

# Collective Bargaining Agreement between OGC and AFGE, Local 1106\*

\*Revised in January 2010 to reflect amendments and Articles added after August, 2006.

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## TERMS AND DEFINITIONS

### Article 1.

When used in this Agreement, the terms contained in this Article have the following meanings:

- a. Agency. The Office of the General Counsel of the Department; when not capitalized, “agency” has its ordinary meaning.
- b. Agreement. The collective bargaining agreement between the Agency and the Union; when not capitalized, “agreement” has its ordinary meaning.
- c. Associate General Counsel Area of Responsibility. The division or divisions supervised by an Associate General Counsel of the Agency; the term also includes the area supervised by the Director of Administration and Resource Management.
- d. Day. A calendar day; if the day an action must be completed under this Agreement falls on a non-workday, the due date shall be the next workday.
- e. Department. The United States Department of Agriculture.
- f. Designated Agency Management Official. The General Counsel or the Agency management official or officials designated by the General Counsel to perform specific activities under this Agreement.
- g. Division. A Washington office division.
- h. Employee. A bargaining unit employee.
- i. Parties. The Union and the Agency; when not capitalized, “parties” has its ordinary meaning.
- j. Party. The Union or the Agency; when not capitalized, “party” has its ordinary meaning.
- k. Supervisor. An employee’s immediate supervisor.
- l. Union. The American Federation of Government Employees (AFGE), Local 1106.
- m. Union President. The Union President or designee.
- n. Written Communications. Written communications under this Agreement may be hand-delivered, mailed, or delivered by facsimile or electronic mail; delivery is timely if postmarked or transferred via electronic mail or facsimile no later than the final day of the designated period.

## RECOGNITION, UNIT DESIGNATION, AND COVERAGE

### Article 2.

#### Section 1. Recognition and Unit Designation.

- a. By this Agreement, the Agency recognizes the Union as the exclusive representative of all employees in the bargaining unit as defined in this Article. In accordance with 5 U.S.C. Chapter 71, the Union represents all employees regardless of whether they are members of the Union.
- b. The Parties shall not do anything by custom or practice that violates this Agreement.

Section 2. Coverage. The bargaining unit to which this Agreement applies includes all employees of the Agency, except those employees described in 5 U.S.C. § 7112(b)(1), (2), (3), (4), (6), and (7).

## EFFECTIVE DATE AND DURATION OF AGREEMENT

### Article 3.

Section 1. Effective Date. This Agreement shall take effect on the 31st day after it has been executed by the Parties, provided that it has been ratified by the Union members and not disapproved by the head of the agency under 5 U.S.C. § 7114(c).

Section 2. Duration. This Agreement shall remain in effect until January 2015. The Agreement shall remain in effect for additional 1-year periods after January 2015 unless, during the month of January of any year, the Union President or the designated Agency management official provides written notice to the other Party that the Union or the Agency wishes to modify or terminate the Agreement. The Parties shall meet within 30 days of receipt of the written notice to establish negotiation ground rules. This Agreement shall remain in effect until the Parties have completed negotiations on a new or modified agreement.

Section 3. Renegotiations. The Union President or the designated Agency management official may provide written notice to the other Party at any time that the Union or the Agency wishes to modify one or more articles of this Agreement. The Party receiving the notice is not required to agree to renegotiations. If the Parties agree to renegotiate, they shall meet in person or by telephone within a reasonable period of time.

Section 4. Supplemental Agreements. A supplemental agreement between the Parties that has become a part of this Agreement shall terminate at the same time as this Agreement, unless the Parties agree otherwise in writing.

## GOVERNING LAW AND REGULATIONS

### Article 4.

For all matters covered by this Agreement, the Agency, the Union, and employees are governed by statutes and government-wide regulations in effect at the time the Agreement was adopted, and by subsequently enacted statutes. If there are changes to government-wide regulations after the adoption of this Agreement, either Party may propose amending the Agreement to reflect the changes under the procedures of the Notification and Response Times Article or the Mid-Term Bargaining Article. If there is a conflict between this Agreement and any Department or Agency regulation, rule, policy, or directive, the Agreement shall govern.

## EMPLOYEE RIGHTS

### Article 5.

Section 1. General. The Agency shall treat employees fairly, equitably, and without discrimination in all aspects of personnel management. Employees shall be free of discrimination based on their age, gender, race, color, religion, marital or family status, national origin, disability, political beliefs, sexual orientation, or Union activity. The Agency shall provide employees the full protection afforded to them by law, regulation, Department policy, and this Agreement. The Agency shall not penalize employees for exercising their rights under this Agreement. Employees shall be free from restraint, interference, coercion, discrimination, or reprisal for presenting information regarding any matter for which relief is available under this Agreement.

Section 2. Right to Union Membership. Employees shall have the right to form, join, or assist the Union, or to refrain from these activities, freely and without fear of penalty or reprisal, and employees shall be protected in the exercise of these rights. The rights of employees include the right to act as a Union representative, and to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under the Federal Service Labor-Management Relations Statute and this Agreement.

Section 3. Right to Union Representation. Employees have a right to Union representation and to meet with a Union representative during official time in accordance with the Federal Service Labor-Management Relations Statute and this Agreement. The Agency shall not require employees to state why they wish to speak to a Union representative. Union-related discussions between employees and their Union representatives that concern non-criminal matters are confidential.

The Agency shall notify employees annually of their right to representation under 5 U.S.C. § 7114(a)(2)(B), known as Weingarten rights. If the Agency conducts a meeting to examine an employee in connection with an investigation, the Union shall be given the opportunity to be present if:

- a. The employee reasonably believes that the examination may result in disciplinary action against the employee; and
- b. The employee requests representation.

Before it conducts an investigatory meeting, the Agency shall inform the employee of the purpose and nature of the meeting. If the employee makes a request for Union representation at the investigatory meeting, the Agency representative conducting the meeting shall, if necessary, postpone the meeting to allow the employee sufficient time to obtain a Union representative. The meeting shall be rescheduled for a time that is convenient for the employee, the Agency representative, and the Union representative. If the parties are unable to agree on a time for

rescheduling the meeting, the matter shall be referred to the Union President and the designated Agency management official for resolution.

During an investigatory meeting, the Union representative may ask questions, clarify questions, seek clarifications, help the employee provide the Agency with facts favorable to the employee, identify other employees who may have knowledge of relevant facts, and request a caucus to speak to the employee privately.

Section 4. First Amendment Rights. Employees may exercise their First Amendment rights freely and without fear of penalty or reprisal. Employees may, either individually or collectively, petition Congress or any member of Congress, and they may present their views to Executive Branch officials.

Section 5. Access to Information and Documents. Employees, and their designated representatives who have been authorized in writing, shall have access to and may make copies of all Department and Agency records that are retrieved under their name or social security number, or any other identifier that is specific to the individual employee, in accordance with the Privacy Act, 5 U.S.C. § 552a.

Section 6. New Employees. A Union representative shall be given 30 minutes of official time to meet with each new employee to explain the Union's role and responsibilities. The Union representative may not use official time to solicit membership in the Union.

Section 7. Duty Time to Review the Collective Bargaining Agreement. During the first week after the effective date of this Agreement, the Agency shall give each employee 2 hours of duty time to read the Agreement. New employees shall be given 2 hours of duty time during their first week of employment to read the Agreement.

## MANAGEMENT RIGHTS

### Article 6.

Section 1. Agency Authority. Pursuant to 5 U.S.C. § 7106(a), and subject to 5 U.S.C. § 7106(b), nothing in this Agreement shall affect the Agency's authority:

- a. To determine the mission, budget, organization, number of employees, and internal security practices of the Agency; and
- b. In accordance with applicable laws:
  - i. to hire, assign, direct, layoff, and retain employees in the Agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against employees;
  - ii. to assign work, to make determinations with respect to contracting out, and to determine the personnel by which Agency operations shall be conducted;
  - iii. 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
  - iv. to take whatever actions may be necessary to carry out the Agency's mission during emergencies.

Section 2. Permissive Bargaining. The Agency elects to bargain with the Union over the permissive subjects contained in 5 U.S.C. § 7106(b)(1). The Agency may rescind its election to bargain over the permissive subjects. Any rescission by the Agency may be made with respect to permissive subjects as a whole, or on an issue-by-issue basis.

If an impasse is reached during negotiations over a permissive subject, and if both Parties agree, the Parties may request assistance from the Federal Mediation and Conciliation Service. The Parties agree to give full consideration to a mediator's efforts to resolve an impasse. If mediation fails to resolve an impasse over a permissive subject, and if both Parties agree, the Parties may refer the impasse to the Federal Service Impasses Panel.

## EQUAL EMPLOYMENT OPPORTUNITY

### Article 7.

Section 1. General. The Agency shall provide and promote equal employment opportunity for all qualified persons; shall prohibit discrimination based on age, gender, race, color, religion, marital or family status, national origin, disability, political beliefs, or sexual orientation; and shall provide a workplace that is free of sexual harassment. In all aspects of personnel management, the Agency shall provide employees the full protection afforded to them by law, regulation, Department policy, and this Agreement.

Section 2. Furnishing Information. Upon request, the Agency shall furnish the Union President with copies of any equal employment opportunity or affirmative action employment plans, reports of accomplishments, and statistical information relating to the Agency's equal employment opportunity programs.

Section 3. Union Notification. The Agency shall provide the Union President with a timely opportunity to comment before the Agency issues any equal employment opportunity or affirmative action employment plans. The Agency shall furnish the Union President with copies of all approved plans.

Section 4. Counselors. The Parties agree that trained equal employment opportunity counselors are necessary to properly administer an equal employment opportunity program. The Agency shall ensure that counselors are available and accessible to employees. These counselors shall advise employees of all of their rights, in accordance with law and regulation.

Section 5. Equal Employment Opportunity Complaints.

- a. The Union may represent an employee who has filed a complaint under either the Department's equal employment opportunity procedure or the Grievances and Arbitration Article of this Agreement.
- b. The filing of a formal equal employment opportunity complaint by an employee constitutes an election to use statutory appeal procedures, and precludes the filing of a grievance on the same subject matter under the Grievances and Arbitration Article of this Agreement.

## EMPLOYEE WELLNESS

### Article 8.

Section 1. General. The Agency shall maintain a safe and healthy work environment for all employees. The Parties agree to cooperate in an effort to avoid accidents, injuries, and health hazards in all areas under the Agency's control.

### Section 2. Work Conditions.

- c. The Agency shall make reasonable efforts to promptly abate unsafe or unhealthy working conditions. Where the conditions are dangerous to life and limb, and immediate repairs cannot be made to render the area safe, employees shall not be exposed to those conditions, and the Agency shall provide alternate accommodations or administrative leave.
- d. If there is an emergency in an office, the Agency's first concern shall be the health and safety of the employees and visitors to the facility. If it is necessary to evacuate a facility, employees shall not be readmitted into the facility until it has been determined that there is no longer a danger.
- e. If abatement of an unsafe or unhealthy working condition within 30 days will not be possible, the Agency shall prepare an abatement plan and provide it to affected employees. The plan shall contain an explanation of the circumstances of the delay in abatement, a proposed timetable for the abatement, and a summary of the interim steps that will be taken to protect employees from being injured by the unsafe or unhealthy working conditions.
- f. When an unsafe or unhealthy working condition cannot be abated without assistance from the General Services Administration, another Federal lessor agency, or any other lessor, the Agency shall cooperate with the lessor in its attempts to abate the condition.

### Section 3. Employee Rights and Responsibilities.

- a. The Parties will work together to detect unsafe and unhealthy working conditions at the earliest possible time, and to correct them at the working level closest to the problem. An employee who is assigned duties that may endanger the employee's health or well-being shall notify the supervisor of the situation. The supervisor shall delay or modify the assignment until appropriate corrective actions have been taken.
- b. An employee may decline to perform an assigned task if the employee reasonably believes that the task poses an imminent risk of death or serious bodily harm, and

there is insufficient time for normal Agency reporting and abatement procedures.

Section 4. Emergency Assistance.

- a. If an employee has to leave work because of illness or injury, the Agency shall, upon request, help the employee find suitable transportation. If a co-worker provides the requested assistance, the co-worker shall not be charged leave for the time involved.
- b. The Agency shall maintain reasonable first aid supplies or assistance at each office, and shall provide employees access to them.

Section 5. Health Services. The Agency shall permit employees reasonable opportunity to visit on-site health service units for emergency and appropriate health maintenance care. Where approved by the supervisor, the visits shall be permitted without charge to leave.

Section 6. Smoke-Free Environment. There shall be no smoking in any Agency office or in other areas under the Agency's control.

Section 7. Work Place Environment. The Agency shall provide employees with a workplace environment that is comfortable, relatively free of distractions, and safe.

- a. Workstation Furniture and Equipment. The Agency shall provide employees with available information about ergonomic issues and prevention of work-related injuries. For medical reasons, the Agency shall, whenever feasible, provide an employee with workstation furniture and equipment that meets ergonomic requirements. When replacing or upgrading workstation furniture or equipment, the Agency shall, whenever feasible, obtain furniture or equipment that meets ergonomic requirements. The Agency shall also provide training on the safe and proper use of workstation furniture and equipment. The Agency shall comply with all applicable regulations of the Occupational Safety and Health Administration, and shall take into account guidelines issued by that agency or by the National Institute of Occupational Safety and Health.
- b. Video Display Terminals. All video display terminals provided by the Agency shall be properly installed and maintained. If requested by an employee and the health care provider, the Agency shall reassign the employee during pregnancy to other work that does not require the use of a video display terminal. A reassignment of work may require the employee to alter work schedules or arrangements approved under other articles of this Agreement.
- c. Air Quality and Temperatures. If air quality and temperatures cannot be maintained at levels conducive to good health and employee well-being, the Agency shall temporarily relocate employees whenever practical to other office

spaces, or permit employees to work under a temporary flexiplace arrangement; or, when relocation is not practical, excuse employees from duty without loss of leave or pay, in accordance with the Leave Article of this Agreement.

- d. Maintenance and Housekeeping. The Agency or its agent shall take reasonable steps to avoid distractions to employees when scheduling maintenance, construction, or housekeeping activities, and shall comply with applicable safety and health standards relating to sanitation, and to insect and vermin control.
- e. Space Heaters and Personal Fans. Upon request, the Agency may make approved space heaters and personal fans available to employees.

Section 8. Federal Employees Compensation Act. The Agency shall inform employees injured in the performance of their duties of the procedures for filing a claim under the Federal Employees Compensation Act, and of the benefits available.

Section 9. Fitness. The Agency recognizes that fitness activities can enhance employee wellness and morale.

- a. The Agency shall attempt to make federally maintained fitness facilities available to its employees.
- b. Supervisors shall encourage employee wellness by allowing employees to arrange their work schedules to take advantage of fitness facilities, or other fitness activities, consistent with the Hours of Work Article of this Agreement.

## EMPLOYEE ASSISTANCE PROGRAM

### Article 9.

Section 1. Purpose. The Parties believe in helping employees with personal or family problems that may affect their job performance. For that reason, the Parties shall work together to inform employees about the Employee Assistance Program (EAP), which is designed to help employees who are affected by alcohol, drug abuse, mental illness, and other personal or family problems that may affect job performance.

Section 2. Use of Leave Under the Employee Assistance Program. If the Agency recommends that an employee participate in the EAP, the employee shall be granted administrative leave for the first EAP counseling session. For additional counseling sessions or rehabilitation, the employee may use sick leave, annual leave, compensatory time, or leave without pay.

### Section 3. Employee Rights and Responsibilities.

- a. Employees may voluntarily seek counseling from, information about, and referrals to the EAP.
- b. Employees may not be required to participate in the EAP; employees who decline to participate in the EAP shall not be penalized for having done so.
- c. The confidentiality of medical records, counseling records, and other records of employees who participate in the EAP shall be preserved in accordance with applicable law and regulations. The Agency shall do whatever it can under applicable law and regulations to ensure that information regarding an employee's participation in the EAP is kept strictly confidential.
- d. An employee's job security, appraisals, and promotion opportunities shall not be adversely affected by participation in the EAP.
- e. If the Agency has grounds to remove, suspend, or downgrade an employee because of performance or disciplinary problems resulting from mental illness, alcohol or drug abuse, or some other personal or family problem, the Agency, after a consideration of the circumstances, shall generally stay the action until the employee has been given reasonable time to enter into an appropriate rehabilitation program. Employees must provide the Agency with documentation showing that they are participating in the program, and must make reasonable progress toward improving their conduct or job performance.

Section 4. Union Participation in Employee Assistance Program Training. A Union representative shall be invited to attend any seminars, workshops, conferences, or training sessions designed to acquaint employees with the EAP.

Section 5. Promoting the Employee Assistance Program.

- a. The Agency shall post information describing the EAP in a prominent location in each division and office.
- c. The Agency shall provide information about the EAP to new employees during their initial orientation.
- d. When the Agency learns of any change in the EAP provider or any change in the services provided, the Agency shall timely provide that information to the employees and the Union President.

Section 6. Right to Union Representation.

An employee may request Union representation at any meeting with the Agency regarding the employee's participation in the EAP.

## PARTNERSHIP

### Article 10.

#### Section 1. General.

- a. The Parties are committed to developing a cooperative labor-management relationship, and to working together as partners in furthering the Agency's mission. Through collaborative problem-solving and consensus decision-making on a variety of workplace and labor-management issues, the Parties wish to help the Agency function more effectively and efficiently, better serve the Department and client agencies, save taxpayer dollars, and improve the quality of work life for all Agency employees.
- b. The Parties intend to continue the partnership, begun by the successful negotiation of this Agreement, through mutual effort and recognition of each Party's interests.

#### Section 2. Principles. A successful partnership requires:

- d. pre-decisional information sharing and involvement;
- e. a continuing dialogue between the Parties at the highest levels;
- f. working cooperatively to achieve mutual interests; and
- g. sharing responsibility for decisions reached through partnership consensus by publicly supporting them and helping with their implementation.

#### Section 3. Partnership Council.

- a. In order to establish an effective partnership, the Parties agree to form a Partnership Council. The members will include:
  - i. the Union President and the designated Agency management official;
  - ii. an additional 2 Union representatives designated by the Union President, and an additional 2 Agency representatives designated by the General Counsel; and
  - iii. a note-taker provided by the Agency.

- b. The Parties may invite other Union and Agency representatives to meetings involving particular issues.
- c. Partnership Council meetings shall be held semi-annually or more often as needed. The Union President and the designated Agency management official shall determine the dates and times for the meetings. Meetings shall be held by conference call, except that the Partnership Council shall convene at a designated location for at least 1 meeting per year. The meetings shall be chaired by the Union President and the designated Agency management official on an alternating basis. The agenda for the meetings shall be set by the Union President and the designated Agency management official.
- d. Discussions may include personnel policies and practices; working conditions; the Agency's budget; budget allocations to field offices and Washington divisions; numbers, types and grades of employees as well as the technology, methods, and means of performing work; labor-management plans; the Agency's strategic plan; and other issues that might generally be considered non-negotiable under traditional statutory provisions.

Section 4. Official Time and Travel Costs. The Agency shall authorize official time for participation of Union representatives in the Partnership Council meetings. The Agency shall pay the travel and per diem expenses for face-to-face Partnership Council meetings.

Section 5. Training. A labor-relations training program is essential to an effective partnership. The Partnership Council shall determine what training is necessary, and, to the extent funds are available, the Agency shall pay for the training. Whenever possible, the Parties shall use the low-cost or no-cost resources of the Federal Labor Relations Authority, the Federal Mediation and Conciliation Service, the Department of Labor, and others.

## OFFICIAL TIME

### Article 11.

Section 1. Use of Official Time. Union representatives may use official time, which is limited to the time an employee would otherwise be in a duty status, only for the following purposes:

- a. representing employees in the preparation and presentation of grievances and appeals;
- b. representing employees faced with disciplinary or adverse actions;
- c. attending meetings with Agency officials relating to representational duties;
- d. preparing and presenting Union grievances;
- e. preparing and presenting the Union's defense in Agency grievances;
- f. serving as the Union's representative or technical advisor in preparation for an arbitration hearing, and when representing the Union in an arbitration hearing;
- g. serving as a Union observer in adverse action hearings or grievance procedures affecting employees in which the Union is not the designated representative, if an observer is permitted by law;
- h. serving on committees that are authorized under this Agreement or as otherwise agreed to by the Parties;
- i. representing an employee in an injury compensation claim or any other matter covered by a statutory appeal procedure;
- j. preparing for collective bargaining agreement negotiations or negotiations designed to reach an interim agreement;
- k. serving as a negotiator in collective bargaining agreement negotiations or negotiations designed to reach an interim agreement;
- l. performing duties to comply with the Union's statutory obligation to report and disclose certain matters;
- m. meeting with employees to discuss conditions of employment; and
- n. performing other duties mutually agreed to by the Parties in accordance with law.

Section 2. Designation of Union Officials. The Union shall provide the designated Agency management official with the names of all Union officers and stewards, and promptly notify the Agency of any changes in assignments. A copy will also be provided to the Agency's Director of Administration and Resource Management.

Section 3. Assistant Vice Presidents and Stewards. Assistant Vice Presidents and stewards may use a reasonable amount of official time on the labor relations activities described in Section 1 of this Article. Assistant Vice Presidents and stewards shall obtain prior approval from their supervisors to perform representational activities before being released from regular duties. After using a period of official time, Assistant Vice Presidents and stewards shall promptly report back to work, and notify their supervisors that they have returned. If any scheduling conflicts arise that cannot be resolved by the Assistant Vice Presidents or stewards and their supervisors, the Union President and the designated Agency management official shall attempt to resolve the dispute informally.

Section 4. Vice Presidents. Vice Presidents may use up to 5 hours of official time per week on the labor relations activities described in Section 1 of this Article. If a Vice President does not use all 5 hours of official time in a week, the unused time will not carry over into a subsequent week. The use of official time by Vice Presidents in blocks of 2 hours or less shall not require prior approval from their supervisors. If Vice Presidents need more than 2 hours of consecutive official time, they shall obtain approval from their supervisors before being released from regular duties, unless the Vice President and supervisor agree that prior approval for a period of time greater than 2 hours is not required. If a Vice President needs more than the allotted 5 hours of official time per week, the request for additional official time will be handled under the provisions of Section 3 of this Article. Requests for official time for Vice Presidents above the 5-hour limit are not to be a frequent occurrence. If any scheduling conflicts arise that cannot be resolved by Vice Presidents and their supervisors, the Union President and the designated Agency management official shall attempt to resolve the dispute informally. Time spent in negotiations or impasse proceedings are not subject to, and will not count against, the 5-hour limit.

Section 5. Secretary/Treasurer. The Secretary/Treasurer may use up to 10 hours of official time per week on the labor relations activities described in Section 1 of this Article. If the Secretary/Treasurer does not use all 10 hours of official time in a week, the unused time will not carry over into a subsequent week. If the Secretary/Treasurer expects to use more than 4 hours of consecutive time for Union work during the following week, the Secretary/Treasurer shall discuss the Union activity with the supervisor in an attempt to accommodate the needs of both Parties. If any scheduling conflicts arise that cannot be resolved by the Secretary/Treasurer and the supervisor, the Union President and the designated Agency management official shall attempt to resolve the dispute informally. Time spent in negotiations or impasse proceedings are not subject to, and will not count against, the 10-hour limit.

Section 6. Union President. The Union President may use up to 36 hours of official time per week on the labor relations activities described in Section 1 of this Article. If the Union President does not use all 36 hours of official time in a week, the unused time will not carry over into a subsequent week. If the Union President expects to use more than 7 hours of consecutive time for Union work during the following week, the Union President shall discuss the Union activity with the supervisor in an attempt to accommodate the needs of both Parties. If any scheduling conflicts arise that cannot be resolved by the Union President and the supervisor, the Union President and the designated Agency management official shall attempt to resolve the dispute informally. Time spent in negotiations or impasse proceedings are not subject to, and will not count against, the 36-hour limit.

Section 7. Acting Union Officers. A Union representative who is temporarily acting for the Union President or the Secretary/Treasurer may use the official time allotted for the respective position. The Union shall promptly notify the Agency of any temporary changes within its organizational structure.

Section 8. Official Time Reporting. All use of official time must be recorded on the official time and attendance reports.

## OFFICIAL USE OF FACILITIES AND SERVICES

### Article 12.

#### Section 1. Meeting Rooms.

- a. Use for Official Time Purposes. The Union may use conference rooms or similar space during duty hours for activities for which official time is authorized. The space shall be adequate to protect the confidentiality of any discussions. The Union shall schedule use of the space through the Agency.
- b. Use for Non-Official Time Purposes. The Union may use conference rooms or similar space during non-duty hours for activities for which official time is not authorized. The Union shall schedule use of the space through the Agency.

#### Section 2. Office Space.

- a. If space is currently available or becomes available in an Agency office, the Agency shall provide a private office to the Union President, in addition to the space in which the Union President conducts official Agency business. This office space shall be private, secure, and have at least the following: floor-to-ceiling hard walls; locking doors; standard furnishings such as a desk, chairs, a locking file cabinet, a bookshelf; a telephone with voice mail; a personal computer with printer; and a facsimile machine with a separate telephone number. Similar accommodations shall be provided to the Secretary/Treasurer if the Secretary/Treasurer is not collocated with the Union President. The Secretary/Treasurer shall not necessarily be provided a facsimile machine. If this office space is not available, the Agency shall permit the Union President and Secretary/Treasurer to use any appropriate space available for conducting Union business, including the offices assigned to them for the conduct of official Agency business.
- b. If space is currently available in an Agency office, the Agency shall provide a private office with a locking door to other members of the Union's Executive Board. If space is not available, the Agency shall permit them to use any appropriate space available for conducting Union business, including the work space assigned to them for the conduct of official Agency business. The Agency shall provide a locking file cabinet for each member of the Union's Executive Board.
- c. When Assistant Vice Presidents and stewards require privacy for conducting Union business, the Agency shall permit the use of available space for the conducting of this business. The Agency shall provide a locking file cabinet for each Assistant Vice President and steward. The Agency will not be obliged to provide more than one private office at any Agency location.

Section 3. Equipment and Supplies.

- a. Telephones, Facsimile Machines, and Conference Calls. The Union may use telephones and facsimile machines for Union activities for which official time is authorized. With adequate notice to the Agency, the Union may use telephone conference calls to conduct meetings of its Executive Board or its membership. The Agency will bear only the cost of on-net long-distance calls.
- b. Computers and Printers. The Union President and Secretary/Treasurer shall be provided use of a computer and printer exclusively for Union activities. Vice Presidents, Assistant Vice Presidents, and stewards shall be permitted to use an Agency computer and printer for Union activities. If additional Agency computers and printers are available in a particular location, and not currently required for Agency business, they shall be provided for use by other members of the Executive Board exclusively for Union activities. These computers shall be connected to the Agency's Local Area Network, and shall have standard Agency software. The Agency will not be obliged to provide more than one computer and printer for Union activities at any Agency location.
- c. Electronic Mail. Union officials and employees may use electronic mail for Union activities for which official time is authorized. On non-duty time, Union officials and employees may use electronic mail for Union activities for which official time is not authorized.
- d. Copy Machines. Union officials and employees may use copy machines for Union activities for which official time is authorized.
- e. Office Supplies. The Agency shall provide a reasonable amount of office supplies for Union activities for which official time is authorized.
- f. Other. If it believes it is necessary, the Union may request the use of other equipment for Union activities for which official time is authorized.

Section 4. Information Services.

- a. Bulletin Boards. The Agency shall provide and allow the use of a separate bulletin board in each division or office for the posting of Union information.
- b. Mail.
  - i. For Union activities for which official time is authorized, the Agency shall provide and pay for regular mail service by the United States Postal Service and, by agreement, for any other mail or delivery service the Agency uses. All Union mail shall bear the name and return address of an

Executive Board member, Assistant Vice President, or steward.

- ii. The Union may use mail slots, bins, or inboxes for distributing Union materials during non-duty hours. The materials shall be reasonable in size and clearly identified as Union material, and shall contain nothing that identifies the material as the Agency's material or implies that the material is sponsored or endorsed by the Agency.
  - iii. On a quarterly basis, the Agency shall meter and mail to each employee's home address, one piece of first-class mail containing material relating to Union activities for which official time is authorized.
- c. Telephone Directories. The telephone, facsimile machine, and room numbers of Executive Board members will be included in the Agency's telephone directory. Assistant Vice Presidents and stewards shall also be listed in the telephone directory. The Union shall advise the Agency of changes in the names and titles of Union officials.
- d. Internet. The Agency agrees to provide space and support for a Union web page linked to any Internet or Intranet home page maintained by the Agency. The Union shall be responsible for maintaining its own web page.

Section 5. Accountability.

- a. The Union shall use the Agency's facilities, services, and equipment described in this Article only for the purposes allowed by statute, regulation, and this Agreement.
- b. The Union shall use the facilities, services, and equipment provided by the Agency under this Article in a prudent and economical manner.

## UNION DUES WITHHOLDING

### Article 13.

Section 1. Eligibility. Employees may pay Union dues through the authorization of voluntary allotments from their salary if they are members in good standing of the Union; they voluntarily complete and submit to the Secretary/Treasurer a Standard Form 1187, Request for Payroll Deductions for Labor Organization Dues; and their biweekly salary is sufficient to cover the total amount of the dues allotment.

### Section 2. Procedure.

- a. Once the withholding of dues begins, an employee shall remain on payroll withholding for one full year. If an employee submits a voluntary cancellation of dues withholding (Standard Form 1188) during the first year after the employee authorizes dues withholding, the cancellation will be effective the first full pay period after the first-year anniversary date of the employee's dues authorization, provided that the Union receives the employee's request on a timely basis. If an employee submits a Standard Form 1188 after the first full year of dues withholding, the cancellation will be effective the first full pay period after the employee's next anniversary date, provided that the Union receives the employee's request on a timely basis.
- b. An employee who wishes to stop paying Union dues through the authorization of voluntary salary allotments shall submit a Standard Form 1188 to the Secretary/Treasurer no earlier than six weeks and no later than two weeks before the anniversary date of commencement of the employee's dues withholding. The Union will not process Standard Forms 1188 that are received outside of this time frame.

### Section 3. Union Responsibility. The Union shall:

- a. inform its members of the voluntary nature of this system for allotment of Union dues;
- b. provide the Standard Form 1187 to its members;
- c. send properly executed and certified Standard Forms 1187 to the Agency's Director of Administration and Resource Management;
- d. provide written notification to the Agency's Director of Administration and Resource Management, with a copy to the Agency's Resource Management Specialist, of the following:
  - i. the Union officials authorized to certify Standard Forms 1187 (currently

- the Union President and the Secretary/Treasurer),
- ii. any change in the amount of dues to be deducted, and
- iii. the name of any employee who is no longer in good standing with the Union; and
- e. provide the Standard Form 1188 to the Agency's Director of Administration and Resource Management whenever an employee provides this form to the Union.

Section 4. Agency Responsibility.

- a. The Agency shall process voluntary allotments of dues in accordance with this Article, and take all steps within its authority to ensure that:
  - i. dues are withheld from an employee's salary on a biweekly basis, to begin with the first full pay period after the Agency receives a properly completed and signed Standard Form 1187 for the employee from an authorized Union official;
  - ii. new dues amounts are withheld upon certification from an authorized Union official; and
  - iii. dues are no longer withheld from an employee's salary after an authorized Union official provides the Agency with a properly completed and signed Standard Form 1188 for the employee. Dues withholding will end on the date determined under Section 2.a. of this Article.
- b. If the Agency becomes aware of a processing problem with respect to employee dues withholding, it shall promptly notify the Union President, and work diligently with other Department offices and government agencies to resolve the problem.
- c. The Agency shall promptly notify the Union President or the Secretary/Treasurer when a dues-paying member is no longer eligible for dues withholding.

Section 5. Miscellaneous.

- a. Nothing in this Article prevents the Union from establishing dues amounts that are based on an employee's grade level; and
- b. A general agreement between the Department and AFGE regarding dues withholding controls certain aspects of the dues withholding process not addressed by this Article. If that general agreement becomes ineffective, the Parties shall renegotiate this Article to address those items that were previously addressed by the general agreement.

NOTIFICATION AND RESPONSE TIMES

Article 14.

Section 1. Introduction. This Article provides a procedure for Agency notification to the Union of changes affecting conditions of employment. It also applies to formal discussions and information requests.

Section 2. Major Changes in Conditions of Employment. Major changes in conditions of employment are reductions in force, furloughs, office closures, Agency reorganizations, and changes in conditions of employment that affect more than one region or more than one Associate General Counsel area of responsibility. The Agency shall provide the Union President with advance written notice of proposed major changes in conditions of employment.

- a. Advance Notice. The Agency shall provide written notice at least 30 days in advance of a proposed change, identifying the proposed change, explaining the reasons for the proposed change, stating the proposed implementation date, stating the likely effects of the proposed change, and estimating the number of employees potentially affected by the proposed change.
- b. Union Response. Within 15 days of receipt of the advance notice, the Union President may present written recommendations to the Agency responding to the proposed change, or a written request for a briefing. If the Union President presents written recommendations to the Agency, the Agency shall respond in writing within 15 days of their receipt. If not satisfied with the Agency's response, the Union President may request negotiations within 15 days of receipt of the response.
- c. Briefing. If the Union President requests a briefing on a proposed change, the Agency shall provide it in person or by telephone within 15 days of the request. Within 15 days of a briefing, the Union President shall either notify the Agency of the Union's approval of the proposed change or request negotiations.
- d. Negotiations. If the Union President requests negotiations, the Parties will strive to begin negotiating within 15 days of the request or at another time agreed to by the Parties. The negotiations may be in person or by telephone.
- e. Implementation. The Agency may implement a proposed change if the Union President does not respond in writing to the original advance notice within 15 days of receipt of the advance notice, or request negotiations within 15 days of a briefing.

Section 3. Non-Major Changes in Conditions of Employment. Non-major changes in conditions of employment are changes in conditions of employment that affect only one region or Associate General Counsel area of responsibility, except for reductions in force, furloughs, office closures, and Agency reorganizations.

- a. Advance Notice. The Agency shall provide written notice at least 15 days in advance of a proposed change to the Union President, identifying the proposed change, explaining the reasons for the proposed change, stating the proposed implementation date, stating the likely effects of the proposed change, and estimating the number of employees potentially affected by the proposed change.
- b. Union Response. Within 7 days of the notification, the Union President may request negotiations or a briefing on the proposed change.
- c. Briefing. If the Union President requests a briefing, the Agency shall provide a briefing in person or by telephone within 7 days. Within 7 days of a briefing, the Union President shall either notify the Agency of the Union's approval of the proposed change or request negotiations.
- d. Negotiations. If the Union President requests negotiations, the Parties will strive to begin negotiating within 7 days of the request or at another time agreed to by the Parties. The negotiations may be in person or by telephone.
- e. Implementation. The Agency may implement a proposed change if the Union President does not respond in writing within 7 days of receipt of the advance notice, or request negotiations within 7 days of a briefing.

Section 4. Formal Discussions. Pursuant to 5 U.S.C. § 7114(a)(2)(A), the Agency shall provide the Union President with written notice of formal discussions no later than 2 business days before a formal discussion is scheduled to begin. The Parties may waive the notification period.

Section 5. Information Requests. The Union President shall submit information requests under 5 U.S.C. § 7114(b)(4) to the designated Agency management official. The Agency shall respond to the Union's requests for information within 15 days by requesting clarification, providing the information requested, providing a written explanation why the request cannot be fulfilled, or asking the Union to explain why the requested information is relevant and necessary.

Section 6. Union Initiated Mid-Term Bargaining. If the Union wishes to initiate mid-term bargaining, it shall follow the procedures contained in the Mid-Term Bargaining Article of this Agreement.

## MID-TERM BARGAINING

### Article 15.

Either Party may initiate mid-term bargaining by proposing changes in conditions of employment, provided that the changes do not relate to matters addressed in this Agreement or any supplemental agreement between the Parties.

Section 1. Major Changes in Conditions of Employment. Major changes in conditions of employment are reductions in force, furloughs, office closures, Agency reorganizations, and changes in conditions of employment that affect more than one region or more than one Associate General Counsel area of responsibility.

- a. Advance Notice. The Union President will provide the Agency written notice of a proposed change, identifying the proposed change, explaining the reasons for the proposed change, stating the proposed implementation date, stating the likely effects of the proposed change, and estimating the number of employees potentially affected by the proposed change.
- b. Agency Response. If the Union President submits a proposal under this section, the Agency shall provide a written response within 15 days of receipt of the proposal, or submit a written request to the Union for a briefing. If the Agency requests a briefing, the Union shall provide the briefing in person or by telephone within 15 days of the Agency's request. Within 15 days after the briefing, the Agency shall notify the Union President of its determination. The Agency may agree to the proposal, reject it, or present a counter-proposal. If the Agency agrees to the proposal, it shall implement it. If the Agency rejects the proposal or presents a counter-proposal, the Union may accept the Agency determination. If the Union rejects the Agency determination, the Parties will strive to begin negotiating within 15 days or at another time agreed to by the Parties. The bargaining may be conducted in person or by telephone. If the Parties reach an agreement under this section, the agreement shall be set forth in a Memorandum of Agreement (MOA). Disputes over the interpretation or application of an MOA shall be resolved under the Grievances and Arbitration Article of this Agreement. If the Parties are unable to reach an agreement on a mid-term bargaining proposal submitted under this section, either Party may declare an impasse and present the impasse to the Federal Service Impasses Panel in accordance with its rules.

Section 2. Non-Major Changes in Conditions of Employment. Non-major changes in conditions of employment are changes in conditions of employment that affect only one region or Associate General Counsel area of responsibility, except for reductions in force, furloughs, office

closures, and Agency reorganizations.

- a. Advance Notice. The Union President shall provide the Agency written notice of a proposed change, identifying the proposed change, explaining the reasons for the proposed change, stating the proposed implementation date, stating the likely effects of the proposed change, and estimating the number of employees potentially affected by the proposed change.
- b. Agency Response. If the Union President submits a proposal under this section, the Agency shall provide a written response within 7 days of receipt of the proposal, or submit a written request to the Union for a briefing. If the Agency requests a briefing, the Union will provide the briefing in person or by telephone within 7 days of the Agency's request. Within 7 days after the briefing, the Agency shall notify the Union President of its determination. The Agency may agree to the proposal, reject it, or present a counter-proposal. If the Agency agrees to the proposal, it shall implement it. If the Agency rejects a proposal or presents a counter-proposal, the Union may accept the Agency determination. If the Union rejects the Agency determination, the Parties shall strive to begin negotiating within 7 days or at another time agreed to by the Parties. The bargaining may be conducted in person or by telephone. If the Parties reach an agreement under this section, the agreement shall be set forth in an MOA. Disputes over the interpretation or application of an MOA shall be resolved under the Grievances and Arbitration Article of this Agreement. If the Parties are unable to reach an agreement on a mid-term bargaining proposal submitted under this section, either Party may declare an impasse and present the impasse to the Federal Service Impasses Panel in accordance with its rules.

Section 3. Timeliness of Agency Response. If the Agency does not respond within the times established by this Article, the Union President shall notify the designated Agency management official, who shall take immediate steps to ensure that the Agency complies with all the provisions of this Article. If there is no response from the designated Agency management official within 15 days, there shall be face-to-face negotiations between the Union President and the designated Agency management official, at the Agency's expense, regarding the proposal.

Section 4. Agency-Initiated Mid-Term Bargaining. If the Agency wishes to initiate mid-term bargaining, it shall follow the procedures contained in the Notification and Response Times Article of this Agreement.

## PROVISION OF DOCUMENTS

### Article 16.

Section 1. Web Page. The Agency shall create and maintain a Web page that shall contain Agency policies and directives, and a link to a Union site. The Union shall be responsible for maintaining its site.

Section 2. Policies and Directives. All new policies and directives issued by the Agency shall be provided to the Union President as soon as possible. The Agency shall have until the time this Agreement is submitted to the Union for ratification to determine which policies and directives are currently in effect and to provide them to the Union President. The Union President may request to bargain over any policies and directives the Union believes are not currently in effect.

Section 3. Notice of Training, Vacancy and Detail Opportunities. The Agency shall implement an Agency-wide procedure for the timely distribution of training, vacancy and detail opportunities to employees and the Union President.

Section 4. Organizational Charts. The Agency shall provide organizational charts for both the Washington office and field offices to employees and the Union President. The organizational charts and any supplemental documents provided under this section shall specify the rater of record of each employee.

Section 5. New Employee Orientation. Within 30 days after a new employee is hired, the Agency shall provide an orientation session, which may be based on training modules. The Agency shall also provide the new employee with copies of this Agreement, any supplemental agreement between the Parties, and current Agency policies and directives.

Section 6. Budget Information. Within 30 days of their completion and receipt by the Agency, the Agency shall provide the Union with the Agency's:

- a. OMB budget allowance;
- b. congressionally appropriated budget;
- c. budget allocation for each region and field office, and for each Associate General Counsel area of responsibility; and
- d. actual obligations by object class at the end of each fiscal year.

Section 7. Copies of Agreements. Within 30 days after this Agreement or any supplemental agreement between the Parties goes into effect, the Agency shall provide copies of them to the Union President and employees.

Section 8. Employee Information. The Agency shall maintain and provide the Union with a list of all employees by name, position title, series, grade and office location. In addition, on a quarterly basis, the Agency shall provide the Union with the same information with respect to newly hired employees and employees whose status and grades have changed.

Section 9. Joint Committee. The Parties shall form a joint committee to make recommendations to the General Counsel on what policies and directives are currently in effect, and should be included in an OGC handbook containing Agency policies and directives. This handbook shall be available on any Internet or Intranet home page maintained by the Agency.

Section 10. Union Information Requests. Nothing in this Article shall limit the Union's right to request information under 5 U.S.C. § 7114(b)(4).

## OFFICE DRESS POLICY

### Article 17.

Section 1. Purpose. This flexible dress policy provides benefits to employees at no cost to the Agency, without inhibiting the provision of legal services or diminishing the Agency's professional image.

### Section 2. Definitions.

- a. Traditional business attire is neat and clean, and includes the following:
  - i. for male attire: a suit with a necktie, or a sport coat with dress pants and a necktie; and
  - ii. for female attire: a dress, a two-piece suit, or a jacket, blazer, or sweater with a skirt or dress pants.
- b. Business casual attire is neat and clean, and more casual than traditional business attire. It includes denim but does not include athletic wear, such as T-shirts, tank tops, sweatshirts, sweatpants, jogging or warm-up suits, and shorts.

Section 3. Traditional Business Attire. Employees shall wear traditional business attire when:

- a. appearing in court or in an administrative proceeding;
- b. meeting with client agency officials or others who usually wear traditional business attire; and
- c. meeting with opposing parties or their attorneys in the context of litigation.

Section 4. Business Casual Attire. For situations other than those set forth in Section 3, employees may wear appropriate business casual attire. However, employees wearing business casual attire are encouraged to have traditional business attire available so that they may attend unscheduled meetings where traditional business attire is obligatory. Employees may be required to wear traditional business attire to attend these meetings.

Section 5. Special Circumstances. The provisions of this Article pertaining to traditional business attire and business casual attire shall not apply in the following circumstances:

- a. Employees, who cannot reasonably comply with the provisions of this

Article for medical reasons, may, with approval of their supervisor, dress in a manner that accommodates the medical condition.

- b. For work that entails visiting sites in forests or fields, acceptable attire may include clothing that is not considered appropriate for the office but that is appropriate for the outdoors.
- c. If an employee's activities on a particular day involve physical work, such as moving office furniture or files, acceptable attire may include clothing that would not be considered appropriate for normal office duties.
- d. Employees shall comply with any court-imposed dress code whenever appearing in court.

Section 6. Local Policies. Agency offices may adopt dress policies that are tailored to local circumstances and do not create problems for the Agency. These policies may allow for business casual attire in a more expansive manner than the policies established in this Article.

## TRANSIT AND PARKING SUBSIDY

### Article 18.

Section 1. Pre-Tax Benefit. In furtherance of the Federal Employees Clean Air Incentive Act, 5 U.S.C. § 7905, an employee who uses qualified transit or qualified parking in commuting to or from the employee's residence or duty station may elect either or both of the following benefits:

- e. An amount of an employee's gross income shall be set aside, before taxes, representing payment for qualified transit costs, which amount shall be the lesser of the actual cost to the employee of qualified transit travel; or the monthly maximum amount excludable from gross income for qualified transportation fringe benefits, other than qualified parking, as allowed by law.
- f. An amount of an employee's gross income shall be set aside, before taxes, representing payment for qualified parking fees, which amount shall be the lesser of the actual cost to the employee of monthly qualified parking fees paid by the employee, or the monthly maximum amount excludable from gross income for qualified parking, as allowed by law.

Section 2. Authority. This Article shall be administered in accordance with the provisions relating to qualified transportation fringe benefits set forth in 26 U.S.C. § 132(f). Benefits provided to employees under Section 1 are not subject to income tax, as allowed by law.

Section 3. Certification. The pre-tax benefits of Section 1 shall be based upon a certification by an employee of the regular monthly costs that the employee expects to incur. The employee shall update the certification annually, on a date set by the Agency. Employees are responsible for ensuring that actual costs incurred each month are not less than the amount certified. If the employee's regular monthly costs increase, and the increase would affect the benefits available to the employee under Section 1, the employee shall provide the supervisor with a revised certification. If the Agency has reasonable grounds to believe that the actual costs incurred by an employee are less than the amount of the certification, it may require the employee to submit a monthly certification of actual costs. This certification shall include the dates traveled, the daily costs incurred, the type of transportation used or the location of qualified parking, and the total costs incurred during the month. In a monthly certification related to qualified parking for a carpool, the employee shall list the person or persons with whom the employee carpools.

Section 4. Definitions.

- a. Qualified transit means mass transit facilities, whether or not publicly owned, such as buses, subways, rail, light rail, elevated rail, streetcars, trolleys, ferries, and commuter highway vehicles.

- b. Commuter highway vehicle means any highway vehicle, the seating capacity of which is at least 6 adults, not including the driver, and at least 80 percent of the mileage use of which can reasonably be expected to be for purposes of transporting persons in connection with travel between their residences and their place of employment, and on trips during which the number of persons transported for these purposes is at least one-half of the adult seating capacity of the vehicle, not including the driver.
- c. Qualified parking means parking used by an employee on or near the employee's duty station, when the employee commutes to work in a carpool; or, on or near a location from which the employee commutes to work by qualified transit, commuter highway vehicle, or carpool. This term does not include any parking on or near property used by the employee for residential purposes.
- d. Carpool means an arrangement whereby the employee regularly commutes to or from work in a vehicle that carries at least 3 persons, including the employee. However, if the Department adopts a more liberal definition of carpool, then the Department standard shall apply.

Section 5. Executive Order 13150. Eligible employees may elect transportation fringe benefits under Section 1 of this Article or Executive Order 13150, or both.

## BUSINESS CARDS

### Article 19.

The Agency shall, to the extent permitted by law, including decisions of the Comptroller General, provide business cards to its employees. The Agency may use its own equipment and personnel to produce the business cards.

## OUTSIDE EMPLOYMENT AND OTHER OUTSIDE ACTIVITIES

### Article 20.

Section 1. Introduction. Employees may engage during non-duty hours in outside activities, including outside employment, that do not involve conduct prohibited by statute or federal regulation. The Standards of Ethical Conduct for Employees of the Executive Branch (Executive Branch Standards), 5 C.F.R. Part 2635, and the Supplemental Standards of Ethical Conduct for Employees of the Department of Agriculture (USDA supplemental regulation), 5 C.F.R. Part 8301, shall be implemented as to employees subject to the provisions of this Article.

### Section 2. Prior Approval of Outside Employment.

- a. Coverage. Except as otherwise provided in this Article, prior Agency approval for outside employment shall be obtained by covered employees, who are:
  - i. any employee required to file either a public (Standard Form 278) or a confidential (Office of Government Ethics Form 450) financial disclosure report, if the employment falls within the definition contained in the USDA supplemental regulation; and
  - ii. any bargaining unit attorney, if the outside employment involves the practice of law, whether compensated or not.
- b. Procedure. A covered employee who wishes to engage in outside employment shall present a written request for approval to the head of the division or office in which the employee is located, in accordance with the procedures set forth in 5 C.F.R. § 8301.102(c). The General Counsel shall appoint 1 or more Agency designees to review the requests. The Agency shall respond to the employee, normally within 20 days of receipt of the request, by approving the request, seeking further information to determine whether the outside employment meets the standard for approval set out in Section 2.c. of this Article, or disapproving the request, setting out its reasons for the disapproval. If the request requires a more expeditious response, the Agency shall make all reasonable efforts to respond as soon as possible. If the Agency disapproves an employee's request, the employee may file a grievance under the Grievances and Arbitration Article of this Agreement.
- c. Standard for Approval. The Agency shall approve a covered employee's request to engage in outside employment, unless it determines that the outside employment is expected to involve conduct prohibited by statute or Federal regulation, including 5 C.F.R. Parts 2635 and 8301.

- d. If the Agency proposes to extend the requirement to file public or confidential financial disclosure reports to additional categories of employees, it shall notify the Union President in accordance with the Notification and Response Times Article of this Agreement.

Section 3. Categorical Approvals. If the outside employment does not involve conduct prohibited by law or regulation, covered employees need not provide notification to the Agency, or seek prior approval from the Agency in the following circumstances:

- a. Legal Services to Family Members. A covered employee may provide occasional legal advice and services, with or without compensation, to anyone related to the employee by blood or affinity, or whose close relationship to the employee is the equivalent of a family relationship.
- b. Pro Bono Activities. A covered employee may provide legal advice and services to organizations or individuals, without compensation other than reimbursement of expenses, through a professional, educational, religious, charitable, employee, social, fraternal, recreational, or other non-profit organization.
- c. Professional Associations and Other Organizations. A covered employee may participate in the activities of professional associations, such as bar associations, or of other organizations, such as educational, religious, charitable, employee, social, fraternal, recreational, or other non-profit organizations, and may serve in a personal capacity as an officer of any of these organizations, without compensation other than reimbursement of expenses.
- d. Teaching, Speaking, Writing, or Editing.
  - i. Applicability. Covered employees may teach, speak, write, or edit with respect to topics that do not relate to their official duties, within the meaning of 5 C.F.R. § 2635.807(a)(2)(i)(B) through (E), with or without compensation, so long as the invitation to do so was not received from a prohibited source as defined in 5 C.F.R. § 2635.203(d).
  - ii. Disclaimer. If the covered employee is identified as an employee of the Agency in any written works or in any course catalogs or other written materials, the written works or other materials shall also contain a disclaimer stating that the views expressed are those of the employee and not necessarily those of the Department or of the Agency.

Section 4. Outside Activities Related to an Employee's Official Duties.

- a. Notice. Before engaging in teaching, speaking, writing, or editing with respect to topics that relate to their official duties within the meaning of

5 C.F.R. § 2635.807(a)(2)(i)(B) through (E), covered employees shall provide notice to the Agency as follows:

- i. Uncompensated Activities. Covered employees must provide their supervisors with written notice before engaging in uncompensated activity.
  - ii. Compensated Activities. Covered employees must provide their supervisors with written notice before engaging in compensated activity. The notice shall be given at least 20 days before engaging in the activity, unless the nature or timing of the activity requires a shorter notice period. In any case, the notice must provide the Agency with sufficient time to determine whether the activity is expected to involve conduct prohibited by statute or Federal regulation.
- b. Disclaimer. If the covered employee is identified as an employee of the Agency in any written works or in any course catalogs or other written materials, the written works or other materials shall also contain a disclaimer stating that the views expressed are those of the employee and not necessarily those of the Department or of the Agency.

Section 5. Voluntary Submission of Requests for Approval. Covered employees may voluntarily submit requests for Agency review and approval of outside employment arrangements that are arguably exempted by Section 3 or 4 of this Article from the prior approval procedures of the USDA supplemental regulation and this Article. The Agency shall either confirm that the outside employment is exempted from the prior approval procedures, or shall inform the employee of the need to comply with Section 2 or 4 of this Article.

Section 6. Recordkeeping. The Agency shall retain notifications and requests for approval of outside employment, as well as Agency responses to them. These records shall be maintained in a confidential manner and with due regard for the privacy of employees who have sought approval or provided notification; shall not be shared with other employees who have no need to know of an employee's outside employment or other outside activities; and shall be protected from disclosure to the maximum extent provided for by the Freedom of Information Act, 5 U.S.C. § 552, the Privacy Act of 1974, 5 U.S.C. § 552a, and all other applicable law and regulation.

Section 7. Political Activities. Political activities of employees shall be governed by the Hatch Act, 5 U.S.C. §§ 7321 through 7326, and its implementing regulations, 5 C.F.R. Parts 733 and 734.

## AWARDS

### Article 21.

Section 1. General. Recognizing employee performance through awards improves morale, efficiency, and productivity. The kinds of awards covered by this Article are cash awards, time-off awards, honorary or informal recognition awards, and quality step increases. When an employee receives an award, notice of the award shall be placed in the employee's official personnel folder and in the supervisor's work site file.

Section 2. Criteria. Awards shall be distributed throughout the Agency in a fair and equitable manner. The Agency shall consider the following criteria when making award decisions:

- a. Quality of performance and service to clients – performing consistently and exceptionally for the benefit of the Agency and client agencies;
- b. Problem-solving and innovation – working to improve current practices or trying new approaches or solutions;
- c. Teamwork and collegiality – advancing Agency goals by working collegially with other Agency personnel to achieve organizational goals;
- d. Special accomplishments – exemplary performance beyond ordinary job responsibilities;
- e. Citizenship – contributing to the well-being of the community, which shall be awarded only by non-monetary recognition; and
- f. Other contributions to organizational goals.

Section 3. Cash Awards. Toward the end of each fiscal year, the Agency shall determine if any funding is available to be allocated for cash awards. Available funding shall be distributed equitably among the Agency's organizational components in a manner which ensures that all employees have an equal opportunity for recognition. Employees who are recognized for outstanding performance in their annual appraisals shall be given first consideration by the Agency in the allocation of cash awards.

Section 4. Time-Off Awards. The Agency may grant time-off awards to employees, which shall be made without charge to leave or loss of pay. Before granting a time-off award to an employee, the Agency shall advise the employee that the award may be declined. If a time-off award is declined, the Agency shall give the employee non-monetary recognition.

Section 5. Non-Monetary Awards. The Agency may recognize employee performance through honorary or informal recognition awards, including certificates of appreciation, letters of commendation, plaques, or similar items.

Section 6. Quality Step Increases. A quality step increase is an increase in the employee's rate of basic pay from one step or rate of the grade of the employee's position to the next higher step or rate within the grade. Quality step increases provide employees with incentives and recognition for excellence in performance. The Agency may recognize the outstanding performance of an employee by granting a quality step increase. An employee who receives a quality step increase is ineligible for another performance award in that same rating year.

Section 7. Union Recommendations. The Union may recommend to the Agency that it recognize an employee's performance through non-monetary recognition, a time-off award, or an on-the-spot award. The Agency shall consider the Union's recommendations when making award determinations, but final decisions on all awards shall be made by the Agency.

Section 8. Annual Report. At the end of each calendar year, the Agency shall provide the Union President with an annual report:

- a. summarizing the funding allocated to the employee awards program, itemizing the amount expended on cash awards; and
- b. listing all employees who received awards during the year, including the type of award, the basis for recognition, and the amount, in the case of cash awards.

Section 9. Review. The Parties shall meet periodically, in person or by telephone, to discuss the implementation of this Article, and, particularly, whether it is achieving the shared objectives of fairness and an equitable distribution of awards throughout the Agency. Representatives of the Parties may recommend improvements in the implementation of this Article to the General Counsel.

## TRAINING AND CAREER DEVELOPMENT

### Article 22.

Section 1. General. The Parties recognize the value of a well-trained workforce and the need for a well-planned and well-conducted training program. The program shall be designed to improve job performance, provide for career development, and meet Agency needs. The identification and selection of training is the joint responsibility of the employee and the Agency.

Section 2. Funding for Training. At the beginning of each fiscal year or when the Agency has been provided its final budget for that fiscal year, whichever is later, the Agency shall notify the Union President regarding the amount of funds it plans to make available for training that fiscal year. After notifying the Union President and receiving any comments from the Union, the Agency shall make its final determination regarding the amount of training funds and shall notify the Union President. The Agency shall notify the Union of any changes in the amount of training funds.

### Section 3. Career Development.

- d. Factors to be considered in making decisions regarding career development and training for employees include educational experience, relevant work experience, job performance, and relevant individual skills and potential.
- e. At least annually, the employee and the supervisor shall meet to discuss training and career development. At this meeting, the employee and the supervisor shall discuss the employee's developmental needs and appropriate training courses. Typically, this meeting will occur during the employee's annual performance evaluation or when training funds are allocated for the upcoming fiscal year.
- f. At any time, an employee may request a conference with the supervisor to discuss training and career development.

### Section 4. Training Requests.

- a. Employees may request to attend courses, seminars, meetings, or conferences that will enhance current working skills or provide training for work that may be assigned in the future. The supervisor may grant or deny a request depending on the relevance of the training, training fund priorities, demands of the office workload, and other training opportunities provided to the employee.
- b. The Agency shall permit an employee to use official duty time to attend training that is approved but not funded by the Agency if the Agency determines that the

training relates to the employee's assigned duties or would enhance its mission and the employee's performance.

- c. The Agency shall annually provide the Union President with the following information for each Associate General Counsel area of responsibility and for each field office: the amount of funds expended under this Article, and a list of courses and seminars approved or denied by the Agency.

## TRAVEL

### Article 23.

#### Section 1. Official Travel.

- a. Whenever possible, the Agency shall schedule employee travel to occur during an employee's regularly scheduled work hours.
- b. Employees shall not be required to use privately owned vehicles for travel on official business.
- c. The Agency shall provide, upon request, telephone calling cards to employees who travel on official business or perform official duties away from their office 3 or more times per year. The Agency shall have available for each office and division an additional telephone calling card for use by employees who travel less than 3 times per year.
- d. The Agency shall provide each office and Associate General Counsel area of responsibility with at least one notebook computer containing word processing, remote electronic mail, and internet software for use by employees who travel on official business.
- e. The Agency shall either have cellular telephones available for employees who travel on official business, or allow employees to rent cellular phones for use during travel on official business, provided that the employees have received prior approval from the Agency.
- f. Employees are responsible for the proper care and security of Agency equipment used during official travel.

Section 2. Travel Advances. For good cause, travel advances may be made available to employees for official travel. The use of travel advances will be governed by government-wide regulations. Employees shall submit timely requests and obtain prior approval from their supervisors for travel advances. Employees who have been issued government credit cards are expected to use them to reduce or eliminate the need for travel advances.

#### Section 3. Reimbursement.

- a. An employee shall be reimbursed within 30 days after the employee submits a proper claim to the approving official. If the Agency believes that a claim is not proper, the Agency shall notify the employee within 7 days after the Agency receives the claim, and state why the claim is not proper. If the Agency does not reimburse the employee within 30 days after receipt of a proper claim, in addition

to the amount due the employee, the Agency shall pay the employee a late payment fee and any late payment charge imposed by the credit card contractor. Late payment fees shall be calculated in accordance with 41 C.F.R. § 301-71.210.

- b. The Agency shall ensure that adequate staff is trained and available to process employee travel claims as expeditiously as possible.
- c. The Agency shall reimburse employees for prepaid lodging expenses that are not refundable when temporary duty is curtailed, canceled, or interrupted for official purposes or for other reasons beyond the employee's control that are acceptable to the Agency, provided that any commitment by an employee for prepaid lodging expenses of more than one night or involving more than a 24-hour cancellation condition has been pre-approved by the supervisor, and the employee personally has sought to obtain a refund or otherwise has taken steps to minimize the costs.
- d. The Agency shall reimburse employees for official faxes and telephone calls, including calls made from an employee's personal cellular phone, made while on official travel.

## WORK SPACE

### Article 24.

Issues concerning employee work space assignments should be resolved at the office location between the affected employees and supervisor whenever possible. If the Agency determines that changes are needed in employee work space assignments, the following shall occur:

- a. The Agency shall notify the Union President, in accordance with the Notification and Response Times Article of this Agreement, as soon as it determines that an office relocation or other change in work space assignments is required.
- b. The supervisor shall involve the affected employees and the Union early in the planning process to obtain input regarding possible changes in employee work space assignments.
- c. The criteria for determining priorities in work space assignments are the employee's grade level, and, for employees within the same grade level, the employee's seniority as determined by the employee's service computation date. If the Agency concludes that the requirements of the position or of the Agency require it to assign work space on a different basis, the notification provided to the Union President under paragraph (a) of this Article shall include the reasons for the Agency's determination.
- d. The needs of employees entitled to reasonable accommodation shall be a priority in determining work space assignments.
- e. The Agency recognizes that employees have different preferences in decorating their assigned work spaces. Employees may decorate and maintain items of their choosing in their individual work space without interference from supervisors consistent with applicable laws and regulations, such as those governing safety, religious freedom, and hostile work environment. If an issue concerning decoration arises, the supervisor shall attempt to resolve the issue with the employee in question. The Agency shall not move or remove an employee's personal property without first notifying the employee, unless the personal property presents a health or safety issue, or under unusual circumstances, where removal is required for other management reasons and the employee is unavailable for prior notification. An employee may request Union representation at any point in this process.
- f. Employees shall maintain their work space in a reasonably neat and professional condition. The Agency shall provide employees with adequate filing and storage space. Maintaining common areas in a reasonably neat and professional condition is the responsibility of the Agency employees who use them.

## WORKPLACE TECHNOLOGY

### Article 25.

Section 1. Technology. Workplace technology is electronic equipment and associated software that affect an employee's methods and means of performing work.

Workplace technology includes personal computers and peripherals; laptop computers; printers; modems or other methods of Internet access; computer networking equipment, devices and servers; copiers; scanners; telephone systems; computer and network operating systems; facsimile machines; and software.

Section 2. Acquisition of Workplace Technology. Before acquiring any new technology, the Agency shall notify the Union President in accordance with the Notification and Response Times Article of this Agreement. New technology is any equipment or software that will change how the Agency performs its daily operations, and does not include the replacement of equipment or software by equipment or software currently in use by the Agency, or upgrades of existing equipment or software that are purchased as needed for the daily operations of the Agency.

Section 3. Replacement of Workplace Technology. The Agency shall install newly acquired workplace technology in a timely manner, within 60 days for equipment, and, whenever possible, within 6 months for software.

Section 4. Training. The Agency shall train employees in the use of workplace technology at the time it is provided to employees. This training may include video presentations, vendor training, teleconferencing, and training by Agency personnel.

## DETAILS AND VOLUNTARY REASSIGNMENTS

### Article 26.

Section 1. Scope. Details have the potential to enhance the experience, skill, and knowledge of employees in a manner that benefits both the professional growth of the employees and the operations of the Agency when the employees return to their original positions. A detail may be proposed by the employee, the Agency, or other entities in accordance with 5 U.S.C. § 3341 et seq. A proposed detail may specify the employee to be detailed or the detail may be open to any employee who meets the requirements of the detail. Details may be to another office of the Agency or of the Department, to another agency of the Federal Government, to state or local governments, or to other organizations as provided by law and regulation.

Section 2. Definition. Details are temporary assignments of employees to different positions in increments not to exceed 120 days, after which the employees shall return to their regular duties, without any reduction in grade and step. Time spent on a detail shall count towards time-in-grade requirements, career ladder promotions, and within-grade increases pursuant to law and regulation.

Section 3. Terms of Details Initiated by the Agency. Selection for details shall be conducted in a fair and equitable manner. The Agency may designate a particular employee for detail or it may consider all qualified employees, as provided below.

- a. If the Agency desires to open a detail to competitive consideration, it shall provide all employees with a description of the position and duties, the geographic and organizational location, and duration of the detail; the qualifications for the position and any other criteria that will be the basis for the Agency's selection; the specifications for the application process, including the identification of the person to whom the application must be sent; the deadline for submission of applications by interested employees; and the name of the selecting official.
- b. If the competitive consideration process does not produce a qualified candidate, the Agency may select the qualified employee with the latest service computation date to be assigned to the detail position.
- c. If any entity specified in Section 1, other than the Agency, requests that a particular employee be detailed to the entity, the Agency may comply with the request without considering other candidates.
- d. For good cause, the Agency may detail employees if it determines that their involuntary detail is necessary to address emergency situations. These details shall extend no longer than the time required to address the emergency situation, normally no more than 30 days.

Section 4. Terms of Details Proposed by an Employee. A detail may be proposed by an employee. The employee shall submit a written proposal to the Agency that shall describe the entity to which the employee would be assigned; the position and duties to be filled; the duration of the detail; the proposed receiving entity's willingness to have the employee on detail; the benefits of the detail to the employee and the Agency; the anticipated costs of the detail; and identification of the entity that will pay the employee's salary and any per diem or transportation costs. Within a reasonable period of time, not to exceed 60 days from receipt of the proposal, the Agency shall issue a written decision on the proposal that either consents, declines to consent, or consents with modifications to the proposal. The decision shall be based on an evaluation of the benefits to the employee and the Agency; the effect of the detail upon the operations of the office and the workload of other employees; whether the receiving entity is willing to accept the detail and its costs; the number of details previously undertaken by the employee; the effect on current staffing levels; and the proposed cost to the Agency. The Agency is under no obligation to incur or pay any cost of the detail. The Agency may deny the request for a detail based on its evaluation of the factors listed above, if it determines that the detail would cause an adverse impact on the Agency by reducing productivity, diminishing the level of services furnished to the public, or increasing the cost of Agency operations.

Section 5. Impact and Implementation. Upon selection of an employee for a detail of more than 30 days, the Agency shall notify the employee, other applicants, and the Union President at least 15 days before the commencement of the detail. The Union President may consult with the Agency regarding the potential adverse effect of the detail on other employees, and any measures necessary to mitigate that effect, taking into account the costs of these measures compared to the benefits to be achieved by the detail.

Section 6. Voluntary Reassignments. Employees may request voluntary reassignments to other divisions, offices, or geographical areas within the Agency. The Agency shall maintain, within the Office of Administration and Resource Management, a permanent, confidential list of these employees and their preferences for reassignment. The Agency shall provide the Union President with a copy of the confidential list. Whenever a division or office of the Agency is authorized to fill an available vacant position, the Office of Administration and Resource Management shall provide the division or office head with the names of employees who have expressed an interest in reassignment to that division or office. The Agency shall give those employees full consideration for reassignment in filling the available vacant position. If the available vacant position is filled by a voluntary reassignment that requires relocation, the Agency is not obligated to pay relocation expenses.

## TEMPORARY PROMOTIONS

### Article 27.

#### Section 1. General.

- c. Employees detailed to a higher-graded position for a period of more than 30 days shall be temporarily promoted to that position. An employee shall be compensated at the appropriate rate for the higher-graded position commencing on the first day of the detail.
- d. The Agency is not required to temporarily promote an employee unless the Agency has directed or permitted the employee to assume the duties of the higher-graded position. If the Agency knew or should have known that an employee is performing the duties of the higher-graded position, it has permitted the employee to perform those duties.
- e. The requirements of subsection (a) shall not be circumvented by rotating employees into a higher-graded position for 30 days or less in order to avoid compensating the employee at the appropriate rate for the higher-graded position.
- f. Temporary promotions for more than 120 days shall be filled through competitive procedures established by law, regulation, and this Agreement. Temporary promotions for 120 days or less shall be made as follows:
  - i. The Agency shall notify all qualified employees to determine if any employee wishes to be considered for the temporary promotion. If there are the same number of applicants as vacancies, each of the qualified applicants shall be selected.
  - ii. If more employees apply than there are vacancies, the Agency shall select from among the qualified applicants on a competitive basis. The first area of consideration will be the appropriate field office or Associate General Counsel area of responsibility.
  - iii. To provide experience to more than 1 employee, the Agency may rotate temporary promotions of more than 30 days among qualified applicants in the order of earliest service computation date.
  - iv. If there are no applicants, the Agency may select an employee who is willing to accept the temporary promotion. If no one is willing to accept the temporary promotion, the Agency may proceed in accordance with the Details and Voluntary Reassignments Article of this Agreement.

Section 2. Notification.

- a. The Agency shall notify the Union President of a potential temporary promotion, and provide a reasonable amount of time for the Union to comment before it is announced to employees.
- b. The Agency shall notify all affected employees and the Union President whenever an employee is selected for a temporary promotion.

Section 3. Documentation.

- a. Temporary promotions for more than 30 days shall be properly documented in the employee's official personnel folder.
- b. An employee who receives a temporary promotion for more than 30 days shall be provided with a copy of the position description and the performance plan.

Section 4. Loans. The Agency may solicit volunteers and assign employees to a position or duties for periods of 30 days or less in order to accommodate emergencies and staffing shortages without following the procedures of this Article.

## VACANCY ANNOUNCEMENTS

### Article 28.

#### Section 1. General.

- a. If the Agency proposes to fill an available excepted service position from within the Agency, it shall issue a vacancy notification throughout the Agency. The Agency shall provide copies of the notification to all eligible employees by electronic mail, or by posting it on the Agency's web page, and shall post the notification in each of the Agency's offices and divisions. Notifications shall be issued at least 14 days before the closing date.
- b. The Agency shall post vacancy announcements for all available vacant competitive service positions. Additionally, the Agency shall, whenever possible, post vacancy announcements for all available vacant excepted service positions. The Agency shall provide copies of vacancy announcements to all eligible employees by electronic mail, or by posting them on the Agency's web page, and shall post the vacancy announcements in each of the Agency's offices and divisions. Vacancy announcements shall be posted for at least 21 days before the closing date.

Section 2. Consultation with the Union. The Agency shall consult with the Union President before it posts a vacancy announcement or issues a notification.

Section 3. Contents of Vacancy Announcements. Every vacancy announcement shall clearly specify the qualifications and selection criteria for the position, and the official to whom the application should be sent. If the requirements for a vacant position change before the position is filled, the Agency shall post a new vacancy announcement reflecting the changes.

#### Section 4. Vacant Positions.

- a. All employees shall have a fair and equitable opportunity to compete for available vacant positions.
- b. If the Agency decides to interview any best qualified applicant for an available vacant position, all best qualified applicants shall be interviewed.
- c. The Agency shall notify all employees of selections made to fill vacant positions.
- d. At the request of an employee who was a qualified applicant, but was not selected for a position, the Agency shall provide an explanation as to why the employee was not selected.

Section 5. Position Qualifications. The Agency shall provide the Union President with copies of all position qualifications for vacant positions. The Union may submit recommendations to the Agency regarding the position qualifications.

Section 6. Priority to Employees. Whenever it intends to fill an available vacant position above the entry level, the Agency shall first consider qualified employees who apply for a lateral transfer or promotion to the position. In these circumstances, the Agency is not obligated to pay relocation expenses.

Section 7. Non-Senior Executive Service and Senior Executive Service Management Positions. The Agency shall allow bargaining unit employees to compete for all supervisory positions within the Agency at the GS-15 level and below. The Agency may fill Senior Executive Service positions without competition.

## SUPPORT STAFF PROMOTIONS

### Article 29.

#### Section 1. Career Ladder Promotions.

- a. Support staff members in career ladder positions shall be promoted to the next higher grade after they have served one year in grade, provided that they have demonstrated ability to perform at the next higher grade, work at the next higher grade is available, and budgetary resources are available.
- b. The Agency shall ensure that employees receive timely performance ratings, and that the timing of the ratings does not adversely affect their promotions.

#### Section 2. Paralegal Positions.

- a. If a division or office of the Agency determines that it should establish 1 or more paralegal positions with a career ladder of GS-5, 7, 9, and 11, it shall submit a request with supporting justification to the Director of Administration and Resource Management. Establishing these positions shall generally be accomplished within current staffing authorizations.
- b. If the Agency decides to establish a paralegal position with a career ladder of GS-5, 7, 9, and 11, it shall follow the procedures set forth in the Vacancy Announcements Article of this Agreement.

#### Section 3. Legal Assistant Positions.

- a. If a division or office of the Agency determines that it should establish 1 or more legal assistant positions with a career ladder of GS-5, 6, 7, and 8, it shall submit a request with supporting justification to the Director of Administration and Resource Management. Establishing these positions shall generally be accomplished within current staffing authorizations.
- b. If the Agency decides to establish a legal assistant position with a career ladder of GS-5, 6, 7, and 8, it shall follow the procedures set forth in the Vacancy Announcements Article of this Agreement.

## ATTORNEY PROMOTIONS

### Article 30.

#### Section 1. Promotions.

- a. Attorneys with fully successful or higher performance ratings shall be promoted to the next higher grade up to the GS-14 level after they have served one year in grade, provided that they have demonstrated ability to perform at the next higher grade, work at the next higher grade is available, and budgetary resources are available.
- b. The Agency shall ensure that employees receive timely performance ratings, and that the timing of the ratings does not adversely affect their promotions.

#### Section 2. Senior Counsel Positions.

- a. Non-supervisory attorneys employed at the GS-15 grade level will be designated as Senior Counsel. When the Agency determines that a non-supervisory GS-14 attorney is performing at the GS-15 grade level, the Agency shall promote the attorney to that grade level, or initiate discussions with the Union President as set forth in section 3.c. Nothing in this Article prohibits the Agency from exercising its authority under 5 U.S.C. § 7106(a).
- b. In considering recommendations for promotion to Senior Counsel, the Agency shall evaluate the recommendations under the Office of Personnel Management classification standards applicable to attorneys at the GS-15 level in the GS-0905 general attorney series.
- c. Whenever a supervisor determines that a non-supervisory GS-14 attorney is performing at the Senior Counsel level, the supervisor may recommend to the Regional Attorney or Associate General Counsel that the attorney be promoted to Senior Counsel. If the Regional Attorney or Associate General Counsel agrees, the recommendation shall be forwarded to the General Counsel for consideration. The standards for promotion to Senior Counsel specified in subsection (b) of this section shall apply to these recommendations.
- d. Non-supervisory GS-14 attorneys who believe that they are performing duties at the Senior Counsel level may propose to their supervisors that they be promoted to Senior Counsel. These proposals shall include a written memorandum specifying how the employee's performance meets the standards in subsection (b) of this section. Nothing in this Article

precludes an employee from requesting that the Union provide the Agency with its views regarding an employee's proposal for promotion to Senior Counsel. The supervisor shall act on the employee's proposal within 30 days of its receipt. If the supervisor concurs with the employee's proposal, the supervisor shall forward a recommendation for promotion to the Regional Attorney or Associate General Counsel for consideration. If the Regional Attorney or Associate General Counsel agrees, the recommendation shall be forwarded to the General Counsel for consideration within 15 days of receipt of the supervisor's recommendation.

- e. If the supervisor does not concur with a proposal submitted by a non-supervisory GS-14 attorney that the attorney be promoted to Senior Counsel, the supervisor shall meet with the attorney to discuss the reasons for the denial, and shall further discuss areas of performance, work assignments, and training that may enhance career development. If desired by the supervisor or the employee, the supervisor shall document the discussion in writing.
- f. If an employee is not satisfied with the supervisor's disposition of a request for promotion to Senior Counsel, the employee may request review of that determination by the Regional Attorney or Associate General Counsel, if the Regional Attorney or Associate General Counsel is not the immediate supervisor. Employees may also use available provisions of the Grievances and Arbitration Article of this Agreement.
- g. If the General Counsel concurs in a recommendation for promotion to Senior Counsel, the General Counsel shall approve the recommended promotion, and shall announce it to the Agency after it becomes effective. The General Counsel shall issue a decision on the promotion within 45 days from receipt of the supervisor's recommendation.
- h. The timeframes specified in this Article may be extended by agreement of the Parties.

### Section 3. Implementation.

- a. The Agency shall provide the Union President, upon request, with a report indicating the number of Senior Counsel promotion recommendations received and the disposition of each, specifying whether it has been approved, disapproved, or remains under consideration. The report shall state whether the recommendation was initiated by the employee or the supervisor, and the location within the Agency of the employee involved, unless disclosure of the location would reveal the identity of an employee whose promotion was denied.

- b. The Parties shall meet periodically, in person or by telephone, to discuss the implementation of this Article, and, particularly, whether it is achieving the shared objectives of fairness and an equitable distribution of Senior Counsel within the Agency's various components. Representatives of the Parties may recommend to the General Counsel improvements in the implementation of this Article.
- c. If funding affects the functioning of this Article in any particular year, the Agency shall notify the Union President. The Parties shall attempt to reach agreement on a method for addressing the funding issue. If the Parties agree on a method, it shall be implemented.
- d. Upon request, and to the extent permitted by law, the Agency shall make documents used in the Senior Counsel promotion process available to the Union President. The Agency shall notify the Union President if any documents are withheld and the reasons for withholding them.

Section 4. Accretion of Duties. Nothing in this Article prevents an employee from being promoted because of an accretion of duties.

Section 5. Grievances. If an attorney in the bargaining unit, whose promotion has been denied by the General Counsel, wishes to file a grievance challenging the General Counsel's decision, the attorney's grievance will be treated as a Step 3 grievance. The grievance will otherwise be handled in accordance with the procedures contained in Article 41, Grievances and Arbitration, of this Agreement, except that the designated Agency management official shall issue a written decision within 45 days of the final meeting.

## HOURS OF WORK

### Article 31.

#### Section 1. General.

- a. All work schedules shall comply with this Article, except that existing schedules may remain in effect by agreement of the employee and the supervisor.
- b. Work schedules shall be available to employees in accordance with this Article.
- c. Work schedules must fall between the hours of 6:30 a.m. and 6:30 p.m. on Monday through Friday, except that a supervisor may allow employees to begin work at 6:00 a.m.
- d. If more than one employee requests the same day off, or the same hours off during normal business hours, the supervisor shall review the requests and respond in writing within 15 days. In deciding whether to approve the requests, the supervisor shall determine whether approval would have an adverse impact on the Agency by reducing productivity, diminishing the level of services furnished to the public, or increasing the cost of Agency operations. A finding of inadequate office coverage during normal business hours is a basis for disapproval under these criteria. If the supervisor decides not to approve all of the requested days or hours off, the supervisor shall notify the employees of the determination, and shall meet with them to determine if they can agree on a schedule. The Union shall be given an opportunity to be present, either in person or by telephone, at the meeting. If the parties are unable to reach an agreement, the employee with the earliest service computation date shall have first choice for the scheduled day or hours off.
- e. If an employee is required to work on a scheduled day off, the supervisor shall offer the employee the choice of an alternative day off within the same pay period, or compensatory time or overtime as appropriate.
- f. If a scheduled day off falls on a federal holiday, the employee's holiday shall be the employee's preceding regularly scheduled workday. If a federal holiday falls on a Saturday, the employee's holiday shall be the employee's preceding regularly scheduled workday. If a federal holiday falls on a Sunday, the employee's holiday shall be the employee's next regularly scheduled workday.

- g. Employees may change from one type of work schedule to another no more than once per quarter, except by agreement of the employee and the supervisor.
- h. Full-time employees must be at work during the Agency's core hours, which are 10:00 a.m. to 3:00 p.m., unless they use leave, compensatory time, or credit hours, or the supervisor has agreed to allow employees to begin work at 6:00 a.m.
- i. This Article shall be administered according to law and regulation, including 5 U.S.C., Chapter 61, Subchapter II, and 5 C.F.R. Part 610, Subpart D, and this Agreement.

Section 2. Standard 40-Hour Work Week. The standard 40-hour work week shall consist of 5 consecutive 8-hour days, Monday through Friday, with the same starting and stopping time each day. Schedules other than this standard schedule are called alternative work schedules.

Section 3. Alternative Work Schedules. Alternative work schedules have the potential to improve productivity and morale, and to provide greater service to the public. Alternative work schedules available for election are the 5/4-9 and 4-10 compressed work schedules, and the flexible work schedule.

- h. Alternative work schedules shall comply with the following:
  - i. Employees on an alternative work schedule may not schedule work in excess of a 10-hour day, including credit hours.
  - ii. Full-time employees must work at least 4 days per week and a minimum of 35 hours per week, unless they use leave, compensatory time, or credit hours. Part-time employees must work the number of hours per pay period and per week that have been approved for their part-time work schedule.
  - iii. In emergencies or unforeseen circumstances, supervisors may grant exceptions to the rules set forth in this subsection.
- b. Alternative work schedules available for election are the 5/4-9 and 4-10 compressed work schedules, and the flexible work schedule.
  - i. 5/4-9 Compressed Work Schedule. This is a compressed work schedule that includes 8 workdays of 9 hours each, 1 workday of 8 hours, and 1 day off within the biweekly pay period.

- ii. 4-10 Compressed Work Schedule. This is a compressed work schedule that includes 4 workdays of 10 hours and 1 day off within each week of the biweekly pay period.
- iii. Flexible Work Schedule (FWS). Under the FWS, an employee must work a minimum of 35 hours per week, and 80 hours per pay period, and may work no more than 10 hours per day, including credit hours. Employees working a FWS can establish different starting and stopping times within the time bands set forth in Section 1.c. for each workday. With prior notice to the supervisor whenever possible, an employee may start the workday 1 hour earlier or 1 hour later than the scheduled starting time, with an equivalent adjustment within the same pay period, provided that the work schedule falls within the time bands set forth in Section 1.c. Alternatively, the employee may use appropriate leave, compensatory time, or credit hours, as provided for in the Leave Article of this Agreement. Employees must work core hours at least 4 days per week. If the employee intends to take off 1 or more days not chargeable to leave in a pay period, the employee must notify the supervisor and obtain approval no later than the second Monday of the preceding pay period, unless otherwise agreed to by the supervisor. Employees working a FWS may work, accumulate, and use credit hours under Section 3.c. of this Article.

c. Credit Hours

- i. Credit hours are hours, in addition to the basic work requirement, that employees who are working a FWS may elect to work, accumulate, and use so as to vary the length of a workday or a work week. Credit hours may be worked only by employees on a FWS, and are worked at the election of the employee, consistent with the provisions of this Agreement. They are distinguished from overtime hours in that they are not officially ordered and approved in advance by the Agency. They must be worked within an employee's non-overtime tour of duty and thus create no entitlement to overtime pay. Credit hours do not apply to the standard 40-hour work week or to compressed work schedules.
- ii. With the supervisor's approval, an employee may use credit hours to vary the length of a workday or a work week. A supervisor shall approve an employee's use of credit hours as provided for in the Leave Article of this Agreement.
- iii. Employees may earn credit hours only on their regularly scheduled workdays, up to a maximum of 2 credit hours for each day.

- iv. Credit hours shall be earned in increments of 30 minutes and may be used in increments of 15 minutes.
- v. For full-time employees, a maximum of 24 credit hours may be carried forward from pay period to pay period. For part-time employees, the maximum is one-quarter of the employee's scheduled biweekly tour of duty. Credit hours may be carried forward for 26 pay periods.

Section 4. Approval of Work Schedules. An employee who wishes to change a work schedule shall submit a written request to the supervisor, who shall review the request and respond in writing within 15 days. In deciding whether to approve an employee's request, the supervisor shall determine whether approval would have an adverse impact on the Agency by reducing productivity, diminishing the level of services furnished to the public, or increasing the cost of Agency operations. A finding of inadequate office coverage during normal business hours is a basis for disapproval under these criteria. If the request is denied, the supervisor shall provide the employee with a written explanation.

Section 5. Additional Provisions.

- f. If differences arise between the Agency and an employee with respect to the implementation of a work schedule, the supervisor, the employee, and a Union representative shall discuss the differences and attempt to resolve them informally. If the parties do not reach an agreement, the employee may discuss the issue with the next level supervisor. If agreement is not reached within 45 days after the employee first raised the issue, the procedures beginning at Section 7.c.ii. of the Grievances and Arbitration Article of this Agreement shall apply.
- g. To the extent feasible, the Agency shall schedule meetings during core hours, and give employees as much advance notice of meetings as possible.
- h. Employees in travel or training status may be required to adjust their work schedules. Employees on detail may be required to comply with the work schedule of the organization to which they are temporarily assigned. Employees shall attend regularly scheduled meetings, and participate in other work that requires their involvement, even if doing so means that they shall not take advantage of alternative work schedules provided for in this Article. The Agency shall make every effort to accommodate employees who are required to modify their work schedules, such as by altering days off if the employees are on compressed work schedules.
- i. If the Agency determines that an employee's work schedule has an adverse impact on the Agency by reducing productivity, diminishing the level of services furnished to the public, or increasing the cost of Agency operations, the Agency

may suspend or terminate it. A finding of inadequate office coverage during normal business hours is a basis for suspending or terminating a work schedule.

- j. Employees who work at an alternative work site more than one day in a week may use no more than two credit hours in that week.

## FLEXIPLACE

### Article 32.

#### Section 1. Purpose.

- k. Flexiplace is a program that permits all employees, including attorneys and members of the support staff, as appropriate, to work at home or at approved locations other than the conventional work site.
- l. Situations appropriate for flexiplace include, but are not limited to, the accommodation of medical and other special needs; energy or environmental conservation; reduced commuting costs; the provision of an environment for uninterrupted work; cost or space savings; better geographic coverage for the Agency's mission; and the enhancement of family life. Flexiplace is not a substitute for family care.
- m. The Parties recognize that the flexiplace program has maintained employee productivity and improved employee morale and job satisfaction, and anticipate that it will continue to do so.

#### Section 2. General.

- a. Employee participation in the flexiplace program is voluntary.
- b. Participants in the flexiplace program must enter into a written flexiplace work agreement, which is attached as Exhibit A to this Article.
- c. Work away from the conventional work site may vary depending upon the arrangements between the employee and the supervisor.
- d. A flexiplace arrangement may be used either on a regular or on an occasional basis, for part of a day, for individual days or hours within a pay period, or for several pay periods for the purposes described in Section 1.b.
- e. The Agency may review flexiplace arrangements at any time to determine whether they should be continued, modified, or terminated. The Agency may modify or terminate any flexiplace arrangement if the supervisor determines that the arrangement has an adverse impact on the Agency by reducing productivity, diminishing the level of services furnished to the public, or increasing the cost of Agency operations. A finding of inadequate office coverage during normal business hours is a basis for modifying or terminating a flexiplace arrangement. If the Agency decides to modify or terminate a flexiplace arrangement without the

employee's agreement, it shall provide written notice to the Union President in accordance with the Notification and Response Times Article of this Agreement.

- f. Participants in the flexiplace program may use compressed schedules or the flexible work schedule. Employees who work at an alternative work site may earn credit hours on the days they work at the alternative work site. Employees who work at an alternative work site more than 1 day in a week may use no more than  
2 credit hours in that week.
- g. Existing flexiplace arrangements may remain in effect by agreement of the employee and the supervisor.

Section 3. Eligibility. In determining an employee's eligibility to participate in the flexiplace program, the Agency shall consider whether:

- a. the employee has demonstrated the ability to work independently at a fully successful level;
- b. the employee is on leave restriction;
- c. the employee is on a performance improvement plan;
- d. the employee has received any disciplinary or adverse action in the last 12 months that would adversely affect the integrity of the flexiplace program or the Agency;
- e. the employee's fully successful performance requires:
  - i. daily and frequent use of specialized equipment or technology that is available only at the conventional work site,
  - ii. daily and frequent access to confidential or sensitive data, payroll records, or proprietary information protected by law or regulation from unauthorized disclosure, or
  - iii. daily and frequent personal contact or interaction with the employee's supervisors, co-workers, clients, employees of other government agencies, or the public;
- f. the alternative work site complies with reasonable safety standards, and has adequate work space and equipment to perform official business; and

- g. surplus equipment and property are available for the employee's use, or funds are available to provide them, if the employee does not have personal equipment and property for official business.

Section 4. Approval. The Agency shall approve or disapprove an employee's request to participate in the flexiplace program on a fair and equitable basis. In making its determination, the Agency shall consider whether the proposed arrangement will have an adverse impact on the Agency by reducing productivity, diminishing the level of services furnished to the public, or increasing the cost of Agency operations. A finding of inadequate office coverage during normal business hours is a basis for denial under these criteria.

- a. Employees who wish to participate in the flexiplace program shall submit a written request to their supervisors. The written request shall include the proposed work schedule and days to be worked away from the conventional work site.
- b. The supervisor shall review the request and respond in writing within 30 days.
- c. If the supervisor disapproves a request to participate in the flexiplace program, the supervisor shall provide the employee with a written explanation.

Section 5. Additional Provisions.

- a. The official duty station of an employee participating in the flexiplace program is the conventional work site.
- b. Whenever a supervisor receives two or more requests for approval of overlapping flexiplace arrangements, and concludes that the combined absences would have an adverse impact on the Agency by reducing productivity, diminishing the level of services furnished to the public, or increasing the cost of Agency operations, the supervisor shall inform the employees that all of the requests cannot be approved. The supervisor shall meet with the employees to determine whether the requests can be modified or limited to satisfy the employees and meet the Agency's needs. The Union shall be given an opportunity to be present, either in person or by telephone, at the meeting. If agreement cannot be reached, the employee with the earliest service computation date shall be given priority.
- c. Employees participating in the flexiplace program may work away from the conventional work site one or two days per week except under unusual conditions in which the supervisor and employee agree that additional workdays per week away from the conventional work site would be beneficial to the accomplishment of the Agency's mission. For example, an employee's physical condition may not allow the employee to come to the office, or working at a client facility may further the Agency's mission. Employees may have to work at the conventional work site on their flexiplace days, if required by special circumstances, either

planned or unplanned, including office assignments, meetings, the absence of other employees, emergencies, and training. The Agency shall provide employees with as much advance notice as possible if adjustments to flexiplace schedules are required. If any scheduled flexiplace work day falls on a federal holiday, the employee may request another flexiplace work day in the same work week. The supervisor shall approve or disapprove the employee's request after determining whether the requested change would have an adverse impact on the Agency by reducing productivity, diminishing the level of services furnished to the public, or increasing the cost of Agency operations.

- d. Full-time employees must work at the conventional work site at least 3 days per week, unless they use leave, compensatory time, or credit hours, or 1 of the days is a federal holiday. Part-time employees must work at the conventional work site at least 60 percent of their scheduled tour of duty, unless they use leave, compensatory time, or credit hours. Employees who work a 4-10 compressed work schedule may work at an alternative work site no more than 1 day per week.
- e. Supervisors shall make reasonable efforts to employ methods such as teleconferencing, fax machines, and electronic mail to avoid requiring an employee to report to the conventional work site on a flexiplace day. If an employee is required to return to the conventional work site, travel to and from the conventional work site is considered normal commuting time and not hours of work.
- f. During their scheduled hours of work, employees at an alternative work site shall be as accessible by telephone, electronic mail, or other means, as when they are working at the conventional work site.
- g. Work schedules shall be specified in flexiplace work agreements.
- h. Overtime and compensatory time for employees participating in the flexiplace program shall conform to applicable law, regulation, and this Agreement, as shall policies and practices for requesting and using leave.
- i. Subject to the limitations of the Agency's budget, the Agency shall make a good faith effort to provide the equipment, software, supplies, and services required for employees to participate in the flexiplace program.
- j. Alternative work sites must meet all reasonable safety standards. The employee shall perform a self-certification safety inspection, using the form attached to this Article as Exhibit B.
- k. Employees participating in the flexiplace program shall not be excused from work because workers at the official duty station are dismissed or not required to work

due to an emergency, if it does not affect the work being performed at the alternative work site. If an emergency occurs at the alternative work site that affects the employee's ability to perform work, the employee shall immediately notify the supervisor. The supervisor shall direct the employee to another work site, grant an excused absence, or allow the employee to request leave.

- l. The Agency shall not be responsible for operating, home maintenance, or any other incidental costs, such as utilities and insurance, associated with use of the alternative work site. The employee is entitled to reimbursement for authorized expenses incurred while conducting business for the Agency, including official telephone calls, as provided for by law and regulation.
- m. The Agency shall notify the Union President before approving a flexiplace work agreement.
- n. The Agency shall provide the Union President, upon request, with a list containing the names, grades, job classifications, and effective dates of all employees participating in the flexiplace program.

Exhibit A

Flexiplace Work Agreement

This flexiplace work arrangement is agreed to by \_\_\_\_\_  
(employee) and \_\_\_\_\_ (supervisor).

1. This arrangement will begin on \_\_\_\_\_ and continue until \_\_\_\_\_ or until terminated.
2. The employee's division or office is:  
\_\_\_\_\_
3. The employee's official duty station is:  
\_\_\_\_\_
4. The employee's alternative work site is:  
\_\_\_\_\_
5. Unless otherwise instructed, the employee shall work only at the conventional work site or the alternative work site. The employee agrees not to conduct personal business while in official duty status at the alternative work site, such as caring for dependents or making home repairs.
6. The employee's work schedule is:  
\_\_\_\_\_
7. All pay, special salary rates, leave, and travel entitlements shall be based on the employee's official duty station. The employee's time and attendance shall be recorded as work at the official duty station.
8. The employee must follow established office procedures for requesting and using leave.
9. The employee shall work overtime only with advance approval of the supervisor.
10. Employees are responsible for the proper care and security of Agency property and equipment at the alternative work site, and shall use them only for official purposes. The Agency shall service and maintain any Agency property and equipment provided to the employee. The employee shall install, service, and maintain any personal property and equipment. The following Agency property and equipment are located at the alternative work site:  
\_\_\_\_\_

11. The Agency shall provide the employee with necessary office supplies, and shall reimburse the employee for authorized expenses incurred while conducting Agency business, as provided for by law and regulation, including business-related long distance telephone calls. The Agency shall not be responsible for operating costs, home maintenance, insurance, or any other incidental costs, such as utilities, associated with the alternative work site.
12. The Agency shall not be liable for damages to an employee's personal property at the alternative work site, unless allowed under the Federal Tort Claims Act or the Military Personnel and Civilian Employees Claims Act.
13. If the alternative work site is not a government office, the employee shall provide a work space that is adequate for the performance of official duties, and shall complete a self-certification safety checklist.
14. The Federal Employees Compensation Act applies to employees if they are injured in the course of performing official duties at the conventional or alternative work site. The employee shall notify the supervisor immediately of any accident or injury that occurs at the alternative work site and shall complete any required forms. The supervisor shall immediately investigate the report.
15. The employee shall complete all assigned work according to procedures agreed upon by the employee and the supervisor.
16. The employee shall protect government records from unauthorized disclosure or damage, and shall comply with the Privacy Act of 1974, 5 U.S.C. § 552a.
17. While working at the alternative work site, the employee shall be bound by the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635.
18. This flexiplace agreement may be terminated in accordance with the Flexiplace Article of the collective bargaining agreement between the Agency and the Union.
19. Nothing in this agreement precludes the Agency from taking disciplinary or adverse action against an employee who fails to comply with its provisions.

Employee's Signature \_\_\_\_\_ Date: \_\_\_\_\_

Supervisor's Signature \_\_\_\_\_ Date: \_\_\_\_\_

## Exhibit B

### Alternative Work Site Self-Certification Safety Checklist

Name:

Organization:

Address:

Alternative Work Site Location:

#### Workplace Environment

1. Are temperature, noise, ventilation, and lighting levels adequate for maintaining your normal level of job performance? Yes [ ] No [ ]
2. Are all stairs with four or more steps equipped with handrails? Yes [ ] No [ ]
3. Are all circuit breakers and fuses in the electrical panel labeled as to intended service? Yes [ ] No [ ]
4. Do circuit breakers clearly indicate if they are in the open or closed position? Yes [ ] No [ ]
5. Is all electrical equipment free of recognized hazards that would cause physical harm (frayed wires, bare conductors, loose wires, flexible wires running through walls, and exposed wires to the ceiling)? Yes [ ] No [ ]
6. Will the building's electrical system permit the grounding of electrical equipment? Yes [ ] No [ ]
7. Are aisles, doorways, and corners free of obstructions to permit visibility and movement? Yes [ ] No [ ]
8. Are file cabinets and storage closets arranged so drawers and doors do not open into walkways? Yes [ ] No [ ]
9. Are chairs free of any loose casters (wheels) and are the rungs and legs of the chairs sturdy? Yes [ ] No [ ]
10. Are the phone lines, electrical cords, and extension wires secured under a desk or alongside a baseboard? Yes [ ] No [ ]

11. Is the office space neat, clean, and free of excessive amounts of combustibles?  
Yes [  ] No [  ]
12. Are floor surfaces clean, dry, level, and free of worn or frayed seams? Yes [  ] No [  ]
13. Are carpets well secured to the floor and free of frayed or worn seams? Yes [  ] No [  ]
14. Is there enough light for reading? Yes [  ] No [  ]

#### Computer Workstation

1. Is your chair adjustable? Yes [  ] No [  ]
2. Do you know how to adjust your chair? Yes [  ] No [  ]
3. Is your back adequately supported by a backrest? Yes [  ] No [  ]
4. Do you have enough leg room at your desk? Yes [  ] No [  ]
5. Are your feet on the floor or fully supported by a footrest? Yes [  ] No [  ]
6. Are you satisfied with the placement of your monitor and keyboard? Yes [  ] No [  ]
7. Is it easy to read the text on your screen? Yes [  ] No [  ]
8. Is the screen free from noticeable glare? Yes [  ] No [  ]
9. Is the top of the screen at eye level? Yes [  ] No [  ]
10. Do you need a document holder? Yes [  ] No [  ]
11. Is there space to rest your arms when you are not typing? Yes [  ] No [  ]
12. While you are typing, are your forearms close to parallel or parallel with the floor?  
Yes [  ] No [  ]

13. Are your wrists fairly straight when typing? Yes [  ] No [  ]

Employee's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Supervisor's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## PART-TIME EMPLOYMENT AND JOB-SHARING

### Article 33.

#### Section 1. Part-Time Employment.

- a. The Parties recognize that part-time employment may provide benefits for the Agency and for employees. Part-time employment means regularly scheduled work of 16 to 32 hours per week, or 32 to 64 hours per pay period. Subject to approval of the supervisor, an employee may vary the number of hours to be worked in any particular week or pay period.
- b. Part-time employment of limited duration means that the employee will engage in part-time employment for not less than 3 or more than 6 pay periods. For part-time employment of limited duration, the regularly scheduled work week shall be at least 20 hours and no more than 32 hours. Employees who request to go on part-time employment of limited duration shall specify the number of pay periods in which they intend to engage in part-time employment when giving notice under Section 1.d. Once approved, the election of part-time employment of limited duration shall be irrevocable, except that the Agency may terminate or alter the arrangement by agreement with the employee or pursuant to Section 3 of this Article.
- c. Part-time employment of unlimited duration means that the employee does not intend to limit the duration of the part-time employment. Subject to the provisions of Section 1.e., an election of part-time employment of unlimited duration does not preclude the employee from later converting to full-time employment. In order to ensure adequate work coverage for an office and not unduly burden other employees, the Agency shall make all reasonable efforts to hire an additional part-time employee when an employee converts from full-time employment to part-time employment of unlimited duration.
- d. Subject to the provisions of this Article, an employee may convert to part-time or full-time employment. The employee shall submit a written request to the supervisor at least 3 pay periods before the conversion. The employee's notice shall specify the number of hours that the employee will work during the week or during the pay period, the schedule to be worked, and whether the conversion to part-time employment will be of limited or unlimited duration. The Agency shall give due consideration to employee requests and respond in a timely manner.
- e. In determining whether to allow conversion to part-time or full-time employment, the Agency shall consider the following factors: (1) the benefits to the Agency of the proposed arrangements; (2) the available budget and needs of the Agency; (3) the duties and responsibilities of the position, including assignments and amount

of work; (4) available space, resources, and equipment; (5) the needs of the employee; and (6) the impact on the remaining personnel in the office.

- f. If the Agency approves an employee's request for conversion to part-time or full-time employment, the Agency shall provide the employee with written notification of the approval, including the number of hours to be worked per pay period and the part-time schedule approved.
- g. If the Agency denies an employee's request for conversion to part-time or full-time employment, the Agency shall provide the employee with written notification of the reasons for the denial, and, upon request of the employee, shall discuss whether alternative arrangements are feasible.
- h. Whenever an employee requests conversion from full-time to part-time employment, the Agency shall inform the employee of the effect the conversion may have with respect to potential reductions-in-force, retirement, health and life insurance, eligibility for and timing of promotions, eligibility for and timing of within-grade pay increases, and accrual of leave. For example, part-time employees pay a larger share of their health insurance premiums than full-time employees pay, 5 U.S.C. § 8906(b)(3); earn less annual leave and sick leave than full-time employees earn, 5 C.F.R. §§ 630.303 and 630.406; and the retirement annuity for an employee covered under the Federal Employees Retirement System is prorated to reflect the time the employee spent in part-time status, 5 C.F.R. § 842.407. The Agency shall also inform the employee that the employee may be required to return to full-time status.
- i. To the extent allowed by law, part-time employees shall have equal opportunity with full-time employees to participate in all employee programs and benefits.
- j. Unless approved by the Agency, an employee may not convert from part-time to full-time, or from full-time to part-time employment more than one time during any 26 consecutive pay periods.
- k. An employee who is employed on a full-time basis shall not be required to accept part-time employment as a condition of continued employment.

## Section 2. Job-Sharing.

- a. The Parties recognize that job-sharing may offer benefits for the Agency and for employees. The Agency shall consider allowing two or more full-time employees in an office to convert to part-time employment of unlimited duration in order to share one job, provided that each employee qualifies for the position to be shared, and that the total number of hours to be worked by both employees shall not exceed 80 hours per pay period. Agency consideration of job-share

arrangements shall include the factors identified in Section 1.e., as well as concerns inherent in job-share arrangements, such as coordination issues.

- b. Employees who want to share a job shall submit a written request to the supervisor, specifying the number of hours that each employee shall work. The Agency is under no obligation to recruit for a job-share position.

Section 3. Ending or Altering a Part-Time or Job-Sharing Arrangement. The Agency may end or alter a part-time or job-share arrangement based on the needs of the Agency, by providing the employee with written notice, at least 3 pay periods in advance of the termination or alteration. In making this determination, the Agency shall consider increased work requirements, failure to meet job goals, changes in budget conditions, emergency work-related conditions, and the loss of employees or job-share partners. If it is necessary to end a job-sharing arrangement, the Agency may require one or both of the job-sharers to work full-time, or may permit one or both to work part-time.

## OVERTIME

### Article 34.

#### Section 1. General.

- a. For employees on a standard work schedule, overtime is work ordered or approved in excess of 8 hours per day, 40 hours per administrative workweek, or 80 hours per pay period. For employees on compressed work schedules or the flexible work schedule (FWS), overtime is work ordered or approved in excess of the number of hours worked daily on the compressed work schedules or the FWS, or work in excess of 80 hours per pay period.
- b. Employees who have received advance written approval to work more than 80 hours in a pay period will be compensated in accordance with law and regulation. Employees whose rate of basic pay is above the rate for GS-10, Step 10, shall receive compensatory time in lieu of overtime pay for occasional and irregular overtime worked, unless the employee's position is non-exempt under the Fair Labor Standards Act.

#### Section 2. Scheduling and Approval.

- a. Overtime must be authorized in advance and approved in writing by the supervisor. An exception to the advance authorization requirement will be made when pressing organizational needs require overtime work and the supervisor agrees or has requested that the work be performed outside normal work hours.
- b. Overtime will be scheduled, approved, and worked in increments of 15 minutes.
- c. Overtime shall be distributed as equitably as possible among qualified employees. The Agency shall make reasonable efforts to ensure that employees are not assigned to perform an excessive amount of overtime. The Agency shall take into account an employee's personal hardship when making unscheduled overtime assignments.
- d. As soon as the need is known, the Agency shall notify the employees who will be assigned to work overtime on the same or the following workday. Otherwise, the Agency shall, whenever possible, provide employees with 48-hour advance notice of upcoming overtime. Employees who report for scheduled overtime on a day when work was not scheduled for them, or for which they are required to return to their place of employment, are deemed to have worked at least 2 hours overtime, if they were not notified of the cancellation.

Section 3. Delay While on Official Business. If employees are unable to return to their official duty station through no fault of their own while away on official business, they will remain in duty status. They shall be paid overtime or given compensatory time for any time beyond their normal duty hours that they are required to perform work.

Section 4. Records.

- a. The Agency shall maintain appropriate overtime records to show which employees worked overtime and when the overtime was worked.
- b. The Agency shall make available to the Union President, upon written request, records of overtime assignments of employees to aid in resolving individual claims of unfair or inequitable distribution of overtime. The records will be redacted to the extent required by law.

Section 5. Compensatory Time.

- a. Compensatory time is an award of official time equal to the amount of time spent in overtime.
- b. Employees must request and receive approval before using compensatory time. Compensatory time will be scheduled, approved, and used in increments of 15 minutes, in accordance with the Leave Article of this Agreement. Accrued compensatory time must be used by the end of the leave year following the year in which it was earned. Otherwise, it must be paid at the rate at which it was earned. Compensatory time must be used before annual leave, unless this requirement would result in the forfeiture of annual leave. Employees leaving the Department shall be paid for any unused compensatory time at the pay rate at which it was earned.

## LEAVE

### Article 35.

Section 1. General. The Agency shall administer leave in accordance with law, regulation, and this Article. All leave charges will be in 15-minute increments. For purposes of this Article, “family” includes a spouse, child (including adopted and foster children), parent, sibling, grandparent, in-law (mother, father, sister, or brother), and any individual related by blood or affinity or whose close association with the employee is the equivalent of a family relationship.

### Section 2. Annual Leave.

- a. For purposes of this Article, “annual leave” includes annual leave, credit hours, and compensatory time, except that, in subsection (f) of this section, “annual leave” does not include credit hours or compensatory time.
- b. Employees are entitled to use annual leave in accordance with this Agreement. Supervisors shall grant requests for annual leave unless the requested absence would cause an adverse impact on the Agency by reducing productivity, diminishing the level of services furnished to the public, or increasing the cost of Agency operations.
- c. Requests for annual leave shall be made and approval shall be granted as far in advance as practicable. If a request for annual leave is denied, the supervisor shall discuss the denial with the employee, provide the employee with a written explanation of the denial upon request, and specify when the employee will be able to take the requested leave. In the scheduling of annual leave, preference shall be given to employees with the earliest service computation date.
- d. With prior notice to the supervisor whenever possible, an employee may use short periods of annual leave, normally 2 hours or less, without requesting advance approval. However, the use of this leave is ultimately subject to approval by the supervisor.
- e. Annual leave shall be granted in a manner that permits employees to take at least 2 consecutive weeks of annual leave per year. The Agency shall try to accommodate employee requests to take longer periods of annual leave.
- f. All annual leave that an employee may accrue during the leave year is available for use on the first day of the leave year, in accordance with the approval provisions of this Article. An employee may request annual leave in advance of its actual accrual provided that:

- i. the employee has served more than 90 days in the employee's current appointment;
  - ii. the request does not exceed the amount of annual leave that the employee will earn during the rest of the leave year; and
  - iii. it is anticipated that the employee will be in a duty status long enough to repay the advanced leave.
- g. The Agency shall not cancel approved leave without consent of the employee, except in unusual and infrequent circumstances.
  - h. Annual leave that is erroneously charged or forfeited through no fault of the employee shall be restored in accordance with applicable regulations.

Section 3. Sick Leave.

- a. An employee's request to use earned sick leave shall be approved when the employee:
  - i. requests advance approval for medical, dental, or other examinations or treatment;
  - ii. is incapacitated because of sickness, injury, or pregnancy;
  - iii. is required to give care and attendance to a member of the employee's family who is incapacitated as the result of a physical or mental illness, injury, pregnancy, or childbirth, or who requires medical, dental, or optical examination or treatment;
  - iv. would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by the employee's presence on the job because of exposure to a communicable disease; or
  - v. makes arrangements necessitated by the death of a family member or attends the funeral of a family member.
- b. Employees should notify their supervisors and request approval for medical, dental, and other appointments as far in advance of the date and time of the appointments as possible.
- c. If an employee is unable to report for duty because of illness or injury, the employee shall notify the supervisor as soon as possible and normally no later than the beginning of the Agency's core hours. The employee shall keep the

supervisor informed of the need for continued use of sick leave. The Agency shall keep confidential the employee's reason for use of sick leave. This information shall be disclosed only to those supervisors who have authority to approve or disapprove the request.

- d. Employees shall not be required to furnish a medical certificate when requesting approval for sick leave for 4 or more consecutive workdays, unless the supervisor has reasonable grounds to question whether an employee is properly using sick leave. The supervisor may accept a self-certification in lieu of a medical certificate where the circumstances surrounding the employee's absence indicate that the services of a health care provider were not available or required.
- e. Employees shall not be required to furnish a self-certification or medical certificate when requesting approval for sick leave for fewer than 4 consecutive workdays, except under the circumstances covered by subsection (f) of this section.
- f. If a supervisor has reasonable grounds to question whether an employee is properly using sick leave, the supervisor may ask the employee for an explanation. For example, reasonable grounds for questioning an employee about the use of sick leave might exist if the employee has not followed the established procedures for requesting sick leave, or if the employee's use of sick leave consistently includes the days before or after holidays and weekends. If the employee is unable to provide a reasonable explanation for the use of sick leave, the supervisor may require a self-certification or medical certificate, if the employee was treated by a health care provider. If the explanation and any related documentation do not support the use of sick leave, the supervisor shall counsel the employee and discuss any procedures and requirements the employee must follow to obtain approval of sick leave. If there is a pattern of questionable sick leave use, the supervisor shall provide the employee with written notice of the problem, setting forth any restrictions regarding the use of sick leave and their duration. Sick leave restrictions shall be in place for no more than 4 months. However, if the problem continues, an employee's sick leave restriction may be extended for additional periods of 4 months or less.
- g. Upon the employee's request, and with the presentation of a medical certificate, the Agency may advance sick leave to permanent employees for up to 30 days, provided the employee has first exhausted accrued sick leave. However, advanced sick leave may not be granted to employees subject to sick leave restriction under subsection (f) of this section, or for whom future accrual of sick leave is improbable.
- h. Sick leave that is erroneously charged shall be restored in accordance with applicable regulations.

Section 4. Maternity and Paternity Leave.

- a. Employees shall be granted maternity or paternity leave in accordance with law, regulation, Federal guidelines, and this Article. Reasonable amounts of maternity and paternity leave in the form of sick leave, advanced sick leave, annual leave, leave without pay, or any appropriate combination of them, shall be granted during pregnancy, delivery, and for a reasonable period after delivery, as recommended by a health care provider.
- b. Employees shall provide their supervisors with notice of intent to use maternity or paternity leave at least 30 days before the leave is to begin or as soon as is practicable. The notice shall indicate the kind of leave to be used and the approximate dates of the leave.
- c. A request for temporary modification of duties shall be granted to a pregnant employee before or after maternity leave if the employee's regular duties are considered inappropriate by the health care provider. The Agency shall not establish specific time periods for prohibiting the employee from working before childbirth, or from returning to work thereafter. Normally these decisions will be made by the employee in consultation with the health care provider.
- d. An employee whose spouse or partner recently adopted or gave birth to a child may use annual leave, sick leave, leave without pay, or a combination of them, to care for the spouse or partner, the child, or other minor children in the household in accordance with Section 5 of this Article.

Section 5. Family and Medical Leave.

- a. For purposes of this section:
  - i. "parent" means a biological parent or a person whose close association with the employee was equivalent to a parental relationship when the employee was a child; and
  - ii. "son or daughter" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child whose close association with the employee is equivalent to a filial relationship, and who is under 18 years of age, or 18 years of age or older and incapable of self-care because of a mental or physical disability.
- b. Under the Family and Medical Leave Act of 1993 (FMLA) and the Federal Employees Family Friendly Leave Act, employees are entitled to a total of 12

weeks of unpaid family and medical leave during any 12-month period for 1 or more of the following reasons:

- i. the birth of a son or daughter and to care for a son or daughter;
  - ii. the placement of a son or daughter with the employee for adoption or foster care;
  - iii. the care by the employee of the employee's spouse, son, daughter, or parent who has a serious health condition; or
  - iv. a serious health condition that makes the employee unable to perform the functions of the employee's position.
- e. If the need for family and medical leave is foreseeable, the employee shall provide the supervisor with notice of intent to use the leave at least 30 days before the leave is to begin or as soon as is practicable.
- f. To be eligible for leave under the FMLA, an employee must have completed at least 1 year of Federal service.
- g. An employee who meets the criteria for family and medical leave and has complied with the requirements and obligations of the FMLA may not be denied use of the leave.
- h. An employee may elect to substitute annual or sick leave for any unpaid leave under the FMLA. Annual and sick leave may also be advanced to employees in accordance with applicable regulations and Sections 2.f. and 3.g. of this Article. Employees may be granted leave without pay regardless of whether they have used all of the other kinds of leave available to them.
- i. The Agency shall ensure continued employment for an employee who has been on extended FMLA leave and who wishes to return to work, unless, after proper notification, termination is required by the expiration of the employee's appointment, a reduction in force, for just cause, or for other reasons unrelated to the employee's extended absence. The employee shall be returned to the same position or to an equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment within the same commuting area.
- j. If an employee requests leave to care for the employee's spouse, son, daughter, or parent who has a serious health condition, the Agency may request certification from a health care provider under 5 U.S.C. § 6383.

- k. In addition to other leave available under this section, employees may schedule and shall be granted up to 24 hours of leave without pay each year to participate in school activities directly related to the educational advancement of their children; to accompany their children to routine medical or dental appointments; and to accompany their elderly family members to routine medical or dental appointments or other professional services related to their care, such as arranging for housing, meals, and utility and banking services. Supervisors shall support an employee's request to schedule paid time off for the family activities listed in this subsection.

Section 6. Bereavement Leave. In accordance with law, regulation, Federal guidelines, and this Article, an employee shall be granted any appropriate combination of annual leave, sick leave, and leave without pay for purposes of bereavement or mourning when there has been a death in the employee's family.

Section 7. Religious Leave. In accordance with law, regulation, Federal guidelines, and this Article, a supervisor shall permit an employee to earn compensatory time that the employee may use to attend religious services, or when religious beliefs do not allow the employee to work during normal duty hours. The employee may earn the necessary compensatory time either before or after using the religious leave. However, before using the religious leave, the employee and supervisor shall agree on a schedule for earning the necessary compensatory time.

Section 8. Leave Without Pay.

- a. Leave without pay (LWOP) is a voluntary, temporary, nonpay status, and approved absence from duty during normal duty hours that may be granted at the request of an employee. Requests for short periods of LWOP will normally be submitted to the supervisor. Requests for extended LWOP, absences from duty totaling more than 4 consecutive workweeks or 160 consecutive duty hours, shall be submitted to a Regional Attorney, Associate General Counsel, or Director of Administration and Resource Management. Decisions on whether to grant LWOP shall balance the mission requirements of the Agency with the needs of the employee. The Agency shall provide the employee with information regarding the effect of extended LWOP on the employee's benefits, earned leave, and creditable service.
- b. An employee may request that LWOP be approved for any reason. An employee's request for LWOP may be submitted orally or, upon request of the supervisor, in writing, and shall state the reasons for the request and the dates and duration of the period for which LWOP is sought. At the employee's request, the supervisor shall provide a written explanation if the request is denied in whole or in part.

- c. An employee may request LWOP for academic opportunities, training, or occupational development that will enhance the employee's skills and benefit the Agency.
- d. If, for budgetary or other reasons, the Agency determines that the use of LWOP by employees would be advantageous, the Agency shall notify all employees and solicit applications for LWOP. The notice shall state when the applications are due, and shall advise employees of the effect of LWOP on employee benefits, earned leave, and creditable service. Employees who wish to request LWOP under this subsection shall submit a written request to their supervisors stating the period for which LWOP is sought. If the Agency receives more requests for LWOP under this subsection than it can accommodate, employees with the earliest service computation dates shall be given priority, unless their absence would cause an adverse impact on the Agency by reducing productivity, diminishing the level of services furnished to the public, or increasing the cost of Agency operations. After the Agency reviews all LWOP requests submitted under this subsection, it shall provide a written response to each applicant, stating that the request has been approved, or, if approved in part or disapproved, stating the reasons for which the request was not approved.

Section 9. Absence Without Leave. Absence without leave (AWOL) is absence without approved leave and without adequate reason for failing to obtain prior approval for the absence. Employees may be charged with AWOL if they are absent without prior authorization. A charge of AWOL is not a disciplinary action but may serve as the basis for taking disciplinary action.

Section 10. Administrative and Other Leave.

- a. Administrative leave may be granted by supervisors. Administrative leave is an authorized absence from duty without loss of pay or charge against leave. Administrative leave may be granted for purposes not part of an employee's regular duties, such as civic duties or other activities that are deemed to be in the interest of the Agency.
- b. Employees shall be granted administrative leave if it is necessary to close an office location, delay the start of work hours, or release employees early. If any of these events occurs, the Agency shall provide timely notice to affected employees that administrative leave is in effect.
- c. If a duty station is open, but inclement weather or other emergency condition affecting travel prevents an employee from getting to work on time, the employee's tardiness may be excused by the supervisor without charge to leave when it can be determined that the employee made every effort to get to work on time.

- d. Administrative leave may be approved for continuing legal and professional education courses and professional and pro bono activities, including courses relevant to an employee's position or the office, ethics courses required to acquire or maintain professional licenses, and professional activities and pro bono services deemed to be appropriate by the supervisor.
- e. The Agency may approve administrative and other kinds of leave to permit employees (1) to vote in a civil election, where polls are not open sufficiently in advance of or after normal duty hours; (2) to serve on a jury or, when permitted under Department or other applicable regulations, to attend judicial proceedings as a witness; (3) to attend the funeral of a coworker or other professional associate; (4) to take necessary bar examinations or required civil service examinations; (5) to serve in the Military Reserves or National Guard (including active duty); (6) to donate blood (up to 4 hours of administrative leave including necessary travel time); (7) to donate bone marrow (up to 7 days of paid leave per calendar year plus annual or sick leave); (8) to serve as an organ donor (up to 30 days of paid leave plus annual or sick leave); or (9) to engage in other activities for which administrative and other kinds of leave are permitted by law or regulation.

Section 11. Leave Transfer and Leave Bank Program. The Agency shall maintain a leave transfer program in accordance with 5 C.F.R. § 630.901 et seq. If the Department establishes a voluntary leave bank program in accordance with 5 C.F.R. § 630.1001 et seq., the Agency shall participate in the program.

## POSITION DESCRIPTIONS AND CLASSIFICATIONS

### Article 36.

Section 1. Review of Position Descriptions. The Agency shall ensure that every employee has a position description that accurately reflects the employee's title, series, grade, and the major duties performed by the employee. Upon request by the employee, the employee and the supervisor shall review the employee's position description. The Agency may review the accuracy of a position description at any time. Employees who believe that they are performing duties outside the scope of their position description, or that their position description is otherwise inaccurate, may submit to their supervisors a written request that their position descriptions be reviewed. The written request should explain why the employee believes the position description is inaccurate, or specify the duties the employee is performing that are not reflected in the position description. After reviewing the employee's job duties and position description, the Agency shall issue a written decision within 30 days of the employee's request, stating whether the Agency believes that the position description is accurate. If the Agency determines that the employee's position description is not accurate, it shall revise the position description in accordance with Section 4. If the employee is dissatisfied with the Agency's decision, the employee may file a grievance under the Grievances and Arbitration Article of this Agreement. If the Agency decides to permanently reassign the employee's work during a position description review, the Agency shall notify the Union President and bargain if appropriate.

Section 2. Review of Position Classifications. The Agency may review the classification of a position at any time. Employees who believe that their positions are improperly classified may request the Agency to review the classification. If an employee asks the Agency to review the position classification, the Agency or its agent will complete the review within 60 days from the date of the employee's request, and will issue a written decision within 90 days of the employee's request. The decision will state whether the Agency or its agent believes that the employee's position is properly classified. The employee may appeal that decision to the Compensation and Employment Division of the Office of Human Resources Management. Before raising a classification issue with the Office of Personnel Management, the employee is encouraged to use the classification review and appeal procedures described in this section. If the Agency decides to change the classification of an employee's position as a result of a classification review, the Agency shall notify the Union President and bargain if appropriate.

Section 3. Adjustments in Classifications. If Agency review of an employee's position description or position classification shows that the position should be classified at a higher grade level, the Agency shall grant the employee a noncompetitive promotion or eliminate the grade-controlling duties of the position. If the promotion is granted, it will become effective the first full pay period after the position has been classified at a higher grade level. If the promotion is delayed, the Agency shall inform the employee of the reason for the delay and the pay period the promotion will take effect. If the Agency eliminates the grade-controlling duties of the position or delays the promotion, it shall inform the employee of the employee's rights

under the Grievances and Arbitration Article of this Agreement. The employee's rights to back pay and interest will be determined under the Back Pay Act, 5 U.S.C. § 5596, and applicable regulations. If Agency review of an employee's position description or position classification shows that the position should be classified at a lower grade level, the Agency shall effect an appropriate reduction in the employee's grade and pay, or, if appropriate, shall assign the employee additional duties in order to avoid a reduction in grade and pay.

Section 4. New and Revised Position Descriptions.

- a. New Position Descriptions. When a new position description has been approved and classified for an employee by the Agency or its agent, the supervisor and the employee shall review the position description together. If the employee is dissatisfied by the position description or classification, the employee may seek review under Sections 1 and 2 of this Article.
- b. Revised Position Descriptions. When an employee is assigned additional major duties that are not reflected in the current position description, the Agency shall revise the position description accordingly. When the revised position description has been approved and classified by the Agency or its agent, the supervisor and the employee shall review the position description together. If the employee is dissatisfied by the position description or classification, the employee may seek review under Sections 1 and 2 of this Article.

Section 5. Rights of the Union.

- a. The Agency shall provide the Union President with a copy of any new or revised position description upon request. The Union may make recommendations to the Agency concerning the accuracy of any position description. The Agency shall review the recommendations and provide the Union President with a written response within 30 days of receipt of the recommendations.
- b. If the Agency receives proposed position descriptions or classification standards for employee positions from the Department or the Office of Personnel Management, it shall provide the Union President with copies of the proposed position descriptions and classification standards and seek the Union's comments.
- c. An employee may request Union representation at any time during a position description or position classification review.

## OFFICIAL PERSONNEL RECORDS

### Article 37.

Section 1. Official Personnel Records. The official personnel records of employees are contained in official personnel folders maintained by the Department, which also maintains copies of employee performance appraisals, and records of disciplinary and adverse actions.

Section 2. Use of Official Personnel Folders. An employee's official personnel folder is the official repository of records regarding the employee's employment history. It may be used by the Agency for any purpose provided for by law and regulation. It may be reviewed by Agency personnel who, in the performance of their official duties, require access to it. An employee, or a designated representative who has been authorized in writing, shall be granted reasonable access to any records contained in the official personnel folder. The employee shall be allowed to review and copy them during normal business hours under appropriate supervision, and in accordance with law and regulation. Official personnel folders shall be purged in accordance with law and regulation.

Section 3. Supervisor's Work Site Files. Supervisors may maintain work site files regarding employees, including home addresses, telephone numbers, and other emergency contact information; time and attendance records; performance appraisals and related materials; training, award, and promotion histories; and other matters pertinent to the performance of their personnel management responsibilities. Records maintained in a supervisor's work site file shall be made available to authorized persons for official purposes only, as provided for by law and regulation, and shall not be disclosed to any unauthorized person. Employees, and their designated representatives who have been authorized in writing, may have access to, and may make copies of, the records. At the time of an employee's annual performance evaluation, the employee and the supervisor may review the supervisor's work site file. Records, including counseling records, shall be purged in accordance with law, regulation, and this Agreement. Employees shall be allowed to initial and date counseling records before they are placed in the supervisor's work site files.

Section 4. Privacy. A record or file pertaining to an employee shall be made available only as provided for by law and regulation, including the Privacy Act of 1974, 5 U.S.C. § 552a.

## EVALUATION OF EMPLOYEE PERFORMANCE

### Article 38.

Section 1. General. This Article provides a uniform and consistent process for evaluating employee performance. The Parties acknowledge their common goal of improving employee and organizational performance. In an effort to achieve this goal, the Agency intends to implement a performance appraisal process, consistent with the requirements of law, regulation, and this Agreement, that encourages continual communication between employees and supervisors, and provides a mechanism to evaluate employee performance, to identify strengths and weaknesses of employees, and to address deficient performance effectively through activities such as increased communication, coaching, training, and, if necessary, through appropriate personnel actions.

### Section 2. Definitions.

- a. Appraisal. Appraisal is the process under which an employee's performance is reviewed and evaluated.
- b. Appraisal Period. The appraisal period is the established period of time for which performance will be reviewed and a rating of record will be prepared. The rating period is normally 1 year.
- c. Critical Element. A critical element is a work assignment or responsibility of such importance that unacceptable performance on the element would result in a determination that an employee's overall performance is unacceptable. Critical elements are used to measure performance only at the individual level.
- d. Non-Critical Element. A non-critical element is a work assignment or responsibility that is not of such importance that unacceptable performance on the element would result in a determination that an employee's overall performance is unacceptable. A non-critical element is a dimension or aspect of performance, exclusive of a critical element, that is used in assigning a summary rating level.
- e. Element Rating Levels. The element rating levels are the measures of performance for each critical and non-critical element. Each element shall be rated at 1 of 3 levels: exceeds fully successful, meets fully successful, or does not meet fully successful.
- f. Performance Plan. A performance plan is the written performance elements and standards that set forth expected performance. A plan shall include all critical and non-critical elements and their performance standards, and shall be reviewed annually by the employee and the supervisor at the beginning of the new rating period.

- g. Progress Review. A progress review is a meeting at which the supervisor communicates with the employee about the employee's performance, including the critical and non-critical elements and applicable standards.
- h. Rating of Record or Final Rating. The rating of record or final rating is the performance rating prepared at the end of an appraisal period for performance of assigned duties over the entire period and the assignment of a summary rating level within the appraisal. The summary rating levels are outstanding, superior, fully successful, marginal, and unacceptable.
- i. Performance Standards. Performance standards are performance thresholds, requirements, or expectations that must be met to be appraised at a particular level of performance.

Section 3. Uniformity of Critical and Non-Critical Elements.

- a. Critical and non-critical elements define the most important aspects of an employee's official responsibilities.
- b. The substance of critical and non-critical elements and the designation of critical elements shall accurately reflect the actual duties performed by the employee and their relative importance. Subject to this principle, the Agency shall, to the extent practical, ensure uniformity in critical and non-critical elements, and in the relevant standards set forth in the performance plan, for all employees similarly classified by occupational series and performing similar work.
- c. Whenever the Agency proposes to change an employee's critical or non-critical elements, it shall give the employee 60 days written notice to provide input regarding the proposed change. Upon agreement between the employee and the supervisor, the change may be implemented before the 60-day period elapses.
- d. If team elements are used, employees shall be rated for their individual participation in team operations, not team output or team work product.
- e. To the maximum extent feasible, performance standards shall contain objective criteria by which to measure an employee's performance on the critical and non-critical elements of the employee's performance plan and shall be applied in a fair and valid manner. Performance standards recognize the degree of difficulty of the work performed by the employee, and reflect the importance of the work product to the Agency.

Section 4. Final Rating.

- a. At the end of each appraisal period, an employee shall receive a summary rating of outstanding, superior, fully successful, marginal, or unacceptable. For an employee to obtain a summary rating of fully successful, the employee must achieve a rating of at least “meets fully successful” on all elements.
- b. Employee performance ratings shall be based solely on individual merit, and not limited by any artificial quota system in any office or division or in the Agency at large. Since no summary rating level requires recognition by awards, the final rating of employees is not contingent upon the availability of awards. The Agency shall ensure that supervisors are aware of the proper application and operation of the Agency’s employee rating system in order to ensure that uniform rating policies are applied uniformly throughout the Agency.
- c. Supervisors shall discuss final ratings with employees. The final rating shall be reflected in a written performance appraisal and shall be given to the employee as soon as possible after the end of the rating period, but not more than 30 days thereafter. This time limit may be extended to allow an employee to comment upon, discuss, or provide additional information with respect to the rating. Additionally, this time limit does not apply to:
  - i. an employee who has not yet completed a performance improvement plan;
  - ii. a new employee who has not yet met the minimum time period for a rating; or
  - iii. an employee who has been reassigned or promoted to a new position, but has not yet met the minimum time period for a rating.
- d. An employee who wishes to challenge or appeal a final rating may do so by following the grievance procedures set forth in the Grievances and Arbitration Article of this Agreement.

Section 5. Progress Reviews.

- a. There shall be at least 1 progress review during the rating period, generally mid-year. The supervisor shall communicate with an employee regarding the employee's performance during the rating period. Face-to-face meetings are 1 example of how this may occur. Communication may also occur in writing. Face-to-face meetings and written feedback coupled with the regular mid-year progress reviews will be sufficient for most employees to understand what is expected of them and to measure their progress toward meeting these expectations.

- b. At the time of any progress review, the supervisor and employee should discuss the evaluation of the employee's actual performance for the appraisal period, including:
  - i. the employee's accomplishments;
  - ii. the degree to which the employee has met critical and non-critical elements and any barriers that may impede successful completion of those elements;
  - iii. changes in work assignments that may require revision of performance elements;
  - iv. deficiencies in work performance and required improvements;
  - v. training and developmental needs; and
  - vi. any areas in which the employee is exceeding expectations.
- c. If an employee's performance is marginal in 1 or more performance elements at the time of a progress review, the supervisor shall assist the employee in efforts to improve performance in the elements.
- d. Supervisors shall assist employees in efforts to maximize job performance in accordance with their performance plans.

Section 6. Unacceptable Performance. If, at any time during the rating period, the supervisor believes that an employee's performance would be rated as "does not meet fully successful" on any critical or non-critical element, the supervisor shall, without undue delay, hold a progress review with the employee to discuss the unacceptable performance.

Section 7. Performance Improvement Plans. A performance improvement plan (PIP) shall not be instituted for an employee unless the employee is performing at a "does not meet fully successful" level on 1 or more critical elements at any time during the rating period. Before the Agency places an employee on a PIP, the Agency shall meet with the employee and the employee's Union representative, if any, to discuss the contents of the PIP and to ensure that the PIP is tailored to address only those performance deficiencies for which unacceptable performance has been found by the Agency. A PIP shall last no less than 120 days. At the Union President's request, the Parties shall discuss the potential adverse impact of a PIP on other employees, and any measures necessary to mitigate that impact.

Section 8. Reassignment, Reduction in Grade, and Removal. An employee may be reassigned, reduced in grade, or removed for unsatisfactory performance after completing a PIP, if the employee is still performing at a "does not meet fully successful" level for those critical elements

that caused the PIP to be instituted. These actions are subject to law, regulation, and this Agreement.

Section 9. Measures of Performance. The number of assignments or cases handled by an employee during a rating period is not, by itself, sufficient to appropriately measure an employee's performance under any critical or non-critical element. Rather, in rating the employee, the Agency shall evaluate the employee's actual job performance for the designated appraisal period. Included among the factors that may be considered are the assignments or cases handled by the employee; the complexity of the work; the time and level of effort expended; the degree of supervision required; the importance of the work to the Agency, a client agency, the Department, or other entity; and the degree to which the employee received assistance from others. Employees will be rated on objective criteria contained in the performance plan, which shall be discussed with the employee at the beginning of each rating period and during the mid-year progress review.

## REDUCTIONS IN FORCE

### Article 39.

Section 1. General. The Agency shall conduct reductions in force in accordance with law, regulation, and this Agreement.

Section 2. Use of Reductions in Force. The Parties agree that a reduction in force, whether for budgetary or for other management reasons, should be used only in extremely limited circumstances. Consequently, the Agency shall first consider other options before proposing a reduction in force. Options that may be considered include transfers of work, transfers of staff, reducing costs through attrition, requesting approval to offer early-out retirements, determining whether any full-time employees wish to convert to part-time employment of limited or unlimited duration, determining whether any employees wish to share a job, determining whether any employees wish to go on leave without pay, arranging for reimbursable work details, imposing a hiring freeze, using furloughs, or freezing nonessential expenditures. Before proposing a reduction in force to respond to a budget shortfall or for other management reasons, the Agency shall meet with the Union President to discuss the various options available to the Agency.

### Section 3. Union Notification and Procedures.

- a. If the Agency determines that it must conduct a reduction in force, it shall comply with this Article and the Notification and Response Times Article of this Agreement.
- b. The Agency shall provide the Union President with written notice of a reduction in force at least 15 days in advance of a 60-day general notice to the affected employees.
- c. The Agency shall provide the Union President with the following information regarding any proposed reduction in force:
  - i. the legal authority and reasons for the proposed reduction in force;
  - ii. the competitive area to be affected by the proposed reduction in force;
  - iii. the numbers, types, and grades of positions to be affected by the proposed reduction in force;
  - iv. the proposed effective date; and
  - v. copies of the notices to be sent to employees.

- d. Before it issues specific reduction-in-force notices to employees, the Agency shall provide the Union President with a copy of, and allow the Union to comment on, the retention registers it intends to use in conducting the reduction in force. The Agency shall also provide the Union President with a copy of, and allow the Union to comment on, any amended retention registers. The retention registers shall be made available to the Union President as soon as they are available. An employee who is subject to a proposed reduction in force, and any designated representative who has been authorized by the employee in writing, shall be allowed to review the retention registers. The employee and any authorized representative shall also be allowed to review the employee's personnel files and any other documents the Agency used to complete the retention registers.
- e. If the Agency informs employees that they are subject to a reduction in force, the employees will be encouraged to review and update their official personnel folders. Employees and their designated representatives who have been authorized in writing shall be allowed to review their official personnel folders during normal business hours. The Parties shall establish a deadline for submission of requests by the employees for revision of official personnel folders.
- f. The Agency shall give specific written notice to employees selected for release from their competitive level due to a reduction in force at least 60 days before the effective date of the reduction in force in compliance with 5 C.F.R. Part 351, Subpart H. The Agency shall provide the Union President with a copy of the notice.

Section 4. Notice to Employees. In addition to providing specific notice to employees selected for release from their competitive level, the Agency shall inform all employees in a competitive area of its plans for any reduction in force in that competitive area.

Section 5. Official Time. Union representatives shall be entitled to a reasonable amount of official time to assist employees affected by reductions in force. Among other things, official time shall be granted to Union representatives for private consultations with employees; preparation for, and participation in, meetings with the Agency; review of retention registers; review of personnel files as permitted by law, regulation, and this Agreement; responding to inquiries from employees; and appeals.

Section 6. Employee Use of Administrative Leave and Agency Facilities. If the Agency informs an employee that the employee will be separated as a result of a reduction in force, the employee shall be entitled to a reasonable amount of administrative leave to participate in employment interviews, and to prepare and distribute resumes and job applications. The employee shall also be entitled to use Agency telephones, computers, and office equipment to seek other suitable Federal employment. The use of administrative leave under this section is subject to prior approval from the employee's supervisor.

Section 7. Placement Services. In order to minimize the adverse effects of a reduction in force, the Agency shall conduct a placement program for employees who are subject to separation. This program shall include counseling regarding job opportunities and other alternatives available to employees affected by a reduction in force. The Agency shall provide employees with information concerning state unemployment compensation benefits. If permitted by law and regulation, the Agency shall offer to enroll employees subject to separation in a reduction in force in any Interagency Career Transition Plan administered by the Office of Personnel Management, any Career Transition Assistance Plan administered by the Department, the Department's Reemployment Priority List, and the Department of Labor Job Training Partnership Act programs. If payment is required and funds are available, the Agency shall offer to enroll employees subject to separation in a reduction in force in other government programs designed to assist them.

Section 8. Details. An employee who has been temporarily detailed to another position at the time the employee is separated from employment because of a reduction in force shall be separated from the position of record held by the employee prior to the detail.

Section 9. Vacancies. The Agency shall maintain a list of available vacant positions to be filled throughout the Agency. The Agency shall offer an employee who would otherwise be separated in a reduction in force an available vacant position that is within the same competitive area and within 3 grade intervals of the employee's present position, provided that the employee qualifies for the position. If no positions are available within the employee's competitive area, the Agency shall offer an employee who would otherwise be separated in a reduction in force an available vacant position that is outside the employee's competitive area and within 3 grade intervals of the employee's present position, provided that the employee qualifies for the position. Since the offer of a position outside the employee's competitive area is extended primarily for the benefit of the employee, the Agency shall not be obligated to pay relocation expenses. If the Agency decides to fill a position with an employee subject to separation in a reduction in force, the Agency shall make job offers to the employees in retention standing order. An employee shall have 15 days to accept or reject a job offer under this section. If the employee rejects a job offer made under this section within the employee's competitive area, the employee shall not be entitled to further job offers under this Article. If the employee rejects a job offer made under this section outside the competitive area, the employee shall be entitled to any other rights available to employees separated in a reduction in force.

Section 10. Reemployment Rights. If an employee is separated in a reduction in force, the Agency shall offer the employee the first position in the same competitive area that the Agency decides to fill within 3 grade intervals, provided that the employee qualifies for the position, and the position shall not be offered to another employee under Section 9 of this Article. If more than 1 separated employee qualifies for a vacant position, the Agency shall make job offers to the employees in retention standing order. Employees who lose their jobs in a reduction in force shall retain reemployment rights with the Agency for a period of 15 months.

Section 11. Excepted Service Employees. Employees under excepted service appointments shall be afforded the same basic rights enjoyed by competitive service employees in connection with the conduct of a reduction in force.

Section 12. Union's Right to Negotiate. The Union retains the right to negotiate with the Agency on the effect or implementation of any reduction in force regarding any matter not specifically articulated in this Article.

## DISCIPLINARY AND ADVERSE ACTIONS

Article 40.

### Section 1. General.

- a. The Parties acknowledge that the public interest requires the maintenance of high standards of conduct. The supervisor/employee relationship shall include early recognition and resolution of potential performance or conduct problems that could lead to disciplinary action or could adversely affect the morale or working conditions of other employees. No employee shall be subject to disciplinary or adverse action except for just and sufficient cause. This Article does not apply to the termination of probationary employees.
- b. Disciplinary actions are admonishments, reprimands, and suspensions for 14 days or less.
- c. An adverse action is a removal or suspension for more than 14 days, a reduction in pay or grade, or a furlough for 30 days or less.
- d. Non-disciplinary adverse actions may include demotions based upon reclassification of positions, unrequested removal or loss of grade, furloughs for 30 days or less, or adverse actions resulting from unsatisfactory work performance.

Section 2. Meeting. The Agency shall notify the Union President of meetings during which discipline or potential discipline will be discussed. Notification will be made as provided in the Notification and Response Times Article of this Agreement.

Section 3. Factors for Consideration. Disciplinary actions taken by the Agency or its agent shall differentiate between simple and gross misconduct. The following factors, given their appropriate weight, shall be considered in determining the appropriate disciplinary response:

- a. the nature and seriousness of the offense and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or inadvertent, malicious or for personal gain, or frequently repeated;
- b. the employee's grade level and type of employment, including fiduciary responsibilities, public contact, and prominence of the position;
- c. the employee's prior disciplinary record;

- d. the employee's prior work record, including length of service, job performance, dependability, and ability to get along with co-workers;
- e. the effect of the offense and any proposed penalty upon the employee's ability to perform at a satisfactory level, and its effect upon supervisors' confidence in the employee's ability to perform assigned duties;
- f. the consistency of the penalty with those imposed upon other employees for the same or similar offenses in the past;
- g. the consistency of the penalty with any applicable table of penalties;
- h. the notoriety of the offense or its impact upon the reputation of the Agency;
- i. the degree to which the employee had been notified of the rule or requirement, or had been warned about the conduct in question;
- j. the potential for the employee's rehabilitation;
- k. mitigating circumstances surrounding the offense, such as unusual job tensions, personality problems, mental impairment, harassment, bad faith, malice, or provocation by others involved in the matter; and
- l. the adequacy and effectiveness of alternative sanctions to deter similar conduct in the future by the employee or others.

Section 4. Admonishments. Admonishments are the mildest form of disciplinary action, provided orally or in writing, and characterized by specific use of the term "admonishment." Admonishments shall provide a description of the circumstances giving rise to the admonishment, an explanation of the possible consequences if the behavior continues, and inclusion of a written summary of the admonishment in the supervisor's work site file. The supervisor shall provide the employee with an opportunity to respond to the admonishment. The summary of the admonishment shall remain on file until the Agency deems that the behavior has been corrected, but no longer than 1 year from its effective date. An employee may file a grievance regarding the admonishment.

Section 5. Letters of Reprimand. Reprimands are more formal disciplinary actions than admonishments, are provided in writing, and are characterized by specific use of the term "reprimand." Letters of reprimand shall provide a description of the circumstances giving rise to the reprimand and an explanation of the possible consequences if the conduct continues. They shall be placed in the employee's official personnel folder and in the supervisor's work site file.

The Agency or its agent shall provide the employee with a copy of the proposed letter of reprimand, which shall inform the employee of the right to respond and the right to Union or other representation. The employee may review and be provided copies of the materials relied upon in support of the proposed reprimand. The employee's Union representative, if any, shall be given copies of the documents provided to the employee. The employee shall be allowed up to 7 days to respond orally or in writing to the proposed letter of reprimand. Upon receipt of the response, or expiration of the response time, whichever occurs first, the Agency or its agent shall determine whether or not to proceed with the reprimand. If the decision is to proceed, the Agency or its agent shall provide the employee with the final letter of reprimand, and shall file it and any written response in the employee's official personnel folder or in any other file maintained by the Department for this purpose, and in the supervisor's work site file. The final letter of reprimand shall remain on file until the Agency deems that the behavior has been corrected, but no longer than 1 year from its effective date. An employee may file a grievance regarding the final letter of reprimand.

Section 6. Suspensions for 14 Days or Less. When the Agency or its agent proposes the suspension of an employee for 14 days or less, the following procedures shall apply:

- a. The Agency or its agent shall provide the employee with not less than 10 days advance written notice specifying the reasons for the proposed suspension, and informing the employee of the right to respond, the date by which the response is due, and the right to Union or other representation.
- b. The employee may respond orally or in writing, or both. Upon receipt of the response, or expiration of the response time, whichever occurs first, the Agency or its agent shall issue a final written decision to the employee. If the decision is unfavorable to the employee, it shall include a statement of the employee's rights under the Grievances and Arbitration Article of this Agreement, and any applicable statutory rights. The Agency or its agent shall file the decision, supporting documents and any written response in the employee's official personnel folder or any other file maintained by the Department for this purpose, and in the supervisor's work site file. The decision and associated materials shall remain available for future Agency consideration until the Agency deems that the behavior has been corrected, but no longer than 3 years from the effective date of the decision.

Section 7. Adverse Action Procedures. If the Agency or its agent proposes a removal, a suspension of an employee for more than 14 days, a reduction in grade, a reduction in pay, a furlough of 30 days or less, or any non-disciplinary adverse action, the following procedures shall apply:

- a. The Agency or its agent shall provide the employee with written notice at least 30 days prior to the proposed adverse action except when there is reasonable cause to believe that the employee has committed a crime for which a sentence of

imprisonment can be imposed, in which case the written notice must be provided at least 7 days prior to the proposed adverse action;

- b. The notice shall state the reasons for the proposed adverse action and shall notify the employee of the right to respond and the right to Union or other representation;
- c. The employee may respond orally or in writing, or both, within 21 days from receipt of the proposed notice of adverse action, or within any longer period stated in the notice. The response may include affidavits and other documentary evidence in support of the response; and
- d. Upon receipt of the response, or expiration of the response period, whichever occurs first, the Agency or its agent shall issue a final written decision. If the decision imposes an adverse action, the decision notice shall include a statement of the employee's rights under the Grievances and Arbitration Article of this Agreement and any applicable statutory rights.

Section 8. Response Deadlines. The employee's response deadlines described in this Article may be extended by the Agency or its agent in writing based upon a showing of good cause.

Section 9. Materials for Review. Upon request by the employee or the employee's representative, the Agency or its agent shall, in accordance with applicable law, provide all materials relied upon to support a proposed disciplinary action, adverse action, or non-disciplinary adverse action.

Section 10. Appeals.

- a. Any appeal of a disciplinary action, adverse action, or non-disciplinary adverse action, may proceed under the Grievances and Arbitration Article of this Agreement, or, if applicable, a statutory appeal process, but not both.
- b. The Agency or its agent, after a consideration of the circumstances, shall generally stay suspensions and adverse actions other than terminations, pending completion of the grievance and arbitration procedure.
- c. An employee's choice between a statutory appeal process and this Agreement's grievance procedure is considered to be made by the timely submission of a grievance or a statutory appeal. Failure to perfect a timely submission in either process shall constitute acceptance of the decision and no additional review shall occur.

Section 11. Employee Representation. Employees who wish to be represented during the proposed notice stage of the disciplinary action, adverse action, or non-disciplinary adverse action process, may be represented by an attorney or other representative of their choice. The Union is not obligated to provide representation, but may do so at its discretion.

## GRIEVANCES AND ARBITRATION

### Article 41.

Section 1. Introduction. The Parties recognize and endorse the importance of identifying and resolving problems promptly and of settling grievances at the lowest supervisory level through this grievance procedure. This Article establishes the exclusive administrative procedure available to employees for the processing and disposition of grievances which fall within its coverage, except when the employee has other rights provided by statute or Government-wide regulation.

Section 2. Definition of Grievance. A grievance is any complaint:

- a. by an employee concerning any matter relating to the employment of the employee;
- b. by the Union concerning any matter relating to the employment of any employee; or
- c. by an employee, the Union, or the Agency concerning the effect or interpretation, or a claim of breach, of this Agreement or any supplemental agreement between the Parties; or any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.

Section 3. Election of Remedy. At the employee's election, the following matters may be raised under the grievance procedure or under a statutory procedure, but not both:

- a. adverse actions, including removals for misconduct, reductions in grade or pay for misconduct, suspensions for more than 14 days, furloughs for 30 days or less, and reductions in grade or removals for unacceptable performance; and
- b. complaints based on discrimination, including race, color, religion, sex, national origin, age, and handicapping condition.

If employees elect to pursue a statutory remedy, they may use a representative of their choice.

Section 4. Exclusions. The following matters are excluded from the coverage of the grievance procedure:

- a. a preliminary warning or notice of potential action, such as a proposal of disciplinary or adverse action;
- b. an action terminating a temporary promotion within a maximum period of 2 years and returning the employee to the position from which the employee was

temporarily promoted, unless the termination would constitute a prohibited personnel practice under 5 U.S.C. § 2302(b);

- c. approval or disapproval of workers' compensation claims;
- d. non-selection for promotion from a group of properly ranked and certified candidates;
- e. disapproval of a quality salary increase, or any other kind of honorary or discretionary award, except that allegations of improper use of procedures, or violation of law, Agency and Department policies, or this Agreement in processing awards may be grieved;
- f. termination of probationary employees;
- g. reductions in force;
- h. the filling of any position outside of the bargaining unit;
- i. life insurance and health insurance claims;
- j. retirement;
- k. any examination, certification, or appointment;
- l. prohibited political activity, except for discrimination based on political affiliation under 5 U.S.C. § 2302(b)(1)(E);
- m. national security suspensions or removals; and
- n. classification of any position that does not result in the reduction in grade or pay of an employee.

Section 5. Filing Requirements.

- a. Union and Agency grievances shall be initiated in writing with sufficient detail to inform the other Party of the nature of the grievance, the situation which gave rise to it, the law, regulation, or Agreement provision alleged to have been violated, and the requested relief. No specific format is required for Union and Agency grievances.
- b. The grievance form contained in this Article shall be used to initiate employee grievances. The employee should provide sufficient information on the grievance form to put the Agency on fair notice as to the matter that is being grieved.

- c. For informal grievances, the grievant shall provide the following information requested in Part A of the grievance form:
  - i. the name of the grievant or grievants;
  - ii. the date the grievance is submitted;
  - iii. a brief description of the nature of the grievance;
  - iv. the name and telephone number of the Union representative, if any; and
  - v. any interest in alternative dispute resolution.
  
- d. For formal grievances, the grievant shall provide, in addition to the information provided in Part A of the grievance form, the following information in Part B:
  - i. a detailed statement of the circumstances giving rise to the grievance, including the dates of the alleged violations and, if a continuing violation, a statement as to why it is a continuing violation;
  - ii. the employment condition in dispute, and, if known, the specific sections of the law, rule, regulation, or this Agreement alleged to have been violated; and
  - iii. the specific relief requested.
  
- e. The parties to the grievance may not raise new issues after step 2 of the grievance procedure. However, they may agree to join new issues to a grievance in progress.
  
- f. A grievance concerning a continuing practice or condition may be filed at any time.
  
- g. A filing is timely if hand-delivered, postmarked, or transferred via electronic mail or facsimile no later than the final day of the designated period.

Section 6. Time Limits.

- a. If the day an action must be completed under this Article falls on a non-workday, the due date shall be the next regularly scheduled workday.
- b. The parties to a grievance may, for good cause, extend any time limits specified in this Article.
- a. If a moving party to a grievance fails to comply with the time limits in Sections 7, 8, 9, or 10 without good cause, the grievance shall be terminated. If the supervisor fails to comply with the time limits in Sections 7.c.i. and 8, without good cause, the grievant may proceed to the next step. In all other cases, if the responding party to a grievance fails to comply with the time limits in Sections 7, 8, 9, or 10 without good cause, the facts alleged by the moving party shall be deemed to be true. The only issues to be decided by the designated Agency management official, the Union President, or an arbitrator, will be whether the failure to comply with the time limits was for good cause, whether the moving party is entitled to relief, and the nature of the relief, if any.

Section 7. Employee Grievances.

- a. Whenever possible, the Parties shall resolve disputes informally or through alternative dispute resolution procedures. Therefore, whenever a dispute arises, the employee and the Agency may agree to use the alternative dispute resolution procedures contained in this Article at either Step 1 or Step 2 of the grievance procedure.
- b. An employee initiating a grievance under this Article shall be limited to Union representation or self-representation. If an employee presents a grievance without Union representation, the Union shall be given an opportunity to be present at all formal discussions concerning the grievance, and shall be given reasonable advance notice of the meetings. Union participation shall be by telephone if the Union representative is not present in the same location as the grievant, unless the Union pays for all transportation expenses of the Union representative, or the Agency agrees to bear the costs.
- c. Employee grievances shall proceed as follows:
  - i. Informal Grievances (Step 1). Within 30 days of the event giving rise to the grievance, or within 30 days of the date the employee becomes aware, or should have become aware, of the event giving rise to the grievance, whichever is later, the employee shall seek to resolve the matter with the supervisor by filing an informal grievance. If the employee wants Union representation, the employee shall notify the supervisor and make the

necessary arrangements through the Union. The supervisor shall issue a written decision within 30 days of receipt of the informal grievance, and shall provide a copy of the decision to the employee and the Union President. If the employee is dissatisfied with the decision, the employee may initiate a formal grievance within 30 days after receipt of the decision.

- ii. Formal Grievances (Step 2). The employee shall initiate a formal grievance by filing a completed grievance form with the appropriate Associate General Counsel or Regional Attorney within 30 days of receipt of the supervisor's informal grievance decision. The Regional Attorney may, upon written notice to the employee and the Union President, designate the Deputy Regional Attorney to resolve the grievance, unless the Deputy Regional Attorney decided the informal grievance. The Associate General Counsel may, upon written notice to the employee and the Union President, designate an Assistant General Counsel to resolve the grievance, unless the Assistant General Counsel decided the informal grievance. The Regional Attorney or Associate General Counsel shall meet in person or by telephone with the employee and the Union representative, if any, within 15 days after receipt of the grievance, and shall issue a written decision within 30 days of the meeting. A copy of the decision shall be provided to the employee and the Union President. The Agency may appoint a management official other than the Associate General Counsel or Regional Attorney to resolve the grievance if the Associate General Counsel or Regional Attorney was involved in the actions giving rise to the grievance, or for other reasons.
- iii. Final Grievance Reviews (Step 3). If the employee is dissatisfied with the Step 2 decision, the employee may, within 15 days of its receipt, present a written grievance to the designated Agency management official for resolution. The designated Agency management official shall meet, in person or by telephone, with the employee and the Union representative, if any, to discuss the grievance, and shall issue a written decision within 30 days of the final meeting. A copy of the decision shall be provided to the employee and the Union President.
- d. If Step 3 of the grievance procedure does not resolve the matter, the Union President may invoke arbitration within 30 days of receipt of the Step 3 decision. Arbitration must be invoked in a writing that shall be delivered to the designated Agency management official.
- e. Decisions that impose a suspension, a reduction in grade or pay for disciplinary or performance reasons, a removal, a final determination of a denial of a within-grade increase, or a furlough, shall be considered equivalent to a Step 2

decision or, at the Union President's election, may be referred directly to arbitration.

Section 8. Group Grievances. The Union President may file a grievance on behalf of more than one employee. If two or more pending grievances involve the same facts, events, issues, and relief, the Parties may agree to join them. The deadlines for filing and processing group grievances shall be the same as those for employee grievances in Section 7 of this Article.

Section 9. Local Grievances. A grievance involving the interpretation or the application of personnel policies or practices affecting conditions of employment within a single region or a single Associate General Counsel area of responsibility constitutes a local grievance, and shall proceed as follows:

- a. Step 1
  - i. Within 30 days of the event giving rise to the grievance, or within 30 days of the date the Party becomes aware, or should have become aware, of the event giving rise to the grievance, whichever is later, the Union President, the Regional Attorney, or the Associate General Counsel shall file a written grievance with the Associate General Counsel, Regional Attorney or the Union President.
  - ii. Within 15 days after receipt of the grievance, the responding Party shall schedule a meeting with the filing Party to discuss the grievance, unless the Parties agree to waive the meeting. Either Party may elect to participate in the meeting by telephone.
  - iii. The responding Party shall issue a written decision within 30 days from the date the meeting was held or waived.
- b. Step 2
  - i. The grieving Party may seek review of the Step 1 decision within 30 days of its receipt, by providing a written request for review to the Union President, or to the designated Agency management official, as appropriate.
  - ii. The Parties may agree to discuss the matter in person or by telephone.
  - iii. The responding Party shall issue a written decision within 30 days of receipt of the request for review or of the meeting, whichever is later.
- c. Within 30 days of receipt of the Step 2 decision, the Union President or the designated Agency management official may invoke arbitration. Arbitration

must be invoked in a writing that shall be delivered to the Union President, or to the designated Agency management official, as appropriate.

Section 10. National Grievances.

- a. A grievance involving the interpretation or application of personnel policies or practices that affect employees in more than one region or Associate General Counsel area of responsibility constitutes a national grievance. Within 30 days after the events giving rise to the grievance, or within 30 days of the date the Party becomes aware, or should have become aware, of the event giving rise to the grievance, whichever is later, the Union President, or the designated Agency management official, shall file a written grievance with the designated Agency management official or the Union President, as appropriate.
- b. Within 15 days after receipt of the grievance, the responding Party shall schedule a meeting with the filing Party to discuss the grievance, unless the Parties agree to waive the meeting. Either Party may elect to participate in the meeting by telephone.
- c. The responding Party shall issue a written decision within 30 days of the date the meeting was held or waived.
- d. Within 30 days of receipt of the decision, the Union President or the designated Agency management official may invoke arbitration. Arbitration must be invoked in a writing that shall be delivered to the Union President, or the designated Agency management official, as appropriate.

Section 11. Alternative Dispute Resolution Procedures. For the purpose of this Article, alternative dispute resolution (ADR) is a dispute resolution process that involves the introduction of a mediator into the grievance process. The Parties shall establish, and the Agency shall bear the cost of, an alternative dispute resolution procedure within this grievance procedure. ADR procedures shall not apply to local or national grievances. Participation in the ADR process is voluntary for both the Agency officials and the employees involved in the grievance. An Agency official and an employee may agree to use the ADR process at either Step 1 or Step 2 of the grievance procedure.

The ADR procedure will use trained mediators to help resolve the grievance. The mediator shall meet with the grievant and the Agency official to facilitate the discussion and assist the parties in resolving their differences. The mediator shall not have decision-making authority, and resolution rests with the participating Agency official and the grievant. The participants may also reach agreement on a partial resolution of the grievance. Any agreement shall be binding on the employee and the Agency, and shall have the effect of permanently terminating the grievance, or that part of the grievance as to which agreement was achieved.

- a. Procedure.
- i. The grievant shall indicate on the grievance form an interest in using ADR. If the Agency agrees to use mediation at Step 1 or Step 2 of the grievance procedure, it shall so indicate on the grievance form and shall provide a copy to the Union President. Any mediation session constitutes a formal meeting under 5 U.S.C. § 7114(a)(2)(A), and the Agency shall give the Union President notice as soon as the session is scheduled.
  - ii. A mediator acceptable to both the Agency official and the employee shall be selected. All mediation sessions shall remain confidential, and shall not exceed 7 days.
  - iii. If mediation produces a solution acceptable to the Agency and the employee, a written agreement shall be prepared and signed by each, and a copy shall be provided to the Union President. Upon execution of the agreement, the grievance, or that part of the grievance as to which agreement was reached, shall be considered settled, and the grievance shall be terminated in whole or in part.
  - iv. If mediation does not fully resolve the grievance, the Agency official shall issue a decision within 30 days after termination of the mediation session. The employee may then pursue the grievance at the next stage of the grievance process.
- b. Applicability. The procedures in this section do not apply to any matter identified in Sections 3.a. and 4 of this Article.

Section 12. Miscellaneous.

- a. Employees and their representatives involved in the presentation and pursuit of grievances shall be free from restraint, interference, coercion, discrimination or reprisal.
- b. Employees shall be granted official time as is reasonable and necessary to present their grievances.
- c. The Parties shall be entitled to an equal number of representatives, on official time, to present grievances to the Agency or the Union.

Section 13. Grievability and Arbitrability. If a Party believes that a particular issue is not subject to the grievance or arbitration provisions of this Article, the Party shall raise this objection before or at the time of the final grievance decision. If the Party does not do so, the objection is waived and may not be raised in arbitration. Any issue not raised by a Party before or at the time a final grievance is presented is waived, and may not be raised in arbitration.

Section 14. Arbitration. Grievances not settled under the provisions of this Article may be submitted to arbitration in accordance with the terms of this Article. Only the Union President may invoke arbitration concerning an employee or a Union grievance. Only the Agency may invoke arbitration concerning an Agency grievance. Unless the Parties agree otherwise in writing, exhaustion of the grievance procedure is a prerequisite to invoking arbitration. Failure to invoke arbitration within the time limits specified in Sections 7, 8, 9, or 10 shall constitute acceptance of the final grievance decision, and the matter shall not be subject to further review. The arbitrator shall conduct the arbitration hearing in accordance with the provisions of this Article.

- a. Selection of Arbitrators. Within 30 days of invoking arbitration, the grieving Party shall request a list of 7 impartial arbitrators from the Federal Mediation and Conciliation Service. Once the list is received, the Parties shall meet, in person or by telephone, to strike names from the list. The Parties shall toss a coin to determine who strikes the first name. The Parties shall alternatively strike names until only one name remains. That individual shall be the arbitrator authorized to hear the grievance. The Parties shall request a list of available dates from the arbitrator to schedule the hearing. If one Party refuses to participate in the selection of an arbitrator, the other Party is authorized to select the arbitrator from the list provided by the Federal Mediation and Conciliation Service.
- b. Authority of the Arbitrator.
  - i. The jurisdiction and authority of the arbitrator shall be confined to the issues presented in the grievance.
  - ii. The arbitrator shall not have the authority to add to, subtract from, or modify any of the terms of this Agreement or any supplemental agreement between the Parties.
  - iii. The arbitrator may authorize reasonable attorney's fees in accordance with the standards contained in the Back Pay Act, 5 U.S.C. § 5596.
  - iv. The arbitrator shall resolve any grievability or arbitrability disputes consistent with this Agreement.
- c. Appeal of Arbitration Decision. Although the arbitrator's decision is binding on the Parties, they retain their rights to file exceptions to the decision with the Federal Labor Relations Authority, the Merit Systems Protection Board, and the Equal Employment Opportunity Commission. Any dispute over the implementation of the decision may be referred to the arbitrator by either Party. The Parties shall share any additional costs charged by the arbitrator for the referral.

- d. Fees and Expenses.
- i. The arbitrator's fees and expenses shall be borne equally by the Parties.
  - ii. The Parties recognize that transcripts are not necessary in most cases. If the Parties agree that a transcript is necessary, the Parties shall share the cost of the transcript. If there is a disagreement about the need for a transcript, the Union President and the designated Agency management official shall attempt to resolve the disagreement. If no agreement is reached, the Parties shall share the cost of the transcript.
  - iii. The Agency shall provide travel and per diem expenses at arbitration hearings for the Union's advocate, a technical advisor, and the grievant, provided that they are Agency employees.
  - iv. The Agency shall pay travel and per diem expenses for a number of Union witnesses equal to the number of Agency witnesses for whom the Agency pays travel and per diem expenses, provided that they are Agency employees. Whenever feasible, witnesses shall testify by telephone if their participation would otherwise require payment of travel and per diem expenses by the Agency.
- e. Recusal of Arbitrator. Arbitrators may recuse themselves from any matter that, in their judgment, would constitute a real or potential conflict, and shall notify the Parties and explain the nature of the conflict.
- f. Ex Parte Communications. Parties may not have ex parte communications with the arbitrator on the merits of the case, but may discuss procedural matters with the arbitrator.
- g. Arbitration Procedure.
- i. Arbitration must be invoked within 30 days after receipt of the final grievance decision by the Union President, or the designated Agency management official. A filing is timely if hand-delivered, postmarked or transferred via electronic mail or facsimile no later than the final day of the designated period. Failure to comply with this time limit shall constitute acceptance of the final grievance decision and the matter shall not be subject to further review.
  - ii. The Parties may submit a joint statement of issues for arbitration. If the Parties cannot agree on the issues to be submitted, each Party may submit its own statement of issues, and the arbitrator shall determine the issues to be heard.

- iii. The arbitration hearing shall generally be held on the Agency's premises during normal duty hours. If the grievance is an employee grievance, the arbitration hearing shall generally be held where the employee works. If the grievance is a local grievance, the arbitration hearing shall be held in the office in which the grievance originated. If the grievance is a national grievance filed by the Union, the arbitration hearing shall be held at the office where the Union President is employed. If the grievance is a national grievance filed by the Agency, the arbitration hearing shall be held at the Agency's Washington office. The Parties may agree to hold the hearing at any other location.
- iv. Employees participating as witnesses and advocates shall be in a paid duty status during their normal duty hours. If necessary, tours of duty shall be changed to accommodate the arbitration process. Employees participating in an arbitration proceeding, other than the Union's advocate, shall not be required to exceed a normal tour of duty without proper compensation or benefits.
- v. Thirty days before the hearing, the Parties shall exchange proposed witness lists and discuss the general nature of the testimony to be provided by each witness. The Parties shall exchange their final witness lists not less than 21 days before the hearing. The lists shall contain the name, business address, and business telephone number of each witness. In addition, the arbitrator may for good cause allow testimony by rebuttal witnesses. All employees who are called as witnesses shall receive official time, to the extent necessary or reasonable, to participate in the arbitration hearing. If either Party requests sequestration of witnesses, the witnesses shall be sequestered. Observers may be permitted upon agreement of the Parties.
- vi. The arbitrator's award and decision are due 30 days from the date the hearing is conducted or 30 days from the date the closing briefs are received, whichever is later. Rebuttal briefs will be permitted upon agreement of the Parties, or upon approval of the arbitrator. The arbitrator's award and decision shall be in writing and shall specifically address each point of contention between the Parties. The award and decision shall avoid lengthy paraphrasing of the Parties' briefs or positions.
- vii. The arbitrator may for good cause extend any time limits in the arbitration proceedings.

- viii. If the moving Party fails to comply with the time requirements of this Article without good cause, the Party shall be deemed to have abandoned the action and the arbitration proceeding shall be terminated.
- ix. If a Party causes a scheduled arbitration hearing to be canceled, postponed, or delayed without good cause, that Party shall pay all fees charged by the arbitrator.
- x. The arbitrator shall determine whether a dispute is grievable or arbitrable under this Article as soon as possible in the proceeding. If the arbitrator determines that the dispute is not grievable or arbitrable, the arbitrator shall terminate the proceeding. Otherwise the arbitrator shall hear the merits of the underlying grievance and decide the issues together.

GRIEVANCE FORM

**Part A** (for all grievances)

1. Name \_\_\_\_\_ Telephone No. \_\_\_\_\_
2. Position \_\_\_\_\_
3. Office \_\_\_\_\_
4. Interest in alternative dispute resolution? Yes No (Circle one)
5. Name and telephone number of the Union Representative, if any:  
\_\_\_\_\_
6. Supervisor to whom this grievance form is submitted:  
\_\_\_\_\_
7. Briefly describe the nature of the grievance:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature of Grievant \_\_\_\_\_ Date \_\_\_\_\_

Received by \_\_\_\_\_ Date \_\_\_\_\_

**Part B** (for formal grievances only)

1. Please provide a detailed statement of the circumstances giving rise to the grievance, including the dates of the alleged violations and, if applicable, a statement as to why it is a continuing violation:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. If known, please state the specific sections of the law, rule or regulation alleged to have been violated or the employment condition in dispute:  
\_\_\_\_\_  
\_\_\_\_\_

3. Please describe the specific relief requested:  
\_\_\_\_\_  
\_\_\_\_\_

Signature of Grievant \_\_\_\_\_ Date \_\_\_\_\_

Received by \_\_\_\_\_ Date \_\_\_\_\_

## EMPLOYEE AND OFFICE SECURITY

### Article 42.

Section 1. Office Security. The Agency, in coordination with the General Services Administration or other federal agencies as appropriate, shall use its best efforts to ensure that each Agency office is located in a building with security facilities that meet or exceed applicable federal government-wide standards.

Section 2. Evacuation Plans. Each Agency office shall be covered by an evacuation plan that sets forth procedures for safe and efficient evacuation during emergencies. The evacuation plan shall identify the employees who have volunteered, or whom the Agency has designated, to assist in the evacuation of Agency facilities. The Agency shall post a copy of the plan in each office, shall provide a copy to employees, and shall brief employees of each office in person on its contents and on any changes to it. The Agency shall provide all new employees with a copy of the evacuation plan during the first week of their employment, and shall brief them on its contents during the first month of their employment. The employees in each office shall be included in all evacuation drills scheduled for their facilities. The Agency shall coordinate with the General Services Administration or other appropriate leasing agent to ensure that evacuation drills are scheduled periodically at all Agency locations. The Agency may meet these requirements by participating in building-wide plans and drills at Agency locations. The Agency and the Union shall meet upon the request of either to discuss the effectiveness of the evacuation plan for any office.

Section 3. Office Closure. The Agency shall close an office and grant administrative leave to employees whenever it concludes that conditions at that office present extraordinary health or safety risks to employees.

### Section 4. Union Closure Request.

#### a. Field Office.

- i. If the Union President believes that an extraordinary health or safety risk to employees exists at any Agency field office, the Union President may ask the local supervisor to close that office. As soon as possible after receipt of the Union's request, the supervisor shall determine whether the office should be closed. If the supervisor decides to close the office, the office will be closed in accordance with the decision.
- ii. If the local supervisor declines to close the office, the Union President may ask the appropriate Regional Attorney to close the office. As soon as possible after receipt of the Union's request, the Regional Attorney shall determine whether the office should be closed. If the Regional Attorney decides to close the office, the office will be closed in accordance with the decision.

- iii. If the Regional Attorney declines to close the office, the Union President may ask the Director, Administration and Resource Management, to close the office. As soon as possible after receipt of the Union's request, the Director shall determine whether the office should be closed. If the Director decides to close the office, the office will be closed in accordance with the decision.
- b. Washington Office. If the Union President believes that an extraordinary health or safety risk to employees exists at the Agency's Washington office, the Union President may ask the Director, Administration and Resource Management, to close the Washington office. As soon as possible after receipt of the Union's request, the Director shall determine whether the Washington office should be closed. If the Director decides to close the Washington office, the Washington office will be closed in accordance with the decision.
- c. Use of Annual Leave. If an extraordinary health or safety risk exists, an employee may use unscheduled annual leave. The employee shall notify the supervisor before leaving the office, but, if notice is not possible at that time, the employee shall notify the supervisor as soon as possible after leaving the office. If the Agency subsequently closes the office and grants administrative leave, the employee will not be charged with annual leave for that absence.

Section 5. Employee Notification. If the Agency evacuates or closes an office because of concerns about the health or safety of employees, the Agency shall, whenever possible, notify employees as provided in this Section.

- a. Employees present at the office. The employees' supervisor shall personally attempt to notify each employee present in the office. Whenever possible, the employees' supervisor shall also notify employees using an intercom system or other available and appropriate means of communication.
- b. Employees scheduled to arrive at the office. The employees' supervisor shall make every effort to inform employees scheduled to be in the office of an evacuation or office closure before their arrival at the office.

Section 6. Union Notification. The Agency shall notify the Union President of all credible threats to employee health or safety as soon as possible after it learns of the threat. Whenever possible, the Agency shall also notify the Union President of the actions that will be taken in response to the threat.

Section 7. Mail Handling.

- a. Training. The Agency shall ensure that all employees shall be trained in the proper procedures for handling mail. The training shall follow procedures

adopted by the Department. Its content shall generally be the same for all employees, regardless of their duty station, except as the employee's specific responsibilities, unique location, or particular circumstances may require. The Union shall be provided the opportunity to comment upon training materials developed by the Agency before they are provided to employees. Training may be provided in a variety of formats, including formal classroom training, Agency-sponsored seminars, and informational materials and videos.

- b. Supplies. The Agency shall provide to all employees who open mail as part of their official duties, and to other employees upon request, surgical gloves, masks, plastic bags, and other materials as recommended by appropriate Federal authorities to ensure the safe handling of mail.

## ACTIVE BAR MEMBERSHIP

### Article 43.

Section 1. Active Membership. After March 20, 2003, or at the time of the next annual performance appraisal, whichever occurs later, all bargaining unit attorneys employed by the Agency must provide evidence that they are active members in good standing of the bar of a state, the District of Columbia, or the Commonwealth of Puerto Rico. Thereafter, evidence of active membership shall be provided at the time of the annual performance appraisal.

Section 2. Satisfactory Evidence of Active Membership. Employees may use official time and Agency equipment and supplies to obtain evidence of active membership. Satisfactory evidence of active membership includes, but is not limited to, a photocopy of an employee's bar card showing that the employee is an active member, a photocopy of the pertinent page from the bar's website showing that the employee is an active member, and a letter or certificate from the bar stating that the employee is an active member. Employees shall make a good faith effort to obtain satisfactory evidence of active membership. If an employee is unable to obtain satisfactory evidence without paying a fee, the designated Agency management official shall, upon request of the employee, call the employee's bar to obtain oral assurance that the employee is an active member. The designated Agency management official shall then document the oral assurance in a memorandum for the employee and the Agency. If there is a disagreement between an employee and the Agency regarding the provision of satisfactory evidence of active membership, the matter shall be referred to the designated Agency management official and the Union President for resolution. Nothing in this Section in any way limits recourse to the provisions of Article 41 of the collective bargaining agreement by the Union, an employee, or the Agency.

Section 3. Continuing Legal Education Courses. Pursuant to Article 22, Sections 5.a. and 5.b., of this Agreement, the Agency shall permit an employee to use official time to attend training, including ethics training and continuing legal education courses, that is approved but not funded by the Agency, if the Agency determines that the training relates to the employee's assigned duties or would enhance its mission and the employee's performance. In making its determination, the Agency shall consider whether the employee's absence would cause an adverse impact on the Agency by reducing productivity, diminishing the level of services furnished to the public, or increasing the cost of Agency operations. In this regard, the Agency and the Union agree that the Department of Justice's Legal Education Institute in South Carolina provides many relevant and cost-effective legal education courses. If there is a disagreement between an employee and the Agency regarding the denial of an employee's training request, the Union President may discuss the matter with the designated Agency management official. Nothing in this Section in any way limits recourse to the provisions of Article 41 of this Agreement by the Union, an employee, or the Agency.

Section 4. On-Site Training Program. The Agency and the Union, working through the Training Committee established under Article 22, Section 2, of this Agreement, shall develop an on-site training program that will, among other things, make use of videotaped, audiotaped,

on-line, and other similar continuing legal education courses. Employees will be allowed to take these courses on official time, subject to the criteria for approval of official time set out in Section 3 of this Article. The Training Committee shall study this issue further and report its findings and recommendations to the Partnership Council at its next session.

Section 5. Time Limits. The Agency may, for good cause, extend any time limits specified in this Article, except that extension of the time limit specified in Section 4 of this Article requires approval by the Agency and the Union.

## COMMITTEES

### Article 44.

The Parties recognize that the Agency's employees are a vital source of expertise and knowledge, and that permanent and ad hoc committees may serve an important function in helping the Agency achieve its mission. The standing committees established by this Agreement are those related to technology, training, pro bono activities, and budgetary issues.

#### Section 1. Technology Committee.

- a. The Parties agree to establish a technology committee to be co-chaired by the General Counsel's designee and the Union President's designee. In addition to the co-chairs, the committee shall consist of 2 members appointed by the General Counsel and 2 members appointed by the Union President.
- b. The committee shall meet telephonically or in person at least twice each year. The committee shall make recommendations to the General Counsel regarding the issues covered by the Workplace Technology Article of this Agreement and this Section. Among other things, the committee may recommend cost savings through the acquisition of workplace technology based on prescribed performance standards; an ongoing replacement strategy to acquire and install workplace technology on a timely basis; a plan that shall maximize the potential for interconnectivity among offices; and a policy that ensures that workplace technology considerations are included in developing the Agency's annual budget. In making these recommendations, the committee shall take into account the financial and human resources available to the Agency.

#### Section 2. Training Committee.

- a. The Parties agree to establish a training committee to be co-chaired by the General Counsel's designee and the Union President's designee. In addition to the co-chairs, the committee shall consist of 2 members appointed by the General Counsel and two members appointed by the Union President.
- b. The committee shall meet telephonically or in person at least twice each year. The committee shall make recommendations to the General Counsel regarding the issues covered by the Training and Career Development Article of this Agreement and this Section. The committee shall evaluate training and career development opportunities, arrange for the distribution of training and career development information, prioritize training needs and opportunities, and make recommendations to the

General Counsel concerning training and career development programs and policies. Among the committee's goals shall be to develop training programs that are not unique, one-time events but rather permanent components of an ongoing training plan; to develop guidelines for supervisors in selecting and approving courses for employees; and to develop an electronic clearinghouse for supervisors and employees to exchange information on the relative worth of training opportunities for future training decisions.

Section 3. Pro Bono Committee.

- a. The Parties agree to establish a pro bono committee to be co-chaired by the General Counsel's designee and the Union President's designee. In addition to the co-chairs, the committee shall consist of 2 members appointed by the General Counsel and 2 members appointed by the Union President.
- b. The committee shall meet telephonically or in person at least once each year. The committee shall study the pro bono policies of other government legal offices and make recommendations to the General Counsel regarding the development of a pro bono policy for the Agency.

Section 4. Budget Committee.

- a. The Parties agree to establish a budget committee to be co-chaired by the General Counsel's designee and the Union President's designee. In addition to the co-chairs, the committee shall consist of 2 members appointed by the General Counsel and 2 members appointed by the Union President.
- b. The committee shall meet telephonically or in person at least twice each year. The committee shall make recommendations to the General Counsel concerning the Agency's budgetary priorities. The committee may also make recommendations concerning steps that the Agency might take to increase its funding.

Section 5. Ad Hoc Committees. The Parties may agree to establish ad hoc committees to study and review specific topics. The committees shall be co-chaired by the General Counsel's designee and the Union President's designee. In addition to the co-chairs, the committees shall consist of an equal number of members appointed by the General Counsel and by the Union President.

Section 6. Agency Review of Recommendations. After receipt of recommendations from a committee established by this Article, the General Counsel shall respond in writing to the committee's recommendations and provide a copy of the response to the Union President. The General Counsel may refer a committee's recommendations to

the Budget Committee established by this Article for its review and comment before responding.