table above, the Employer shall accept notification from a third party, such as a friend or family member, medical provider, or police, acting as the employee's agent for purposes of this Article. Acceptance of such third-party notification, however, does not relieve the employee of responsibility for contacting the supervisor as soon as is reasonably possible to provide any required information or documentation in accordance with this Article.
 - b. While it is the intention of the Parties to respect the privacy of employees in dealing with purely personal matters, notification provided to supervisors in conjunction with unscheduled leave requests must include sufficient information concerning the circumstances to permit the supervisor to evaluate the appropriateness of approving or disapproving leave. This may include a brief description of the circumstances necessitating the unscheduled leave, the expected duration of the absence, and the status of affected, pending work assignments. When it appears that an absence will extend beyond the original date of anticipated return to duty, the employee shall promptly notify the Employer of the new anticipated date of return. The Employer may require periodic telephone calls updating the condition of the employee.
7. When leave scheduling conflicts arise, if the employees are unable to reach agreement, the supervisor will make the final determination by giving consideration to circumstances such as, but not limited to, the nature of the leave requested, seniority, and the date of request.
8. For leave accounting purposes, the lunch period shall not exceed 30 minutes. Exception: under Flexilunch as described in Article 6, Section B, an employee can modify their schedule to allow for longer than 30 minute lunches.
9. Requesting a change of leave type:
- a. Employees may request a change to another type of approved leave:
 - (1) Either before or during the current pay period so long as the leave type being substituted is appropriate and approved by the supervisor.

- (2) Within 2 pay periods after T&A's are transmitted, when the circumstances for which the leave was approved changed during the absence from work (i.e. the employee got sick while on vacation), or the employee provides justification for the change. These requests must be approved by employee's supervisor.
 - b. LWOP cannot be substituted for any paid leave previously approved and certified in the time and attendance process.
 - c. Corrections to T&A's can be processed as necessary.
10. Employees may request sick or annual leave, or leave without pay, to attend and participate in a substance abuse treatment program. The Employer shall grant sick or annual leave, or leave without pay, to the requesting employee, in accordance with procedures in this Article.
11. Medical Certification:
 - a. "Medical certification" means a written statement signed by a registered practicing physician or other practitioner certifying to the incapacitation, examination, or treatment, or to the period of disability while the patient was receiving professional treatment. For sick leave requested because of exposure to a contagious disease, the medical certification should indicate the name of the disease and indicate that the disease is contagious, and the period of confinement and/or quarantine, if quarantine is required by ordinance or statute. Medical certification must be submitted to the Employer within ten (10) calendar days from the employee's return to duty.
 - b. The employer may require medical certification:
 - (1) for an unscheduled absence in excess of three consecutive workdays.
 - (2) for any use of sick leave if the employee is on sick leave restriction.
 - (3) for a chronic condition which does not necessarily require medical treatment although absence from work may be necessary. If the employee has previously furnished a medical certificate of the chronic condition, employees are not required to furnish a medical certificate on a continuing basis. However, the Employer may require reasonable updates to the medical certificate.
 - (4) to consider an employee request for leave for medical reasons, including treatment and convalescence related to childbirth, and care for a spouse, son, daughter, parent, or legal ward with a serious health condition.

- (5) to consider an employee request for special consideration such as reassignment or other reasonable accommodation and there is a question as to the medical need for such accommodation.
 - (6) to consider requests for advanced sick leave under A 11 b (4).
 - (7) to support requests for "family leave" under Section E of this Article.
 - (8) from an appropriate physician stating that the employee can return to work, and noting any applicable limitations.
- c. For purposes of making an administrative determination, the Employer may not require medical documentation beyond that required by applicable law and regulation. Documentation provided to the Employer shall remain strictly confidential among those having a need to know.

Section B. Advanced Annual Leave

1. A permanent employee who expects to remain in service through the leave year may request advancement of annual leave in an amount not to exceed that which the employee will accrue for the remainder of the leave year. The Employer may grant the request.
2. An employee who wishes to request advancement of annual leave shall submit through the Time and Attendance System and provide a written explanation of the reason for the request.

Section C. Sick Leave

1. Sick leave may be granted for absences required by illness, injury, medical appointments, treatment, or certain circumstances involving contagious diseases in accordance with applicable laws and/or regulations.
2. When an employee knows in advance that sick leave will be required for a reason set forth in the above, the employee will request sick leave at the time the necessity for the leave is determined. In evaluating requests for sick leave, in those circumstances in which the employee has substantial control over the need, the employer and employee will work together to schedule leave at an agreed upon time.
3. Advanced Sick Leave:
 - a. The Employer may approve requests for advanced sick leave after considering the following factors:
 - (1) Leave is properly applied for in accordance with this Article.

- (2) Repayment can reasonably be expected through leave accruals taking into account the employee's prior leave record including requests for advanced leave, the employee's length of service, and the nature of the incapacitation.
 - (3) Accommodations can be made within the work unit to cover the work unit's critical functions. This factor may only be considered in situations in which the employee has substantial control over the circumstances and can reschedule the requested leave.
 - (4) Medical certification, as described in Section A, is required from all employees requesting advanced sick leave.
 - (5) Any other relevant factors.
 - b. As a maximum, a permanent employee may be advanced up to 240 hours of sick leave allowed by OPM regulations.
 - c. There is no limit on the number of times an employee may request advanced sick leave. The Employer will consider each request for advanced sick leave on its individual merits and in accordance with the criteria described above.
4. Health Unit Visits:
- a. Employees may leave the work site to attend an on-site health unit. Except in cases of emergency, the employee shall obtain approval of the Employer prior to leaving the work site.
 - b. The employee may be allowed to remain in the health unit for up to one (1) hour during a given work day. If the employee is unable to return to work after one (1) hour, the employee will request appropriate leave. This Section applies only to employees who are ill while in duty status.
 - c. Employees who are injured on the job will not be charged sick leave but shall be granted administrative leave to visit the Health Unit at the time or on the day of the on-the-job injury, in accordance with applicable worker's compensation procedures.
5. Sick leave shall be granted in cases in which an employee is required to care for a family member with a contagious disease or as defined by applicable law and regulation. The employee's request for sick leave must be accompanied by appropriate medical documentation, including such specifics as the particular disease and the acute infectious period, as applicable.

6. Abuse of Sick Leave:

- a. When the Employer has reasonable grounds to suspect the employee of sick leave abuse, the Employer shall meet with the employee to discuss the suspected sick leave abuse, potential ramifications and possible solutions.
- b. As appropriate, the Employer may subsequently notify the employee in writing that, for a stated period not to exceed three (3) months, the employee will be on sick leave restriction, and requests for sick leave will not be approved unless supported by medical certification.
- c. A copy of any leave restriction letter given to an employee will be provided concurrently to the Union. The Union also will be notified concurrently, via email when the Employer extends the employee's leave restriction.
- d. Employees on leave restriction may be required to furnish medical certification upon return to duty, not later than five (5) work days from the employee's return to duty.
- e. Employees shall follow the procedures outlined in Section A6a to notify his/her supervisor of emergency sick leave.
- f. Employees on leave restriction will be treated consistently with other employees when the Employer or OPM announces a delayed arrival or unscheduled leave policy affecting the employee's work site due to weather or other emergencies. Employees will be permitted to request leave or LWOP. The employee will provide the Employer evidence of non-routine incidents in the event of unscheduled leave. The Employer will evaluate and weigh such evidence in determining leave approval.

Section D. Administrative Leave

1. Administrative leave is an excused absence from duty administratively authorized without loss of pay and without charge to other types of leave. The Employer will grant administrative leave in accordance with applicable guidelines and this contract.
2. For inclement weather or other emergency situations, the Agency will follow the current OPM issued Washington, D.C., Area Emergency

Dismissal or Closure Procedures developed in consultation with the Metropolitan Washington Council of Governments. The procedures are updated yearly and can be viewed or printed from the OPM website @ <http://www.opm.gov> (click on operating status).

3. Blood Donation:
 - a. Upon advance request by the employee to the approving official, an employee donating blood without compensation may be granted administrative leave of up to four (4) hours for related rest and recuperation. The four hours of administrative leave for rest and recuperation is in addition to the time necessary to travel to the donation site, donate blood, recuperate at the donation site, if needed, and return to work.
 - b. An employee who is not accepted for donating blood is only entitled to time necessary to travel to and from the donation site and the time needed to make the determination.
 - c. Appropriate documentation from the donation site may be required by the Employer. Such documentation is normally provided directly to the Agency for on-site donations.
4. Employees will be given excused absence for bone marrow and/or organ donations in accordance with applicable law.
5. For USDA-sanctioned health care screenings:
 - a. Employees with fewer than 80 hours (two weeks) of accrued sick leave, may be excused for up to four (4) hours per calendar year.
 - b. Employees with 80 hours or more of accrued sick leave, may be excused using their paid leave (i.e., sick, credit, annual, etc).
6. Voting: Employees may be excused from duty for a reasonable period of time for the purpose of voting. Generally, employees may be excused from reporting to work for up to three (3) hours after the polls open or for leaving work up to 3 hours before the polls close in their voting jurisdiction, whichever results in the lesser amount of time off. Exceptions to the 3 hour limits shall be considered for those commuting long distances, for heavy voter turnout, or other factors, such as work schedules, that would impair the ability to vote.
7. Job Interviews: Administrative leave is authorized for employees who participate in only USDA (Department or Agency) job interviews in the Washington Metropolitan area.

Section E. Family and Medical Leave

1. Leave Entitlement:
 - a. Upon request, an eligible employee is entitled to a total of twelve (12) work weeks or sixty (60) workdays leave without pay during any 12-month period for

the birth of a child, care of a newborn within one (1) year after birth, adoption, or foster care of a child within one (1) year after placement, or care of a spouse, son, daughter, parent, or legal ward who has a serious health condition.

- b. An eligible employee may request other types of leave for which the employee meets legal and regulatory requirements. Such leave might include additional leave without pay, annual leave, advanced annual, credit hours, or sick leave, earned compensatory time, and leave made available under the Voluntary Leave Transfer Program and the leave bank through the term of the pilot program.
2. Requests and Approvals: When the need for leave is foreseeable, an employee shall request leave under the provisions of this Article at least thirty (30) days in advance to allow the supervisor time to prepare for any staffing adjustments necessary to compensate for the employee's anticipated absence. However, the parties recognize that due to the unpredictable nature of these situations, adjustments in the requested leave may be necessary.
3. Medical Certification:
 - a. The Employer may require administratively acceptable medical certification as defined in Section A, subparagraph 11 a of this article when an employee requests leave for medical reasons, including treatment and convalescence related to childbirth, and care for a spouse, son, daughter, parent, or legal ward with a serious health condition.
 - b. The Employer may also require administratively acceptable medical certification when an employee requests special consideration such as reassignment or other reasonable accommodation and there is a question as to the medical need for such accommodation.
 - c. The Employer may require, at the Employer's expense and by a health care provider designated or approved by the Employer, a second medical opinion to verify the validity of the certification provided by the employee. If the second opinion differs from the original certification, the Employer may require at the Employer's expense, certification from a third health care provider selected jointly by the Employer and employee.
4. If, after consulting a physician, an employee requests modification of work duties or temporary reassignment to preclude risks to the employee's or an unborn child's health, the Employer will make reasonable efforts to accommodate the request when supported by administratively acceptable medical certification justifying the recommended work limitations. In the event that the Employer cannot accommodate the request even after making reasonable and all legally required efforts, the Employer will grant, as appropriate, leave in accordance with this Article and applicable legal guidelines.

5. Protection of Employment and Benefits Upon Return to Duty. An eligible employee who takes family leave shall be entitled to return to the same or equivalent position, with equivalent benefits, pay, status, and other terms and conditions of employment, unless termination of employment is otherwise required by reduction-in-force, for cause, or for similar reasons unrelated to the use of family leave.
6. Use of Sick Leave to Care for Family Members or Relating to a Death of a Family Member.
 - a. Subject to the statutory and regulatory limitations and any other applicable OPM and Departmental rules sick leave may be granted in cases in which an employee is required to give care to or attend to a family member, as defined by OPM regulation, having an illness, injury, or other condition which, if an employee had such condition, would justify the use of sick leave by such an employee under this Article, or for purposes relating to the death of a family member, including to make arrangements for or attend the funeral of such family member.
 - b. Sick leave used by an employee for purposes listed above may not exceed forty (40) hours in any leave year, plus up to an additional sixty four (64) ours in any year, but only to the extent the use of such additional hours does not cause the amount of sick leave to the employee's credit to fall below eighty (80) hours.
 - c. Hours and limitations for authorized use of sick leave under this paragraph for part-time employees will be subject to OPM-established limitations that are proportional to the above.

Section F. Military Leave

1. Any full-time permanent or part-time permanent employees who are members of the National Guard or other reserve units of the Armed Forces are entitled to accrue, use, and carryover military leave in accordance with current law and OPM regulations.
2. Upon request, employees will provide certification of the completion of the military duties that necessitated the military leave. This certification can be in the form of endorsed orders, Leave and Earning statements, inactive duty training muster sheets, or any other documentation deemed acceptable by the Agency.

Section G. Court Leave

1. Court leave shall be approved according to 5 USC Section 6322...

"(a) An employee as defined by section 2105 of this title (except an individual whose pay is disbursed by the Secretary of the Senate or the Clerk of the House of Representatives) or an individual employed by the government of the District of Columbia is entitled to leave, without loss of, or reduction in, pay, leave to which he otherwise is entitled, credit for time

or service, or performance of efficiency rating, during a period of absence with respect to which he is summoned, in connection with a judicial proceeding, by a court or authority responsible for the conduct of that proceeding, to serve B (1) as a juror; (2) other than as provided in subsection (b) of this section, as a witness on behalf of any party in connection with any judicial proceeding to which the United States, the District of Columbia, or a State or local government is a party; in the District of Columbia, a State territory, or possession of the United States including the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, or the Republic of Panama. For the purpose of this subsection, "judicial proceeding" means any action, suit, or other judicial proceeding, including any condemnation, preliminary, informational, or other proceeding of a judicial nature, but does not include an administrative proceeding.

(b) an employee as defined by section 2105 of this title (except an individual whose pay is disbursed by the Secretary of the Senate or the Clerk of the House of Representatives) or an individual employed by the government of the District of Columbia is performing official duty during the period with respect to which he is summoned, or assigned by his agency, to B(1) testify or produce official records on behalf of the United States or the District of Columbia; or (2) testify in his official capacity or produce official records on behalf of a party other than the United States or the District of Columbia.

(c) The Office of Personnel Management may prescribe regulations for the administration of this section."

2. Court leave will be granted from the report date stated in the summons through the date discharged from court; court leave will not be granted when the employee is excused from jury duty for a day or a substantial part of a day. In such cases, the employee must request annual leave, credit hours, or leave without pay if the employee fails to return to duty or AWOL may be charged.
3. The employee must notify the Employer at least two (2) weeks in advance or upon receipt of the summons from the court. Court leave must be requested through the Time and Attendance System with a copy of the jury duty or court summons submitted with the request. Upon receipt the employee must present to the Employer a jury duty certificate signed by an officer of the court, if the court leave was granted for jury duty.
4. In every instance, the employee may fulfill the citizenship responsibilities of jury duty. The Employer may petition the court to excuse the employee if jury duty will substantially interfere with the program of work.
5. Leave for private party judicial proceedings will require the use of annual, leave without pay, compensatory, and/or credit hours.

Section H. Religious Observances

1. In accordance with law and government-wide rules and regulations, employees wishing to attend or participate in the observance of a religious holiday normally will be permitted

to be absent on annual leave, credit hours, or compensatory time so long as the employee requests such leave at least three (3) workdays in advance and their absence will not cause a workload problem.

2. For the purpose stated in this section H, an employee may work compensatory time either before or after the grant of compensatory time off. A grant of advanced compensatory time off for these purposes shall be repaid by the appropriate amount of compensatory work within the earlier of two (2) pay periods of its use, or the end of the leave year.
3. Failure to work the required amount of time to repay advanced compensatory time off will result in annual leave or leave without pay being charged.

Section I. Leave Transfer Program and Leave Bank

The Employer agrees to continue its Voluntary Leave Transfer and Leave Bank Programs in accordance with law, rules, and regulations.

Section J. Leave without Pay

1. Leave without pay (LWOP) is a temporary absence from duty, without pay, which an employee may request. The voluntary nature of LWOP distinguishes it from nonpay status resulting from AWOL, furlough, or suspension. Except as noted below, approval of LWOP is discretionary. LWOP may be denied, for example, if the employee's services are required, if the employee has not provided adequate documentation, or if the employee has not followed prescribed procedures for requesting the leave.
2. Approval of application for LWOP is mandatory for:
 - a. Military training or active duty for members of the Reserves or National Guard, who are not entitled to, or have exhausted their military leave.
 - b. Medical treatment for disabled veterans.
 - c. Employees exercising LWOP rights under the Family and Medical Leave Act.
 - d. Employees to fulfill certain family obligations (up to twenty four (24) hours of LWOP each year).
3. Amount of LWOP that May be Granted: An approving official may grant LWOP without regard to the amount of annual or sick leave to an employee's credit.
4. Requesting LWOP for thirty (30) Days or Less:
 - a. LWOP may be requested in one fourth (1/4) hour increments for up to thirty (30) calendar days for any reason, including up to 24 hours for parental or family needs.

- b. No SF-50 or 52 is required for LWOP of less than thirty (30) calendar days.
 - c. The employee shall submit an application for LWOP to the supervisor, in advance if possible. The request should include:
 - (1) Explanation of circumstances surrounding the request; and
 - (2) a medical certificate if the absence is for medical reasons.
 - d. LWOP may be approved/disapproved by the supervisor or approving official. In the case of a possible disapproval, the employee and supervisor shall be willing to discuss other alternatives.
5. Requesting LWOP for More Than thirty (30) Days:
- a. LWOP for more than 30 calendar days is considered extended LWOP. It may not be taken without supervisory approval except in emergencies. Initial grants and extensions are limited to one (1) year at a time.
 - b. Extended LWOP must be approved by the employee's supervisor, Division Director, and when an SF-50 or 52 is generated, final approval shall be obtained from a next level supervisor.
 - c. A request for extended LWOP shall be made according to paragraph 4, c of this section.
 - d. A supervisor or other designated official, as appropriate, shall initiate:
 - (1) an SF-52 for approved extended LWOP, indicating an anticipated not-to-exceed date, and submit through appropriate channels.
 - (2) additional SF-52's for any extensions of the initial LWOP request, indicating anticipated not-to-exceed date, and submit through appropriate channels.
 - (3) an SF-52 to place the employee back in pay status when he/she returns Program or the leave bank through the term of the pilot.
 - e. An SF-50 or 52 shall not be generated if the employee has been approved as a Leave Recipient through the Voluntary Leave Transfer Program or the leave bank through the term of the pilot.

6. Special Consideration:

- a. Employees shall request extended LWOP when they are planning or reasonably certain they will return to Federal service, except in the following cases:
 - (1) Employees whose application for disability compensation or disability retirement is pending.
 - (2) Employees receiving workers' compensation benefits, unless it is known that they are permanently disabled. In these cases, supervisors should contact their servicing staff specialist.
- b. Approving officials shall consider extending LWOP for the following:
 - (1) Employees who have an illness or disability as certified by a medical certificate or other acceptable evidence, unless such evidence indicates that the employee will not return to duty. In these cases, supervisors should contact their servicing staffing specialist.
 - (2) Career or career-conditional employees seeking Federal employment outside their commuting area and the LWOP would allow them to avoid a break in service.
 - (3) Employees to attend school, if the course of study will result in increased ability to perform work in the agency. If the employee is a veteran attending school under the GI Bill of Rights, a liberal policy will be applied even though the course of study may not be directly related to agency activities.
 - (4) Employees to teach at a college or university, if such teaching will give the employee additional experience and training of value to USDA or the agency or will further the interest of USDA or the agency.
 - (5) Career or career-conditional employee when accompanying a member of the Armed Forces or a Federal service employee on a rotational assignment, transfer of function or relocation of activity. In these cases, extended LWOP should not exceed ninety (90) calendar days.
 - (6) Employees serving on a temporary basis as an officer or a representative of a union representing Federal employees.
 - (7) Short term assignments (90 calendar days or less) to public international organizations to engage in organizing programs or consulting work.

7. Family Related LWOP:
 - a. Approving officials may upon request by the employee, in accordance with the Presidential memorandum dated April 11, 1997, grant up to twenty four (24) hours of LWOP per calendar year for the activities listed below. (The 24 hours is separate from and should not be confused with FMLA entitlements.) Where paid leave is appropriate and not contrary to regulation, employees should be permitted its use prior to unpaid leave. Employees may also use earned credit hours and/or compensatory time.
 - b. School and early childhood educational activities - allows employees (including those who do not have children) to support a child's educational development and advancement by attending parent-teacher conferences, meeting with the child-care providers, interviewing for a new school or child-care facility, or participating in volunteer activities such as tutoring, coaching, etc. "School" is defined as an elementary or secondary school, Head Start Program, or a child-care facility.
 - c. Routine family medical purposes - allows parents to accompany children to routine medical or dental appointments, such as annual check-ups or vaccinations. This is applicable in circumstances where an employee does not have the thirteen (13) days of sick leave available currently allowed under existing regulations.
 - d. Elderly relatives' health or care needs - allows employees to accompany elderly relatives to routine medical or dental appointments or other professional services related to their care, such as making arrangements for housing, meals, phones, banking services, and other similar activities.
8. Non-Federal Special Situations: Approving officials shall consider approving LWOP for employees to work in a non-Federal, private, or public enterprise (other than a public international organization) when the work is temporary and the following requirements are met:
 - a. The activity in which the employee is to be engaged is one of special interest and will result in increased job ability applicable to the agency,
 - b. The performance of such work does not involve using information secured as the result of employment in USDA to the detriment of the public service,
 - c. The acceptance of such employment is not likely to bring criticism or cause embarrassment to USDA, and
 - d. The employee is not accepting an office in an organization or permitting the use of his/her name in the advertising material of the organization commercializing the results of work conducted by USDA, regardless of the merits of such an enterprise.

9. Retroactive Substitutions of Annual Leave for LWOP: LWOP may be retroactively changed to annual leave if:
- a. Due to an administrative error or misunderstanding the employee was not aware that he/she had an annual leave balance or that annual leave could have been used;
or
 - b. the employee is accepted into the Voluntary Leave Transfer Program and donated leave is available.

ARTICLE 9: POSITION DESCRIPTIONS

Section A. Position Descriptions

1. Position descriptions shall be current and accurately reflect the principal duties, responsibilities, and supervisory relationships of the position as assigned by the Employer. Supervisors and employees will annually review position descriptions and update as necessary to accurately reflect the principal duties and responsibilities of the position as assigned by the Employer.
2.
 - a. Upon request, the Employer shall furnish each employee with a copy of the employee's applicable position description and the next higher grade, if any, for the position.
 - b. When there is a significant change in an employee's duties, responsibilities, and/or supervisory relationships for a period to exceed 30 days, the Employee shall be provided an accurate and updated position description within (5) five working days of the effective date unless mutually agreed that a different timeframe is needed.
 - c. Employees newly hired to the Agency shall be furnished a current, accurate copy of the position description on the first day the employee assumes his or her duties.
3. Whenever a position description is amended, the Union shall be provided a copy within 5 working days of the effective date of the amended position description.
4. In accordance with law and regulation, employees may grieve reductions in grade, pay, or loss of promotion potential that result from a classification decision following procedures in Article 38 of this Agreement.
5. Duties which are withdrawn from an employee's position description shall no longer be a principal duty or responsibility of the employee, nor assumed in a category for arbitrarily assigned duties such as "other duties as assigned."
6. The phrase "other duties as assigned" normally relates to tasks of an incidental, infrequent, or emergency nature which are impractical to include in the position description. The Employer may assign or change duties and responsibilities necessary to accomplish work appropriate to the employee's position.

Section B. Classification Standards

1. Positions will be classified by comparing the duties, responsibilities, and supervisory relationships in the official position description with the appropriate classification and job grading standard.

2. The Employer will furnish the Union copies of draft Office of Personnel Management classification standards for bargaining unit positions that are referred to the Employer.
3. HRD is available to provide information to employees regarding their concerns about the titles and series of their position. Employees who believe their positions should be reclassified may ask the Employer for an explanation as to why it would or would not be appropriate to do so under the relevant classification standards. If the employee chooses, they may file a classification appeal. The Employer will refrain from temporarily reassigning the employee's work during the classification appeal if the sole purpose for reassigning the work is to avoid reclassification of the employee's position.

Section C. Notification to the Union

The Employer agrees to inform the Union as soon as possible when significant changes will be made in the duties and responsibilities of positions held by employees due to reorganization or when changes in position classification standards result in classification changes.

Section D. Grade Determining Duties

The Employer will assure that duties assigned to the employee that are grade determining will be included in the position description.

ARTICLE 10: PERSONNEL RECORDS

Section A. Official Personnel Records

Employees' official personnel records are contained in the electronic Official Personnel Folders (eOPFs) maintained by HRD. HRD also maintains a copy of employee performance appraisals for the most recent three years in separate folders established for that purpose. Records of disciplinary and adverse action proposals including the documentation, upon which such proposals are based, are maintained by HRD. If the proposed adverse action is sustained, a copy of the final decision memo is retained in the Employee and Labor Relations files, while the SF-50 documenting the action is filed in the eOPF. Letters of reprimand are also filed in the eOPF for up to two years; however, the employer may remove the reprimand from the eOPF at any time. Employees may have access to all of these records under the conditions set forth in Article 2.

Section B. Supervisory Files

1. Supervisors of bargaining unit employees may maintain worksite files on such matters as emergency locator information, time and attendance records, training, award, and promotion histories, and other matters pertinent to the performance of their personnel management responsibilities. In most instances, such files will contain only information that is accessible to the employee through the records maintained by HRD. To the extent that the supervisor maintains records containing information that is not duplicate of material contained in the official files maintained by HRD, such records, other than reports of an ongoing criminal investigation, shall be disclosed upon request to the employee who is the subject of the information or to his /her designated representative. Personal notes that a supervisor may keep as a memory jogger are not considered records and are not releasable to employees, unless relied upon by the supervisor in taking a formal disciplinary or adverse action.
2. Employees may make a written statement to the Employer in response to information they consider unfavorable to themselves which is maintained by the supervisor as a record.
3. No record, information, or document in the supervisor's or personnel office's worksite file will be made available to any unauthorized persons to inspect, review, copy or photocopy. Such information will be made available to authorized persons only for official use, as specified by OPM, other applicable laws, and this agreement.
4. The Employer will disclose to the employee or designated representative who is authorized in writing by the employee, all information, including worksite personnel files, used as a basis for disciplinary or adverse action at the time of the proposed action; or, for information received later, within ten (10) work days of the receipt and verification by HRD of such information.

Section C. Form and Disposition of Records

1. All provisions of this Article apply to electronic as well as paper files.
2. All personnel files maintained by the Employer, including the eOPF maintained by HRD, shall be disposed of in accordance with the General Records Schedule and other applicable laws. Records that are purged from the eOPF will be provided to the employee.

Section D. Index of Systems of Records

The Employer shall provide to the Union and to employees, upon request, an index of the system of records it maintains.

Section E. Employee Records

1. The eOPF prescribed by the Office of Personnel Management is the official repository of records providing the basic source of factual data about the employee's employment history. The eOPF may be used by the Employer's Personnel Office as permitted by applicable law, rule, or regulation for any legitimate official purpose, including but not limited to, screening qualifications, determining status, computing length of service, and providing information for statistical purposes.
2. Contents of the eOPF may be released and records of such information disclosures maintained in accordance with provisions of 5 C.F.R. §293 and §297.
3. Any employee, or designated representative who is authorized in writing by the employee, shall be granted reasonable access during business hours, to review and receive a copy under appropriate supervision, of any documents contained in the eOPF in accordance with applicable law, rule and regulation. Normally, the Employer will make the copies, but if this would result in significant time delay, the employee may make the copies under appropriate supervision.
4. Any information, including documentary information, that is unfavorable, derogatory or which reflects adversely upon an employee's character or government service shall be maintained in the eOPF only in accordance with applicable law and regulation. Employees may review and/or seek to amend any such information in accordance with 5 CFR Part 297, Subpart C, entitled Amendment of Records.
5. Employees may update their resume and/or Government employment application with relevant information regarding experience, education, and training, and have that document filed in their eOPF.

ARTICLE 11: CAREER DEVELOPMENT AND TRAINING

Section A. General

1. The intent of Agency sponsored training is to both improve the current job performance and to develop the employee in order to promote the mission of the agency. The Parties agree to support and encourage employees in developing their knowledge, skills, and abilities, and in contributing to the more effective utilization of available human and material resources in service to the Agency.
2. Each employee is responsible for applying effort, time, and initiative in increasing their potential through career development and training. The Parties will encourage employees to take advantage of educational opportunities and training that enhance work efficiency and provide needed skills for advancement.
3. The Employer agrees to maintain information and furnish guidance about suitable and available education, training, and career development resources.
4. Training opportunities shall be given fairly and equitably and consistent with affirmative action and other broad staff development goals, and will be founded upon conformance with and subject to the following:
 - a. The Government Employee Training Act and regulations issued pursuant thereto;
 - b. the Equal Employment Opportunity Act, as amended;
 - c. the Affirmative Action Plan;
 - d. available resources allocated for training purposes; and
 - e. any other, applicable statutory or regulatory provisions.
5. The Employer agrees to assist employees in planning and completing a plan of career development and training.
6. The Employer agrees to notify employees directly of selection or nonselection for Agency-controlled training or educational opportunity for which they applied or were nominated within fifteen (15) work days of the closing date for nominations for training by the training office. It is understood by the parties that for some classes, this will not always be possible. In cases of nonselection, the employees may request in writing and receive a written explanation for the denial.
7. Where an institution of higher learning requires verification of on-the-job experience, the Employer shall verify Agency experience to the institution within a reasonable period, not to exceed ten (10) work days, of the employee's written request. The Employer's response shall be in the form requested by the employee (e.g., a letter, memorandum, or

telephone call). The Employer agrees to fax the response if requested to do so by the employee.

8. The Employer shall make payment for all authorized expenses in connection with approved training.
9. An employee, who fails to complete training or receives a grade of less than C, shall reimburse the Employer unless a waiver is granted by the Employer.
10. After an employee has satisfactorily completed a training course, a record of the completed training will be filed electronically in a training database. Employees requesting a copy of their individual training records may do so by contacting the Human Resources Division, Training and Development Branch (TDB).

Section B. Definitions

1. "Training" is defined as activity undertaken to increase the knowledge, proficiency, ability, and skills of employees.
2. "Career Development" is defined as training in the performance of those duties which support the Agency mission and performance goals. These include potential duties in a different job or occupation at the same or higher level than the one currently held.

Section C. Training

1. It shall be a major goal to improve in general the job performance of all employees through the establishment of fair and equitable opportunities for training within clearly defined career fields.
2. The following approaches to employee training will be utilized, as appropriate:
 - a. In-service, out-service, or on-the-job training to improve employee capabilities to perform their current duties;
 - b. cross training and rotational assignments in complementary positions;
 - c. enrollment of employees in part-time educational programs at local educational institutions and/or in correspondence courses;
 - d. long-term training in Federal and non-Federal educational institutions.
3. Normally at the time of the interim review, as well as at the time of performance evaluation, or at any other time necessary, supervisors shall discuss with employees training needs and opportunities that would help the employee to improve performance in his/her current position. Unscheduled discussions concerning an employee's training

needs and performance improvement opportunities may be initiated by the employee or supervisor at any time.

4. Supervisors will ensure that individual development plans (IDP) will be prepared or revised for all employees placed into new positions in accordance with Section G of this article. IDP's will be used by the Employer to determine appropriate training and developmental activities to improve the employees' competencies.
5. When training is requested primarily to prepare employees for advancement, or if the requested training would fulfill specific qualification requirements for a position with known promotion potential, selection for such training will be made under competitive promotion procedures, including those contained in Article 17, Merit Promotion. Such training is subject to the Employer's budgetary limitations.
6. Employees in career-ladder positions who have not yet reached the full performance level shall not be required to compete for training which the Employer deems is necessary for their accession to the full performance level.
7. Job-related training shall be provided on an equitable basis among employees who would benefit from such training.
8. When membership in a professional organization is not a trainer-determined or vendor-determined prerequisite for attendance at a training session, the Employer shall not consider membership as the sole factor in determining which employees will receive the training.

Section D. New Processes and Training

1. The Employer agrees to meet, consult, and bargain with the Union when new skills are necessary as a result of the introduction of new equipment and/or new processes which affect or impact the employment of the involved employees.
2. The Employer agrees to notify the Union as soon as practicable of proposed installation of any new equipment, machinery, or processes which would result in changes in work assignments or require additional training of members of the bargaining unit, and to bargain said changes.
3. The Parties agree, upon request by either Party, to meet and discuss, in good faith, the possibility of instituting programs to train or retrain employees in new skills so as to assure an adequate supply of available employees trained in these new skills. Written requests for such a meeting shall identify the purpose thereof.

4. In order to effect a smoother transition to automated processes, the Employer will meet with the Union and bargain in good faith over the establishment of training courses or on-the-job training to effectively enable affected employees to perform their job duties as well as provide for requisite staff development. Bargaining will be conducted as permitted by Law and Executive Order.

Section E. Career Development

1. Employees shall be given reasonable opportunity and reasonable time necessary to discuss their career development with their supervisors and the personnel staff.
2. Both parties recognize that an employee may become dissatisfied with his/her job because of limited advancement possibilities or changing career goals. In such cases the Employer agrees that:
 - a. an employee may request a meeting with the appropriate Employer representative for the purpose of career counseling;
 - b. an employee's request for a lateral transfer to a different job or a transfer to a lower-grade job shall not be considered a factor in any adverse action under Article 28 concerning that employee;
 - c. the Employer agrees to play an active role in nominating members of the bargaining unit for various specialized career development programs.

Section F. Career Development Center

1. The FSA Career Development Center (CDC) is intended to be a one-stop, comprehensive development facility to provide a variety of activities and services to employees at all stages of their careers. The emphasis is on career enhancement through self assessment, self-paced learning, confidential career counseling, and referral services.
2. The services and activities will consist of but are not limited to:
 - a. providing confidential career counseling/development advice to help employees identify training and professional development opportunities;
 - b. providing training resources;
 - c. providing referral services;
 - d. providing information to employees on career-related topics, i.e., Individual Development Plans, resume preparation, and interviewing techniques;
 - e. administering tools for assessing and/or diagnosing skills and career interests;
 - f. facilitating mentoring programs;

- g. supporting the Agency's cross training and retraining efforts; and
 - h. supporting workshops.
3. To the extent that available resources permit, management agrees to continue to provide these services and activities through the CDC.
 4. Changes made in the location of the CDC, employee access, services offered by the CDC, hours of accessibility by employees, and any other changes in the method which CDC provides services and activities will require advance bargaining with the Union in accordance with applicable law, Executive Order, and this Agreement.
 5. Employees may be granted a reasonable amount of official time to utilize the services and activities provided at the CDC.

Section G. Individual Development Plan (IDP)

1. Employees shall complete an IDP to identify training for the performance of the duties the employee currently performs or will be performing, as well as opportunities for career development.
2. The employee and supervisor shall meet to discuss the IDP. The employee shall have the opportunity to explain why they requested training and career development.
3. If, at any stage of the IDP review process requested training and/or opportunity for career development is not approved the employee shall be advised.

Section H. Tuition Assistance

An eligible employee (a career employee or a career-conditional employee who has completed one (1) year of current, continuous federal service) who initiates a request for tuition assistance and obtains prior approval from the Employer will have tuition costs (tuition is defined as the cost of the course per credit hour) paid at educational institutions during their nonwork hours, provided that:

1. The course will enable the employee to increase ability in presently assigned duties or duties the employee will be performing (i.e., the course is job-related);
2. The employee agrees in writing to stay with the Employer three (3) times the actual length of the course. Failure to complete this required service will result in the employee being required to repay costs incurred by the Agency. This requirement may be waived at the Agency's discretion.
3. The employee shall provide HRD/TDB with a course evaluation and, if a college course, with a copy of the final grade.

4. Funds are available to pay for such training without deferring or canceling commitments of higher priority.

Section I. Variance in Work Hours

Requests for a variance in regular working hours and/or appropriate leave for educational purposes will be given consideration if such variance does not unreasonably interfere with the workload and the overall mission accomplishment of the Employer in accordance with Article 6, Section G.

ARTICLE 12: ONBOARDING PROCESS

Section A. Notice of New and Reassigned Employees to Union

The Employer agrees to notify the Union in writing of the names of all new and reassigned non-supervisory GS/WG employees, their grade, classification, positions to which they are assigned, entry on duty (EOD) date, and bargaining unit status (excluding Schedule C employees) within thirty days (30) after the entry on duty date.

Section B. Information to New Employees

1. On, or before the EOD, the Employer shall provide the following to each employee newly assigned to non-supervisory position (excluding Schedule C employees):
 - a. The name of the website for the Onboarding Web Portal a Reference for New Employees at (<http://www.dm.usda.gov/OBP/OBPIIndex.htm>);
 - b. The name and website of AFSCME Local 3925; and,
 - c. A link to the electronic copy of the negotiated agreement and upon request provides a hard copy of the negotiated agreement.
2. A new hire in a non-supervisory position shall be entitled to meet with a union representative and receive an introductory letter and related materials from the Union.
3. Upon the employee's request, the Employer shall provide a face-to-face meeting with the new employee to answer additional questions.

Section C. Official time for Orientation for New Employees

1. The new employee shall be granted official time to participate in all aspects of the orientation process.
2. The Employer will notify and provide an opportunity for the union to participate in the orientation process.

Section D. Checklist

1. The new employee shall be given the opportunity to review the "Onboarding Checklist" found on the website listed above.
2. The supervisor shall maintain a completed copy of the "Onboarding Checklist" and provide the employee access upon request.

ARTICLE 13: TRAVEL AND PER DIEM

Section A. Travel

1. Travel shall be in accordance with the Federal Travel Regulations.
2. All travel must be approved in advance.
3. Whenever possible, official travel will be scheduled during the employee's work day. In those cases where this cannot be accomplished, the affected employee(s) will be compensated for travel time in keeping with applicable pay laws and government-wide regulations.
4. Upon written application on the applicable form, an employee may be advanced sufficient funds to cover anticipated per diem and mileage expenses in accordance with established regulations. Travel advance balances will be maintained in accordance with existing requirements.
5. A government credit card may be provided to employees through appropriate policy and procedure. The credit card may be used only for expenses incurred in connection with official travel. Failure to comply with the terms and conditions of the card, or to timely make payments on the amount due, can subject a cardholder to disciplinary action.
6. The Employer will attempt to minimize extended travel (more than two weeks).

Section B. Per Diem

1. Employees will be reimbursed in accordance with applicable travel laws and regulations (including Comptroller General decisions) for reasonable expenses incurred by them in the discharge of their official duties.
2. Pursuant to Federal Travel Regulations, employees are expected to exercise care in incurring expenses. Indirect travel routes or en route delays, luxury accommodations, use of non-contract carriers and unusual services or expenses must be authorized in advance on approved travel authorizations in accordance with established regulations and procedures. Employees are responsible for paying excess costs.

Section C. Travel Regulations

Employees will be given access to applicable travel regulations.

Section D. Vehicles

1. The Employer agrees to refrain from encouraging use of privately-owned vehicles for official travel.

2. In the event the use of a privately-owned vehicle (POV) is authorized, mileage for such use shall be compensated at the prevailing rate published in the Federal Register.
3. When an employee is authorized to use a POV for official business and that vehicle sustains damage, the employee may file a claim in accordance with 31 CFR 4.4g.

Section E. Illness

In accordance with Federal Travel Regulations and Comptroller General Decisions, an employee that becomes ill while in official travel status is generally entitled to per diem for a period not to exceed 14 calendar days. The period of illness is chargeable to the employee's leave. The supervisor will be notified as soon as possible when an employee becomes ill while in official travel status.

Section F. Gainsharing Travel Program

The Gainsharing Travel Program is an incentive cash award that rewards employees who save the government money while on TDY travel.

For more information, contact Human Resources or your union representative.

Section G. Compensatory Time Off for Official Travel

Compensatory time off for official travel may be earned by an employee for time spent in a travel status away from the employee's official duty station when such time is not otherwise compensable. (See 5 CFR Part 550, Subpart N)

For more information, contact Human Resources or your union representative.

ARTICLE 14: TELEWORK PROGRAM

Section A. General

FSA and RMA headquarters supports telework as workplace flexibility for recruiting top talent; retaining current employees; reducing the cost of office space absenteeism and the use of workers compensation. The purpose of telework is fundamentally to complete the duties, responsibilities and other authorized activities of an employee's official position from an alternative worksite other than at the location an employee normally works. Telework also enables employees to better manage work and personal or family responsibilities.

Section B. Types of Telework

Per the Telework Enhancement Act of 2010, there are two basic reporting metrics that the department and OPM require for telework. These are **Core** (includes Category I and II) and **Ad Hoc** (Category III) telework, explained as follows.

- Category I Core/Regular (24 hours or more) are those employees who have a regular telework schedule (an agreement other than Ad Hoc) of 3 or more days per pay period.
- Category II Core/Regular (1 hour to 23 hours) are those employees with a regular telework schedule (an agreement other than Ad Hoc) of less than 3 days per pay period.
- Category III (Ad Hoc/Situational) are those who telework but are not on a regular telework schedule, i.e. categorized as Ad Hoc agreements in the Telework Management System (TMS).

The current 34-PM describes the following types of telework agreements available in the TMS applications system:

Long-Term (Regular) Telework: Long-term telework agreements can be for any period of time up to and including one year. Long-term teleworkers must report to their primary worksite at least one day per week. The agreement should be re-certified if the agreement is extended past twelve months or there is a permanent change made to the agreement.

Ad Hoc/Situational Telework: The employee teleworks on an intermittent basis. The telework opportunity may be needed to focus on a special project, or other situations that make it beneficial for the employee and supervisor to agree on a situational telework opportunity. Unscheduled telework will be considered for situational, episodic, inclement weather and short term as well as emergency situation that involve national security, extended emergencies, medical reasons or other unique situations. In conjunction with Washington D.C. Area Dismissal and Closure Procedures, employees who wish to telework during an unscheduled leave/delayed arrival or Federal office closure may do so with the approval from their immediate supervisor when they have an existing approved telework agreement in place.

If the employee is a **Core** teleworker, regardless of the number of hours, he or she will choose “Long-Term Telework” in the TMS application system. A Long-Term telework application can be a year or any length of time less than a year.

If an employee is an **Ad Hoc/Situational** teleworker, he or she will select the TMS application choice “Ad Hoc”.

Section C. Position Eligibility

Positions eligible for telework are those involving tasks and work activities that are portable, do not depend on the employee being at the official duty location worksite, are measureable and are conducive to supervisor oversight at the alternative worksite. Therefore, the Agencies utilize the USDA premise that all positions are presumed suitable for telework, unless:

Duties require daily contact with other people or where daily physical presence is required per the official duties of the position.

Duties require daily use of specialized equipment located only at the worksite.

Duties require daily handling of classified materials.

Use of government-furnished computer access to LAN or email is not available. The Agencies agree that they will make available the means and resources necessary to enable employees to telework subject to funding limitations as determined by the Agencies and availability of equipment.

Section D. Employee Eligibility

An employee is considered to be eligible for telework if following conditions are met:

A fully successful or results achieved rating. If the employee has not worked long enough to be rated, performance must be at an acceptable level.

Employee has no disciplinary or adverse action or leave restriction occurring within the preceding 12 months.

Employee has never been disciplined for viewing, downloading, or exchanging pornography, including child phonograph, from a government computer or while performing official Federal Government duties.

Employee has never been officially disciplined for being absent without permission (AWOL) for 5 or more consecutive days in any calendar year.

Section E. Employee Suitability

An employee suitable for telework is an individual with personal characteristics that include the following:

The employee has demonstrated motivation, independence, and dependability in accomplishing work assignments.

The employee has good time-management skills. The individual is motivated, independent, dependable, and does not require close supervision.

The employee has satisfied the adequate home work station requirements, including the availability of equipment and provisions for protecting the confidentiality of data.

The employee must complete the Departmental IT Security and the Departmental Telework Awareness training requirements before the immediate supervisor approves the telework agreement.

The employee's alternate work site meets acceptable standards for the safety of the employee and the security of data and any Government-loaned equipment.

Section F. Restrictions for Teleworking

Telework is not a substitute for day care. Telework employees may not have a dependent child under the age of 12 in the home during work hours unless an in-home care provider is present. Children age 12 and older and other family members who do not require primary care from the employee may be in the home during duty hours. Union representative on telework shall be held to the same requirements as all other employees on telework.

Section G. Supervisor and Employee Agreement

Before beginning off-site work, employees and supervisors must understand their responsibilities and the details of the program. Employees and their supervisors must completed required telework awareness training and certify a telework agreement. Management approval will be at the first line supervisor's level.

Employee participation in the telework program is contingent upon available resources.

Section H. Administrative Policies

Telework Agreement: The telework agreement is the electronic document certified by the telework employee and their supervisor in which each understands the guidelines and procedures of the program. A telework agreement shall be completed for all telework requests. The telework agreement shall be acted upon within 10 work days of its submission to the first line supervisor.

Employee Withdrawal from Telework: Except when required in the event of an emergency, an employee's involvement in the telework program is voluntary and may be discontinued by the employee at any time with appropriate notice. Such notice must be sufficient to allow necessary workplace adjustments to be made.

Removal of Employee from Telework: The supervisor may adjust/terminate an employee's telework agreement if performance declines or telework no longer meets the organizational needs of the work unit. Normally, the employee will not be removed from Telework for a single minor infraction of the Telework Agreement. The supervisor and employee will make a bona-fide effort to work out specific problems before any decision is made to remove the employee from the telework program.

Grievances: Grievances under this agreement will be handled according to Article 38.

Time & Attendance: Supervisors will continue to certify time and attendance for telework employees. Employees are required to record their telework in the Time and Attendance System on their time and attendance using the appropriate codes. All managers and supervisors shall pay particularly close attention to how to code time correctly when teleworking.

Equipment: FSA and RMA teleworkers may only use software, hardware, and telecommunications approved by the Employer to complete their work assignments. Employees approved for work off-site will be provided with necessary software, hardware, and telecommunications to complete their work assignments subject to funding limitations as determined by the Agency. The Employer will not pay any additional utility expenses associated with at-home work.

Surveys, Training and Evaluations: The supervisor and the employee will promptly complete and submit surveys, evaluation materials and performance ratings which summarize telework impact on the office, employee, the supervisor, and other organizational elements. The agency agrees to notify employees of significant changes in agency hardware, software and telecommunications that would affect telework participants. Training on such changes shall be provided at the employee's primary work site, if necessary.

Emergency Dismissal: Telework will be considered for emergency situations that involve national security, extended emergencies or other unique situations. As a result, employees who telework on the day of an emergency agency closure can be required to continue working from their alternative worksite if the closure occurs on his or her telework day. When both primary and alternative worksites are affected by a widespread emergency, the teleworker may be granted excused absence as appropriate. When the emergency affects only the alternate work site for a majority of the workday, the teleworker may be required to report to the primary worksite, request leave, or be granted absence, depending on the circumstances. Some teleworkers may be designated as emergency, mission critical, or Continuity of Operations Planning (COOP) employees. These teleworkers continue to carry out agency operations.

Official Duty Station: Employer will follow OPM guidelines in determining official duty station for employees approved for telework.

Position Descriptions and Performance Standards: Established position descriptions will apply to telework employees, except that the "Supervisory Controls" and "Work Environment" sections may need to be modified. Performance standards for telework employees will be results-oriented and will describe the quantity and quality of expected work products and the method of evaluation. Generally, the same performance standards will apply to both telework employees and on-site employees who perform the same tasks.

Workers Compensation Act: Telework employees are covered by the Federal Employees Compensation Act and may qualify for payment for on the job injury or occupational illness.

Work Schedule, Overtime, Pay, Leave and other Personnel Issues: Rules concerning work schedules, overtime, pay, leave, core hours and other personnel issues apply to telework employees as they do to on-site employees. The telework agreement documents the initial work schedule and should be updated to reflect changes in work schedules. In addition to regularly scheduled on-site days, employees are responsible for attending meetings or other on-site events; reasonable notice, generally not less than 24 hours, of such events will be given to employees who are not scheduled to be in the office on those days.

Zoning: It is the employee's responsibility to determine, and comply with, any local zoning restrictions. The employee is responsible for any costs of working at home that arise from local zoning requirements.

Hoteling: The agency agrees to share desk assignments, if needed, for employees who are away from their primary work site. The agency agrees, whenever appropriate, to incorporate teleworking and/or hoteling into headquarters complex renovations project plans as alternatives to reducing the cost of securing additional space through leasing and/or renting during the temporary renovation and the cost of moving employees to other locations.

Section I - Employer Responsibilities

Provide eligibility guidance and information to employees in the telework program.

HRD will make annual reminders to employees of where to obtain electronic information on the telework program. HRD will provide to the Union a copy of the USDA Telework Report at the same time the report is issued to the Department. Training will be provided to supervisors and employees on the telework program.

The parties agree to recognize to the maximum extent practical to provide optimal remote server access.

ARTICLE 15: TECHNOLOGY, METHODS AND MEANS OF PERFORMING WORK

- A. Proposed changes in technology, methods, and means of performing work initiated by either the Agency or the Union will require appropriate advance notice, pre-decisional involvement of bargaining employees, and bargaining in accordance with applicable laws, Executive Orders, rules, regulations and policies.
- B. Routine network-wide software updates do not require pre-decisional consultation between union and management.
- C. Employee owned software is not allowed on government workstations, unless approved by the employer for installation.
- D. Parties agree to establish a group composed of union and management representatives to address distribution, training, and use of hardware and software.

ARTICLE 16: CAREER LADDER PROMOTIONS

Section A: General

An employee in a career ladder will be promoted on the first full pay period after all of the following requirements are met:

1. The employee becomes minimally eligible to be promoted after one (1) year or whatever lesser period satisfies basic eligibility requirements;
2. The employee is certified as demonstrating the potential for satisfactory performance at the next higher level. In this regard, the supervisor must make this determination prior to the date the employee is minimally eligible to be promoted, according to Section C.
3. Employees must have an overall summary rating of fully successful, results achieved, or better. Employees whose current performance is lacking will receive written notice as described in Section B.
4. All other requirements of law and regulations are met.

Section B. Supervisor Certification

1. Supervisors shall review the work of each employee in a career ladder position who will be eligible for a career ladder promotion prior to the employee's eligibility date, unless the employee is moved into a position with greater promotion potential, according to Section C. Employees who do not meet the requirements for promotion will be provided by the supervisor a written notice to this effect no less than 30 days prior to the eligibility date. The written notice will explain in what performance element area and how the employee's performance is lacking in potential to perform at higher level and advise as to what the employee must do to meet the requirements for promotion. Reasons for delays for a career ladder promotion will be explained in the advance notice. Once an employee's performance improves to meet the requirement for promotion level, the supervisor will certify the employee for promotion.
2. If advance notice requirements are not met and performance is found to be acceptable and the employee has displayed the potential to perform at the higher level, the promotion will be made retroactive to the date the employee met the time-in-grade requirements in their current position.

Section C. Movement into New Position with Promotion Potential

1. Employees who compete, are selected, and are moved into a new position at the same or lower grade than they currently hold, and the new position has greater promotion potential may be, promoted to the next higher level, provided eligibility requirements are met.

2. The supervisor will review the employee's potential for satisfactory performance at the next higher level above the grade of the new position no later than 90 days after being placed.
3. The supervisor will notify the employee of the results of the review within 10 working days. Employees who are not promoted will be given a written notice that will explain the reason(s) for non-promotion. If applicable, they will also be provided information on what performance is lacking and advise as to what the employee must do to meet the requirements for promotion.
4. If the review is not performed and the written notice is not provided and the employee is performing satisfactorily, the employee will be promoted effective the first pay period after the date the review was due or the date minimum qualifications are met (TIG and Quality), whichever is later.
5. If the review is not performed within 90 days of the move to the new position and the written notice is not provided and the employee is not performing satisfactorily, the supervisor must review and notify the employee within 10 working days of the employee's request for a promotion as stated in this Section. Failure to meet this requirement is grievable under Article 38 of this Agreement.

ARTICLE 17: MERIT PROMOTION

Section A. General Provisions

1. The principle of merit promotion is to ensure that employees are given full and fair consideration for advancement without discrimination for non-merit reasons and to ensure selection from among the best-qualified candidates. The Employer recognizes the value of promoting from within.
2. Positions in the bargaining unit will be filled on the basis of merit and in accordance with 5 CFR 335 and other applicable law, rule, regulations and this Agreement.
3. To facilitate any downsizing effort, the Agency will, whenever possible, consider qualified in-house applicants prior to considering the applications of outside candidates.
4. Employees who are on extended leave or travel are responsible for notifying their supervisor if they want to be considered for promotional opportunities while they are on travel or leave, and for leaving a telephone number or e-mail address with their supervisor. Supervisors must notify temporarily absent subordinate employees about announced vacancies for which they indicated an interest so that they may apply. Employees who wish to be considered for vacancies but who will be temporarily absent from the workplace should make appropriate arrangements to have Internet access to apply for vacancies online utilizing the automated system.
5. Employees who submit applications are encouraged to independently confirm:
 - a. the receipt of their application by HRD in advance of the closing date of the vacancy announcement, the employee may provide evidence of timely submission, e.g. USAJobs receipt confirmation; fax confirmation;
 - b. the status of their application and;
 - c. the status of the vacancy for which they are applying.

Section B. Vacancy Announcements

1. The Employer will utilize the Agency-wide automated system for all solicitations and application processes.
2. Announcements for bargaining unit positions in FSA and RMA shall be open for at least 10 calendar days
3. All vacancy announcements for FSA and RMA positions within the Washington, D.C. metropolitan area will be posted electronically on the OPM website for federal vacancies. HRD will issue an e-mail announcement of vacancies that open each week.

4. All vacancy announcements will contain the following information:
 - a. announcement number and issue date;
 - b. area of consideration;
 - c. title, series, grade;
 - d. types of appointments identified
 - e. an indication that it is for multiple positions and/or is an open continuous announcement, if applicable;
 - f. geographic location of position;
 - g. closing date for acceptance of applications;
 - h. duties of the position;
 - i. qualification requirements, including any selective placement factors;
 - j. evaluation methods to be used; if any;
 - k. known promotion potential, if any;
 - l. instructions for applying;
 - m. whether reimbursement for relocation expenses is authorized in the event selection is made of a candidate from outside the commuting area;
 - n. a statement that the principles of equal employment opportunity will be adhered to in all phases of the promotion process.
 - o. an agency contact and a reasonable accommodation statement for applicants with disabilities when an accommodation for any part of the application and hiring process is requested.

Section C. Qualification Standards

1. Qualification requirements and selective placement factors for vacant positions will be job related.
2. Candidates will be rated basically eligible for a position if they meet the minimum qualification requirements for a General Schedule position described in the OPM Qualifications Standards Operating Manual (or Wage Grade Qualifications Standards, as appropriate) as supplemented by valid job-related selective placement factors, if any.

3. Selective placement factors may be used in determining basic qualifications if they are essential (not merely desirable) to successful performance in the position being filled. The inclusion of such factors must be clearly supported by the position description.

Section D. Evaluation and Ranking Criteria

The best-qualified candidates will be identified through an impartial evaluation of eligible candidates based upon uniformly applied job-related evaluation criteria. The following factors will provide a framework for evaluating and ranking candidates.

1. Application: An application submitted using appropriate forms or other written statements according to the requirements of the announcement.
2. Experience: Experience is to be evaluated in terms of the position to be filled. Length of experience may be used only to the extent to which it can be shown to be a valid job-related factor for the position being filled.
3. Training and Education: Pertinent training, self-development, and outside activities determined to indicate effective performance in the position to be filled will be considered to the extent that they are clearly job-related, or clearly provide evidence of learning ability where this is a requirement for successful performance on the job.
4. Performance Appraisal: All applicants must submit a copy of their latest performance appraisal form dated within the last 18 months or a statement advising why the performance appraisal is unavailable.
5. Awards: Employee's achievements (i.e., formal awards) that earned them special recognition will be considered in terms of the requirements of the job to be filled.
6. Job related assessment questions: Assessments determine related knowledge, skills, and abilities.

Section E. Evaluation and Ranking Procedures

1. Initial Review of Applications:

Before beginning the evaluation and ranking procedures, the individual(s) having the candidate evaluation responsibility will first review all applications to ensure that each applicant/application:

- (1) is within the area of consideration;

- (2) meets minimum qualifications, including selective placement factors, if applicable; and
- (3) meets time-in-grade requirements, if applicable.

2. Rating and Ranking:

The best qualified candidates will be identified through an automated rating and ranking of responses to job related questionnaires and/or other assessment methods

a. Automated rating and ranking system:

- (1) The agency will use a system accepted by OPM and/or the Department in compliance with applicable laws and regulations.
- (2) During the review of an applicant's rating, the employer may only adjust the rating score if the application package clearly does not support the self certification statement and rating. The employer shall notify an applicant if their score was adjusted.
- (3) The automated system ranks applicants based on the weights established by the selecting official and HRD.
- (4) Names of the best qualified applicants will be listed alphabetically for referral to the selecting official. Individual scores will not be listed.
- (5) Noncompetitive referrals will be listed alphabetically and placed on a separate certificate.

Section F. Selection

1. The selecting official will comply with the law and this agreement. The selecting official is not required to fill a vacancy by selection of one of the candidates listed on the promotion certificate. Instead, the selecting official may, for example, request additional recruitment efforts, re-advertise, or fill the job by other type of placement action.
2. If the selecting official decides to conduct interviews, all reasonable efforts will be made to interview all applicants on the Best Qualified promotion certificate(s). If one is interviewed all should be interviewed. Noncompetitive referrals need not be interviewed, nor must all noncompetitive referrals be interviewed .
3. The selecting official's decision to select a particular candidate is subject to law, regulation, or Government-wide mandate.

4. If a promotion is involved, Bargaining Unit employees covered by this contract will be notified of their selection and will be released from their existing positions promptly, normally no later than 1 full pay period after selection.

Section G. Merit Promotion Records

In accordance with 5 CFR 335, and ensuring that individuals' rights to privacy are protected, HRD shall keep a copy of the following documents in each merit promotion case file either in the automated system or hard copy for a period of two (2) years or after formal personnel management evaluation review by OPM, whichever comes first, if the time limit for grievance has lapsed before the anniversary date:

1. vacancy announcements;
2. position description;
3. copies of ALL applicants' application package;
4. copies of performance appraisals;
5. rating criteria;
6. ratings for each qualified applicant;
7. ranking and cutoff for Best Qualified;
8. referral list or promotion certificates (competitive or non-competitive certificate)

Section H. Employee Requests for Information

Unsuccessful candidates for positions filled competitively under this Article are entitled, within five (5) working days of receipt of written request to HRD, to the following information:

1. basic eligibility determination;
2. basic qualification determination;
3. their own individual rating scores;
4. individual rating scores of other candidates (not tied to name);
5. best qualified cut off score
6. name of individual selected.

Section I. Noncompetitive Promotion

When HRD determines that there has been an accretion of duties and responsibilities that warrants an increase in grade, the employee and supervisor will be notified. The Employer will either promote the employee without competition or eliminate or redistribute the grade controlling duties by the end of the next full pay period from the date of notification.

Section J. Training

To ensure that application, rating, ranking, selection criteria and procedures are understood to the maximum extent practicable, HRD will provide information about the merit promotion process to bargaining unit employees. Employees are encouraged to use the HRD Career Development webpage in preparing the job applications. Consistent with Article 11, Section F,5, employees may be granted a reasonable amount of official time to access and use the HRD website.

Section K. Union participation in Merit Selections

The Union and its representative shall have no participatory rights for representation on rating, ranking, or selection panels, or any other deliberations leading to decision involving the exercise of management rights under Merit Selection and Promotion.

ARTICLE 18: REASSIGNMENTS

Section A. Definition

A **reassignment** is changing from one position to another without promotion or demotion, without change of employment status while serving continuously within one Agency.

A **transfer** is changing from one agency to another without a break in service of more than one full workday.

Section B. General

The parties understand the employees or the Employer may initiate the reassignments of an employee for such purposes as:

1. maintaining or improving the economy, integrity, or efficiency of the Agency;
2. assuring the best utilization of employee skills or abilities;
3. making the best use of current staff and other resources;
4. providing employees with opportunities to enhance their qualifications, skills, abilities, and experience in areas of work performed by the Employer;
5. resolving work-related problems;
6. addressing employee hardship and reasonable accommodation concerns;
7. fulfilling an employee request;
8. allowing cross training for employees.

Reassignments will be consistent with Career Transition Assistance Program (CTAP) regulations.

Section C. Procedures - Employee Requests for Reassignments

1. An employee may make a request verbally or in writing directly to HRD or through the supervisor to HRD for reassignment outside their immediate work area.
2. HRD will respond, in writing, within thirty (30) days of HRD's receipt of the employee's request.
3. The Employer will review the employee's request utilizing the various factors outlined in Section B of this Article. The Agency may not be able to meet the employee's requests, give the needs and exigencies of the Agency. Upon request, HRD will provide career development assistance and information regarding available employment resources.

Section D. Employer-Initiated Actions

1. Before initiating a reassignment, the Employer will provide notice to the Union. The Union shall have fifteen (15) workdays to respond to such notification. Failure to respond waives the Union's rights to negotiate impact and implementation of the reassignment.
2. When a reassignment from one bargaining unit position to another bargaining unit position is required, the Employer will notify the employee of the details of the new assignment in advance of the reassignment.
3. When the reassignment involves a change in duty station from outside the Washington, DC area, the Employer agrees to give the employee a reasonable amount of time to accomplish the change in duty station in an orderly manner. The Employer will provide an explanation to the employee and to the union the reasons for the reassignment if the reassignment was not at the employee's request.
4. When a reassigned or transferred employee indicates that the action will result in undue personal hardship, the Employer will give reasonable consideration to the employee's claims, and, if possible, make reasonable effort to minimize the hardship in accordance with applicable laws and regulations.

ARTICLE 19: DETAILS

Section A. Definition

For the purposes of this article, the term detail means the temporary assignment of an employee to new duties or to another position.

Section B. Details to a Position at the Same Grade Level

1. Length of Detail. The detail of an employee to a position at the same grade level will generally not exceed 120 days. All details will be for a specific period of time. For details of more than 120 days, the Employer will consider any personal concerns of the employee related to the detail. This provision may not be circumvented by resorting to a series of details of less than 120 days.
2. Documentation. Details of an employee to a position at the same grade level will be documented:
 - a. by an SF-52 for details of more than 30 days.
 - b. at the request of the employee for details of 30 days or less by a memorandum to the employee and signed by the supervisor to which the employee was detailed with a brief description of the duties of the employee on the detail.
3. Impact on Merit Promotion Procedures. Merit promotion procedures do not apply when a detail is to a position at the same grade level.
4. Employees detailed to a position at the same grade level for more than 120 days will be provided with a copy of the position description and a performance plan for the position. For details of 120 days or less, performance requirements should be incorporated and reflected in the existing performance plan.

Section C. Details to a Higher-Graded Position

1. Length of Non-Competitive Detail. An employee may not be non-competitively detailed to a higher graded position for more than 120 days. A detail to a higher graded position for more than 30 days requires a temporary promotion, provided time in grade requirements are met (*per 5 CFR 300.604*). This provision may not be circumvented by rotating an employee in and out of a detail position.
2. Details under this Section anticipated to be more than 120 days require the competitive announcement of the detail position. This does not prevent an employee from being temporarily promoted for less than 120 days while the position is being advertised.

3. Documentation. Details under this Section will be documented:
 - a. by an SF-52 for details of more than 30 days.
 - b. at the request of the employee, for details of 30 days or less, by a memorandum to the employee and signed by the supervisor to which the employee was detailed with a brief description of the duties of the employee on the detail.
4. Details will not be used to circumvent competitive procedures or be used to give an unfair competitive advantage to the employee detailed to a higher-graded position.
5. Employees detailed to a higher-graded position for more than 30 days will be provided with a copy of the position description and a performance plan for the position within 30 calendar days of the beginning of the detail.

Section D. Return to Original Assignment

Upon return to their original position, the employee will be given reasonable time to become acquainted with any changes which have occurred during their absence.

Section E. Training and Developmental Assignments

Work assignments/details made as part of recognized training or professional development programs will not be covered by the requirements of this Article to the extent that they conflict with program guidelines or requirements or interfere with the achievement of the training or professional development program objectives.

Section E.

The parties agree to establish an Intranet site where employees may indicate their interest in short-term work assignments.

ARTICLE 20: PART-TIME EMPLOYEES

Section A. Employee Information

The Employer recognizes the benefit of part-time employment to both the Agency and employees in those situations where mission accomplishment permits such arrangements. Employees may request information concerning the impact of the conversion from full-time to part-time or part-time to full-time employment in the areas of retirement, reduction-in-force, health and life insurance, promotion, and step increases.

Section B. Consideration

1. The Employer will consider employee requests to convert to part-time or full-time work.
2. Employee requests for changes in part-time or full-time employment must be made in writing to the Employer.
3. Employees will sign a statement indicating acceptance of part-time employment conditions, at the time of entering into a part-time position.

Section C. Adjustment of Schedule

Employees may request in writing to initiate or change their non-pay day(s) off in accordance with the provisions of Article 6.

ARTICLE 21: PROBATIONARY EMPLOYEES

Section A. Definitions

A probationary bargaining unit employee is a bargaining unit employee who has been given a new career or career-conditional appointment and who meets the conditions described in 5 CFR, Part 315.801(a).

Section B. Procedures for Probationary Bargaining Unit Employees

1. The Employer agrees, upon request, to advise a probationary bargaining unit employee of his/her performance progress at any time after expiration of the first six (6) months of the probationary period but no later than the end of the tenth (10th) month of the probationary period.
2. The Employer may discharge a probationary employee at any time during their probationary period if they fail to demonstrate fully their qualifications for continued employment. When the Employer decides to terminate a bargaining unit employee serving a probationary period because his/her work performance or conduct during this period fails to demonstrate his/her fitness or qualifications for continued employment, the Employer shall terminate the probationary bargaining unit employee by notifying him/her as to why he/she is being separated and the effective date of the action.
3. The Employer agrees that when it deems advanced notice of termination to be in the best interests of the Service, i.e. of the Employer's operation and mission accomplishment, the affected probationary bargaining unit employee will be given two (2) weeks advanced notice. If less than two (2) weeks probationary time remains prior to the effective date of such action, a lesser advanced notice may be given.
4. The Employer may allow a probationary bargaining unit employee the opportunity to resign his/her position in lieu of termination unless the needs of the Service, time or the availability of the probationary bargaining unit employee dictate otherwise.
5. To the extent permitted by applicable law, rule, and regulation, probationary employees shall have the right to appeal their termination to the Merit Systems Protection Board, or, if the employee believes that their termination is based on discrimination, the employee may file an EEO complaint.

Section C. Consultation

Any probationary bargaining unit employee may consult with the Union regarding their termination.

Section D. Grievability

Nothing in this Article shall afford the probationary bargaining unit employee the opportunity to grieve a termination.

ARTICLE 22: REDUCTION IN FORCE and FURLOUGH

SECTION 1. GENERAL PROVISIONS

1. PURPOSE

This article establishes procedures for effecting any reduction in force (RIF) actions in the FSA/RMA Washington, DC, bargaining unit and successor bargaining units. It should be used in conjunction with 5 USC and Title 5, Code of Federal Regulations, Part 351, which is available in all servicing personnel offices. The Employer recognizes the right of the Union to fully participate in the pre-decisional RIF process, and recognizes the desirability to achieve diversity goals to the extent practicable.

2. USE OF REGULATIONS:

- a. The Employer is responsible for determining the categories within which positions are required, where they are to be located, and when they are to be filled, abolished or vacated.
- b. Each agency shall follow 5 CFR 351, when it releases a competing employee from his or her competitive level by furlough for more than 30 days, separation, demotion, or reassignment requiring displacement, when the release is required because of lack of work; shortage of funds; insufficient personnel ceiling; reorganization; the exercise of reemployment rights or restoration rights; or reclassification of an employee's position due to erosion of duties when such action will take effect after an agency has formally announced a reduction in force in the employee's competitive area and when the reduction in force will take effect within 180 days.
- c. When the agency fills a vacant position by an employee who has been reached for release from a competitive level for one of the reasons in paragraph 1-2(b), RIF procedures shall be followed.

3. NOT COVERED

Actions not covered. This reduction in force policy does not apply to:

- a. The termination of a temporary or term promotion or the return of an employee to the position held before the temporary or term promotion or to one of equivalent grade and pay.
- b. A change to lower grade based upon the reclassification of an employee's position due to the application of new classification standards or the correction of a classification error.

- c. A change to lower grade based on reclassification of an employee's position due to erosion of duties, except that this exclusion does not apply to such reclassification actions that will take effect after an agency has formally announced a RIF in the employee's competitive area and when a RIF will take effect within 180 days. This exception ends at the completion of the RIF.
- d. Placement of an employee serving on an intermittent, part time, on call, or seasonal basis in accordance with conditions established at the time of appointment.
- e. A change in an employee's work schedule from other than full time to full time. A change from full time to other than full time for a reason covered in paragraph 1-2 (b) is covered by RIF procedures.
- f. Reassignment, not due to displacement, to a position at the same grade in the same or different competitive levels, including reassignments due to reorganization.

4. POLICY

- a. Reductions in personnel strength will be accomplished, whenever possible, by planning and attrition. Every effort will be made to avoid use of RIF procedures to effect such reductions. RIFs will be implemented only if their necessity cannot reasonably be abated through other means, such as, hiring freezes, furloughs, reduction in travel or training that is not critical to the mission of the agency, or reduction of contracts with consultants and contractors, and any and all other expenses that are not critical to the mission of the agency.
- b. Employees and their union representatives will be informed at least 120 days in advance of any necessity for a RIF. The union shall respond within 30 days of notification with a request for information beyond that provided under this Section. In the event of a reduction of 50 or more employees, the Secretary of Agriculture, appropriate Government agencies and interested employee and civic groups will also be informed of the Agency's plans.
- c. Once employees have been informed of a pending RIF under b above, employees may make reasonable use of official time, equipment, and supplies for the purpose of finding other employment as long as it does not unduly interfere with the Agency's business. Employees and supervisors will follow procedures in Article 45 in use of official time for this purpose.
- d. The agency will, to the extent feasible, offer employees being separated or downgraded due to RIF vacant continuing positions for which they are qualified.
- e. Outplacement assistance will be provided to all employees who are separated as a result of a RIF. Outplacement assistance will be in accordance with the Federal,

Department and agency Career Transition Assistance Programs (CTAP). See other relevant articles of this contract.

5. COMMUNICATIONS BETWEEN MANAGEMENT AND EMPLOYEES

- a. RIF actions covered by this article are highly sensitive subjects. Open communications with employees and union representatives will help employees understand the need for the RIF action and will encourage them to continue work with as little disruption as possible. Management officials will ensure that all employees are provided with complete and timely RIF information.
- b. Management acknowledges its duty to comply with negotiated agreement provisions concerning union notice of planned RIFs and participation at formal meetings, and will provide the Union with information on employees':
 - (1) competitive area
 - (2) competitive level
 - (3) subgroup
 - (4) RIF service computation date.

6. PLANNING: When the need for a RIF has been ascertained under procedures in 1-2(a):

- a. Management will inform the Union of its determinations regarding a potential RIF, and provide relevant information responsive to Union inquires.
- b. The Agency will obtain information related to the extent to which the workforce is likely to be reduced through normal attrition, which includes resignations, retirements, and other separation actions.

7. RIGHTS TO INFORMATION: The Agency shall notify the union and employees of the following items:

- a. Employees and their union representatives will be informed at least 120 days in advance of any necessity for a RIF. The union shall respond within 30 days of notification with a request for information beyond that provided under this Section.
- b. Notify employees of their rights to use official time, supplies, and equipment for the purpose of finding outside employment as stated in Section 1-4.
- c. An employee to be RIFed will be notified at least 60 days before the RIF is to become effective. When a RIF is caused by circumstances not reasonably foreseeable, and the Director of OPM, at the request of an agency head or

designee, has approved a notice period of less than 60 days, the Agency will notify the union and employees as soon as practicable. This shortened notice period must cover at least 30 full days before the effective date of release. Agency will promptly provide to the union a copy of its request to OPM.

- d. The Agency will provide timely notice to the Union that final retention register and all draft, preliminary, retention registers are available for review such that adequate time is provided for Union input. This will include modeled RIF's and scenarios.
 - e. The Union will be provided a list of exceptions to qualification standards when the Agency makes exceptions to qualifications standards in order to assign an employee to a vacant available position. See Section 6-8.
 - f. Management shall make copies of the OPM regulations 5 CFR 351 available in each Division.
 - g. The Agency will make every reasonable effort, including manual preparation of documents, to ensure that employees receive a copy of the Separation-RIF SF-50 or equivalent in a timely fashion to file for unemployment compensation. The agency may substitute an equivalent document acceptable to State Unemployment Compensation Agency in the commuting area.
8. DEFINITIONS: These definitions only apply to Article 22.
- a. Annual Performance Rating of Record - Annual performance rating of record for the purpose of a RIF shall be the record from the most recently completed appraisal period prior to the date of issuance of reduction in force notices or the cutoff date the Agency specifies prior to the issuance of reduction in force notices after which no new ratings will be put on record. Rating of record has the meaning given that term in 5 U.S.C. Chapter 43, Sec. 430.203. For an employee not subject to or part 5 U.S.C. Chapter 43, Sec. 430.203, it means the officially designated performance rating, as provided for in the Agency's appraisal system, that is considered to be an equivalent rating of record under the provisions of 5 U.S.C. Chapter 43 Sec. 430.201(c).
 - b. Assignment Right - the right of an employee to be assigned (by means of bump or retreat) in the second round of competition to a position in a different competitive level held by an employee with lower standing on the retention register (see sections 6-3, 6-4, and 6-5 of this Article).
 - c. Bump - Bump assignment rights to a lower subgroup as defined in 5 CFR 351.701 (b). Also see section 6-3.
 - d. Competing employee - an employee in tenure group I, II, or III in either the competitive or the excepted service.

- e. Competitive area - the area described in Article 1 or other organizational and geographical boundaries within which employees compete in a RIF (see section 3-2.)
- f. Competitive Level - Competitive level shall be established by the agency to determine the competitive levels consisting of all positions in a competitive area which are in the same grade (or occupational level) and classification series, and which are similar enough in duties, qualification requirements, pay schedules, and working conditions so that an agency may reassign the incumbent of one position to any of the other positions in the level without undue interruption IAW 5 U.S.C Chapter 43 Sec. 351.403.
- g. Days - calendar days.
- h. Function - all, or a clearly identifiable segment, of an agency's mission (including all integral parts of that mission), regardless of how it is performed.
- i. Furlough - the placement of an employee in a temporary non-duty and non-pay status for not more than 1 year. For furloughs of more than 30 consecutive calendar days (or 22 work days, if done on a non-continuous basis) RIF procedures will apply.
 - (1) Emergency Furlough - A furlough because of lack of appropriations or lack of work due to unpredictable events such as natural disasters, fires, etc.
 - (2) Non-emergency Furlough - A furlough because of budgetary short-fall or lack of work other than noted in the definition of Emergency Furlough.
- j. Local Commuting Area - Local commuting area means the geographic area that usually constitutes one area for employment purposes. It includes any population center (or two or more neighboring ones) and the surrounding localities in which people live and can reasonably be expected to travel back and forth daily to their usual employment.
- k. Non-pay Status - Includes AWOL, LWOP, furlough and suspensions.
- l. Notice - an official written communication provided to an individual employee announcing that he or she will be affected by a RIF action. The specific RIF notice contains the specifics of RIF action to be taken. It must be issued not later than 60 days before the RIF is to become effective. When a RIF is caused by circumstances not reasonably foreseeable, the Director of OPM, at the request of an agency head or designee, may approve a notice period of less than 60 days. This shortened notice period must cover at least 30 full days before the effective date of release.

- m. Representative Rate - the fourth step of the grade for a position under the General Schedule, or the prevailing rate for a position under the Federal Wage system or similar wage determining procedure; and, for other positions, the rate designated by the agency as representative of the position.
- n. Retention:
 - (1) register - a list of competing employees within a competitive level who are grouped by tenure of employment, veteran's preference, and length of service, augmented by performance credit. In practice, the terms competitive level and retention register generally have the same meaning and refer to the competitive level after an employee's retention standing is determined.
 - (2) standing - an employee's relative position on the retention register.
- o. Retreat - See Section 6-4.
- p. Rounds of Competition - the different stages of competing for retention in a RIF action. In the first round of competition, employees compete to stay in their competitive level. In the second round of competition, employees compete for assignment to positions in different competitive levels.
- q. Subgroup Standing - the employee's relative position on the retention register based on tenure group and veteran's preference subgroup. It does not take into account length of service or performance credit.
- r. Tenure - the period of time an employee may reasonably expect to serve under a current appointment.
- s. Transfer of Function - 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 involved is virtually identical to functions already being performed in the other competitive area(s) affected; or the movement of the competitive area in which the function is performed to another local commuting area. The gaining competitive area may be in the same or a different agency. The movement of work within a competitive area is reorganization.
- t. Undue Interruption - a degree of interruption that would prevent the completion of required work by the employee 90 days after the employee has been placed in a different position through RIF. The 90 day standard should be considered within the allowable limits of time and quality, taking into account the pressures of priorities, deadlines and other demands. However, a work program would generally not be unduly interrupted even if an employee needed more than 90 days after the RIF to perform the optimal quality or quantity of work. The 90 day

standard may be extended if placement is made under RIF procedures to a low priority program or to a vacant position.

- u. Veteran's Preference - Veteran's preference shall pertain to preference in Federal employment and the following apply. Veteran means a person who was separated with an honorable discharge or under honorable conditions from active duty in the armed forces performed in a war; or, in a campaign or expedition for which a campaign badge has been authorized; or during the period beginning April 28, 1952, and ending July 1, 1955; or, for more than 180 consecutive days, other than for training, any part of which occurred during the period beginning February 1, 1955, and ending October 14, 1976 IAW 5 CFR 211.102.
- v. Work Schedule – Defined as full-time, part-time, intermittent, seasonal, or on-call basis.

SECTION 2. TRANSFER OF FUNCTION

1. GENERAL

- a. A transfer of function does not suspend management's right to take other legitimate personnel actions. These actions may be taken before, concurrent with, or after the transfer of function.
- b. In order to assist employees who must decide whether or not to accept transfer to a new geographic location, Agency officials should provide available information to affected employees regarding the new location of the activity, the timing of the transfer, the gaining organization, the foreseeable new positions, and the conditions upon which this information is subject to change. Information should also be made available to the extent practicable concerning such matters as availability and cost of housing in the new area, and the Government's obligations to pay travel and moving expenses. Similarly, positive out placement programs must be undertaken to assist, to the extent practicable, employees who are faced with separation because they do not choose to transfer with the function, or because they did not receive offers at the new location.
- c. A function being transferred solely for the purposes of liquidation is not a continuing function. A function is transferred only when it disappears or is discontinued at one location and appears in an identifiable form at another location. The function must, at the time of transfer, be authorized to continue in operation for more than 60 days. In contrast, a discontinued function that does not appear at another location is considered to have been abolished. An employee whose position is transferred solely for liquidation, and who is not identified with an operating function specifically authorized at the time of transfer to continue in operation more than 60 days, is not a competing employee for other positions in the competitive area gaining the function.

2. LOSING COMPETITIVE AREA: The following apply to the losing competitive area in a transfer of function:

- a. Regardless of an employee's personal preference, a competing employee occupying a position that has been identified for transfer has no right to transfer with a function, unless the alternative is separation or downgrading in the competitive area losing the function.
- b. Except as permitted in section 2-3 (e) below, the losing competitive area must use adverse action procedures if it chooses to separate an employee who declines to transfer with his or her function. An employee who declines to transfer with the function may not be separated any sooner than the effective date of the transfer of the employees who choose to transfer with the function to the gaining competitive area.
- c. Transfer of function regulations do not permit the losing competitive area to carry out a RIF solely for employees who decline to transfer with their function. However, the losing competitive area may, at its discretion, include employees who decline to transfer as part of a concurrent RIF conducted for other reasons. They may also reassign the employee to another continuing position under the general authority to reassign employees.

3. IDENTIFICATION OF POSITIONS WITH A TRANSFERRING FUNCTION

- a. The competitive area losing the function is responsible for identifying the positions of competing employees with the transferring function. A competing employee is identified with the transferring function on the basis of the employee's official position. Two methods are provided to identify the employees with the transferring function:
 - (1) Identification Method One; and
 - (2) Identification Method Two.
- b. Identification Method One must be used to identify each position to which it is applicable. Identification Method Two is used only to identify positions to which Method One is not applicable.
- c. Under Identification Method One, a competing employee is identified with a transferring function if:
 - (1) (a) The employee performs the function at least half of his or her work time; or

- b. If a transfer of function requires that the gaining competitive area conduct a RIF, employees identified for transfer by the losing competitive area shall be transferred to the gaining competitive area before it conducts a RIF, with no change in tenure. They have the right to compete in any RIF on retention registers comprised of both themselves and the employees assigned to the gaining competitive area at the time the transfer is effected. A transferred employee who is reached for a RIF action in the gaining competitive area has no retreat rights to the losing competitive area.
- c. The gaining competitive area may determine the retention rights of incoming employees in a transfer of function without an actual relocation of the competing employees from the losing competitive area. The losing competitive area may act as an agent for the gaining competitive area in providing information to transferring employees and, if applicable, in processing lump sum annual leave payments and severance pay.
- d. Employees whose positions are transferred solely for purposes of liquidation, and who are not identified with operating functions specifically authorized at the time of transfer to continue in operation for more than 60 days, are not competing employees in the gaining competitive area. The employee has the right to transfer to the gaining competitive area solely for the purpose of separation by RIF.

An employee whose position is transferred solely for liquidation is placed on the reemployment priority list of the gaining rather than the losing competitive area.

- e. The transfer of function regulations do not apply to the transfer of a function which is terminated in the losing competitive area, and is subsequently transferred to another competitive area for completion.

A competing employee who the agency identifies with a terminated program is a competing employee in the losing competitive area for RIF competition.

5. RIF GRIEVANCES

An employee has no right to appeal a transfer of function. However, an employee may raise a transfer of function issue as part of an appeal or grievance of a subsequent RIF or adverse action that the employee believes resulted from the transfer of function.

SECTION 3. SCOPE OF COMPETITION

1. GENERAL

- a. Employees compete for retention in a RIF action on the basis of competitive area, competitive level, tenure of employment, veteran's preference, and length of service augmented by performance credit. These factors are explained below.

- b. Records established for RIF purposes (such as documentation of competitive area and competitive level determinations) must be available for review by representatives of the Office of Personnel Management, by representatives of the bargaining unit, and by an employee of the agency, to the extent that this register and records have a bearing on a specific action taken, or to be taken, against the employee. The Agency shall preserve intact all registers and records relating to an employee for at least one year from the date the employee is issued a specific notice or until all related grievances and appeals have been settled.

2. COMPETITIVE AREAS

A competitive area shall be defined solely in terms of the Agency's organizational unit(s) and geographical location, and it shall include all employees within the competitive area. A competitive area may consist of all or part of the Agency. The minimum competitive area is a subdivision of the Agency under separate administration within the local commuting area. The Union recognizes that the determination of RIF's competitive areas is a management function.

3. COMPETITIVE LEVELS

- a. Competitive level - a group of all positions in a competitive area which are in the same grade or occupational level, and classification series and which are similar enough in duties, qualification requirements, pay schedules, and working conditions so that the agency may reassign the incumbent of one position to any of the other positions in the level without undue interruption. It is the concept of interchangeability that is paramount. The competitive level is based upon each employee's position description, not on the employee's personal qualifications. Only occupied positions are included in a competitive level. During the RIF process management will utilize continuing vacancies to minimize the adverse impact of the RIF.
- b. Separate competitive levels are established in each competitive area according to the following:
 - (1) By service - Competitive vs. Excepted.
 - (2) By appointment authority - Separate levels are established for Excepted Service positions filled under different appointment authorities.
 - (3) By pay schedule.
 - (4) By type of work schedule - Full-time, part-time, intermittent, seasonal, or on-call basis. No distinction may be made among employees in the competitive level on the basis of the number of hours or weeks scheduled to be worked.

- (5) By trainee status - Separate levels for employees in formally designated trainee or developmental programs, as defined by 5 CFR 351.702 (e) (1) through (4).
- c. A position is placed in a competitive level when it is established. The competitive level is shown on the position description cover sheet, and is entered into the NFC automated personnel inventory system.
- d. The initial round of competition in a RIF action is among employees in the same competitive area who are assigned to positions in the same competitive level.
- e. Each subsequent round of competition in RIF attempts to place an employee released from their competitive level in previous round through exercise of their Bump and Retreat rights.

SECTION 4. RETENTION STANDING

1. ORDER OF RETENTION FOR COMPETITIVE SERVICE

- a. After grouping interchangeable positions into competitive levels, the Agency applies the four retention factors in establishing separate retention registers for each competitive level that may be included in the RIF. The name of each employee is listed in the retention register in the order of his or her retention standing. The retention register includes the name of each employee who holds a position in the competitive level, holds another position because of a temporary promotion from the competitive level, or is detailed from the competitive level. Employees on military duty with restoration rights are not included. Competing employees are placed on a retention register in the following groups and subgroups. The descending order of retention standing:
 - (1) By **TENURE GROUPS** is: Group I, Group II, and Group III.
 - (2) By **SUBGROUPS**, based upon eligibility for veteran's preference in RIF, within each tenure group is: Subgroup AD, Subgroup A, and Subgroup B.
 - (3) By **LENGTH OF SERVICE** within each subgroup: Employees are ranked beginning with the earliest service date (including performance credit).
- b. Tenure groups for competitive service employees are comprised as follows:
 - (1) Group I - All career employees not serving a probationary period for appointment to a competitive position and other employees specified in 5 CFR 351.501(b)(1) (i) - (iv).

- (2) Group II - All career-conditional employees, all employees serving a probationary period for initial appointment to a competitive position, and employees whose tenure status is pending final resolution by OPM.

Note: The fact that an employee is serving a probationary period for a supervisory or managerial position does not affect the tenure group of the employee's appointment for RIF purposes.

- (3) Group III - Includes all employees serving under indefinite appointments, temporary appointments pending establishment of a register, status quo appointments, term appointments, and any other non-status non-temporary appointments which meet the definition of provisional appointments contained in 316.401 and 316.403 of 5 CFR 351.

c. The subgroups are comprised of the following employees:

- (1) Subgroup AD - All preference eligibles with compensable service-connected disabilities of 30 percent or more.
- (2) Subgroup A - All preference eligibles not included in Subgroup AD above.
- (3) Subgroup B - All non-preference eligibles.

d. A retired member of a uniformed service who is drawing retired pay must meet certain OPM criteria in order to be considered preference eligibles for RIF purposes. These criteria are defined in 5 CFR 351.501.

2. ORDER OF RETENTION FOR EXCEPTED SERVICE

a. Competing employees in the excepted service are classified on a retention register on the basis of their tenure of employment, veteran's preference, length of service, and performance, in descending order as set forth in section 4-1 (a) for competing employees in the competitive service.

b. Groups are defined as follows:

- (1) Group 1- All permanent employees whose appointment carries no restriction of condition such as conditional, indefinite, specific time limit, or trial period.
- (2) Group 2- All employees serving a trial period or whose tenure is equivalent to a career-conditional appointment in the competitive service.
- (3) Group 3- All employees whose tenure is indefinite (without specific time limit) but not actually or potentially permanent; or whose appointment has

a specific time limitation of more than one year; or who are currently employed under a temporary appointment of one year or less, but who have completed one year of current continuous service under a temporary appointment with no break in service of one workday or more.

3. LENGTH OF SERVICE AND CREDIT FOR PERFORMANCE

- a. A service date will be established for each competing employee in a RIF. Employees are listed on a retention register within Veterans Preference subgroups by length of service, in descending order, starting with the earliest service date.
- b. An employee's service date for RIF purposes is one of the following:
 - (1) The date the employee entered on duty, if the employee has no previous creditable service;
 - (2) The date obtained by subtracting the employee's total previous creditable service from the date the employee last entered on duty; or
 - (3) The date obtained by subtracting from the date in section 4-3 (b) (1) or (2) above any service credit for performance to which the employee is entitled under section 4-3 (c) below.

An employee who is a retired member of a uniformed service is entitled to credit for the length of time in active service in the armed forces during a war, or in a campaign for which a campaign badge has been authorized, or the total length of time in active service in the armed forces if the employee is considered a preference eligible under 5 CFR '351.501(d). (5 CFR 351.503c)

- c. Employees are given performance credit for RIF competition when the employee's performance meets certain requirements. The amount of credit added is based on the mathematical average (rounded in the case of fractions to the next higher whole number) of the value of the employee's last three actual Federal annual performance ratings of record received during the 4-year period prior to the date of issuance of specific RIF notices, or the date the Agency freezes ratings before issuing RIF notices.

An employee who has not received any rating of record during the 4-year period shall receive credit for performance based on the modal rating for the summary level pattern that applies to the employee's official position of record at the time of the RIF. A modal rating is defined as the summary level assigned most frequently among the actual ratings of record that are:

- (1) assigned under the summary level pattern that applies to the employee's position of record on the date of the reduction in force;

- (2) given within the same competitive area, or the agency's option within a larger subdivision of the agency or agency wide; and
- (3) on record for the most recently completed appraisal period prior to the date of issuance of reduction in force notices or the cutoff date specified in subsection g, after which no new ratings will be put on record.

An employee who has received at least one but fewer than three previous ratings of record during the 4-year cycle shall receive credit for performance on the basis of the value of the actual rating(s) of record divided by the number of actual ratings received.

In determining this average the value assigned to each actual performance rating of record is as follows:

**	Level 1	Level 2	Level 3	Level 4	Level 5
Pattern A	0	NA	16	NA	NA
Pattern B	0	NA	13	NA	17
Pattern C	0	NA	13	17	NA
Pattern D	0	0	17	NA	NA
Pattern E	0	NA	12	15	18
Pattern F	0	0	14	NA	18
Pattern G	0	0	14	17	NA
Pattern H	0	0	14	16	18

**NA means not applicable to the rating pattern, i.e., the level is not used in that pattern. The numbers represent the number of years to be credited for a rating at that level and under that pattern.

Examples:

- (1) An employee on a 5-tiered system (Pattern H) whose last three annual performance ratings of record were Outstanding, Exceeds Fully Successful, and Exceeds Fully Successful would have a total of 17 years ($18 + 16 + 16 = 50$, divided by 3 = 16.7, rounded to next higher whole number) added to his or her length of service for RIF purposes.

- (2) An employee whose last three annual performance ratings of record were Outstanding and Superior (based on 5-tier system - Pattern H) and Pass (based on Pass/Fail rating system - Pattern A) would have a total of 17 years (18 + 16 + 16 = 50, divided by 3 = 16.7, rounded to next higher whole number) added to his or her length of service for RIF purposes.

NOTE: For all ratings of record put on record before October 1, 1997, or where all ratings within the 4-year cycle and competitive area are in the same rating pattern, the performance credit assigned to each actual performance rating must use the 20, 16, 12 additional years of service for Outstanding, Superior, and Fully Successful ratings.

- a. If an employee has had more than three annual performance ratings of record during the 4-year period, the three most recent Federal annual performance ratings of record are used. An annual performance rating of record received prior to the 4-year period cannot be used.
- b. Regardless of whether the employee's service occurred in one or more Federal agencies, the employee's actual ratings are to be used to the extent they are available. If they are not available in the employee's official records, the current employing agency will accept employee copies of annual performance ratings of record for this purpose. For employees who received performance ratings while not covered by 5 U.S.C. Chapter 43, those performance ratings shall be considered ratings of record when it is determined that those performance ratings are equivalent ratings of record under provisions of 5 CFR '430.201(c). (*5 CFR 351.504 a 3*)
- c. An employee who has received an improved rating following an opportunity to demonstrate acceptable performance as provided in 5 CFR 432 shall have the improved rating considered as the annual performance rating of record. The cutoff date specified in subsection g applies.

The cutoff date for submission of performance appraisals shall be 90 days before the date the specific RIF notice is issued to employees. No new appraisals will be accepted after this date.

4. RETENTION REGISTER

- a. The Agency will prepare a retention register for each competitive level affected by the RIF, listing employees by tenure group/subgroup as follows: IAD, IA, IB, IIAD, IIA, IIB, IIIAD, IIIA, and IIIB.
- b. An employee serving a temporary promotion will be placed on the retention register for the competitive level from which he or she was promoted.

- c. A permanent employee serving in a part-time work schedule will be provided the option to be returned to a full time work schedule 90 days before the specific RIF notice is issued to employees.
- d. An employee who has received a written decision to demote or reassign him or her because of unacceptable performance or conduct will be placed on the retention register for the competitive level to which he or she will be demoted or reassigned.
- e. The Agency will list, apart from the retention registers but on the same document, in the following order, the name of each employee who:
 - (1) Is serving under a time limited appointment or temporary promotion (together with the expiration date of appointment or promotion); or
 - (2) Has a written decision under 5 CFR Part 432 or Part 752 of removal from the position because of unacceptable performance or conduct. An employee who has received a written decision under 5 CFR 432 or Part 752 of the decision to demote him or her because of unsuccessful performance or conduct competes from the position to which he or she has been or will be demoted.
 - (3) Employees so listed are noncompeting employees in the competitive level, because the Agency must remove them from positions in the competitive level by means other than RIF before releasing any competing employee from the level through RIF.

SECTION 5. RELEASE FROM COMPETITIVE LEVEL

5. RELEASE OF NONCOMPETING EMPLOYEES

- a. When an employee's position is abolished in a RIF, the employee is not automatically released from his or her competitive level. The Agency first releases noncompeting employees from the competitive level. A noncompeting employee is one who:
 - (1) Is serving under a specifically limited temporary appointment to a position in that competitive level;
 - (2) Is serving under a term promotion or temporary promotion to a position in that competitive level (these employees are returned to their permanent positions of record, or equivalent); or
 - (3) Has received a written decision of removal from a position in that competitive level.

- a. A reassignment made during a reorganization to a position in the same competitive level is neither a RIF nor an adverse action, because RIF regulations apply only when there is a release from a competitive level. The Agency may reassign any employee in the competitive level to a vacant position at the same grade level in the same or different competitive level.

6. RELEASE OF COMPETING EMPLOYEES

- a. If a competing employee must be released, an employee in an abolished position has a right to one of the other positions in the level as long as he or she is not the lowest standing employee. If the employee in the abolished position is the lowest standing employee, he or she may be released from the competitive level. Similarly, when satisfying an assignment right of an employee from a different competitive level, the Agency is not required to offer the job of the lowest standing employee, but may reassign employees within the level and offer any position in the level so long as the assignment right is satisfied and the proper order of release from the level is followed.
- b. After the Agency has released all noncompeting employees from a competitive level, it selects competing employees for release in the inverse order of their retention standing, beginning with the lowest standing employee. All employees in tenure group III are released before any employee in tenure group II is released, and all employees in tenure group II are released before any employee in tenure group I is released. Within each tenure group, employees in subgroup B are released first, followed by subgroups A and AD in that order. Within each subgroup, employees are released in the order of their service dates (as augmented by performance rating credits), beginning with the most recent service date. When employees in the same subgroup have identical service dates and are tied for release, the performance rating credit will be deducted and the employee with the most recent service computation date will be released first if employees have the same service computation date after deducting the performance rating credit, tie breakers are as follows:
 - (1) Creditable Federal Service, including County Office service and excluding military service.
 - (2) Creditable USDA service, including County Office service and excluding military service.
 - (3) Creditable FSA (and predecessor Agency) service, including County Office service and excluding military service.
- c. Exceptions to the order of release described above are listed in 5 CFR 351.601 (a) (1) and (2) and 351.606, 607, 608, and 805. Any employee reached for release out of the regular order must be notified in writing of the reason for the exception.

- d. An employee released from a competitive level may have the right to be assigned to another position. If so, the employee must be offered that position (or an equivalent one). Assignment rights are discussed in detail in section 6. below.
- e. Only when an employee has no right of assignment to another position, or turns down an offered position satisfying the assignment right, may the Agency furlough or separate the employee under RIF procedures. The Agency may furlough a competing employee only when it intends within one year to recall the employee to the position from which furloughed. The Agency may not furlough competing employees for more than one year. If a furlough is not appropriate, the employee is separated. However, an employee may not be separated while a lower standing employee in the same competitive level remains on furlough.

7. RECALL OF RIFed OR FURLOUGHED EMPLOYEES

When the agency recalls employees to duty in the competitive level from which RIFed or furloughed, it shall recall them in the order of their retention standing, beginning with the highest standing employee, or as otherwise required by USDA Regulations.

SECTION 6. ASSIGNMENT RIGHTS

1. ELIGIBILITY

- a. In a RIF action, a competitive service employee in tenure group I or II who has a current annual performance appraisal of record of “results achieved” or “minimally successful” or higher has eligibility for assignment to another position, provided that the position:
 - (1) Is in the competitive service;
 - (2) Is in the same competitive area;
 - (3) Will last at least three months;
 - (4) Is one for which the released employee is qualified;
 - (5) Has a grade or representative rate of pay no higher than the grade or representative rate of the position from which the employee is released;
 - (6) Is encumbered by an employee subject to displacement by the released employee by either "bump" or "retreat". Employees do not have inherent rights to vacant positions;
 - (7) Has the same type of work schedule (full time, part time, etc.) as the position from which the employee is released; and

- (8) Has a pay rate which requires no reduction or the least possible reduction in the employee's present pay rate.
- b. Promotion potential is not considered in filling a position under RIF regulations. A RIF offer may have more, less, or the same potential.
- c. The existence of an encumbered position does not oblige an agency to offer an employee a particular position; however, it does establish the employee's right to be offered a position at the same grade level as the encumbered position.
- d. Even though an employee is entitled to only one offer of assignment, the agency must make a better offer if a position with a higher representative rate is available on or before the date of the RIF notice.
- e. Employees in tenure group III or those having current annual performance appraisals of record of "unacceptable" have no assignment rights in a RIF action.

2. BEST POSSIBLE OFFER

- a. When more than one available position meeting all criteria of section 6-1. above will satisfy an employee's assignment right, the employee must be offered the position with the highest representative rate. When two or more available positions exist with the same representative rate, the employee may be offered any of the positions.
- 1. While the best possible offer must be made to a competing employee, he or she may voluntarily accept an available position at a lower representative rate. Willing acceptance of such an offer, with full knowledge of entitlement to a position with a higher representative rate, does not satisfy an employee's assignment right. Such a voluntary acceptance of an available position is not covered by RIF regulations and does not confer grade or pay retention.
- c. A competing employee may be reassigned to a vacant position in the same competitive area, or in a different competitive area in the same commuting area, which is at least equivalent to the employee's assignment right. However, employees have no right to such reassignment, nor do they have the right to choose assignment to any particular position in a RIF action.
- d. A competing employee may be offered a temporary position (under an appointment not to exceed one year) only in lieu of separation by RIF when the employee has no other assignment right.

3. DISPLACEMENT OF A LOWER SUBGROUP EMPLOYEE ("BUMPING")

- a. Upon release from a competitive level, an eligible employee is entitled to "bump" to an available position which requires no reduction, or the least possible

reduction, in representative rate, when the occupied position is encumbered by an employee subject to displacement (see section 6-4 below), AND is the same grade or no more than three grades or three grade-intervals (or equivalent) below the position from which the employee is released. Employees must be qualified for the offered position. (5 CFR 351.701a)

- b. An eligible employee in subgroup IAD can displace an employee in IA, IB, or any employee in tenure groups II and III. An IA employee can displace employees in IB, or any employee in group II or III. An IB employee can displace any employee in group II or III. An eligible employee in subgroup IIAD can displace an employee in IIA, IIB or any employee in tenure group III. An IIA employee may displace an employee in IIB or any employee in group III. An IIB employee may displace any employee in group III.

4. **DISPLACEMENT OF AN EMPLOYEE IN THE SAME SUBGROUP**

("RETREATING"): Upon release from a competitive level, an eligible employee is entitled to "retreat" to an available position that requires no reduction, or the least possible reduction, in representative rate, when the occupied position is:

- a. Encumbered by an employee with a later service date in the same subgroup as the retreating employee;
- b. The same grade, or no more than three grades or three grade-intervals (or equivalent) below the position from which the retreating employee is released (the position may be up to five grades or grade-intervals lower if the released employee is a preference eligible with a compensable service-connected disability of 30 percent or more);
- c. The same position, or essentially identical to a position previously held by the released employee in any Federal agency; and
- d. Encumbered by an employee with a current annual performance appraisal of record no higher than "minimally successful" when the released employee's rating is "minimally successful".
- e. The criteria for an essentially identical position are the same as the criteria for competitive level, as defined in Section 3-3, except as stated in 5 CFR 351.701(c)(3).

5. **DISPLACEMENT OF AN EMPLOYEE IN THE SAME SUBGROUP ("BUMPING")**

The Agency shall permit a competing employee to displace an employee with lower retention standing in the same subgroup consistent with section 6-3 when the Agency cannot make an equally reasonable assignment by displacing an employee in a lower subgroup (reference 5 CFR 351.705(a)(1)).

6. PREFERENCE ELIGIBLES WITH 30 PERCENT OR MORE SERVICE-CONNECTED DISABILITIES

- a. The personnel office must notify the Office of Personnel Management (OPM) when it determines, based on the available evidence, that a preference eligible who has a compensable service-connected disability of 30 percent or more is not able to fulfill the physical requirements of a position to which the employee would otherwise have been assigned under RIF procedures.
- b. At the same time, the personnel office must notify the employee of the reasons for the determination and of the employee's right to respond to OPM within 15 days of the notification.
- c. OPM will make a final determination concerning the physical qualifications of the employee for the position, and inform the personnel office and the employee of the findings. The Agency may not assign any other person to the position until OPM has made its final determination.
- d. The personnel office must comply with the final OPM determination.

7. GRADE AND PAY RETENTION

Employees assigned to positions at a lower representative rate than the position from which released are entitled to 2 years of grade retention and subsequent pay retention in accordance with 5 CFR 536.

8. EXCEPTIONS TO QUALIFICATIONS STANDARDS

In a RIF action, exceptions may be made to qualifications standards in order to assign an employee to a vacant available position at the same or lower representative rate. This may be done when it is determined that the employee has the capacity, adaptability, and skills required, or that he or she can be retrained to assume the duties of the new position within a reasonable period of time. Reasonable time, for purposes of this exception, will be 90 days unless otherwise agreed to by the union and management. However, minimum educational requirements (such as 24 semester hours in Accounting, or the equivalent, for the GS-511 series) cannot be waived.

SECTION 7. NOTICE TO EMPLOYEES

1. NOTICE PERIOD

- a. Career and career-conditional employees affected by RIF actions will be given at least 60 days advance specific notice. These conditions apply to employees being separated, furloughed for more than 30 days, reduced in grade, or required to accept assignment beyond the commuting area in a transfer of function. The initial 60 day specific notice need not be extended if the notice is amended

resulting in a more favorable action for the employee; but if amendment results in a more severe action (such as a change from demotion to separation), a new 60 day notice is required. Employees who accept a functional transfer offer and then decline during the last 30 days of the 60 day notice period need only be given a 30-day advance notice of separation. At the time the Agency issues a notice to an employee it must give a written notice to the exclusive representative of every affected employee at the time of the notice.

- b. Career and career-conditional employees who receive an initial or subsequent notice of separation or furlough due to RIF may not be carried in leave without pay (LWOP) beyond the effective date of their RIF action.
 - c. Generally career or career-conditional employees may not be carried in annual leave status beyond the effective date of a RIF action. However, if employees would become eligible for immediate annuities if carried beyond the effective date of a RIF they are to be allowed to use accrued annual leave until they become eligible to retire.
2. CONTENT OF NOTICE: Specific advance notice of release from the competitive level as a result of a RIF action will include all of the following information:
- a. A general statement of reasons the RIF is being conducted.
 - b. A statement of the specific action to be taken: separation, demotion, furlough, or reassignment.
 - c. The effective date of the action.
 - d. The employee's competitive area, competitive level, subgroup, service date, and annual performance ratings of record received during the last four years.
 - e. The place where the employee may inspect the regulations and records pertinent to his or her case.
 - f. If applicable, the reasons for retaining a lower standing employee under a mandatory exception, discretionary exception, or discretionary temporary exception authorized by OPM regulations.
 - g. If applicable, a statement that employees are being separated under liquidation procedures without regard to standing within the subgroup, and the date that the liquidation will be complete.
 - h. The employee's appeal or grievance rights, time limits, and appropriate procedures.

- i. If applicable, the employee's rights, entitlements, and responsibilities with respect to the available out placement and assistance programs such as CTAP, Career Development Centers and other programs which may be available.
 - j. Notice to the employee of the right to reemployment consideration.
 - k. Information on applying for unemployment compensation.
 - l. Estimate of severance pay
 - m. Information on the employee's eligibility to continue health and life insurance benefits after RIF separation.
 - n. Notice to the employee of the entitlement to a copy of OPM's retention regulations found in 5 CFR 351.
3. STATUS DURING NOTICE PERIOD

The notice period begins the day after the employee receives the RIF notice. Neither the day the employee receives the notice or the effective date of the RIF action may be counted in computing the notice period. Generally, employees will remain in a duty status during the notice period. Under emergency conditions due to lack of work or funds, employees may be placed on annual leave, or in nonpay status, with or without their consent, for all or part of the notice period, with the prior approval of the Administrator. Employees may be placed in leave without pay only with the employee's consent. (*5 CFR 351.806*)

SECTION 8. NOTICE TO INTERESTED AGENCIES AND GROUPS

1. GENERAL

This action is applicable to RIF actions which result in the closure of a field office, or a reduction in personnel within a region, which is expected to be of interest to members of Congress and the public. It applies to actions involving the abolishment of 50 or more encumbered positions within an area.

2. INFORMATION TO EMPLOYEE ORGANIZATIONS

Every effort will be made to provide information to the National Office of the Union as well as the president and secretary of Local 3925 on a reduction to the bargaining unit employees.

3. INFORMATION TO THE OFFICE OF PERSONNEL MANAGEMENT

Appropriate OPM offices will be informed as soon as information is available about significant RIFs so that they may assist in carrying out RIF actions and placing displaced employees.

4. INFORMATION TO STATE EMPLOYMENT SERVICE OFFICES

- a. Appropriate employment service offices in each competitive area must be provided the earliest practicable advance notice of the number and kinds of employees being affected by a major reduction and be offered office space for satellite offices for both unemployment and employment services.
- b. If the RIF involves more than 49 employees, the appropriate Dislocated Worker Unit and the highest elected official in the area where the RIF actions will take place must be notified. As a minimum, the number of employees to be separated, the locations of those employees, and the effective date of the RIF must be provided in this notice.

5. INFORMATION TO THE U. S. DEPARTMENT OF LABOR

Pertinent information should be provided to the Department of Labor regarding employees to be displaced, to assist that agency in discharging its responsibilities under the Federal unemployment compensation program.

6. INFORMATION TO LOCAL CHAMBERS OF COMMERCE

Information should be furnished to local Chambers of Commerce and other local civic organizations.

SECTION 9. PLACEMENT ASSISTANCE

- a. Placement assistance will be offered in accordance with the Federal, Department and agency CTAP programs.
- b. Management will provide resume-writing software in each division or over the local area network and allow reasonable use of Agency equipment to prepare resumes by bargaining unit employees seeking outplacement to the extent that such activities do not interfere with ongoing Agency work. Agency equipment shall include but not be limited to: computer, phones, fax machines, printers and copiers.
- c. Upon request, the Agency will grant 40 hours of administrative time to career and career-conditional employees who have been identified as surplus to make use of career transition resource services and facilities. Upon request, employees who have received an official notice of separation will receive an additional 40 hours

of administrative time to make use of career transition resource services and facilities. Additional time may be provided by supervisors on a case by case basis, in coordination with HRD, without unduly interfering with the Agency's business to attend the following:

- (1) job fairs,
- (2) job interviews,
- (3) seminars, counseling services and appointments with outplacement consultants, and
- (4) other job search activities.

d. The Agency will make facilities available for:

- (1) in-house job fairs,
- (2) D.C., Maryland, Virginia, and other local Employment Officials to set up field offices in Agency office space,
- (3) office space for outplacement consultants, counseling services, and classroom space for retirement and job hunting seminars, and
- (4) D.C., Maryland, Virginia, and other local Unemployment Officials to set up field offices in Agency office space.

e. The Agency will obtain and make available:

- (1) access for bargaining unit employees to search job posting bulletin boards on Internet and other electronic sources,
- (2) D.C., Maryland, and Virginia unemployment compensation forms in each Division, and
- (3) retirement and job hunting seminars, counseling services and outplacement consultants.

SECTION 10. SEVERANCE PAY

Eligible employees who are involuntarily separated from the Federal Service in a RIF action will be granted severance pay in accordance with 5 CFR 550.

SECTION 11. RIF APPEALS

1. GENERAL

- a. With the exception of those employees covered by this section, any employee who received a specific notice of a RIF action, including separation, demotion, or furlough of more than 30 days, and believes that the provisions of this Manual, or of applicable OPM or USDA regulations, have not been correctly applied, may file an appeal with the Merit Systems Protection Board (MSPB). An employee who accepts an offer of assignment to another position at the same grade same representative rate may not appeal the RIF action to MSPB. As part of the specific RIF notice, the employee will be provided with a copy of the MSPB appeal form, and will be advised that he or she:
 - (1) Have 30 calendar days after the effective date of the action to file an appeal;
 - (2) May have access to the MSPB regulations regarding the processing of appeals; and
 - (3) May file the appeal in person or by mail, but in either case is responsible for ensuring that the appeal is received timely at the appropriate MSPB field office.
- b. An employee in a bargaining unit covered by a negotiated grievance procedure that does not exclude RIF must use the negotiated grievance procedure and may not appeal a RIF action to the MSPB, unless the employee raises an allegation of discrimination under 5 U.S.C. 2302(b)(1) in conjunction with a RIF action (in which case the employee may either use the negotiated grievance procedures or appeal to MSPB, but not both). Time limits for these employees are spelled out in the collective bargaining agreement.
- c. An employee may not file a RIF appeal before the effective date of the RIF action, even when the employee's basic right is to file a grievance under a negotiated grievance procedure.

2. GROUNDS FOR RIF APPEAL: Employee appeals of RIF actions may be based on, but not limited to the following grounds:

- a. Retention of an employee in a lower subgroup in a job for which the appellant considers himself or herself qualified.
- b. Insufficient notice.
- c. Inadequate reasons, or failure to give reasons, for exceptions to the regulations.

- d. Denial of the right to examine the regulations or to inspect the retention registers and related records.
- e. Improper competitive area.
- f. Improper competitive level.
- g. Improper tenure grouping.
- h. Error in establishing the service date.
- i. Failure to make a reasonable assignment offer.
- j. Improper determination of qualifications for another assignment.
- k. Improper placement on leave without pay during the notice period.
- l. Failure by the Agency to comply with its own administrative procedures.

SECTION 12. FURLOUGHS

1. GENERAL PROVISIONS

- a. The Union recognizes that circumstances beyond the control of Management may necessitate having to furlough employees. The union also recognizes that the decisions to furlough employees, which employees will be furloughed, and the duration of any furlough must be made by Management.
- b. Management recognizes that the Union in agreeing to the following does not waive any individual employee's rights under Statute or regulation.
- c. Furloughs, whether they are emergency or nonemergency furloughs, will be implemented in accordance with applicable Statutes, regulations, and negotiated agreements.
- d. Nonemergency furloughs will be implemented only if their necessity cannot reasonably be abated through other means, such as hiring freezes, reduction in travel or training that is not critical to the mission of FSA, or reduction of contracts with consultants and contractors, and any and all other expenses that are not critical to the mission of the agency.

2. FURLOUGH NOTICES

- a. In emergency furlough situations, employees will be given as much advance notice as possible.

- b. In nonemergency furlough situations, employees will be given as much advance notice as possible but not less than the minimum notice required by Statute or regulation.
- c. Furlough notices distributed to employees will contain all the information required by Statute or regulation including, if applicable, an explanation of why the employee is being furloughed if not every employee in his/her competitive level and competitive area is being furloughed.
 - (1) In the case of an emergency furlough both Management and the Union recognize that the number of furlough days may not be known in advance and that Management may not be able to notify bargaining unit employees if the number of furlough days becomes known after the onset of the furlough.
 - (2) In the case of a nonemergency furlough when the number of furlough days is not known in advance, Management agrees to provide furloughed bargaining unit employees with an updated furlough notice as soon as possible after the exact number of furlough days becomes known.
- d. In nonemergency furlough situations and to the extent possible in emergency furlough situations Management will submit a draft furlough notice to the Union for comment prior to distributing it to employees.
- e. Management will provide the Union with a list of employees that identifies those who will be subject to furlough and those who will not be subject to furlough. The list will state the reason why an employee is not being furloughed.
 - (1) In a nonemergency furlough situation, the listing of employees will normally be provided to the union within three work days after making the decision to furlough.
 - (2) In an emergency furlough situation, the listing of employees deemed critical and noncritical will be provided to the union as much in advance of the anticipated furlough date as possible.

3. PROCEDURES

- a. In nonemergency furlough situations when less than all employees in a competitive level and competitive area are being furloughed, Management will ask employees to volunteer to be placed in leave without pay (LWOP) status.
 - (1) Management reserves the right not to accept a voluntary request for LWOP from an employee for work related reasons.

- (2) The savings from voluntary LWOP will be used to reduce the number of employees subject to furlough or the number of hours of furlough for all employees being furloughed.
 - (3) If there are insufficient volunteers to mitigate the need for the furlough, employees will be selected for furlough on the basis of their RIF retention standing.
 - (4) If there are more than enough volunteers to obviate the need for the furlough, employees will be placed in LWOP status on the basis of their RIF SCD with the employee having the earliest in time RIF SCD being given the first right of refusal.
- b. In a nonemergency furlough situation and to the extent it is possible to do so, Management will permit employees to choose the days on which they will be furloughed. In the event of scheduling conflicts among equally qualified employees, the employee with the earliest in time RIF SCD date will be granted his/her request.
 - c. In a nonemergency furlough situation and to the extent that it is possible to do, Management will not schedule both the day before and the day after a holiday as furlough days.
 - d. Shutdown procedures:
 - (1) Necessary shutdown functions may include but are not limited to:
 - (a) Making necessary contacts outside the Agency to communicate status of operations.
 - (b) Canceling meetings, hearings, and other previously arranged agency business.
 - (c) Issuing notices to State and County Offices regarding termination of activities.
 - (d) Performing the tasks necessary to protect classified and confidential information, including listing of all papers to be accorded confidential status and accounting for all classified documents.
 - (e) Inventorying and preparing Government property for disposition.
 - (f) Performing requisite administrative functions, such as processing payroll for the period until the expiration of funds, assuring that

employees are accorded all due personnel rights, providing employees with requisite documents, etc.

- (2)
 - (a) Only employees designated as critical and employees notified as required for shut-down activities will be required to report for duty on the first day of an emergency furlough. Management shall minimize the number of employees required for shut-down activities.
 - (b) However, if noncritical employees or employees not required for shutdown activities are requested to report for duty, Management strongly urges that employees report for duty. Failure to report for duty during an employee's normal tour of duty hours will result in the employee not being paid for that day if the furlough ends prior to 11:59 PM on that evening. If the furlough ends prior to the beginning of the duty day and the employees are either late reporting or fail to report for duty on that day, they will be considered to be in AWOL status.
 - (c) Employees on prior approved leave or on a compressed work schedule (CWS) day off on the first day of an emergency furlough will not be required to report for work unless otherwise directed or unless designated as a critical employee.
- (3) Employees required to report to work on the first day of shutdown who will be required to perform the necessary and designated shutdown activities will be:
 - (a) Informed by their supervisors either orally or in writing of the shutdown activities in which they may engage.
 - (b) Released from work upon completion of their assigned shutdown activities and approval by their immediate supervisor.
 - (c) Informed by their immediate supervisor before the termination of the employee's workday whether the shutdown activity in which they are engaged requires the employee's presence on a subsequent day(s) and if so, to whom to report.
- (4) Employees reporting to work on subsequent days of shutdown:
 - (a) Must have the prior approval of their immediate supervisor before reporting to work.
 - (b) Will engage only in shutdown activities identified by their immediate shutdown supervisor.

- (c) Will be released and placed on immediate furlough by their shutdown supervisor when the assigned shutdown activity(ies) identified for the employee's accomplishment have been completed.

4. PERSONNEL CONSIDERATIONS

a. Hours of Duty

- (1) During the period of an emergency furlough, full-time employees on compressed work schedules (CWS) and part-time will be deemed to be furloughed on the days and for the number of hours of each day in accordance with their last approved work schedule.
- (2) During non-emergency furloughs for budgetary short-falls or lack of work, all full-time employees furloughed will be furloughed for the same number of hours. Part-time employees will be furloughed in the same proportion as full time employees, for example, a part-time employee who works 20 hours a week will be furloughed for 50 percent of the number of hours that a full-time employee is furloughed.

b. Time In Non-Pay Status

- (1) Aggregate non-pay status not to exceed 22 work days will count toward the completion of the probationary period.
- (2) Furlough days count toward time-in-grade.
- (3) Within-grade increases will not be delayed because an employee is placed on furlough unless the employee is in non-pay status during his/her waiting period for:
 - (a) 80 hours for employees in Steps 1, 2, and 3;
 - (b) 160 hours for employees in Steps 4, 5, and 6;
 - (c) 240 hours for employees in Steps 7, 8, and 9.

c. Absence and Leave

- (1) An employee on furlough will receive annual and sick leave accruals unless he/she is in non-pay status for 80 hours or increments thereof during the leave year.

- (2) When an emergency furlough is required, employees on approved annual leave on the effective date of the furlough will have their annual leave canceled and they will be permitted to remain absent from work for the duration of the furlough.
 - (a) Upon the expiration of the furlough, employees who were on approved annual leave that did not extend beyond the end of the furlough will report to duty.
 - (b) Employees who have had annual leave canceled due to a furlough will be given every opportunity to reschedule that leave.
 - (c) Employees who have had annual leave canceled or who were prevented from taking prior scheduled annual leave due to a furlough and who make reasonable efforts to reschedule their leave and are denied an opportunity to take use or lose leave by Management are entitled to request restoration of any excess leave under exigency of the public service leave regulations. If regulatory requirements are met, management will grant requests under these circumstances.
- (3) When an emergency furlough is required, employees on approved sick leave on the effective date of the furlough will have their sick leave canceled and they will be permitted to remain absent from work for the duration of the furlough.
 - (a) Upon the expiration of the furlough, employees who were on approved sick leave the effective date of the furlough will report to duty unless their medical status precludes them from doing so.
 - (b) If an employee's medical status precludes him/her from reporting to work upon the expiration of the furlough, the employee must request sick leave in accordance with applicable procedures.
- (4) Employees may not use annual or sick leave on scheduled furlough days during a nonemergency furlough.
- (5) Furlough days do not count against Family Medical Leave absences and entitlements.
- (6) Employees in continuation of pay (COP) status will remain on COP status in accordance with Department of Labor regulations during a period of furlough.

d. Health and Life Insurance

- (1) Health insurance benefits will continue for up to 365 days in non-pay status.
 - (a) The Government shall continue to pay the employer share of the health insurance premium. (Refer to 5 C.F.R. 890.)
 - (b) The employee is responsible for his/her share of the health insurance premium. Payment of the employee's share of the premium during a furlough will be made in accordance with National Finance Center procedures. (Refer to 5 C.F.R. 890.)
- (2) Life insurance shall continue for up to 12 months in non-pay status at no cost to the employee. (Refer to 5 C.F.R. 870.)

e. Pay During Furlough

- (1) Employees who are required to report for duty during an emergency furlough will be compensated in accordance with applicable Statute and regulation.
- (2) Employees who are placed on emergency furlough because of a lapse of appropriations will be retroactively paid when appropriations are approved to the extent permitted by Statute and regulation. Absence without charge to leave shall be retroactively granted barring statutory prohibition, or actions that would be in violation of the Anti-Deficiency Act, 31 U.S.C. Para 665 (1976), or statements of congressional intent to the contrary.

f. Furlough will not be used in lieu of another adverse or disciplinary action.

g. Performance expectations shall be adjusted to take into account the effect of being away from the workplace on furlough.

5. FURLOUGH GRIEVANCES AND APPEALS

a. This section applies only to furlough grievances and appeals. Either Party may submit an institutional grievance over the interpretation of this agreement or its general application to the Director, Human Resources Division or the President of AFSCME Local 3925, as appropriate.

- (1) The grievance will be in writing and submitted within 5 work days of becoming aware of the issues giving rise to the grievance.
- (2) Within 5 work days of receipt of the grievance, representatives of the Parties will meet to attempt to mutually settle the grievance.

- (3) If settlement cannot be reached the Parties will jointly request the designation of a panel of not less than 3 nor more than 5 arbitrators from the Federal Mediation and Conciliation Service.
 - (a) Within 2 workdays of receipt of the list of arbitrators, representatives of the Parties will meet and select an arbitrator by alternately striking names. The loser of a coin toss will strike first.
 - (b) The arbitrator's authority will be limited to interpreting the agreement language and determining remedies for breach of this agreement. The Arbitrator is not empowered to fashion a remedy that decides the appeal of any individual employee.
 - (c) An expedited arbitration procedure will be used. The arbitration hearing will be scheduled for the earliest date available on the calendar of the arbitrator selected. The arbitrator shall be asked to issue a bench ruling, followed by a short written confirmation of his award.
 - (d) The arbitrator's fee shall be paid by the losing party. In the event of a split decision by the arbitrator, the arbitrator's fees shall be paid by the Parties in a proportion determined by the arbitrator.
- b. This grievance procedure does not cover individual employee appeals of furlough actions.

6. MISCELLANEOUS CONSIDERATIONS

- a. To the extent that Management has information available on contact points for unemployment compensation and other benefits to which employees being placed on furlough may be entitled, it will be provided to those employees.
- b. **Outside Employment:** Employees may accept outside employment during furlough days, as long as the work does not constitute an illegal conflict of interest.
- c. **Access to Union Office:** To the extent possible, the union officers and officials shall be allowed access to the designated union offices and related space during the time of a furlough, of whatever type and duration, in order to continue to fulfill the union functions and responsibilities dictated and delineated in and under the Federal Statute, 5 U.S.C. 5596(b), Chapter 71 of Title 5. The Union recognizes that the employer does not control access to the South Building.

ARTICLE 23: PERFORMANCE APPRAISAL

Section A. Evaluation of Work Performance

1. Performance appraisal is a continuous process. It is an integral part of a sound employee/supervisor relationship involving communication between employee and supervisor concerning requirements or job expectations, performance necessary to achieve them, and progress in terms of meeting stated objectives. Communication shall include on-going feedback to the employee about the level and quality of performance. Performance appraisal is a joint process designed to increase constructive communication between the supervisor and the employee, and to improve the employee's performance.
2. Performance plans including elements and standards shall be based on the requirements of the position.

Section B. Definitions

1. 5-tier appraisal system - A performance appraisal system that has five levels of performance: "Unacceptable, Marginal, Fully Successful, Superior, Outstanding"
2. Annual rating/rating of record - a written record of the appraisal of each performance element, and the overall performance rating. Annual ratings are ratings of record and are generally conducted once a year.
3. Appraisal - the act or process of reviewing and evaluating the performance of an employee against the described performance standards.
4. Appraisal rating period - For all employees is October 1 through September 30 of the following year.
5. Critical Performance Element - a component of an employee's job that is of sufficient importance performance below the "Fully Successful level would result in unacceptable performance in the employee's position.
6. Departure rating - an appraisal which is completed when an employee has served on a performance plan for at least ninety (90) calendar days and is leaving one permanent position for another. This is not a formal rating of record and is only to be considered by the rating official of record when determining the annual rating of record.
7. Electronic Approvals - a process that can include electronic signatures or embedded tracking information that indicates approval.
8. Opportunity to Improve (OTI) - a written notice informing an employee of performance deficiencies and of the action to be taken by the employee to improve performance during a specific time frame. (See Article 25, Unacceptable Performance)

9. Performance plan - the aggregation of all of an employee's written critical elements and performance standards.
10. Progress review - an interim review of the employee's progress toward achieving the performance standards and is not a rating.
11. Performance standard - the expressed measure of the level of achievement established by the Employer for the duties and responsibilities of a position.
12. Signature – Signature may be written or electronic. An electronic signature is a process that can include imbedded tracking information.

Section C. Performance Plans

1. Pursuant to 5 U.S.C. 4302, performance standards must, to the maximum extent feasible, permit the accurate evaluation of job performance on the basis of objective criteria related to the positions in question. Performance standards will be established on a common format.
2. Performance standards are expressed measures that the Employer expects to be achieved for each position element. The standards for all elements shall be defined at the Fully Successful. The definitions shall be specific, observable, obtainable, and measurable descriptions in terms of quantity, quality, timeliness, and manner of performance so as to provide a clear means of assessing at which level performance elements have been accomplished. Performance standards must be performance-related, not conduct related, nor personality related. In addition, they shall be stated at the level of performance expected for the grade held by the employee, and shall be based on factors within the control of the employee.
3. A performance plan consisting of performance elements and standards will be documented on a prescribed form.
4. In developing performance plans, the Employer encourages the input of employees who occupy such positions before implementing such performance plans. Employees shall be provided a minimum of five (5) work days to submit comments.
5. Performance plans shall be established and communicated to the employee in writing, or electronically, within thirty (30) calendar days after the beginning of the appraisal period. At the time the plan is provided to the employee(s), the Employer and employee shall discuss the plan and its elements in an attempt to avoid any subsequent misunderstandings about the expected performance.
6. An employee may request that his/her standards or elements be reconsidered in light of his/her comments or if the employee's duties have been significantly changed.

7. Employees permanently assigned to new positions or work units with different elements and standards or employees on details expected to exceed one hundred twenty (120) calendar days will be issued a performance plan within thirty (30) calendar days of entering the new position or starting the detail.

Section D. Performance Appraisal

1. 5 tier system: Performance plans describe the “Fully Successful” level of performance. Each element will be rated in accordance with the appropriate performance level as prescribed in the Agency’s performance plan.
2. When employees change from one permanent position (that they have been in for at least ninety [90] calendar days) to another permanent position or at the termination of a detail (that has lasted at least one hundred twenty (120) calendar days) the rating official will prepare feedback comments on the employee's performance and forward comments to the rating official of record. This departure appraisal will be issued within thirty (30) calendar days of the change in position and will be considered by rating official of record when formulating rating of record.
3. Excluded from coverage are those employees expected to be employed less than 90 days; those students employed as trainees under a work-study program or under temporary appointments and those in long term training programs.
4. All ratings given must be based on employee performance.
5. The minimum period upon which a rating should be based is ninety (90) calendar days of continuous service in a permanent position under the same performance standards. However, if at the end of the rating period, a bargaining unit employee has not served ninety (90) calendar days in the same position, under the same performance standards and elements, and under the same supervisor, the appraisal may be deferred until these conditions are met.
6. Official time spent performing Union functions will not be considered as a positive or negative factor when evaluating a critical element.

Section E. Ratings of Record

1. Bargaining unit employees will ordinarily be given a completed appraisal within thirty (30) calendar days of the end of the rating period except as otherwise stated in this Agreement or required by law. When a bargaining unit employee receives the rating, the Employer and the bargaining unit employee will meet and discuss the rating.
2. Employees may submit written or electronic statements of at any time during the rating period, whether or not they are requested by the supervisor.
3. When a performance rating is presented to an employee, the discussion will include the basis for the rating. The employee will be asked to sign the original paper document or

indicate receipt of the electronic rating document. The employee is expected to acknowledge receipt of the rating through a signature. This acknowledgement does not mean the employee agrees with the rating. When an employee refuses to sign the rating the appraisal official must record such refusal on the rating.

4. Employee's written objection to the ratings must be attached to the rating.

Section F. Progress Reviews

1. Informal discussions, including review of performance to determine progress and problems are a normal part of supervision and should occur throughout the appraisal period.
2. Progress reviews provide the opportunity to identify and resolve problems in the employee's performance. A formal discussion is required for the midyear review and end-of-year rating.
 - a. A progress review must be conducted whenever the employee reaches the approximate midpoint between the date the employee's performance plan was issued and the end of the appraisal period unless the length of this period is less than ninety (90) calendar days.
 - b. Additional progress reviews may be conducted.
 - c. Progress reviews will summarize the employee's performance in comparison to each element of the performance plan. Corrective actions will be identified, as appropriate.
 - d. Supervisors and employees are to indicate on the performance plan that progress review discussion(s) occurred.

ARTICLE 24: WITHIN GRADE INCREASES

Section A. Granting Within Grade Increases (WGI's)

If the employee is performing at the fully successful or results achieved level, the Employer shall grant a within-grade-increase (WGI) to the employee in the first pay period following completion of the required waiting period.

Section B. Notification Requirements for Denial of (WGI)

When a manager concludes that an employee's work is not at the fully successful or results achieved level the employee will be notified in writing, at least thirty (30) days in advance, that the WGI will be denied. The notification will state the element(s) and standard(s) that the employee has failed to perform at the fully successful or results achieved level, with examples of unsatisfactory performance, and advice as to what the employee must do to bring the performance to the fully successful or results achieved level. The notice will advise the employee of their reconsideration rights.

Section C. Reconsideration

If the employee's performance is lacking in a critical performance element, then the PIP/OTI process is followed. If the employee's performance is lacking in a non-critical element, then a WGI reconsideration decision is due thirty (30) calendar days from the date of the Employer's receipt of the employee's written request for reconsideration. Neither the substantive nor procedural aspects of WGI denials may be grieved until a reconsideration decision is due or issued.

ARTICLE 25: UNACCEPTABLE PERFORMANCE

Section A. Scope Definition

1. This Article applies only to employees who have completed their probationary or trial period. It does not apply to employees serving on a temporary appointment.
2. "Unacceptable" or "Results Not Achieved" performance ratings can only occur after Performance Improvement Plan/Opportunity to Improve (PIP/OTI) procedures have been followed, and the PIP/OTI was failed.
3. A personnel action resulting from "Unacceptable" or "Results Not Achieved" performance is defined as the reassignment, reduction in grade, or removal of an employee whose performance fails to meet established performance standards in one or more critical elements of the employee's position.

Section B. Procedural Requirements

Because performance appraisal is a continuous process, the following procedures, consistent with Chapter 43, Title 5, shall be followed at any time during the year when the Employer concludes that a bargaining unit employee's performance is "Unacceptable" or "Results Not Achieved".

1. There must be a discussion between the Employer and the bargaining unit employee for the purpose of:
 - a. advising the bargaining unit employee of specific shortcomings between observed performance in the performance element(s) under scrutiny and the performance standard(s) associated with particular element(s)
 - b. providing the bargaining unit employee with a full opportunity to explain the observed deficiencies.
 - c. the supervisor and employee shall provide each other with written notes documenting the meeting within 7 calendar days.
2. After the discussion, the Employer should determine what action is best suited to the particular circumstances.
 - a. Borderline Performance. Counseling, training, and closer supervision are the most commonly preferred options available. If borderline performance continues, the Employer may continue counseling, training, or closer supervision or the Employer may reassign the employee.
 - b. "Unacceptable" or "Results Not Achieved" Performance. "Unacceptable" or "Results Not Achieved" performance may lead to reassignment, reduction in

grade or removal. Bargaining unit employees must be given a reasonable period of time to demonstrate acceptable performance on the critical element(s) deemed "unacceptable" or "results not achieved". An employee must fail the PIO or OTI before they may receive an official rating of record of "unacceptable" or "results not achieved" for that element. If this occurs at the end of the rating period the appraisal period will be extended. Actions based on unacceptable performance of employees who have completed their probationary or trial period shall conform with the requirements and procedures set forth in this Article.

3. Performance Improvement Period (PIP) or Opportunity to Improve (OTI): Prior to initiating an action to remove or downgrade an employee, the employee must be given in writing, with a copy to the Union:
 - a. Notice of "Unacceptable" or "Results Not Achieved" performance in one or more critical elements of the employee's performance standards. The OTI or PIP is generally ninety (90) calendar days to bring performance to an acceptable level, but may be longer if needed. However, as a minimum, the OTI or PIP must provide at least sixty (60) calendar days to bring performance to an acceptable level. During the improvement period, the employee will be given the opportunity to work on those portions of the job that are unacceptable, but not to the exclusion of other work assignments. The supervisor will ensure that the employee receives adequate work time in order to improve the area that has been declared unacceptable.
 - b. Specific information as to how the supervisor will assist the employee in that effort;
 - c. Specific information as to what the employee must do to bring performance to acceptable level in that period;
 - d. A re-evaluation of the employee's performance biweekly for the period.
 - e. Normally within fourteen (14) calendar days after the end of the performance improvement period, the employee will be notified in writing whether the employee's performance is acceptable or whether the performance remains at the "Unacceptable" or "Results Not Achieved" level.
 - f. If the determination is that the employee's performance is "Unacceptable" or "Results Not Achieved", the Employer may reassign the employee upon written notice that includes a statement of grievance rights or, as set forth in 4 below, propose to remove or demote the employee.
4. Notice of Proposed Adverse Action: An employee whose reduction in grade or removal is proposed is entitled to thirty (30) calendar days advance written notice which informs the employee of the following:

- a. the nature of the proposed action;
- b. the specific instances of unacceptable performance by the employee on which the proposed action is based;
- c. the critical elements of the employee's position involved in each instance of unacceptable performance;
- d. the time to reply;
- e. the right to be represented by the Union or other representative;
- f. the right to make an oral and/or written reply and to receive a written decision with appeal rights.

Section C. Employee Response

1. The employee will be given the opportunity to respond orally and/or in writing prior to a decision. Any request for an oral reply must be submitted within 5 calendar days, written reply must be submitted within fifteen (15) calendar days.
2. If the employee elects to make an oral reply, the Employer may make a verbatim transcript of the oral reply and will provide a copy to the employee.

Section D. Adverse Action Decision Letter

1. If, after full consideration of the case, adverse action is warranted, the Employer will decide whether to remove or demote the employee.
2. The deciding official shall prepare a decision letter to the employee, with a copy to the Union, which shall include all of the following:
 - a. findings with response to each reason and specification listed in the letter proposing the action.
 - b. findings with response to each factual dispute, if any, raised by the employee's reply by stating the reasons why each factual dispute was rejected.
 - c. the effective date of the action. The effective date must be no earlier than ten (10) calendar days from the date of the letter.
 - d. written concurrence in the action by an official who is in a higher position than the official who proposed the action.

- e. notice that the employee has the option to appeal the action to the Merit Systems Protection Board (MSPB) or through the negotiated grievance procedure, but not both; and
 - f. notice that the employee will be deemed to have exercised his/her option to raise the matter under one procedure or the other at the time the employee timely files a written grievance or files a notice of appeal under the applicable MSPB procedure.
3. After compliance with reasonable accommodation requirements, if the employee is the subject of an action based on unacceptable performance related to a disability, and the employee is eligible, and files for disability retirement and the Employer recommends approval, the Employer will delay the action to allow a determination to be made concerning the disability retirement. When an application for disability retirement of an employee is approved, the employee, at his/her option, may use any available sick leave.

Section E. Time Extensions

Except for the advance notice period in Section B. 4, any of the time limits set forth in this Article may be extended or waived by mutual agreement of the parties.

ARTICLE 26: EMPLOYEE RECOGNITION AND AWARDS

FSA Only

- A. The parties agree that an employee recognition system is a necessary and useful mechanism through which employees' significant accomplishments shall be recognized. Employees and managers are strongly encouraged to take an active part in the system by recognizing and rewarding contributions which increase productivity, empower employees, and promote team building. Anyone may be the recommending individual for a Superior Accomplishment Award.
- B. The parties will follow the guidance of 5-PM Part 6 (Rev. 11) Amendment 1 issued 8-18-09 ("Recognizing Performance").
- C. On an annual basis FSA will publish the names of employees in the Washington, DC local commuting area who are recipients of all types of awards as listed in 5 PM Part 6 (Rev. 11) Amendment 1 issued 8-18-09 ("Recognizing Performance").

RMA Only

- A. The parties agree that an employee recognition system is a necessary and useful mechanism through which employees' significant accomplishments shall be recognized. Employees and managers are strongly encouraged to take an active part in the system by recognizing and rewarding contributions which increase productivity, empower employees and promote team building.
- B. The parties will follow the guidance of USDA Departmental Regulation Number 4040-5451-1: USDA Employee Awards and Recognition Program (<http://www.ocio.usda.gov/directives/doc/DR4040-451.htm>). On an annual basis RMA will publish names of employees in the Washington DC local commuting area who are recipients of performance based awards including performance, extra effort and spot awards.

ARTICLE 27: EEO AND PROHIBITED PERSONNEL PRACTICES

Section A. Purpose

1. For the purpose of this Article and in accordance with 5 U.S.C. Section 2302, “prohibited personnel practice” means any action described in Section B below.
2. For the purpose of this Article, “personnel action means”
 - a. an appointment
 - b. a promotion
 - c. an action under Chapter 75 of the Civil Service Reform Act of 1978
 - d. a detail, transfer, or reassignment
 - e. a reinstatement
 - f. a restoration
 - g. reemployment
 - h. a performance evaluation under Chapter 43 of the Civil Service Reform Act of 1978
 - 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, and
 - j. any other significant change in duties or responsibilities which is inconsistent with the employee's salary or grade level.

Section B. Prohibited Practices

1. Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority:
 - a. Discriminate for or against any employee for employment:
 - (1) on the basis of race, color, religion, sex, or national origin, as prohibited under Section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16);
 - (2) on the basis of age as prohibited under Section 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631.633a);

- (3) on the basis of sex, as prohibited under Section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206[d]);
 - (4) on the basis of handicapping condition, as prohibited under Section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791);
 - (5) on the basis of marital status or political affiliations, as prohibited under any law, rule, or regulation.
- b. Solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of:
- (1) an evaluation of the work performance, ability, aptitude, or general qualifications of such individual; or
 - (2) an evaluation of the character, loyalty, or suitability of such individual.
- c. Coerce the political activity of any person (including the providing of any political contribution or service) or take any action against any employee as a reprisal for the refusal of any person to engage in such political activity;
- d. Deceive or willfully obstruct any person with respect to such person's right to compete for employment;
- e. Grant any preference or advantage not authorized by law, rule, or regulation to any employee (including defining the scope or manner of competition or the requirement for any position) for the purpose of improving or injuring the prospects of any particular person for employment;
- f. Appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in 5 U.S.C. 2302, Section 3110[a][3]) of such employee if such position is in the Agency in which such employee is serving as a public official (as defined in 5 U.S.C. 2302, Section 3110[a][2]) or over which such employee exercises jurisdiction or control as such an official;
- g. Take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee because of:
- (1) any disclosure of information by an employee which the employee reasonably believes evidences:
 - (a) a violation of any law, rule, or regulation, or

- (b) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety; if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs; or
 - (2) any disclosure to the U. S. Office of Special Counsel, the Merit Systems Protection Board, the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee reasonably believes evidences:
 - (a) a violation of any law, rule, or regulations, or
 - (b) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.
- h. Take or fail to take, or threaten to take or fail to take, any personnel action against any employee because of:
 - (1) the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation;
 - (2) testifying for or otherwise lawfully assisting any individual in the exercise of any right referred to Subparagraph h(1);
 - (3) cooperating with or disclosing information to the Inspector General of an agency, or the Special Counsel, in accordance with applicable provisions of law; or
 - (4) for refusing to obey an order that would require the individual to violate a law.
- i. Discriminate for or against any employee on the basis of conduct which does not adversely affect the performance of the employee or the performance of others; except that nothing in this paragraph shall prohibit an agency, from taking into account in determining suitability or fitness, any conviction of the employee for any crime under the laws of any state, the District of Columbia, or the United States, or
- j. Knowingly take, recommend, or approve any personnel action if taking of such action would violate a veteran's preference requirement: or knowingly fail to take, recommend, or approve any personnel action if the failure to take such action would violate a veteran's preference requirement; or

- k. take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in 5 U.S.C. 2301.
2. Nothing in this Section shall be construed to authorize the withholding of information from Congress or the taking of any personnel action against an employee who discloses information to Congress.

Section C. Equal Employment Opportunity

1. The Employer affirms its commitment to the policy of providing equal employment opportunities to all employees; and of prohibiting discrimination because of race, color, religion, sex, sexual orientation, national origin, handicapping condition, age, marital status, lawful political affiliation, and reprisal for previous Equal Employment Opportunity (EEO) activity.
2. The Employer will remain vigilant in seeking to identify and eliminate any internal policy, practice or procedure which has the purpose or effect of impermissibly denying equal employment opportunities.
3. The Employer will also cooperate and work with the appropriate Civil Rights and disability employment program managers to resolve any discrimination inquiries or complaints.
4. The parties agree that equal employment opportunity shall be administered in accordance with Title 7 of the Civil Rights Act of 1964, 29 CFR Part 1614, Title 5 U.S.C., Executive Order, AND other applicable rules and regulations.
5. Nothing in Section B 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 in the civil service under:
 - a. Section 717 of the Civil Rights Act of 1964, prohibiting discrimination on the basis of race, color, religion, sex, or national origin;
 - b. Sections 12 and 15 of the Age Discrimination in Employment Act of 1967, prohibiting discrimination on the basis of age;
 - c. Under Section 6(d) of the Fair Labor Standards Act of 1938, prohibiting discrimination on the basis of sex;
 - d. Section 501 of the Rehabilitation Act of 1973, prohibiting discrimination on the basis of handicapping condition;

- e. The provisions of any law, rule, or regulation prohibiting discrimination on the basis of marital status or political affiliation.
6. The Union may make recommendations about the Affirmative Action Plan. Copies of the plan will be provided to the Union and to each employee upon request.
7. The Union agrees to assist and cooperate with the Employer in assuring equal employment opportunity. The Union will promptly advise the Employer of any problems or potential problems it perceives in the areas of equal employment opportunity or reasonable accommodation. This will include meeting to discuss measures being taken in this area and possible solutions to problems as they occur.

Section D. Due Process

1. An employee affected by a prohibited personnel practice or who believes that he or she has been discriminated against on the grounds set forth in this Article, may file either a grievance under the provisions of this Agreement (Article 38), or a complaint under an appropriate complaint/appeals procedure, but may not file under more than one procedure.
2. Any employee who wishes to file or has filed a grievance or complaint shall be free from coercion, interference, and reprisal, and shall be entitled to expeditious processing of the complaint within time limits prescribed by regulations or this Agreement.

Section E. Representation

1. Whether the employee chooses to file under EEO procedures or under the negotiated grievance procedure (Article 38), employees have a right to be represented or to be unrepresented.
2. For complaints filed under EEO procedures, the representative may be a Union representative, another employee, or an attorney.
3. For complaints filed under the negotiated grievance procedure (Article 38), the representative is a Union representative or a Union-designated representative. If the employee elects to process the grievance without representation, the Union shall have the right to be present at any meeting between the Employer and the employee concerning the grievance, to ensure fair treatment and procedural adherence to the terms of Article 38.

Section F. EEO Information

1. EEO complaint procedures will be posted on bulletin boards on each wing and floor occupied by bargaining unit employees. The Union will also be given a copy of the complaint procedures.

2. The Employer shall post and maintain the names, phone numbers, and work locations of EEO staff and counselors on official bulletin boards on each floor.

Section G. EEO Advisory Committee

1. The Employer agrees to negotiate with the Union, in accordance with law and this Agreement.
2. The Union will make as many nominations as it wishes for the EEO Committee. The Employer will recommend that the Administrator select at least 6 members and 6 alternates. In the event the Administrator does not select any of the Union nominations, the Union will make additional nominations to complete the 6 members and 6 alternates.

Section H. Statistical Summaries

See Article 39 for EEO reports.

Section I. Obligations

Where the development and implementation of the Employer's Equal Employment Opportunity plans and programs involve changes in personnel policies, practices, or working conditions, the Employer will fulfill its bargaining obligations with the Union under 5 U.S.C, Chapter 71, Labor-Management Relations and this Agreement.

ARTICLE 28: DISCIPLINARY AND ADVERSE ACTIONS

For the purposes of this agreement:

1. A "suspension" is defined as the placing of an employee in a temporary status without duties and pay for disciplinary and adverse actions.
2. A "disciplinary action" is defined as a letter of official reprimand or a suspension of 14 calendar days or less.
3. An "adverse action" is defined as a suspension of more than 14 calendar days, reduction in grade, or pay or removal.
4. A "reprimand" is defined as a written document describing the conduct or other deficiency giving rise to the reprimand, and provides official notice that a failure to correct the conduct or deficiency, or future misconduct, may result in more severe action.
5. A "work day" is defined as any day the Agency is open for business.

Section B. General Provisions

The rights afforded under this Section are not applicable to temporary employees or students with Not to Exceed (NTE) dates.

1. No bargaining unit employee will be disciplined and/or subject to adverse actions except for such cause as will promote the efficiency of the Service. The Employer agrees that any disciplinary and/or adverse action taken will be appropriate to the specific offense and in accordance with applicable law, rules and government-wide regulations. In establishing penalties for employee discipline, the employer will apply agency regulations, including the USDA penalty guide.
2. Unless otherwise stated within this article disciplinary/adverse actions will be administered as timely as possible.
3. Except for emergency actions, in any disciplinary action or adverse action, the employee will be furnished with a copy of the material relied upon by the Employer to take the action at the time of the notice of the proposal of such action.
4. Employees may grieve disciplinary and adverse actions, in accordance with terms of Article 38 of this contract.
5. When appropriate, parties are encouraged to enter into an alternative discipline agreement by mutual consent.

6. Previous Consideration: In determining the appropriateness of penalties for misconduct, the Employer will consider the relatedness and recency of prior offences as well as other mitigating measures in accordance with relevant case law and agency regulations.

Section C. Reprimand

1. Reprimands shall be maintained in the employee's Official Personnel Folder (OPF) for a period not to exceed two (2) years.
2. The period of retention may be reduced when the employee's supervisor determines that circumstances warrant a shorter period. Such determination may be made in response to an employee's request to remove the reprimand from the employee's OPF.
3. Reprimands, which have been overturned as a result of grievance or other authority, shall be immediately removed from all official personnel records.

Section D. Disciplinary Actions

1. Cause:
 - a. The Employer may suspend an employee for 14 calendar days or less for such cause as will promote the efficiency of the service including discourteous conduct to the public confirmed by an immediate supervisor's report of four such instances within any one year period or any other pattern of discourteous conduct.
 - b. The Employer may not take a suspension against an employee on the basis of any reason prohibited by 5 U.S.C. 2302.
2. Procedure: When the Employer proposes to suspend an employee for 14 calendar days or less, the Employer will:
 - a. notify the employee in writing at least 15 work days prior to the proposed suspension date of the following:
 - (1) the proposed action;
 - (2) the specific reasons for the proposed action;
 - (3) the opportunity to review the evidence that is relied upon to support the charges;
 - (4) the time to reply and furnish affidavits and other documentary evidence in support of the reply;
 - (5) the right to be represented by the Union;

- (6) the right to make an oral and/or written reply within seven (7) work days from the receipt of the proposed action. Note: This period of 7 work days will not start until the material referenced in Section B.3. is provided.
- (7) issue a final decision after receipt of the written and/or oral reply, or the termination of the advance written notice period. This letter will state which reasons and specifications are sustained and will address factual disputes, if any, raised in the employee's reply by stating the reasons why each factual dispute was rejected.

Section E. Adverse Actions

1. Cause:
 - a. The Employer may suspend an employee for more than 14 calendar days, reduce the employee's grade, or remove an employee only for such cause as will promote the efficiency of service.
 - b. The Employer may not take a suspension for more than 14 calendar days against any employee, reduce the employee's grade, or remove an employee on the basis of any reason prohibited by 5 U.S.C. 2302.
2. Procedure: Unless otherwise provided by law [e.g. the crime provision of 5 U. S. C. 7513 (b)] or government-wide regulation, the Employer will:
 - a. notify the employee in writing at least 30 calendar days prior to the proposed date of suspension, reduction in grade, or removal of the following:
 - (1) the proposed action;
 - (2) the specific reasons for the proposed action;
 - (3) the opportunity to review the evidence that is relied upon to support the charges;
 - (4) the time to reply and furnish affidavits and other documentary evidence in support of the reply;
 - (5) the right to be represented by the Union;
 - (6) the right to make an oral and/or written reply within ten (10) work days from the receipt of the proposed action. Note: This period of 10 work days will not start until the material referenced in Section B.3. is provided.
 - b. issue a final decision after receipt of the written and/or oral reply, or the termination of the advance written notice period. This letter will state which reasons and

specifications are sustained and will address factual disputes, if any, raised in the employee's reply by stating the reasons why each factual dispute was rejected.

- c. inform the employee, in writing, of his/her option to appeal the action to the Merit Systems Protection Board or grieve through the negotiated grievance procedure, but not both, and will inform the employee that he/she will be deemed to have exercised his/her option to raise the matter under one procedure or the other at the time the employee timely files a written grievance or files a notice of appeal under the applicable MSPB procedure.

3. Action by the Deciding Official:

- a. After carefully considering the proposed letter, evidence of record, and the employee's response, if any, including any mitigating factors, the deciding official shall decide:
 - (1) to withdraw the proposed action; or
 - (2) to institute a lesser action; or
 - (3) to institute the proposed action.
- b. Stay of Action: At the request of the employee, the effective date of the action may be stayed up to 10 calendar days from the date of the decision letter.
- c. The deciding official must be a higher-ranking official than the official proposing the action.

Section F. Time Limit Extensions

Except for time limits subject to statutory or regulatory requirements any of the time limits set forth in this Article may be extended or waived by mutual agreement of the parties.

Section G. Arbitration

See Article 39.

Section H. Evidence

The Parties recognize that there is no requirement to include the evidentiary materials with any copies of proposed final decisions to the Union. It is the employee's responsibility and decision to share such information with the Union.

ARTICLE 29: WAIVER OF OVERPAYMENT

Section A. Processing Requests

1. When an employee receives an overpayment of pay and allowances, they may request a waiver of overpayment in accordance with applicable law, rule, and regulation.
2. The Employer will process all requests for waiver of overpayment as expeditiously as practicable.
3. To the extent possible, if an employee has applied for a waiver of overpayment, no overpayment will be collected until the employee's application for waiver of overpayment has been decided.
4. If a requested overpayment is denied, the employee will be notified of the reason(s) for the denial in writing.

Section B. Repayment

1. When an employee is not granted a waiver of overpayment, the employee will be permitted to make repayment in accordance with applicable law, rule, and regulation.
2. If an employee terminates employment with the Employer prior to the liquidation of any overpayment described in this Article, the Employer retains the right to satisfy any outstanding balance from any funds due to the employee.

ARTICLE 30: RETIREMENT COUNSELING AND RESIGNATION

- A. Employees may visit agency retirement counselors without charge to leave. Employees within 5 years of retirement eligibility may attend retirement programs upon supervisory approval.
- B. The Agency agrees to make available an annual training program on retirement issues which any interested employee may attend. In the absence of such a program, employees within five (5) years of retirement eligibility may be afforded the opportunity to attend other similar OPM-sponsored training or events. Other employees may be permitted to attend these sessions subject to space or budget considerations or limitations.
- C. Upon request, the Employer will provide a statement setting forth an estimate of the employee's monthly compensation and options available. The Employer reserves the right to limit such requests to once a year.
- D. An employee may withdraw a resignation at any time prior to its effective date provided the withdrawal is communicated in writing to the Employer.

ARTICLE 31: OUTSIDE EMPLOYMENT

For outside employment, contact Human Resources, Ethics Advisor.

ARTICLE 32: EMPLOYEE ASSISTANCE PROGRAM

Section A. Objective

The Employer and the Union support the objective of assisting employees whose job performance is adversely affected by problems including, but not limited to, alcoholism, drug abuse, duress, financial or legal concerns, marriage or family concerns, or other personal problems. Given this common objective, the Employer agrees to continue to support the Departmental Employee Assistance Program (EAP).

Section B. Union Cooperation

The Union agrees to cooperate fully with the Employer in an attempt to rehabilitate affected employees who accept assistance made available under the provisions of the Program.

Section C. Confidentiality

Employee participation in the EAP will be strictly confidential.

Section D. Annual Notification to Employees

The Employer will continue to issue an annual notice to employees explaining the Program and the services it provides.

Section E. Program Participation

1. The parties recognize that the Program is designed to deal with problems at an early stage when the situation may be more likely to be correctable. If an employee participates in the EAP, the responsible supervisory official will give consideration to this fact in determining any appropriate disciplinary and/or adverse action.
2. The Employer will not take any action against an employee for seeking assistance through the EAP. Participation in the Program will not prevent the Employer from proposing and taking conduct and performance-based actions.
3. EAP services will be made available to those employees who request and need them. The Employer agrees to assist employees by providing information and encouragement to use counseling services as needed. Should counseling appointments require absence from the workplace; the employee will make the appropriate advance arrangements with their supervisor.
4. When the Employer determines that a conduct or performance problem exists which may be drug or alcohol related and refers the employee to EAP, the Employer may take appropriate disciplinary or adverse action, consistent with fairness and the obligation to provide reasonable accommodation.

Section F. Leave During Duty Hours

Absences during duty hours for counseling, assessment, referral, rehabilitation, or treatment must be charged to sick, annual, or leave without pay in accordance with leave regulations and this Agreement.

Section G. New Hire Orientation

Newly hired employees will receive appropriate EAP information and materials during orientation.

ARTICLE 33: HEALTH AND SAFETY

Section A. General

1. To the extent of its authority and consistent with applicable law, Executive Order 12196, OSHA requirements, as well as other applicable health and safety codes, provide and maintain safe and healthful working conditions for all employees. The Employer and the Union will cooperate to that end and will encourage employees to work in a safe manner.
2. Pursuant to applicable law and regulation, no employee shall be subject to restraint, interference, coercion, discrimination, or reprisal for filing a report of an unsafe or unhealthful working condition, or other participation in Agency occupational safety and health program activities, or because of the exercise by such employee on their behalf or another's of any right afforded by Section 19 of the Occupational Safety and Health Act, Executive Order 12196, or 29 CFR 1960. These rights include, among others, the right of an employee to decline to perform their assigned task because of a reasonable belief that, under the circumstances the task poses an imminent risk of death or serious bodily harm coupled with a reasonable belief that there is insufficient time to seek effective redress through normal hazard reporting.

Section B. Employer Action

1. The Employer will work with all persons, entities, or organizations which own and/or control work space to which bargaining unit employees are assigned to ensure that healthy and safe working conditions are maintained and to ensure compliance with applicable laws, rules, and regulations, and this agreement. The Employer will provide feedback to employees and the Union regarding the results of any action taken.
2. The Employer agrees:
 - a. to provide information concerning Federal Employee Health Benefits and Life Insurance Programs, pre-retirement planning, retirement benefits information, and occupational health services. (See also Article 30 Retirement Counseling and resignation)
 - b. to make information available to employees on health benefits open season activities and maintain copies of offered health plans for review upon request.
 - c. to work with the building manager, the Department, GSA and private lessors, as applicable, to have safe electrical equipment, and adequate light and ventilation in all work areas;
 - d. to provide information about ergonomic hazards and how to prevent ergonomic related injuries.

- e. to grant periodic relief to employees using VDTs (video display terminals) for extended periods during the course of a day, by interspersing other work tasks requiring less visual concentration.
- f. to provide, to the extent possible, safety devices, such as glare screens, printer sound covers, etc., which will promote greater safety and comfort for VDT operators.
- g. to follow the Americans With Disabilities Act and GSA regulations in providing facilities appropriate and adequate to accommodate the needs of handicapped employees;
- h. to inform the Union of any decision to introduce new office equipment into the work place so that the Union may, thereafter, request bargaining concerning any appropriate arrangements required because of the new equipment;
- i. to obtain and provide to the Union copies of applicable regulations and/or fire safety inspection certificates
- j. to make available for review by the Union all safety reports required by law, regulation, and/or this agreement.

Section C. Union Action

The Union will encourage all bargaining unit employees to work safely with due consideration for the safety, health and comfort of all fellow employees. To avoid preventable unhealthy or unsafe working conditions, the Union will encourage respect and care by bargaining unit employees for the Employer's facilities and equipment and their own work environment.

Section D. Employee Reports of Unsafe or Unhealthy Working Conditions

1. Each bargaining unit employee is encouraged to report any unsafe or unhealthy working conditions to his or her immediate supervisor as soon as any such conditions come to his or her attention.
2. The Employer will investigate the reported condition as soon as is practicable, and may refer the situation to
 - a. the appropriate FSA or USDA office;
 - b. GSA,
 - c. the Occupational Safety and Health Administration (OSHA) of the Department of Labor,
 - d. the Public Health Service (PHS) Health Unit, or

- e. other appropriate official including the municipal fire marshal or building inspector for further investigation.
3. The Union will be given an opportunity to accompany any inspector who responds on such a complaint during the inspector's physical inspection of the workplace. The Union representative will be granted official time for this purpose.
 4. The Employer will respond within three (3) working days to an employee report of hazardous conditions and will report within 30 calendar days of plans and actions taken regarding the hazard. No employee will be unreasonably required to continue working in a situation determined to pose the threat of imminent danger.
 5. If an employee is assigned duties which he/she reasonably believes could possibly endanger his/her health or well-being, the employee will immediately notify his/her immediate or second-line supervisor of the situation.
 - a. If the supervisor cannot solve the problem and agrees with the employee, the supervisor will, under normal circumstances, delay the assignment and refer the matter through the proper channels for appropriate action, unless the delay would unduly interfere with the Employer's operation.
 - b. When the supervisor does not agree with the employee's concerns, the employee has the right to consult the Union and the right to file a report in accordance with the applicable agency or departmental regulations.

Section E. Occupational Injury or Illness

1. Employees who become injured or occupationally ill in the performance of duties shall report the injury or illness to their supervisor immediately.
2. The supervisor will refer the employee to the Human Resources Management Division, the Health Unit, or other medical service as appropriate and as permitted by applicable law, rule or regulation.
3. The supervisor shall also advise the employee to contact HRD to obtain information on benefits under the Federal Employees' Compensation Act.
4. The Employer shall cooperate in promptly processing all paperwork in connection with compensation claims.

Section F. Occupant Emergency Plan

Each building in which bargaining unit employees are headquartered will have an Occupant Emergency Plan. The Employer will issue an annual reminder of the Occupant Emergency Program Plan.

Section G. First-Aid

1. The Employer will provide first-aid kits at FSA building locations for use when Health Unit facilities are not available. Employer-designated employees will ensure kits are maintained and will notify a Health Unit nurse when replacements of supplies are needed. All employees will have reasonable access to these supplies; however, employees should use Health Unit services when available.
2. The Employer may provide training to interested employees for cardiopulmonary resuscitation (CPR) during duty or non duty hours. Training during scheduled work days will be considered regular duty hours for approved participants.

Section H. Health Unit

1. The Employer currently participates in the Federal Employee Occupational Health (FEOH) program administered by the Public Health Service, U.S. Department of Health and Human Services. The Employer agrees for the life of this Agreement to continue participating in the FEOH program and other Departmental health and wellness programs (e.g., screenings, classes, and informational materials).
2. In the event an employee becomes incapacitated on the job, the Employer will notify Health Unit personnel who may call for emergency transportation if deemed appropriate.

Section I. Smoking Cessation Programs

1. The Agency will allow up to two hours Administrative leave per pay period on duty time for employees to voluntarily attend the smoking cessation program of their choice. This opportunity will be made available on a one time basis for each employee. Employees who wish to attend smoking cessation programs during work hours will request on a SF-71 in advance and provide the following information to their supervisor: the purveyor of program, the schedule of classes, and the total hours to be spent in the classes. The supervisor shall approve the request unless the approval would interfere with the mission and function of the Agency. This program is generally limited to a maximum of 12 weeks.
2. Policy
 - a. All interior space in the parties' headquarters facilities shall be smoke free.
 - b. All government owned or leased motor vehicles shall be smoke free and everyone who occupies such vehicles including but not limited to, employees, contractor employees, and visitors shall refrain from smoking while occupying said vehicles
 - c. Outdoor smoking areas that are designated by the Department, as of December 1, 1997, shall remain available for smoking by employees. These areas provide a

measure of protection from the weather and if abolished, except as covered by 2d, the employer shall reenter negotiations over the outdoor smoking areas.

- d. Smoking areas closed during renovation work will be considered a temporary change and will not abrogate this agreement.

Section J. Space and Electricity

The Employer agrees to provide space and electrical power within the bargaining unit work area and to allow employees reasonable time to use refrigerators, microwaves, water coolers, coffee pots, and the like, provided that the employees purchase such items.

ARTICLE 34: REORGANIZATION AND WORKPLACE MOVES

Section A. Definitions

1. A “reorganization” is defined as the establishment, abolishment, transfer, or consolidation of functions; or the assignment of new or realignment of existing organizational reporting lines of an office.
2. A “workplace move” is defined as any change in an employee’s office location or modification to existing office space.

Section B. Reorganization

1. Notification Proposal
 - a. Management will notify the Union and the employees when reorganization is under consideration.
 - b. Management will present a written draft proposal to the Union and other affected employees to review.
 - c. Management will announce and schedule at least five days in advance an employee-management meeting at the level affected by the proposal. At the same time, Union representatives will be notified and included. At the meeting management will answer questions and receive Union representative and employee input.
 - d. The Union will have 10 workdays from the date of the meeting to review the information presented in the meeting and submit comments on the package.
2. Evaluation Stage
 - a. Management will take the comments received from the Union and the affected employees and develop a formal reorganization proposal to Union representatives and affected employees. This proposal will include a background statement, which bargaining unit employees are affected, old & proposed organizational charts (including grade and job series changes), physical location of employees, target dates for implementation, management’s point of contact, and any other necessary documents.
 - b. Upon receipt of the proposal, the Union within 10 workdays will gather bargaining unit employee input, request additional reasonable information, and /or respond to management.
 - c. Management shall meet all reasonable Union requests for relevant additional information, and, if needed, the evaluation period may be extended by mutual consent for up to an additional 10 work days.

d. Management may similarly respond to concerns of other affected employees.

3. Determination Stage

a. Within 10 workdays of receipt of the formal reorganization proposal, the Union will respond to management with one of the following options. Management shall meet all reasonable Union requests for relevant additional information, and, if needed, the determined period may be extended by mutual consent for up to an additional 10 workdays.

(1) Proceed With Plan

(2) Proceed With Specified Changes

(3) Formal Negotiations

b. Management will proceed accordingly unless formal negotiations are timely requested by the Union.

4. Implementation

a. Management will implement the reorganization plan in accordance with existing personnel rules and labor relations law.

b. Union and management will discuss any additional changes proposed after implementation begins.

c. By mutual consent, Union and management may request a facilitated session to address significant additional changes to the reorganization plan.

Section C. Workplace Moves

1. Steps and/or time frames outlined below may be modified or waived by mutual consent of the Union representatives and Management.

2. Written Proposal

a. After the initial floor plan is drafted, management will notify the following people of the need to schedule meetings/discussions with a bargaining unit employee(s) on negotiable workplace moves:

(1) relevant Union representative(s) (i.e. AFSCME Chief Steward, President) and

(2) servicing labor relations (LR) specialist (if available).

- b. Managers are encouraged to hold additional meetings with Union representatives and affected employees as needed.
 - c. Management will schedule a pre-decisional meeting at a mutually convenient time for the assigned Union representative(s), affected bargaining unit employees, and LR specialist (when available).
- 3. At least five work days in advance of the meeting management will provide a written information package to the Union representative and the LR specialist. In the case of office moves, a current floor plan and a proposed floor plan will be prepared that shows:
 - a. proposed locations of affected employees
 - b. proposed location of equipment
 - c. the needs of people with disabilities have been addressed
 - d. Other material relevant to the workplace change to clarify for the Union representative(s) the impact of change should be provided, if available
- 4. At the meeting, Management will provide the latest written and verbal information about the proposed change.
 - a. During the meeting, the Manager and the Union representative(s) will agree upon a deadline for timely submission, not to exceed 15 workdays, of bargaining unit employees' written comments/suggestions on the proposal.
 - b. After the meeting, bargaining unit employee's written/verbal comments/suggestions will be channeled through the Union representative(s) to the FSA/RMA manager and the LR specialist (if involved).
 - c. Management will determine how comments/suggestions are to be incorporated into its final proposal.
- 5. Evaluation Stage
 - a. Management will present a complete proposed final workplace move plan to Union representatives and affected employees. The plan will include:
 - (1) detailed current and proposed floor plan with:
 - (2) employee location
 - (3) desk location
 - (4) equipment location

- (5) before and after room square footage for each bargaining unit employee
- (6) a statement on how the needs of people with disabilities have been taken into account
- (7) a statement on how employee comments are being addressed
- (8) a copy of the MSD Project Plan with tentative action dates.

Note: Managers are encouraged to provide Union representatives with copies of before and after MSD Computer Aided Design CAD floor plans.

- (9) employee grade
 - (10) employee service computation date.
- b. Upon receipt, the Union will, within 10 workdays, gather bargaining unit employee input, request additional reasonable information, and /or respond to management.
 - c. Management shall meet all reasonable Union requests for relevant additional information, and, if needed, the evaluation period may be extended by mutual consent for up to an additional 10 workdays.
 - d. Management may similarly respond to concerns of other affected employees.

6. Determination Stage

After evaluating the workplace move plan, within the specified time frame in 5 b, the Union will respond to management with one of the following options:

- a. Proceed With Plan
- b. Proceed With Specified Changes
- c. Formal Negotiations

7. Implementation and Follow-up

- a. Management will proceed with implementation of the workplace move plan. unless formal negotiations are timely requested by the Union. By mutual consent, Union and Management may request a facilitated session to address significant additional changes to the workplace move plan.

- b. In the event employees will be displaced for more than one day or uncontrollable delays occur in moving employees to a new location, Management will ensure the following:
- (1) provide an alternative work site (including telework options) where employees can reasonably be expected to accomplish assigned work;
 - (2) provide for assignments outside of the employee's normal duty station (for example, scheduling temporary duty assignments to coincide with the move); or
 - (3) in the event that management is unable to provide an alternative worksite or other assignments, the displaced employee will be placed on administrative leave until management can provide a worksite or other assignment as noted as above or the delay and/or displacement is resolved.
 - (4) during implementation and after completion of the workplace move, MSD representatives, managers, affected employees and Union representatives will follow-up and work together to resolve any problems directly related to the move itself, i.e., a move "punch list" that includes items such as touch-up paint, repair of items broken during move, repair of torn carpet, etc.

ARTICLE 35: COMMERCIAL ACTIVITIES

Section A. Purpose and Definitions

1. This article pertains to work performed or that could be performed by existing bargaining unit employees who are negatively impacted by commercial contracting pursuant to applicable law and regulations. Each party recognizes its obligation to serve its internal and external customers efficiently and economically and undertakes to fulfill this obligation by comparing the costs of outside source contracting and in-house performance.
2. An Agency function is a function which is so intimately related to the public interest as to mandate performance by Agency employees. These functions include those activities which require either:
 - a. the exercise of discretion in:
 - (1) applying statutory mandates, or
 - (2) following regulatory authority, or
 - (3) promulgating policy, or
 - b. the use of value judgment in:
 - (1) making program decisions, or
 - (2) regulating agricultural conservation, or
 - (3) encouraging soil and water conservation, or
 - (4) administering farm and collateral loans, or both, or
 - (5) managing risk, or
 - (6) disbursing revenue, or
 - (7) controlling Treasury accounts, or
 - (8) financing Treasury borrowing, or
 - (9) administering public funds, or
 - (10) analyzing benefit/cost issues, or
 - (11) designing user-friendly automated systems, or
 - (12) directing Federal employees.
 - c. other functions not in competition with the commercial sector.
3. A Procurement Forecast is a planning document submitted to the Office of Small Disadvantage Business Utilization for the propose of identifying Agencies planned procurements.
4. A benefit/cost analysis is the A-76 process of developing an estimate of the benefit of Agency performance of a commercial activity and comparing it to the costs to the Agency for performance of the activity; and, further, comparing the benefit/cost of conversion to contract with the benefit/cost of conversion to in-house.
5. A Commercial Activity is an agency-provided service which could be obtained from a

commercial source. A commercial activity is not a Governmental function. A commercial activity also may be part of an organization or a type of work that is separable from other functions or activities and which is suitable for performance by contractors outside the Agency.

6. Statement of Work (SOW) is a description of the work to be performed. An SOW may become part of a Request for Proposals to which a contractor may respond.
7. “Interested party for the purpose of filing a protest” (See Federal Acquisition Regulation Part 33.1) means an actual or prospective offer or whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.
8. Sole source acquisition means a contract for the purchase of supplies or services that is entered into by an agency after soliciting and negotiating with only one source.
9. Program office is the office that initiates the procurement request.

Section B. Procurement Forecast

The Agencies will post all Procurement Forecasts on the Office of Small and Disadvantaged Business Utilization website. Program offices will respond within 10 work days of the date of a union request for information regarding a procurement forecast before the final acquisition plan is approved.

Section C. Contract Modifications

1. The Program Office will provide notification to the Union of any potential contract modifications to on-going contracts that may impact Bargaining Unit employees.
2. The Program Office will respond to the Union’s information request prior to the finalization of the modification.

Section D. Solicitation

1. The union does not meet the definition of an “interested party for the purpose of filing a protest” unless it is under A-76. “Interested party for the purpose of filing a protest” means an actual or prospective offer or having submitted a proposal for evaluation whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.
2. Prior to release of a request for solicitation, the Union may request the opportunity to timely negotiate impact and implementation of such a decision on existing bargaining unit employees except in cases of overriding exigency such as health, safety or security.

3. The Union will only request to see the Statement of Work or Performance Work Statement in advance of the solicitation in acquisitions that the Union will not submit a proposal. The Union officially waives its right to submit a proposal for such acquisition.

Section E. Information

Upon request the Program Office will provide the union with a copy of the approved contract.

Section F. Out Placement

The Agency agrees to follow Article 22 of this contract when employees are subjected to a Reduction in Force as a result of actions as described in this article. The Agency agrees to follow Article 34 of this contract when employees are subjected to reorganization as a result of actions described in this article.

ARTICLE 36: CAREER OPPORTUNITIES PROGRAM

The Parties agree to hold this Article in abeyance pending Departmental determination of responsibilities over this function. Once the authorities are finalized, or no later than 12 months after formal ratification of this Contract, the Parties agree to immediate formal negotiations of this Article.

ARTICLE 37: REPORTS

- A. By April 30 and October 31, the Union will be provided with a list, categorized by organizational subdivision, of all employees in the bargaining unit. Each employee shall be identified by name, job title, series, and grade, step, and time in grade as reflected in the NFC database and service computation date. The list shall be furnished electronically.
- B. The Employer will inform the Union of employees who are transferred, or assigned different work positions within the bargaining unit within two weeks of such action.
- C. The Union is not bound by the Employer's identification of a particular employee or group of employees as (a) bargaining unit or non-bargaining unit employee(s) solely on the basis of the Employer having made such identification.
- D. On a yearly basis, as permitted by law or regulation, the Union will be provided summary statistical data, according to job series, grade level, step, race, sex, age and handicap data of :
 - 1. promotion actions,
 - 2. awards (special and performance),
 - 3. disciplinary actions and adverse actions,
 - 4. outside hiring,
 - 5. workforce profile.

ARTICLE 38: GRIEVANCE PROCEDURES

Section A. Common Purpose:

The purpose of this Article is to provide a mutually acceptable method for the prompt resolution of grievances filed by the Parties.

1. The Parties agree that most grievances should be resolved in an orderly, prompt, and equitable manner that will maintain the self-respect of the employee and be consistent with the principles of good management and the public interest.
2. The Parties, especially Union representatives and first-line supervisors, are encouraged to meet as necessary to informally discuss and attempt resolution of matters or problems of concern to either party; including, but not limited to, employees' concerns or dissatisfactions and problems of Agreement interpretation and administration.
3. Most grievances arise from misunderstandings or disputes which can be resolved promptly and satisfactorily on an informal basis. In order to successfully resolve grievances at the lowest level, at all levels, the Parties agree to have full and open discussions among the participants to clearly and objectively find the facts, identify contributing and mitigating factors, and make every effort to formulate a resolution.
4. See also Article 28, Disciplinary and Adverse Actions.
5. See also Article 27, EEO and Prohibited Personnel Practices, Section D. Prohibited Personnel Practices are grievable.

Section B. Definitions:

1. "Grievance" means any written and signed complaint:
 - a. by any employee with respect to terms and conditions of employment governed by this Agreement;
 - b. by the Union concerning any matter relating to terms and conditions of employment governed by this Agreement; or
 - c. by any employee, AFSCME Local 3925 or its successor, or the Agency or its successor concerning:
 - (1) the effect or interpretation, or a claim of breach, of a collective bargaining agreement; or
 - (2) any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.
 - (3) any Agency personnel policy, procedure, or practice.

2. "Workday" means any day the Agency is open for business.
3. "Close of Business (COB)" means the end of Agency business hours.

Section C. Scope of Procedures

1. The procedures set forth shall be the procedures available to bargaining unit employees and to the parties to this Agreement for resolution of grievances covered under the terms of this Agreement.
2. Exclusions: The following matters are not grievable under these procedures and are specifically excluded from the coverage of this Article.
 - a. any claimed violation of 5 U.S.C. Chapter 73, subchapter III, relating to prohibited political activities (Hatch Act);
 - b. retirement, life insurance, or health insurance;
 - c. a suspension or removal under 5 U.S.C. 7532 (national security reasons);
 - d. any examination, certification, or appointment administered by the Office of Personnel Management (OPM);
 - e. the classification of any position which does not result in the reduction in grade or pay of an employee, or loss of promotion potential;
 - f. reduction-in-force or furloughs of more than thirty (30) days;
 - g. non-selection for promotion from a group of properly ranked and certified candidates, or failure to receive a non-competitive promotion;
 - h. termination of a probationary employee during the probationary period and termination of a temporary employee during their temporary appointment;
 - i. a preliminary warning notice of an action which, if effected, would be covered under this procedure or under a statutory appeals procedure;
 - j. the substance of elements and performance standards and/or statements of work objectives.

Section D. Application:

1. grievance may be filed by an employee or a group of employees, by the Union, or by the Employer.
2. Only the Union, or a representative designated by the Union, may represent bargaining in such grievances.
3. Any bargaining unit employee or group of bargaining unit employees may personally present a grievance and have it resolved without representation by the Union provided that the Union will be given an opportunity to be present at all formal discussions in the

grievance process and receive copies of all documents.

4. Any resolution must be consistent with the terms of this Agreement. The Parties agree to keep the number of participants at the meetings to a minimum.

Section E. Employee and Union Procedure:

1. The following apply at all steps of the grievance procedure:

- a. A written response is due.
- b. Computation of time is in accordance with Section J.
- c. Extensions will be granted in accordance with Section H.
- d. The issues involved and the relief requested will be specified.

Note: If a new issue arises during this grievance, it shall not be included in the original grievance; however, a new grievance may be filed.

- e. Additional information may be introduced to support the original issues.
- f. The grievance shall be considered closed when all the requested relief which is specific to the grievant is granted at any step.

2. Step 1 Grievance:

- a. The written and signed grievance must be filed with the grievant's immediate supervisor (copy furnished Labor Relations) within 60 workdays of the act or occurrence or sixty (60) workdays after the grievant knew or should reasonably have known of the act or occurrence giving rise to the grievance.
- b. In the case of ongoing or recurring alleged violation a grievance may be filed within sixty (60) work days of the most recent occurrence and documentation exists verifying the ongoing matter.
- c. Except as provided in Section G below, a grievance may not be filed more than one year from the date of the act or occurrence which gave rise to the grievance or after the date the grievant knew or should reasonably have known of the act or occurrence.
- d. The grievant and/or the assigned Union Representative will meet with the grievant's immediate supervisor in a good faith effort to resolve, discuss, or clarify facts and issues that may impact the decision within ten (10) work days of the date of receipt of the written grievance in an attempt to resolve the grievance.
- e. The supervisor shall provide the grievant and the Union (copy furnished Labor Relations) with a written decision within ten (10) work days of the date of the meeting in (E2d). Included with such decision shall be a statement indicating the grievant's right to submit a grievance to Step 2, as well as the name and title of the reviewing official designated to hear Step 2 of the grievance procedure.

- f. If the Administrator is the Step 1 official, then Steps 2 and 3 are waived.
3. Step 2 Grievance:
- a. If the grievant is dissatisfied with the decision given in Step 1, the grievant may submit the grievance in writing within fifteen (15) workdays to the next level supervisor (copy furnished to Labor Relations).
 - b. Within ten (10) workdays of the date of receipt of the written grievance, a meeting involving the grievant and/or his/her Union representative and next level supervisor will be held in a good faith effort to resolve, discuss, or clarify facts and issues that may impact the decision. The requirement for this meeting may be waived by mutual consent of the parties.
 - c. The deciding official shall provide the grievant and the Union (copy furnished Labor Relations) with a written decision within ten (10) workdays of the date of the meeting in (E3b) or the date of the waiver of the meeting. Included within such decision shall be a statement indicating the grievant's right to submit a grievance to Step 3. The decision shall specify the name and title of the deciding official to whom the grievance may be directed if it is not resolved at Step 2.
 - d. If the Administrator is the Step 2 official, then Step 3 is waived.
4. Step 3 Grievance:
- a. If the grievant is dissatisfied with the decision given in Step 2, the grievant may submit the grievance in writing within fifteen (15) workdays after receipt of the decision of the Step 2 grievance to the deciding official designated by the Employer.
 - b. In a good faith effort to avoid arbitration and to settle the grievance within the Agency, a meeting may be held to attempt to resolve the grievance at the mutual agreement of the parties.
 - c. The designated deciding official listed above shall render a written decision within fifteen (15) workdays of receipt of the Step 3 grievance. This decision shall be the final Agency decision on the grievance. Included with the decision shall be a statement indicating that if the grievance is not resolved, the Union may refer the matter to arbitration in accordance with Article 41.
5. Grievances taken in response to a written decision letter notifying the employee of an action under 5 U.S.C. 7512 (Adverse Actions) or 5 U.S.C. 4303 (Unacceptable Performance) must be filed in writing within twenty-one (21) calendar days of receiving the decision letter as a Step 3 grievance. A management reviewer shall meet with a grievant in any case filed as a result of these actions.
6. If in any step of the grievance procedure it is determined that the Employer's official does not have the authority to resolve the grievance, the grievant will be informed and the grievance will be forwarded to the proper official. This will fulfill the grievant's obligation to meet the timetable set up in the grievance procedure, but it will not be considered as one of the steps. Any grievances starting at the Step 2 level that are not resolved under these provisions may proceed to the Step 3 level.

Section F. Procedures for Consideration of Employer Grievance:

A grievance by the Employer shall be submitted in writing by the Employer to the Union within sixty (60) workdays of the event giving rise to the grievance. The Union will respond in writing to the grievance within twenty (20) workdays of receipt of the grievance. The decision shall specify that it is the Union's final decision on the grievance.

Section G. Procedures for Consideration of a Union Grievance:

A grievance by the Union shall be submitted in writing by the Union to the Employer within sixty (60) workdays of the event giving rise to the grievance. If in any step of the Union grievance procedure it is determined that the Employer's official does not have the authority to resolve the grievance, the Union will be informed and the grievance will be forwarded to the proper official. In a good faith effort to resolve, discuss, or clarify facts and issues that may impact the decision, the Employer will meet with the Union within ten (10) workdays of the receipt of the grievance.

Section H. Time Limits:

1. Time limits in this Article may be extended by mutual consent of the Parties. The Parties agree to respond to a grievance within the time frames allowed. Failure by the grievant to meet time limits, or to request and receive an extension of time, shall automatically cancel the grievance, unless mitigating circumstances prevail. This does not preclude the grievant/union from seeking relief from the other resolution processes including, but not limited to EEO and ADR.
2. Mitigating circumstances refer to situations beyond the reasonable control of the Parties, such as, but not limited to:
 - a. extended military leave
 - b. extended detail or temporary duty travel
 - c. medical condition
 - d. office closures
 - e. natural disaster.
3. If the responding official fails to meet time limits or to request and receive an extension of time, the grievant may appeal the grievance to the next step of the process (i.e., from Step 1 to Step 2) including arbitration under procedures established in Article 41 of this Agreement.

Section I. Requests for Information:

Information may be requested pursuant to 5 U.S.C. 7114(b) (4). In such cases, the time limits in Section J will be extended equal to the amount of time reasonably required to provide the information. Such cases may involve several responses requiring different response times. The parties agree to provide each response as soon as it is researched and reported.

Section J. Computation of Time:

In computing periods of time for purposes of this Article, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, legal holiday, a day other than a legal holiday when the Employer's office is closed, or a day on which a liberal leave policy is in effect due to inclement weather. In this event, the period runs until the end of the next day which is not one of the aforementioned days.

Section K. Notice:

The party generating notice is responsible for ensuring timely delivery to the required recipients. Copies will be provided to the employee, the designated union representative, and the applicable Agency representative. If the required Agency representative is unavailable, a copy will be provided to the HRD Labor Relations office.

ARTICLE 39: ARBITRATION

Section A. Right to Arbitration:

1. If the decision on a grievance processed under the negotiated grievance procedure is not acceptable, the issue may be submitted to arbitration. The request to refer an issue to arbitration must be in writing and submitted to the other Party within twenty-five (25) work days following receipt of the decision by the aggrieved Party.
2. The Party invoking arbitration may opt to postpone the arbitration hearing date if that Party has filed an Unfair Labor Practice charge, alleging information relevant to the case has been withheld, until the FLRA has rendered its decision.

Section B. Submission of the Issue:

The Parties agree that a joint submission of the issue is the most desirable and will work diligently to arrive at one. If the Parties fail to agree on a joint submission of the issue for arbitration, the party invoking arbitration will submit the request within ten (10) work days. Each Party shall submit a separate statement to the arbitrator who shall determine the issue to be heard.

Section C. Selecting the Arbitrator:

1. When arbitration is invoked, the Parties shall meet within ten (10) work days and attempt to select an arbitrator. The parties may mutually agree to waive this meeting. If no agreement is reached, the invoking Party will submit a request within ten (10) work days to the Federal Mediation and Conciliation Service for a list of seven (7) impartial persons qualified to act as arbitrator, and shall also provide a copy of the request to the other party.
2. Within ten (10) work days after receipt of such list, the Employer and the Union representative shall meet to select an arbitrator, unless an extension of time is mutually agreed upon. If the Parties cannot agree on an arbitrator from the list, each Party shall strike one name in turn from the list. The determination of which Party shall strike first from the list will be determined by the flip of a coin. After each Party has struck three names from the list, the remaining person shall serve as the arbitrator. If either Party refuses to participate in the selection process, the other Party will make a selection of an arbitrator from the list. These time limits will not be strictly enforced if mitigating circumstances exist.

Section D. Fees and Expenses:

1. The arbitrator's fees and expenses shall be borne by the losing Party, except that in any decision not clearly favoring one Party's position over the other, the arbitrator may specify that all costs should be borne equally by the Parties.

2. If a clarification of an arbitrator's decision is necessary, the requesting party will pay for the additional arbitration fees and expenses. The arbitrator will be requested to complete the clarification within thirty (30) work days. If jointly requested, the costs will be shared.
3. An employee who is found to have been affected by an unjustified or unwarranted personnel action, which has resulted in the withdrawal or reduction of all or part of the pay, allowances, or differentials of the employee; is entitled appropriate relief in accordance with the Back Pay Act, 5 U.S.C. §5596(b).
4. The arbitration hearing will be held, if possible, on the Employer's premises and during the regular day shift hours. The grievant and any employee called as a witness (from within the FSA and/or RMA workforce) will be excused from duty to the extent necessary to participate in the official proceedings with pay. Questions raised as to whether a witness is necessary will be resolved by the arbitrator prior to the hearing. The Agency will authorize reasonable travel expenses for necessary witnesses in accordance with established Agency travel policies and procedures.

Section E. Authority:

1. The arbitrator's authority is limited to the adjudication of issues which were raised in the grievance procedure. The arbitrator shall not have authority to add to, subtract from, or modify any of the terms of this Agreement, or any supplement thereto. The arbitrator shall apply all applicable law.
2. In considering grievances concerning actions based on unacceptable performance and adverse actions appealable to the Merit Systems Protection Board (MSPB), the arbitrator shall be governed by section 7701(c)(1) of Title 5, United States Code, and, to the extent applicable, by the precedential decisions of MSPB.

Section F. Grievability/Arbitrability Determinations:

The arbitrator shall have the authority to make all grievability and/or arbitrability determinations. Threshold questions of arbitrability shall be heard by the arbitrator on the same hearing date as the hearing on the merits of the case, unless otherwise agreed by the parties.

Section G. Arbitration Process:

1. The Parties may mutually agree to expedited arbitration or a formal hearing. If the Parties do not agree on the process, a formal hearing shall be held.
2. Upon selection of the arbitrator in a particular case, the respective representatives for the Parties will communicate with the arbitrator and each other in order to select a mutually agreeable date for the arbitration hearing.

3. Expedited Arbitration:
 - a. A stipulation of facts to the arbitrator can be used when both Parties agree to the facts at issue and a hearing would serve no purpose. In this case, data, documentation, etc., are jointly submitted to the arbitrator with a request for a decision based upon the facts presented.
 - b. An arbitrator inquiry may be used to expedite the resolution of the grievance. In this case, the arbitrator would make such inquiries as deemed necessary; prepare a brief summary of the facts and render an on-the-spot decision with a summary opinion. The parties may mutually agree to eliminate the summary opinion.
 - c. Mini-Arbitration: In this case, an oral hearing will be held. The arbitrator will prepare a brief summary of the facts and render a decision with a summary opinion. The Parties may mutually agree to eliminate the summary opinion.
4. Formal hearing: A submission to arbitration hearing should be used when a formal hearing is necessary to develop and establish the facts relevant to the issue. In the case, a formal hearing is convened and conducted by the arbitrator.
5. The arbitrator will be requested to render the decision and remedy to the Parties as quickly as possible.
6. Except as provided in paragraph G8 below, the arbitrator's decision shall be final and binding. The arbitrator's decision and remedy shall be implemented without delay.
7. Transcripts: The cost of the transcript requested by one Party for its exclusive use and not shared shall be borne by the requesting Party. If it is mutually agreed to request a transcript, the cost will be borne equally.
8. Exceptions and Appeals: Either Party may seek judicial review of the arbitrator's decision on matters which could have been appealed to the Merit Systems Protection Board, and can file exceptions to all other decisions in accordance with FLRA regulations.

ARTICLE 40: MID-CONTRACT NEGOTIATIONS

Section A. Agreements Under This Article

1. Any agreements reached under the provisions of this Article shall be deemed to be supplemental to this Agreement and subject to approval by the head of the agency pursuant to the provisions of 5 U.S.C. 7114.
2. Should a provision of any agreement negotiated pursuant to this Article be rendered invalid by appropriate authority, either party may reopen the specifically affected sections as well as issues clearly and unmistakably bargained away as part of this Agreement.
3. Notwithstanding this Article, nothing shall affect the authority of the Employer to take whatever actions may be necessary to carry out its mission during emergencies.

Section B. Mandated Changes

1.
 - a. If a future statute, Executive Order, government-wide regulation or judicial decision requires the parties to change this Agreement, or if either Party desires to negotiate the impact and implementation of the change, it shall provide written notification to request bargaining to the other Party. Such notice shall include a specific formal proposal for negotiations.
 - b. If the receiving Party fails to respond within 20 work days of receipt of the notice, such failure shall constitute a waiver of any right to negotiate on the proposed required change and the specific formal proposal shall become part of this Agreement subject to approval by the head of the agency as set forth in Section A.1. of this Article. Neither party will be permitted to propose changes unrelated to the change specifically required by statute, Executive Order, government-wide regulation, or judicial decision.
2. The Employer will meet its collective bargaining obligations in conjunction with implementing changes that affect conditions of employment of bargaining unit employees.

Section C. Mid-term Timetable and Procedures

1. Mid-term negotiations may be initiated by either Party during the period between 120 or 60 calendar days prior to the mid-term date of this agreement by informing the other Party, in writing, of intent to amend, supplement, or renegotiate a specified section(s) in the agreement. The mid-term date is calculated from the effective date of the agreement.
2. For mid-term negotiations, each Party may request to amend, supplement, or renegotiate up to ten (10) articles contained in this agreement. By mutual consent, more articles may be reopened.

3. Requests for mid-term negotiations will be accompanied by a list of proposed articles to be opened with a brief description of the issues of concern.

Section D. Scope of Mid-term Bargaining

Coverage of the topic does not preclude bargaining with respect to the topic over procedures, substance or appropriate arrangements, or any of the areas described in 5 U.S.C. 7106.

Section E. Ground Rules

1. These ground rules may be modified as the parties agree to negotiate any proposal, including, but not limited to, the following:
 - a. Mid-term contract negotiations
 - b. End of contract negotiations
 - c. Reorganizations, moves, impact and implementation of changes in working conditions, RIF's and furloughs, and
 - d. Other bargaining proposals.
2. In addition to the requirements of Section A of this Article, the procedures in Section E. shall govern the conduct of all negotiations pursuant to this Article.
3. Negotiations shall take place during regular duty hours as soon as practicable but not more than 90 calendar days after receipt of a proposal by either party unless otherwise mutually agreed by the parties.
4. The Employer will provide facilities for negotiations.
5. The Union will be authorized the same number of Union representatives on official time as the Employer has representatives at the negotiating table.
6. It is the intent of the parties to consolidate issues for bargaining to the greatest extent possible.
7. Unless mutually agreed, no new proposals shall be submitted by either party after the first day of negotiations.
8. All agreements are tentative until full agreement is reached.
9. Agreements reached will be written and signed by both parties.

Section F. Proposed Changes

1. A proposed change, affecting the conditions of employment of any employee (excluding reorganizations and workplace moves), will be submitted in writing by the party (the Agency or the Union) to the other. The notice will include the following:
 - a. A description of the change or proposed change.
 - b. An explanation of how the change will/would be implemented.
 - c. The date of implementation or proposed implementation.
2. The other party will respond to the notice of proposed change within twenty (20) working days of receipt of the notice. The Union will respond earlier when possible. The other party's response may include a request for information, briefing, and/or negotiation without additional information or briefing.
3. The other party will respond to the request for information or briefing, or both, within twenty (20) working days of receipt of the request.
4. Request for negotiation will be made within twenty (20) working days of receipt of information requested or completion of the briefing, and will be accompanied by proposals or counter proposals, as appropriate.
5. The parties may mutually agree to extend or shorten the time limits described above.
6. With regard to the proposed change, the parties shall bargain over all matters that are negotiable consistent with law and this Agreement.

Section G. Impasse Procedures

1. If agreement cannot be reached on the matters under negotiation, the procedures in G2 - G3 shall apply.
2. Declarations of Impasse
 - a. Neither party may declare an impasse until all Articles and Sections are agreed to or declared non-negotiable by the Employer or declared at an impasse by either party. The parties agree that each will use their best good-faith efforts to avoid impasse in negotiations.
 - b. Either party declaring any provision nonnegotiable will provide to the other party a statement of nonnegotiability and reasons therefore, without prejudice to later supplementation of the reasons.

3. Impasse

- a. In the event either party declares an impasse in negotiations, the Federal Mediation and Conciliation Service shall be immediately requested to provide services and assistance to resolve the dispute pursuant to 5 U.S.C. 7119.
- b. If mediation services of the Federal Mediation and Conciliation Service do not result in resolution of the impasse, either party may invoke the services of the Federal Service Impasses Panel pursuant to 5 U.S.C. 7119. Prior to taking such action, however, the party seeking to invoke the services of the Federal Service Impasses Panel will provide notice to the opposing party of its intention to take such action.

Section H. Other Proposed Changes

1. Requests for bargaining over workplace moves or reorganizations will follow the process found in Article 34.
2. When guidance documents (i.e., notices, directives, memos, etc.) are published:
 - a. When time permits documents will be submitted to the Union representative in draft for pre-decisional comments.
 - (1) The Union will have 10 workdays to provide input to the designated point of contact.
 - (2) Management will provide responses to the Union for all questions and/or issues raised.
 - b. Documents will be published with a disclaimer recognizing bargaining unit implementation only after negotiations have been completed.
 - c. The Union will have 20 work days from the date of electronic distribution to request formal negotiations. Upon receipt of a request, implementation for the bargaining unit will be held in abeyance. Extension of the filing time may be requested during this period.
 - d. If the Union fails to request negotiations, the document will be implemented for the bargaining unit to the extent it does not conflict with this agreement.
 - e. The Union may notify management of acceptance of the document at any time prior to the 20 work days and the document will become effective for bargaining unit employees the next work day.

ARTICLE 41: PRECEDENCE, EFFECT OF LAW AND REGULATION, AND SEVERABILITY

Section A. Previous Agreements and Past Practices

This Agreement supersedes all previous agreements and past practices in conflict with this Agreement.

Section B. Mandated Changes

The provisions in Article 42, Section B.1. and 2. shall be applicable to this Section.

Section C. Severability

Should any part, term, condition or provision of this collective bargaining agreement be declared or determined by any court, head of the agency, or arbitrator to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby, and said illegal or invalid part, term or provision shall be deemed not to be a part of this agreement. If a finding of illegality or invalidity is made the Union may request a briefing or request to negotiate with the Employer within ten (10) workdays of receipt of the proposed change. If the Union requests a briefing, one will be held within ten (10) workdays of the request. If a request to negotiate is submitted under this section, the procedures under Article 42, Section F. shall apply.

Section D. Effect of Agreement

For the duration of this Agreement, it will have the full force and effect of regulations within the bargaining unit.

ARTICLE 42: DURATION AND TERMINATION

Section A. Effective Date

This Agreement and all renegotiated articles and/or portions of articles shall take effect no later than 30 calendar days after ratification by the Union unless disapproved when submitted for Agency Head review pursuant to the provisions of 5 U.S.C. 7114.

Section B. Duration

1. This Agreement shall remain in effect for four (4) years from its effective date.
 - a. Thereafter, it shall automatically renew in increments of one (1) year beginning on the day after the anniversary date, unless either Party serves the other with written notice of a desire to renegotiate or modify this agreement in whole or in part.
 - b. Such notice shall be provided to the Party not more than 120 calendar days nor less than 60 calendar days prior to the expiration date of this agreement.
2. Upon receipt by either Party of notice, both parties shall meet within 90 calendar days of receipt of a proposal to begin negotiations, unless mutually agreed to by the Parties.
 - a. When either Party notifies the other that it wishes to modify this Agreement, this Agreement will be extended until the effective date of the modified agreement.
 - b. The provisions of any article in this agreement may only be reopened pursuant to Midterm Bargaining, Article 40, or where affected by changes of law or Executive Order.

ARTICLE 43: OFFICIAL TIME AND UNION REPRESENTATIVES

Section A. Definitions

1. **Official Time.** The time expended by the Employer's bargaining unit employees as Union representatives, or in their own capacity, when in duty status, without charge to annual leave, and approved by the agency in accordance with Section E of this Article for the purposes set forth in Section C of this article.
2. **Reasonable Time.** The time necessary to accomplish a labor relation task for which official time is requested, including a reasonable amount of time to travel to and from the task location.
3. **Preparation Time.** Reasonable time spent by the Union representative(s), witnesses, or the individual party(s) preparing for the activities described in Section C below.
4. **Participation Time.** The time spent as a Union representative(s), as a witness, or as an individual party(s) to the actions or activities described in Section C.
5. **Days.** The days that FSA/RMA are open. Days do not include weekends, official holidays, or other days that the employer is officially closed.

Section B. General

1. Specific requests for official time shall be for a *reasonable* amount of time, as referenced in Section A. 2. above, given the task or issue at hand and be specified at the time the request is made.
2. The Parties agree that RMA management will deal with RMA employee Union representatives on issues within RMA or affecting RMA (i.e., grievances, appeals, mid-term bargaining, bargaining over proposed changes to conditions of employment). However, the Parties further agree that there may be circumstances or issues that necessitate dealing with non-RMA representatives of Local 3925. In addition, the Local President, Vice President, Chief Steward and/or Council 26 representatives will be allowed to participate in RMA labor management activities, although such participation will normally be conducted alongside of RMA employee Union representatives.
3. Awards – Union officials and representatives cannot receive monetary awards or any work done on behalf of the union.

Section C. Purposes and Uses of Official Time

1. Designated Union representatives: Union representatives designated under Section H, below, may request official time to complete required representational functions, including reasonable preparatory time, in the following circumstances:

- a. To attend a formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any personnel policy or practices or other general condition of employment.
- b. To attend an examination of an employee in the bargaining unit by a representative of the agency in connection with an investigation if the employee reasonably believes that the examination may result in disciplinary action against the employee, and the employee requests representation.
- c. To attend any meeting as a Union representative with one or more representatives of the Employer that is initiated by either a management official or the Union representative in order to informally resolve problems of concern to either party pertaining to matters covered under C.1.a. and b, above.
- d. To represent the bargaining unit in the negotiation of a collective bargaining agreement, including attendance at impasse proceedings, during the time the employee otherwise would be in a duty status. Note: The total number of individuals approved for official time for this purpose shall not exceed the number of individuals designated as representing the agency for this purpose.
- e. For purposes approved by the Federal Labor Relations Authority under 5 U.S.C. 7131(c).
- f. To attend training in labor-management relations, as authorized. The use of official time for labor management training does not include union conferences whose sole purpose is to train union officials on internal union business matters.
- g. In connection with any other matter, including lobbying Congress as it concerns legislation related to bargaining unit employees working conditions, and grievances filed in accordance with Article 38 of this Agreement, in an amount agreed to by the Union and the Employer to be reasonable, necessary, and in the public interest.
- h. To provide testimony before Congress, when specifically requested by Congress concerning issues related to "Conditions of Employment" or all matters affecting federal employment.
- i. To participate in proceedings initiated by the Union or by the Agency in connection with statutory or regulatory appeal procedures.
- j. To hold informational meetings of members of the bargaining unit, subject to advance approval of the Employer.
- k. Other official time may be granted by management on an as needed basis to participate in Agency projects when Union representation is needed. Official time

shall be requested in advance through the supervisor and the employee must ensure that it is approved prior to participation.

1. One (1) hour per week will be granted for stewards meetings. Additional official time is not authorized to cover the time necessary to travel to and from such meetings. Stewards meetings will utilize available tele-conference capabilities provided by the Employer.
2. Bargaining Unit Employees: Bargaining Unit Employees who use official time shall record the official time on their time and attendance record using the appropriate code.

Section D. Prohibited Use of Official Time

1. Any activities performed by any employee relating to the internal business of a labor organization (including the solicitation of membership, elections of labor organization officials, and collection of dues) shall be performed during the time the employee is in a non-duty status.
2. Internal union business conducted during Executive Board meetings.

Section E. Procedures for Use of Official Time

1. All requests for the use of official time shall be for specific periods and must be made in advance and recorded in webTA leave. Each request will be based on the good faith estimate of the official time required to perform the particular function. Requests for the use of official time shall be made to the employee/Union representative's supervisor or in his/her absence, the second line supervisor. If the first and second level supervisors are unavailable, the employee shall leave a message for the supervisor with a co-worker specifying a location at which the employee may be reached and an estimate of the official time required.
2. Prior to meeting with an employee, neither the employee nor the union representative will be required to explain to their supervisor the specific reason for the meeting beyond representing that the meeting relates to an individual matter as defined in Section C of this Article. Requests for official time for labor-management relations training under Section C.1.f. of this Article shall be specified as such.
3. In the event additional official time is required due to unforeseen circumstances, after approval has been given, the employee and/or Union representative shall request an extension of that time. Such a request may be made by telephone. The request shall be made to the original approving official, or, in that person's absence, to the next higher level of supervision. The extended time shall be granted if justified unless the employee or Union representative's absence will significantly interfere with the completion of the work unit's mission and functions.
4. Upon completion of a period of official time, the Union representative and/or employee shall promptly report back to work, and notify the management official(s) who approved

their official time that he/she has returned. Any extension of official time and actual time used will be noted on webTA leave.

5. The parties understand that circumstances may arise that preclude advance approval of official time, such as telephone calls or unscheduled visits to the Union representative's work site. The Union representative will inform employees of the proper procedures for obtaining approval for use of official time to engage in representational activities, as outlined in this Article.
6. Union transportation and per diem costs for union representatives may be paid only when management extends to the Union an official invitation to participate in meetings outside the Washington, D.C. metropolitan area. Costs will be paid by the Agency which extends the invitation.
7. The Employer will pay reasonable transportation costs for union representatives to attend official meetings in the Washington, D.C. metropolitan area. The shuttle service should be used whenever possible.

Section F. Approval of Requests

Employees entitled to use official time for the purposes set forth in Section C of this Article shall be approved for official time when requested unless their presence at the work site is needed to meet the work unit's mission and functions.

Section G. When a Request for Official Time is Not Approved

1. When the Employer requests that a Union official be present for labor-management activities and the Union official's supervisor denies the Union official's request for official time, the Employer will make reasonable efforts to resolve the conflict and, if necessary, will provide the Union with the opportunity to designate another Union official or, if after making a good faith effort, the Union is unable to designate an alternate representative, the Employer will make every attempt to reschedule representational deadlines to enable the Union to fulfill its representational responsibilities.
2. In the event an employee or union official's request for official time is denied, the supervisor will annotate webTA leave with a brief notation as to the basis for the denial. In the event an employee's request for official time for an authorized purpose is denied, the supervisor will make reasonable effort to identify an alternative time for when official time would be approved.

Section H. Designation of Union Representatives

1. Union representatives include:
 - a. members of the Executive Board,
 - b. stewards, and
 - c. other representatives designated by the Union.
2. Executive Board The Executive Board currently includes the President, 3 Vice Presidents, Chief steward, 2 at-large members, Correspondence Secretary, Recording Secretary, and Treasurer. Changes in the composition of the Executive Board will be reported in a timely manner to the agency through a Labor Relations Specialist.
3. Stewards
 - a. It is the intent of the parties to ensure a sufficient number and availability of shop stewards to ensure the union is able to meet its representational responsibilities while permitting the timely completion of each work unit's mission and functions.
 - b. The Union shall have the right to designate stewards. There shall be representation at a ratio of 1 steward to 20 bargaining unit employees. The number of stewards authorized includes the President, 3 Vice Presidents, and the Chief Steward. A good faith effort will be made to adhere to a 1:20 ratio at each building.
 - (1) The Union will assign each Steward a representational area and will communicate such assignments to management and employees. A representational area will be the building in which the Steward regularly performs work assignments.
 - (2) The Union may designate an alternate from another representational area if a regularly designated steward is unavailable due to reasons such as absence or union or agency workload, or if in a particular case there is a requirement for specialized expertise as determined by the Chief Steward.
 - (3) The President, three Vice Presidents, and Chief Steward may represent employees in any representational area.
 - (4) The Chief Steward will make reasonable effort to ensure the timely availability of a Union representative.
4. Other representatives designated by the Union The Union may designate representatives to carry out representational functions as outlines in Section C1 a, d, f, g, h, or k.

5. The Union shall provide an initial list of stewards and officers within ten (10) working days of the signing of this agreement. This list may be updated and modified from time to time.
 - a. Any changes to the original list will be submitted in writing to the Employer's representative three (3) working days before the individual will be recognized by the Employer as having authority to represent the Union and be granted official time for representational duties.
 - b. In exceptional circumstances, such as when a new steward replaces an old steward and is immediately confronted with a situation requiring union representation, the Union may notify the Employer's designated representative verbally, but must send a written confirmation within three (3) working days after that verbal notification.

Section I. 100 Percent Official Time for One Designated Union Official

1. The Union shall designate one elected official from the President, three Vice Presidents, or Chief Steward as 100 percent official time to conduct union business.
 - a. The Union will designate the official who will serve in that capacity each year for a one-year term and notify the Agency prior to assuming the responsibility.
 - b. In the event that an official cannot complete the one-year term, the Union shall notify the Agency of the newly designated official and whether that individual will complete the current one-year term or begin another one-year term.
2. The designee will, for administrative purposes, remain in the current position of record, at the current title, series, and grade. Upon termination of the 100 percent official time designation, official time for continued union representation will be in accordance with the current contract language.
3. The Agency is free to temporarily fill one additional identical position to perform the duties of the 100 percent designee's position of record within the organization. At the termination of the 100 percent official time designation, the temporarily filled identical position may be terminated by the agency. Input from the union will be obtained and considered by the agency prior to making a decision to continue with or terminate the temporary position.
4. The official is eligible to attend training or conferences necessary to maintain professional skills of the assigned permanent position. Criteria for approval or disapproval will be the same as applied to other employees in that work unit. Training related to Union responsibilities is covered by C.1.f.
5. For purposes of career ladder or career enhancement program participation, the time spent as a 100 percent Union official will not be counted. Upon termination of the 100

percent Union official tenure the person shall re-enter the program at the same status as when he/she left.

6. Time spent by the designated Union official on 100 percent official time counts as time-in-grade for within grade increase (WGI).
7. The designated Union official is free to apply for any vacancy and will be fairly considered for any promotional opportunity that he/she is qualified for within FSA/RMA. Performance on Union work on 100 percent official time shall be viewed with neutrality by the selecting official(s).
8. While serving on 100 percent official time, the Union official is ineligible for performance ratings unless the employee is assigned to an Agency position and performs Agency mission duties for at least a 90 day period.
 - a. An employee who has served in a position for 90 days during the rating period prior to designation as the 100 percent Union official will receive an interim rating within 60 days of the effective date of the reassignment. This will revert to the annual rating at the end of the appraisal period unless the employee has returned to regular Agency duties, in which case, this rating will be considered in developing the annual rating.
 - b. If the employee performs the duties of the Union official, and during the rating period serves 90 days of Agency duties after becoming the 100 percent Union official, the annual rating will be the rating received during the 90 day period, based on current regulations.
 - c. Without the 90 day period, the employee understands that he/she shall receive no rating.
9. In the event of a reduction in force (RIF), the designated Union official shall enjoy the same rights as other Agency employees and his/her position of record shall be viewed with neutrality in any RIF planning.
10. The designated official will relocate to the union office during the assignment to 100 percent time, unless the parties mutually agree that relocation is not necessary. To assure confidentiality required by the duties, the union office will be a private office.

Section J. Disputes

Any dispute over the use of official time will be resolved through the grievance procedure set forth in Article 38 of this Agreement.

ARTICLE 44: FACILITIES AND SERVICES

Section A. Union Facilities and Services

1. The Employer shall provide an enclosed, lockable office with furnishings and equipment, for the exclusive use of the Union.
2. The Employer will provide two telephones with voice speakers with outside line for local calls in the Union office. The office shall be listed in the official telephone directory by Union name, room number, and telephone numbers. An additional telephone line for the fax machine will be provided by the Agency.
3. The Union may request rooms to hold meetings on the Employer's premises during the lunch period and outside normal duty hours subject to the official needs of the Employer. For satellite offices where a Union office is not located, the Union may request rooms on the Employer's premises, and to hold meetings during normal working hours in accordance with the terms of Article 43.
4. The Employer shall issue daily passes to Union-identified representatives in order to carry out their responsibilities under this Agreement.
5. Upon request, the Employer shall provide the Union with available tables and easels for display in public spaces.

Section B. Union Access to Bulletin Boards and Literature Distribution

1. The Employer will provide two bulletin boards per floor which will be exclusively for the use of the Union, on any floor on which bargaining unit employees are located. The Union is responsible for the content of its posted material. The Parties agree to discuss any objections they may have to material posted on bulletin boards.
2. The Employer agrees that the Union has the right to use the Employer's mail distribution system to mail documents or correspondence to the Employer or to bargaining unit employees.
3. The Union agrees that, prior to the bulk distribution of its literature, the Union is responsible for preparing, collating, and apportioning such literature.
4. The Employer will provide access to a sub-directory in the shared drive of the FSA LAN for the exclusive use of the union.
5. The Union may distribute its literature desk to desk before or after work or during the lunch hour of the employee distributing the literature, subject to the agency's security needs and in accordance with the terms of Article 43.

6. Union representatives not employed by the Agencies may meet with local Union representatives and/or bargaining unit employees to discuss appropriate matters and may participate in meetings between the Union and the employers. They shall be admitted to the Agencies premises for these purposes.

Section C. Union Office and Equipment: AFSCME Local 3925 and FSA/RMA Management (the parties) recognize that office space is needed and necessary in carrying out the day to day activities generated from labor-management relations. The parties agree to the following:

1. AFSCME Local 3925 shall occupy a designated room in the building housing the most employees as a home office.
2. Management shall furnish the union office the following at no expense to the union:
 - a. 1 computer (standard configuration)
 - b. 1 laser printer
 - c. 1 desk (60" X 30")
 - d. 1 conference table
 - e. 12 chairs
 - f. 1 locking file cabinet (4 shelf lateral)
 - g. 1 telephone (3 mic polycom)
 - h. 1 facsimile machine
 - i. 1 wall clock
 - j. door locks
 - k. 1 copy machine
 - l. 1 window air conditioner (depending on the location).
3. A separate conference/bargaining room to be shared by all FFAS unions will be provided in a separate area of the South Agriculture Building and shall contain:
 - a. 3 conference tables
 - b. 60 chairs
 - c. 2 coat racks

- d. 1 wall clock
 - e. 1 telephone (3 mic polycom)
 - f. wall mounted dry marker board
 - g. 1 flip chart stand
 - h. keyed door locks
4. The office furniture and equipment shall be maintained by the agency. This includes troubleshooting software and hardware problems.

ARTICLE 45: CHILD DAY CARE

Section A. List of Child Day Care Facilities

1. The employer and the Union agree that healthful and adequate child day care facilities are conducive to a family-friendly work environment and are in the best interests of the Agency.
2. Employees can obtain lists of child day care facilities located in GSA space within the National Capital Region from the GSA website at:

www.gsa.gov/Portal/content/offerings_content.jsp?contentOID=114846&contentType=1004

Section B. Visiting Children in Child Day Care

1. With advance supervisory approval, employees may expand their lunch period within the established lunch band for the purpose of visiting the childcare center, in accordance with Article 6.
2. Employees will make up the time in which the lunch period is expanded either at the beginning or end of that day.
3. This Section is not applicable to employees on fixed work schedules.

Section C. Child Care Cost Assistance Program

At the discretion of the Employer, appropriated funds, otherwise available for salaries, may be used to provide child care cost assistance for lower income employees (reference Public Law 107-67, Section 630 and the regulations found at 5 CFR Part 792 subpart B.)

1. General Information
 - a. Subject to the availability of funding, the employer will provide a child day care subsidy to FSA/RMA employees whose total family income is lower than \$47,000. The program is designed to assist them in their efforts to obtain quality, licensed child care for children through the age of thirteen (13) and disabled children through the age of eighteen (18).
 - b. Implementation of the program under this article will be for full- and part-time permanent FSA/RMA employees
2. Eligibility
 - a. To qualify for a subsidy, employees must use licensed child day care (benefits will not be granted for licensed overnight care), be a permanent employee, with a scheduled tour of duty of at least forty (40) hours per pay-period, and have a Total Family

Income* of less than \$47,000 per year. If the eligible employee is married, benefits may only be granted if the spouse is working, enrolled in full-time studies or unable to care for the child or children.

b. The parameters of the program are:

Level	If the Total Family Income* is less than \$47,000Y	The Monthly Subsidy Will Equal**
1	\$44,000 - 46,999	\$83.00
2	\$41,000 - \$43,999	\$166.00
3	\$38,000 - \$40,999	\$249.00
4	\$35,000 - \$37,999	\$332.00
5	\$34,999 or less	\$415.00

*Total Family Income (TFI) refers to line 22 on Internal Revenue Service (IRS) Tax Return Form 1040 or Line 14 on IRS Tax Return Form 1040A.

** The benefit will be reduced by the amount of other state or local government child care subsidies an eligible employee receives and will be paid directly to the child care provider. Subsidy amounts apply to total costs of childcare, not cost per child.

- c. An employee shall be eligible for the program immediately upon joining the Agency, providing the employee is qualified based on the TFI and meets other eligibility criteria.
- d. An employee who is deemed ineligible may appeal that decision in accordance with the provisions of the FSA/RMA Child Day Care Assistance Plan that the parties intend to put in place.

3. Funding Availability

- a. For RMA, the Employer agrees to seek appropriated funds to implement the program starting on October 1, 2003 (Fiscal Year 2004). The Employer will provide a sixty (60) day notice to the employees and the union before implementation, if appropriated funding is approved and available.

- b. For FSA, the employer agrees to implement the program in Fiscal Year 2003. The parties intend to implement on January 1, 2003, pending the completion of the approval and contracting processes.
 - c. The Employer reserves the right to terminate or cap the program if necessitated by budget or ceiling constraints or other constraints beyond its control.
 - d. For any change to funding availability, the Employer will provide a sixty (60) day notice to the employees and the union.
4. Program Administration.
- a. The employer will seek involvement from the union in the development of the FSA/RMA Child Care Cost Assistance Program plan.
 - b. The parties agree that the employer will fairly and equitably administer the program in accordance with applicable law, regulations, and procedures, for the benefit of persons eligible to participate in the program.
 - c. The employer intends this benefit to be a Child Care Cost Assistance Program, such that beneficiaries who meet the tax law requirements will be able to exempt all or a portion of the subsidy from tax liability and will establish the program under guidelines to achieve that objective. An employee's tax liability for assistance received under this program will be determined by the applicable tax code. The employee is responsible for determining his/her tax situation.
 - d. To encourage full participation by eligible employees, the employer and the union will develop a campaign that actively promotes the program.
 - e. To ensure compliance with federal regulations, laws, and program guidelines, the employer and the union will regularly monitor and evaluate the program.

ARTICLE 46: FOOD SERVICES

1. The Employer and the Union agree that accessibility to affordable and adequate food service facilities is a concern for FSA and RMA employees and is a component in the existence of a friendly workplace.
2. The Employer agrees to continue to support its employees' reasonable access and utilization of food service located at the South Building or any work site the employees may occupy. The needs of employees with disabilities must be taken into account.
3. The Union reserves the right to bargain to the fullest extent permitted by law and executive order over food services if bargaining unit members' access to food service facilities changes.

ARTICLE 47: PUBLIC TRANSPORTATION AND PARKING

Section A. General

1. In the interest of relieving Washington, D.C. metropolitan area traffic congestion, reducing air pollution, and conserving energy, the Employer encourages the use of mass transit or van pool by participating in the Metropolitan Transit Promotion Program (MTPP).
2. All parties agree that to be eligible for transit benefits, an employee must, as a normal means of commuting, use a mass transportation system or a commuter highway vehicle; either of which is a member of the WMATA Federal Metro Pool Program.
3. The parties recognize that continuation of these programs is dependent on the availability of funds within the respective budgets of each Agency.

Section B. Metrocheks

1. Metrochek is a nontaxable monthly distribution of farecards paid by the Agency and issued to eligible employees as a metro farecard.
2. Neither Metrocheks nor any other media to which they are converted can be transferred from the recipient to any other individual. Moreover, Metrocheks or the media to which they are converted may only be used for eligible commuting to and from work; not for personal trips or trips between office locations. Inappropriate conversion or use will result in the employee's removal from MTPP, and may result in disciplinary action and/or criminal prosecutions, as appropriate.
3. For additional information, the employee may contact the Department or Agency Transit Coordinator.

Section C. Pre-Tax Parking

1. Pre-tax parking is authorized for eligible employees to exclude certain parking expenses from their taxable income. This benefit is provided by Executive Order 13150, Code of Federal Regulations 1.132.9, and 5 United States Code 7905.
2. For additional information, the employee may contact the Department or Agency Transit Coordinator.

ARTICLE 48: FITNESS/HEALTH FACILITIES

- A. The Employer and the Union agree that accessibility to affordable and adequate fitness/health facilities is a concern for FSA/RMA employees and is a component in the existence of a friendly workplace.
- B. The Employer agrees to continue to support FSA/RMA employees' ready access and utilization of fitness/health centers located at the South Building and the Patriot Plaza III.
 - 1. With advance supervisory approval, employees may expand their lunch period within the established lunch band for the purpose of physical fitness.
 - 2. Employees will make up the time in which the lunch period is expanded either at the beginning or end of that day.
 - 3. This is not applicable to employees on fixed work schedules.
- C. The Union reserves the right to bargain to the fullest extent permitted by law and executive order, over fitness and health facilities if bargaining unit members' access to fitness and health facilities changes while this agreement is in effect.

ARTICLE 49: LABOR - MANAGEMENT MEETINGS

Section A. When Labor - Management meetings will be conducted:

1. During core hours
2. Tuesday, Wednesday, Thursday, or
3. Otherwise, as mutually agreed

Section B. Meeting Location:

1. The person who calls the meeting will suggest the location of the meeting.
2. The respondent may suggest an alternative location.
3. The parties will mutually determine the location.
4. The person who suggests the agreed-upon location has the responsibility to reserve the meeting room.

Section C. Whom to Contact

1. A Manager who calls a meeting will notify in this order:
 - a. The Union President,
 - b. Chief Steward, or
 - c. other union official.
 - d. When the union calls the meeting, it will notify the appropriate management official, or designee.

Section D. Lead Time - In order to allow time to prepare for meetings and take schedule off days into consideration, the parties agree that:

1. Notification will be at least 3 working days before the proposed meeting date.
2. The respondent may request an extension of time to prepare.
3. Change of time will be by mutual agreement.

Section E. Method of Notification

Notification of meeting may be delivered in person. If notification is by e-mail, paper copy, voice mail, or any combination of the above, the requestor is responsible to get confirmation from the individual contacted.

Section F. Format of Notice: Notice of meeting must include proposed:

1. Agenda, including objective of the meeting, date, start time, end time, building and room number.
2. Any available related documents, a list of the calling party's proposed attendees, a request for confirmation of the meeting, a request for a list of the responding party's attendees, and a contact person.

Section G. Other Changes

1. After a meeting is confirmed, if the need arises to postpone, the person who called the meeting and contact person for the other side shall expeditiously arrange to reschedule the meeting.
2. Once the number of attendees has been agreed to, the number may change only by mutual agreement.
3. Either side may substitute an alternate for a delegate without notice, however, practicable notice of substitution should be provided before the meeting begins.

Section H. Ground Rules: Each Labor/Management meeting will start with the following rules, which may be amended by mutual agreement:

1. Confidentiality. Meeting decisions may become public; meeting debates should stay in the room.
2. Professional conduct.
3. Businesslike approach.
4. Start on time.
5. Once person speak at a time.
6. Mutual courtesy and consideration toward each participant.
7. Stick to the subject and to the schedule.
8. Limit discussion to agenda items. Schedule extraneous items for a later meeting.

9. Take breaks as required.
10. Meet the stated objective of the agenda.
11. End on time.

Section I. Fallback Plan: If the meeting goes awry, take the following corrective action:

1. Refocus the meeting.
2. Review the ground rules.
3. Recess for a later time.
4. Reschedule for a later day.
5. Adjourn and vacate the room.

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL LABOR RELATIONS AUTHORITY
WASHINGTON REGIONAL OFFICE**

U.S. DEPARTMENT OF AGRICULTURE
FARM SERVICE AGENCY AND RISK MANAGEMENT AGENCY
WASHINGTON, DC
(Activity/Petitioner)

and

Case No. WA-RP-70063

AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES, COUNCIL 26, AFL-CIO
(Labor Organization)

CERTIFICATION OF VOLUNTARY AGREEMENT

Pursuant to section 291 of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (the Act), a request was filed seeking certification of the parties' agreement on a new bargaining unit created as a result of the Secretary of Agriculture's exercise of authority under the Act and the parties' agreement on the exclusive representative for such unit.

On July 2, 1997, the undersigned issued a Decision and Order finding that the terms of the parties' agreement may be certified as requested.

No timely application for review having been filed, pursuant to the authority vested in the undersigned;

IT IS HEREBY ORDERED that in accordance with the parties agreement the American Federation of State, County and Municipal Employees, Council 26, AFL-CIO is the exclusive representative of a unit of employees of the Farm Service Agency as follows:

All professional and nonprofessional employees employed by the U.S. Department of Agriculture, Farm Service Agency and Risk Management Agency in the Washington, DC metropolitan area, but excluding all management officials, supervisors, and employees described in 5 U.S.C. 7112(b)(2), (3),(4),(6) and (7).

Dated at Washington, D.C., this 2nd day of July 1997.

Michael W. Doheny /s/
Michael W. Doheny
Regional Director
Washington Regional Office
Federal Labor Relations Authority
1255 22nd Street, N.W., Suite 400
Washington, D.C. 20037-1206



United States
Department of
Agriculture

Farm and
Foreign
Agricultural
Services

Farm Service
Agency

1400
Independence
Avenue, SW
Stop 0591
Washington, DC
20250-0591

S A M P L E

TO: All FSA/RMA Employees

FROM:

SUBJECT: Annual Notice of Right to Request Union Representation

The Civil Service Reform Act (CSRA) of 1978 gives certain rights to employees who are represented by a labor organization. If you are a bargaining unit employee, you have the right to be accompanied by a union representative during an examination by a representative of the agency in connection with an investigation if:

- a. You reasonably believe that the examination may result in disciplinary action against you, and
- b. You request representation.

The CSRA requires that a notice of the above right be provided to bargaining unit employees each year. In addition, the CSRA requires that a recognized labor organization shall be given the opportunity to be present during any formal discussion between one or more representatives of the agency and one or more bargaining unit employees, if the discussion concerns any grievance, personnel policy or practice, or other general condition of employment.

The American Federation of State, County and Municipal Employees, Local 3925, is the exclusive representative of bargaining unit employees in the Washington, D.C., metropolitan area.

The following representatives of the American Federation of State, County, and Municipal Employees, Local 3925 (Union) and the Farm Service Agency and Risk Management Agency hereby enter into this Agreement the 5th day of October 2012.

Walter Poyel

FOR the UNION

Paul C. Rall

FOR the FARM SERVICE AGENCY

Francis R. Smith

FOR the RISK MANAGEMENT AGENCY