

COLLECTIVE BARGAINING AGREEMENT

BETWEEN



Local 2846

AND



**UNITED STATES DEPARTMENT OF
AGRICULTURE**

OFFICE OF OPERATIONS

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PREAMBLE

This Agreement, herein referred to as the 2019 Collective Bargaining Agreement is between the Office of Operations of the United States Department of Agriculture and the American Federation of State, County, and Municipal Employees (AFSCME) Council 20, Local 2846 (collectively the “Parties”).

The Agreement is effective as of May 16, 2019, unless otherwise provided.

The successful administration of this Agreement requires effective two-way communication between the Parties for the purpose of bringing matters of concern to the attention of each other. Cooperation between the Parties represents a practical approach that is mutually beneficial. The Parties shall conduct themselves in a professional and business-like manner, characterized by mutual courtesy and consideration in their day-to-day working relationship.

GOVERNING LAW AND REGULATION

In the administration of all matters covered by this Agreement, Agency officials and employees shall be governed by applicable Federal laws, rules, regulations and policies in existence at the time this Agreement is signed. The Parties recognize that these may be subsequently modified. Where regulations, rules or policies conflict with this Agreement and/or supplemental Memoranda of Understanding, the Agreement and/or supplemental Memoranda of Understanding shall govern.

Changes in Government-wide rules, regulation, law or directive, may be subject to negotiations in accordance with 5 USC § 71.

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

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

Section A. Parties to the Agreement

The parties to this Agreement are the U.S. Department of Agriculture, Office of Operations, (OO) Washington, D.C. metropolitan area, hereinafter known as the “Agency,” “Employer,” “OO” or “Management” and the American Federation of State, County and Municipal Employees (AFSCME) Council 20, Local 2846 hereinafter known as the “Union or AFSCME.”

Section B. Unit of Recognition

The unit of recognition covered by this Agreement is that unit certified by the Federal Labor Relations Authority in Case No. WA-RP-18-0008. The Employer recognizes the American Federation of State, County and Municipal Employees, Council 20, Local 2846 as the exclusive representative of all employees (hereinafter sometimes referred to as “employees” or “bargaining unit employees”) in the bargaining unit as defined below.

Section C. Bargaining Unit Coverage

This agreement covers all professional and non-professional employees employed by OO in the Washington, D.C. metropolitan area including professional and nonprofessional employees, but excluding all guards, management officials, supervisors, employees described in title 5, United States Code (U.S.C.), Section 7112 (b)(2), (3), (4), (6) & (7).

Section D. Certification

A copy of the FLRA certificate of recognition can be found in the Appendix.

ARTICLE 2: EMPLOYEE RIGHTS

Section A. General

Each employee shall have the right to form, join or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided, this includes the right:

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

Section B. Weingarten Right

Employees will be provided annual notification of their right to request Union representation at any Management-initiated investigative meeting that may reasonably result in disciplinary action. The Union shall receive a copy of this notification. A copy of the annual Weingarten Notice may be found in the Appendix.

Section C. Access to Rule, Regulation and Policy

OO shall make available copies of the rules, regulations, and policies under which employees are obligated to work in the office having primary responsibility for the program to which the regulations apply, on bulletin boards and/or online.

Section D. Employee Conduct

The Employer and the Union strongly disapprove of abusive actions towards anyone in the workplace. Such actions may be written, physical, or verbal. Abuse will not be tolerated and may result in disciplinary or adverse action.

Section E. Travel

Travel and per diem for employees shall be subject to the regulations and departmental policies in effect at the time of the signing of this Agreement.

Section F. Limited Personal Use of Government Technology

Personal use of government technology shall be subject to the departmental regulations and

departmental policy in effect at the time of the signing of this Agreement.

Section G. Fitness, Health, Food and Daycare

OO shall support employee's ready access and utilization of fitness/health, food service, and daycare centers where the majority of OO employees are located.

Section H. Smoking

Parties agree to follow Departmental Regulation (DR) 4400-006, USDA Smoking Policy.

Section I. Waiver of Overpayment

Processing Requests

1. When an employee receives an overpayment of pay and allowances, he/she may request a waiver of overpayment in accordance with applicable law, rules, and regulations.
2. The Employer will process all requests for waiver of overpayment within the timeframe stipulated by applicable law, rules, and regulations.
3. To the extent possible, if an employee has applied for a waiver of overpayment. No overpayment will be collected until the employee's application for waiver of overpayment has been decided.
4. If a waiver of overpayment is denied, the employee will be sent notification of the reason(s) for the denial in writing.

Repayment

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

Should it become necessary to change any of these services, Management will notify the Union and bargain the impact and implementation of the change if more than de minimis.

ARTICLE 3: UNION RIGHTS AND RESPONSIBILITIES

Section A.

The Union is the exclusive representative of the employees in the OO bargaining unit and is entitled to represent, and negotiate collective bargaining agreements covering, these employees. The Union is responsible for representing the interests of all employees in the bargaining unit without discrimination and without regard to labor organization membership.

Section B.

In the administration of this Agreement, the Employer agrees to recognize the officers, stewards and other representatives designated by AFSCME Council 20, Local 2846 as officials of the Union.

Section C.

The Union has the right to represent an employee or group of employees at any formal discussion between one or more representatives of the Agency and one or more employees in the bargaining unit or their representatives concerning any personnel policy or practices or other general condition of employment; or any examination of an employee in the unit by a representative of the Agency in connection with an investigation if: 1) the employee reasonably believes that the examination may result in disciplinary action against the employee, and 2) the employee requests Union representation.

Section D.

Reasonable Notice: The Union will be given reasonable notice of and provided reasonable time to be present at formal discussions concerning any grievance, personnel policy or practice, or other conditions of employment. The Agency will not deal directly with bargaining unit employees on matters such as working conditions, personnel policy or practices, or by engaging in formal discussions without Union notification. In accordance with applicable law, this does not apply to:

1. administering work assignments;
2. available training (e.g., Individual Development Plan discussions);
3. informal counseling (e.g., tardiness, failure to follow instruction);
4. investigations performed by the Office of the Inspector General (OIG);
5. the reasonable accommodation interactive process, unless the union has been designated as the personal representative;
6. issuance of proposed disciplinary action or adverse action or issuance of a such a decision, unless the union has been designated as the personal representative;
7. discussion of employee personal matters (e.g., medical or familial issues); and
8. performance counseling.

The aforementioned list is illustrative, not exhaustive, and may be subject to change pursuant to applicable law, rule, and regulation.

Section E.

Restraint: Union officials and representatives performing duties in accordance with this Agreement and the Federal Service Labor-Management Relations Statute (FSLMRS or Statute) will not be subject to unlawful restraint, coercion, reprisal, or discrimination as the result of performing union duties.

Section F.

Management will notify the union with the name of each new employee in the bargaining unit within 30 days of their entry on duty. Union representatives may introduce themselves and make a brief 15-minute presentation concerning the union's role and responsibilities on official time.

ARTICLE 4: MANAGEMENT RIGHTS AND RESPONSIBILITIES

In accordance with 5 U.S.C. § 7106, the Employer retains the right:

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

Surveys

The Agency may solicit feedback from bargaining unit employees through verbal or written surveys and questionnaires regarding conditions of employment. If OO creates the survey, it will consult with the Union and allow it to respond within five (5) workdays. If it does not create the survey, it may do so without coordinating with the union. The Agency agrees to provide the Union notice of all surveys. The results of survey(s) conducted regarding conditions of employment will be shared with the Union.

ARTICLE 5: LABOR-MANAGEMENT COMMITTEE

The Parties shall establish a cooperative and productive labor-management committee to create an effective system of two-way communication between the Parties and to create an amiable medium for managers and union representatives to help identify problems and propose solutions to better serve the public and the agency mission.

The Parties shall form a committee consisting of representatives of the Union not to exceed four (4) members, who will meet with OO Management. The first meeting will occur within 60 calendar days after the effective date of this Agreement. Thereafter, meetings will occur semiannually, or more frequently by mutual agreement.

The purpose is to discuss matters of mutual concern, including, without limitation, the identification and/or correction of conditions causing grievances and misunderstandings, improving communications between employees and supervisors; maintaining employee productivity and morale; the improvement of working conditions; potential ULPs; and possible reorganizations. The agenda items are to be submitted five (5) days in advance of the meeting date. The Union may use official time to attend these meetings.

The labor-management committee may not consider existing individual grievances, complaints, or disputes at these meetings.

ARTICLE 6: DUES WITHHOLDING

The purpose of this Article is to memorialize the dues withholding process under this Agreement.

Section A. Authorization and Eligibility

Members of the unit are authorized to effect voluntary allotment for the payment of dues subject to the procedures and stipulations set forth in this Article. Union dues shall be deducted from an employee's pay each pay period and remittances will be made each pay period to AFSCME Council 20 when the following conditions have been met. To be eligible to make a voluntary allotment for the payment of Union dues, an employee must:

1. Be a bargaining unit employee;
2. Have a net salary, after other legal and required deductions, sufficient to cover the amount of the authorized allotment for dues;
3. Apply for membership in the Union by requesting the allotment on the prescribed form, SF- 1187 Form (Request and Payroll Deduction for Labor Organization Dues); and
4. Have the authorized Union official certify the form.

Section B. Union Responsibilities

5. Obtain and distribute the SF-1187 (Request for Payroll Deductions for Labor Organization Dues) Form to its members;
6. Certify on the SF-1187 Form the amount of dues to be withheld initially each biweekly pay period, and identify the Council or Local to receive the dues deductions;
7. Forward the SF-1187 Form to the Human Resource Office (HRO), at no expense to the Agency; and
8. Provide the servicing HRO and OO Labor Relations Officer with written notification concerning any changes in the amount of Union deductions; where dues remittances should be sent; the name of any employee who has been expelled or ceases to be a member in good standing in the Union within 10 days of such determination.

Section C. Agency Responsibilities

1. Upon request, the Agency shall furnish and process the SF-1187 and SF-1188 (Cancellation of Payroll Deductions for Labor Organization Dues) forms in accordance with the terms and conditions specified on the forms and this Agreement;
2. Automatically reinstate the dues withholding of a bargaining unit employee returning to a bargaining unit position from a temporary reassignment or a temporary promotion to a position outside the bargaining unit;
3. Automatically reinstate the dues withholding of a bargaining unit employee returning to pay status from a non-pay status (e.g., LWOP);
4. Dues deductions will be effective as soon as possible, but in no case will it be later than two (2) full pay periods following receipt of the SF-1187 Form by HRO. Changes in the amount deducted for Union dues will be effective as soon as possible, but in no case will it be later than two (2) full pay periods following receipt by the HRO of the Union's certification of changes in its dues;

5. Deductions and remittances will be made each pay period; and
6. Provide the Union the title and address of Agency personnel authorized to receive notification under this article.

Section D. Termination of Allotments

1. Dues will terminate automatically:
 - a. Upon loss of exclusive recognition by the Union, effective at the beginning of the first full pay period after such loss of recognition;
 - b. When the dues withholding agreement is terminated;
 - c. When an employee ceases to be eligible for inclusion in the Union, such as through promotion to a non-bargaining unit position; and
 - d. When an employee ceases to be in good standing, effective with the first full pay period after receipt by HRO of written notice from the authorized Union official.
2. Voluntary dues termination:
 - a. An employee may submit a SF-1188 Form, in duplicate, for the revocation of an allotment within 30 days of the anniversary date when the bargaining unit employee joined the Union.
 - b. The HRO will process the request within two (2) full pay periods and retain a copy for the payroll records.
 - c. A copy of the form shall be returned to the Union and the employee at the address provided on the SF-1188 Form.

Section E. Administrative Errors

Administrative errors in remittance will be corrected by reductions and corrections in subsequent remittance checks. If the employee organization is not scheduled to receive a remittance check after discovery of the error, the employee organization agrees to promptly refund the amount of erroneous remittance. The SPO and the employee members have a mutual responsibility to assure timely revocation of an employee's allotment for AFSCME dues when the employee is promoted or assigned to a position not included in a bargaining unit represented by AFSCME. If the dues allotments continue for more than four (4) months and the employee fails to notify his/her SPO, the retroactive recovery of dues withheld from AFSCME shall not be made, nor shall a refund be made to the employee.

Section F. Disputes

In those instances wherein the Agency and the Union disagree regarding the employee's eligibility for dues withholding, both parties acknowledge that such representational disputes are the sole function of the Federal Labor Relations Authority.

When there is a dispute regarding whether a bargaining unit position is covered by a bargaining unit or not, the employee's dues paying status will continue until the issue is resolved.

The Union retains the right to pursue any appropriate remedy if it is determined by a third party, upon challenge, that an employee was improperly removed from the bargaining unit and/or taken off dues withholding.

ARTICLE 7: WORK SCHEDULES/TOURS OF DUTY

Section A. General

Hours of work for employees shall be in accordance with applicable law, rule and regulation (e.g., 5 U.S.C. Chapter 61; 5 C.F.R. Part 610). Any changes in hours of work will normally take place at the beginning of the pay period. However, the Parties concede that work exigencies and emergencies may occur requiring modification of work schedules on short notice. Management may take such action as is necessary to address an operational exigency or emergency.

Section B. Definitions

For the purposes of this Agreement and consistent with Federal Regulations, the following definitions are used:

1. Alternative Work Schedule - refers to both flexible and compressed work schedules.
2. Basic Work Requirement - the number of hours, excluding overtime hours, an employee is required to work or to account for by charging leave, credit hours, excused absence, holiday hours, compensatory time off, or time off as an award.
3. Biweekly Pay Period - the 2-week period for which an employee is scheduled to perform work.
4. Core Hours - means those hours when employees on a particular shift are required to be at work Core hours are between 9:00 a.m. and 3:00 p.m.
5. Credit Hours - those hours within a flexible work schedule that an employee voluntarily elects to work in excess of his or her basic work requirements so as to vary the length of a workweek or workday. Credit hours may be worked and earned up to two (2) hours per day with prior approval from the supervisor.
6. Compressed Work Schedule (CWS) - work under a fixed work schedule that has:
 - a. In the case of a full-time employee, an 80-hour biweekly basic work requirement that is scheduled for fewer than 10 days.
 - b. In the case of a part-time employee, a biweekly basic work requirement of less than 80 hours that is scheduled for less than 10 workdays and that may require the employee to work more than eight (8) hours in a day.
7. Flexible Work Schedule - means a work schedule that:
 - a. In the case of a full-time employee, has an 80-hour biweekly basic work requirement that allows an employee to determine his or her own schedule consistent with the procedures in this Article; and,

- b. In the case of a part-time employee, has a bi-weekly work requirement of less than 80 hours that allows an employee to determine his or her own schedule consistent with the procedures in this Article.
8. Maxiflex Schedule – a type of flexible work schedule that contains core hours on fewer than 10 workdays in the biweekly pay period and in which a full-time employee has a basic work requirement of 80 hours for the biweekly pay period, but in which an employee may vary the number of hours worked on a given work day or the number of hours each week consistent with the procedures in this Article. See Section F.
 9. Gliding Schedule – a flexible work schedule under which an employee has a basic work requirement of eight (8) hours per day, 40 hours per week, and the employee may select a starting and stopping time each day and may change starting and stopping times daily within the established flexible hours. See Section E.
 10. Temporary Schedule Change – a temporary work schedule change, as used in this Article, means two (2) pay periods or less, except as noted in Section F.6 of this Article.
 11. Permanent Schedule Change – a permanent work schedule change, as used in this Article, means a period of time that exceeds two (2) pay periods.
 12. Flexilunch – employees on a Gliding Schedule or Maxiflex schedule may, with advance supervisory approval, expand their lunch break within the lunch band on any given day, provided arrival and/or departure times are adjusted by an equivalent amount on that day.
 13. Lunch Band – the period of time between 11:00 a.m. and 2:00 p.m. when an employee may take his or her lunch break. An employee may not be required to work more than six (6) hours without a lunch break.
 14. Overtime Hours – for employees on a standard or flexible work schedule, work in excess of eight (8) hours in a day or 40 hours in a week, or outside of a Maxiflex schedule of 80 hours in a pay period, if ordered and approved in advance, but does not include credit hours. For employees on a compressed work schedule, overtime are any hours in excess of those specified for full-time employees. For part-time employees on compressed schedules, overtime hours are those hours in excess of their compressed work schedule for a day (must be over eight (8)) or, for a week (must be over 40).
 15. Standard work schedule – a standard work schedule is Monday through Friday, eight (8) hours a day, plus a 30 to 60-minute meal period scheduled to occur between 11:00 a.m. and 2:00 p.m., and a preset starting time occurring between 7:00 a.m. and 9:00 a.m.
 16. Tour of Duty – under an alternative work schedule means the limits established within which an employee must complete his or her basic work requirement.

Section C. Work Schedule Options

1. Management may consider employee work schedule requests that are made in accordance with Section G below. In cases where an alternate work schedule is not approved, the employee will work a standard work schedule. In establishing the standard work schedule, Management may consider and grant the requested start time and meal period subject to Agency needs. Work schedule requests shall not be denied for any arbitrary, capricious or discriminatory reason.
2. The following tables summarize alternative work scheduling options available to bargaining unit employees in the Washington, D.C. metropolitan area:

a. Available Compressed Work Schedule Options		
	5-4/9 Option	4/10 Option
Tour	Eight (8), nine (9)-hour days and one (1), eight (8)-hour day per pay period	Four (4), ten (10)-hour days per week as scheduled
Start time (Arrival and departure time cannot vary)	9-hour day: 6:00 to 9:00 a.m. 8-hour day: 7:00 to 9:00 a.m.	6:00 to 9:00 a.m.
Nonwork day	One (1) day per pay period as established	One (1) day per week as established
Glide	Ineligible	Ineligible
Credit hours	Ineligible	Ineligible
Flexilunch	Ineligible	Ineligible
Holiday Pay	Eight (8) hours on short day Nine (9) hours on long day	Ten (10) hours
b. Available Flexible Work Schedule Options		
	Maxiflex	Gliding Schedule
Tour	As scheduled up to ten (10)-hour days	Eight (8)-hour work day
Nonwork day	One (1) or more as established	Ineligible
Glide	Eligible	Eligible
Start time	6:00 to 9:00 a.m.	7:00 to 9:00 a.m.

Credit hours	Eligible up to two (2) hours per day (See Section I)	Eligible up to two (2) hours per day (See Section I)
Flexilunch	Eligible	Eligible
Holiday Pay	Eight (8) hours	Eight (8) hours

3. Employees will record their work hours using current time and attendance practices. Should the Agency wish to change such practices it will notify the Union and bargain over the impact of the change that is more than de minimis pursuant to Article 30 of the Agreement.
4. Employees on a standard work schedule are not eligible to glide, earn credit hours, or flex their lunch period.

Section D. Compressed Work Schedule

1. An employee may request to work a compressed work schedule. The employee will submit a proposed schedule with his or her request.
2. The basic work requirement for an employee on a compressed work schedule is 80 hours per pay period in fewer than 10 days. Employees on a compressed work schedule may request to work one of the following schedule options:
 - a. 5-4/9 Compressed Plan - an employee works eight 9-hour days and one 8-hour day for a total of 80 hours a pay period.
 - b. Four-Day Workweek (4/10 Plan) - an employee must work four 10-hour days, 40 hours a week, and 80 hours a pay period.

Core hours for employees on a compressed work schedule are between 9:00 a.m. and 3:00 p.m. each day worked. Employees on a compressed work schedule must be on duty during core hours, except for scheduled and approved use of leave or during the employee's 30-minute unpaid lunch period.

3. Compressed work schedule tours of duty may begin at 6:00 a.m. and must end by 7:30 p.m. The one 8-hour day cannot begin before 7:00 a.m.

Section E. Gliding Schedule Work Schedule

1. An employee may request to work a Gliding Schedule work schedule. Employees will submit a proposed schedule with their request.
2. Employees on a Gliding Schedule work schedule must work an 8-hour day Monday through Friday. They may propose to vary the arrival time of their work day between 7:00 a.m. and 9:00 a.m. on a daily basis.

3. Core hours for employees on a Gliding Schedule work schedule are between 9:00 a.m. and 3:00 p.m. each day. Employees on a Gliding Schedule work schedule must be on duty during those hours except for scheduled and approved use of leave or credit hours or during the employee's 30-minute unpaid lunch period.
4. Employees on a Gliding Schedule work schedule may earn and use credit hours between 6:00 a.m. and 7:30 p.m. on Monday through Friday. See Section I below for more information on credit hours.

Section F. Maxiflex Work Schedule

1. An employee may request to work a Maxiflex work schedule.
2. The basic work requirement for an employee on Maxiflex is 80 hours per pay period. Employees on Maxiflex may work up to 10 hours a day Monday through Friday in meeting their basic work requirement. They may vary the arrival time of their work day between 6:00 a.m. and 9:00a.m., and the departure time between 3:00 p.m. and 7:30 p.m. on a daily basis. While employees may vary their arrival and departure times from their established work schedule within these flexible time bands, they are required to inform their supervisor in advance if they plan to vary arrival or departure time more than 30 minutes. This advance notification requirement does not apply to unforeseen situations beyond the employee's control, wherein the employee must notify the supervisor as soon as possible. Based on compelling work-related needs, the supervisor may direct the employee to report or remain on duty during their established work schedule on any given day.
3. Core hours for employees on a Maxiflex work schedule are between 9:00 a.m. and 3:00 p.m. each day worked. Employees on a Maxiflex work schedule must be on duty during those hours except for scheduled and approved use of leave or credit hours or during the employee's 30-minute unpaid lunch period.
4. Employees on a Maxiflex work schedule may earn and use credit hours between 6:00 a.m. and 7:30 p.m. on Monday through Friday. See Section I below for more information on credit hours.
5. Employees on a Maxiflex work schedule will fill out a projected work schedule and submit it to their supervisor not later than the close of business on the Monday prior to the pay period it will go into effect. Once approved, the employee's submitted work schedule will remain in effect and no further work schedule submission is necessary unless the employee requests a subsequent work schedule change. Consistent with Section H, below, supervisors will approve the employee's requested schedule and any amendments to it unless doing so would adversely affect unit productivity, level of service to the public or other stakeholders, or cost of operations as determined by the supervisor.
6. Employees on a Maxiflex work schedule may request a temporary schedule change for any pay period in which a Federal holiday, or in lieu of holiday as defined in Section K falls on a day that, in the absence of the Federal holiday, would have been otherwise scheduled as a 9- or 10-hour workday, so that only eight (8) hours are scheduled on the holiday or in lieu of holiday.

Section G. Work Schedule Changes

1. Employees must submit a written work schedule request to their supervisors using a supervisory approved procedure. Employees may request a temporary or permanent change in their current work schedule at any time by making a written request to their supervisor no later than the Monday prior to the pay period it will go into effect. After an initial work schedule is established, an employee-initiated request to change between a Standard, Gliding, Maxiflex, or compressed work schedule may be made only once during a 12-month period. This will not preclude supervisory approval of additional employee-requested changes, when such changes would not impede the Agency's day-to-day business operations or negatively impact the Agency's mission.
2. Except in cases of emergency, operational exigency or disciplinary reasons, a Supervisor may make a temporary or permanent change to an employee's work schedule (including scheduled days off).
3. Should the Agency need to make work schedule changes for two or more employees in the same unit, it will notify the Union and bargain over the impact of changes which are more than de minimis in accordance with Article 30 of this Agreement.
4. Any approved work schedule option or work schedule option change will become effective at the beginning of the pay period after approval or as agreed between the supervisor and the employee. Retroactive changes to work schedule options will not be approved.
5. A supervisor or manager will approve or disapprove a work schedule option request within five (5) work days of actual receipt. It is the employee's responsibility to ensure the supervisor's actual receipt of the receipt. If the work schedule option requested is disapproved, the reasons for such disapproval must be provided in writing to the employee.

Section H. Work Schedule Request Conflicts

1. If two or more employees' work schedule requests conflict so that to approve both/all the requests would result in inadequate office coverage during the work day, or undue delays or interruptions to Agency business operations, or the failure, delay, or interruption in completing a critical mission of the Agency, the supervisor should meet with the affected employees and return the form to each employee with the request that the employees reach agreement among themselves, if possible.
2. If the employees are unable to reach agreement by 12:00 noon on the Thursday before the pay period in which the employees desire the requested schedules to be effective, the supervisor, by close of business on Thursday, will approve or disapprove the work schedules by giving priority to the employee with seniority based on the service computation date for leave.

Section I. Credit Hours

1. Use of credit hours (or other earned leave) may be requested to extend a lunch period.
2. Employees on a Maxiflex or Gliding Schedule work schedule will be permitted to earn credit hours subject to the following limitations:
 - a. The earning of credit hours is conditional upon the availability of appropriate work and work priorities as determined by the employee's supervisor. Prior supervisory approval is required for earning credit hours.
 - b. Employees may earn up to two (2) credit hours on any workday and accrue up to 24 credit hours in any biweekly pay period. Credit hours may not be earned on a non-work day. Credit hours can be earned and used in 15-minute increments.
3. Credit hours must be worked within an employee's tour of duty. The tour of duty for employees on Gliding Schedule or Maxiflex is Monday through Friday of each week. Employees on standard or compressed schedules are not eligible for credit hours.
4. For a full-time employee, the number of credit hours that may be carried over from one pay period to the next pay period will not exceed 24 credit hours. For a part-time employee, the number of credit hours that may be carried over from one pay period to the next pay period will not exceed one-fourth (1/4) of the part-time employee's biweekly work requirement.
5. An employee's right to use earned credit hours is subject to supervisory approval. The same procedures used to request using annual leave will be used to request the use of credit hours. Credit hours must be earned before they are used.
6. When an employee is no longer subject to a flexible work schedule, the employee must be paid for accumulated credit hours at his or her current rate of pay. An employee may not be compensated for excess or unused credit hours that cannot be carried forward into the next pay period.
7. An employee may not be paid overtime pay, Sunday premium pay, or holiday premium pay for credit hours.

Section J. Sick and Annual Leave under Flexible Work Schedules

1. Paid time off during an employee's basic work requirement must be charged to the appropriate leave category, credit hours, compensatory time off, or to excused absence if warranted.
2. An employee may apply no more sick or annual leave to a given day than he or she is scheduled to work on that day.

Section K. Reasonable Accommodation

By mutual consent of the supervisor, employee, and the Disability Employment Program Manager, core hours and/or tour of duty restrictions may be waived for a disabled employee requiring a permanent schedule change to enable the Agency to provide ongoing reasonable accommodation for a disability pursuant to the Agency's policy for Reasonable Accommodations.

ARTICLE 8: PREMIUM PAY AND COMPENSATORY TIME

Section A. General

1. Overtime/compensatory time will be earned in accordance with applicable law, rule and regulation.
2. For employees with an established tour of duty for each day during the pay period, work in excess of eight (8) hours per day or 40 hours in a week is considered overtime, if ordered and approved in advance. For employees on a flexible work schedule, work in excess of eight (8) hours in a day or 80 hours biweekly is considered overtime, if ordered and approved in advance.
3. Overtime and compensatory time will be earned and used in increments of 15 minutes.
4. Overtime shall be paid at the applicable overtime rate, except when compensatory time is requested and approved in lieu of overtime payment.
5. Call back overtime shall be compensated at a minimum of two (2) hours payable in overtime or compensatory time for Title 5 and Fair Labor Standards Act (FLSA) covered employees:
6. The Agency will make every reasonable effort to ensure the safety and security of employees during overtime assignments.
7. The Agency determines the need, approves and assigns all overtime work, and the required qualifications of employees to perform it.
8. The assignment or denial of overtime work will not be made as a reward or penalty to an employee.

Section B. Procedure for Assignment of Overtime

1. The supervisor will give an employee as much advance notice as possible in making overtime assignments, but the parties acknowledge that emergencies, operational exigencies, and unanticipated workload requirements may result in the supervisor's inability to give advance notice. However, employees will be allowed reasonable time under the circumstances to make arrangements necessary to minimize personal hardship.
2. Assignment of Overtime
 - a. When possible, overtime will be assigned by seeking qualified volunteers within the work unit functionally responsible for the task at hand.
 - b. If more than enough qualified volunteers apply, the volunteer with the greatest seniority as determined by current continuous service in the Agency is entitled to work the overtime.
 - c. In the event of a tie, then the volunteer with the greatest seniority in Federal service using service computation date for leave is entitled to work the overtime.

- d. In the absence of sufficient qualified volunteers within the work unit, inverse seniority (among qualified employees within the work unit) as determined by Federal service computation date for leave shall apply.
3. Fully qualified employees in training or on details may be considered for overtime in their regular work unit if they are reasonably available as to time, workload, and location.
4. The availability of other equally qualified employees in the work unit will be considered if an employee has a claimed hardship in a particular instance. If the overtime must be worked and the bargaining unit employee being ordered to work the overtime claims hardship, the supervisor may assign the overtime work to another equally qualified employee in the work unit, unless the supervisor determines there is a need for the employee's skill set.

Section C. Compensatory Time

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

Section D. Holiday Premium Pay

1. When the supervisor requires the services of employees on a designated Federal holiday, the supervisor will fill the needs of the work unit using the procedures established in Section B of this Article.

2. To minimize the effect of assigning employees to work on designated Federal holidays, the supervisor will make every reasonable effort to provide a minimum of seven (7) calendar days' notice to affected employees.
3. Employees who are duty stationed in the Washington, DC metropolitan area who are working outside of the Washington, DC metropolitan area on Inauguration Day are not excused from work on that day.

Section E. Overtime While on Official Travel Status

1. Travel time that counts as hours of work under the FLSA may be included in determining overtime pay for work in excess of 40 hours in a workweek, 5 CFR 551.401. Time spent commuting in a government vehicle, absent more, is not a basis for overtime compensation.
2. It is the intention of this Agreement to afford employees on official travel status the flexibility and support necessary to accomplish the Agency's mission and objectives while being appropriately compensated in accordance with this Agreement, government-wide regulation and Federal law. Recognizing that official travel sometimes involves overtime, the following procedures shall apply to assure required accountability:
 - a. Employees will establish trip itineraries including general hours of work in advance of initiating official travel taking into consideration meeting agendas when attending conferences, seminars and other functions with scheduled events. Known overtime needs arising from trip planning shall be approved/denied by the employees' immediate supervisor prior to the onset of official travel. The supervisor will notify the employee of their decision prior to departure.
 - b. Recognizing that there may be circumstances when overtime requirements are not known in advance of official travel and timely contact with the immediate supervisor to seek approval is not possible, the employee will obtain advance written approval for overtime from an appropriate management official. Before official travel begins, if it appears likely that an employee might need to work overtime, but the local situation would likely prohibit requesting advance approval, the supervisor or appropriate management official may grant advance approval for overtime up to two (2) hours per workday and four (4) hours per non-workday. The overtime work must be carefully documented and annotated by the employee.
 - c. Requests for overtime should be limited to work situations. Non-work events include but are not limited to: attendance at optional events such as dinners and receptions. Only those hours that are deemed to be essential to the successful completion of the work assignment will receive overtime approval.

Upon return to their official duty station, employees shall annotate appropriate T&A's (including those submitted while on travel status) per standard T&A submission procedures along with their travel itinerary including any approved overtime adjustments. The T&A's shall be processed in a timely manner.

Section F. Overtime under Alternative Work Schedules

1. For employees on a Maxiflex work schedule, overtime hours are all hours of work in excess of 25 | Collective Bargaining Agreement between AFSCME Local 2846 and USDA Office of Operation

eight (8) hours in a day, or 40 hours in a week, or outside of a Maxiflex schedule if ordered and approved in advance but does not include credit hours. Employees on flexible alternative work schedules may not earn overtime pay as a result of suffered or permitted hours under the Fair Labor Standards Act as hours of work.

2. Management may order an employee who is covered by a flexible alternative work schedule to work hours that are in excess of the number of hours that the employee planned to work on a specific day. If the hours ordered to be worked are not in excess of eight (8) hours in a day or 40 hours in a week at the time they are performed, the employee may elect to:
 - a. Take time off from work on a subsequent workday for a period of time equal to the number of extra hours of work ordered;
 - b. Complete his or her basic work requirement as scheduled and count the extra hours of work ordered as credit hours; or,
 - c. Complete his or her basic work requirement as scheduled and, to the extent allowed by law and regulation, be compensated for the extra hours of work ordered.

Section G. Holiday Pay

1. When a Federal holiday falls on an employee's scheduled workday, the employee is entitled to holiday leave according to the following:
 - a. For employees on a Compressed Work Schedule, the total number of hours scheduled for that day. For example, if a holiday falls on Monday and the employee is scheduled to work nine (9) hours, the employee will be paid nine (9) hours for the holiday.
 - b. For employees on a Maxiflex or Gliding Schedule work schedule, the employee is entitled to eight (8) hours holiday leave.
2. When a holiday falls on a full-time employees' non-workday, the employee may, with supervisory approval and consistent with the need to maintain adequate office coverage and provide services to our customers, take their in lieu of holiday on the work day immediately prior to or after the holiday consistent with Federal laws and regulations.
3. When a federal holiday occurs on a day that a part-time employee is:
 - a. Not scheduled to work, the employee is not entitled to holiday leave;
 - b. Scheduled to work, the part-time employee is entitled to be paid for the number of hours scheduled for that day, up to eight (8) hours.

Section H. Night Pay

1. An employee is entitled to night pay for regularly scheduled night work performed between the hours of 6:00 p.m. and 6:00 a.m. Employees on a flexible work schedule who voluntarily schedule to work after 6:00 p.m. and prior to 6:00 a.m. are not normally entitled to night pay.

2. The supervisor must authorize night pay for any regularly scheduled overtime worked between 6:00 p.m. and 6:00 a.m.

ARTICLE 9: LEAVE

Section A. General Rules

1. Employees will earn annual and sick leave in accordance with applicable law and regulation.
2. Leave requests will not be used as a reward or punishment of employees.
3. Leave will be charged in 15-minute increments.
4. Requests for, and approval or disapproval of, leave will be documented using the WebTA timekeeping system, or any future timekeeping system that may be prescribed for use by USDA. It is the employee's responsibility to ensure requests are submitted to, and received by, the approving official and, when practicable, approved prior to taking leave. Approving officials will timely consider requests for leave and ensure a response is promptly received by the employee.
5. If the needs of the Agency do not permit the approval of leave requested in advance, the supervisor will write the reason for the disapproval in the space provided in the timekeeping system, and will assure that the employee is promptly made aware of the disapproval without depending on automatic notifications by the system. On such occasions, the employee and the supervisor should attempt to schedule leave at an agreed upon time.
6. It is the intention of the Parties to respect the privacy of employees in dealing with purely personal matters. However, where appropriate, a supervisor may request sufficient information concerning the circumstances and the duration of the absence, if known, to permit the supervisor to evaluate the appropriateness of approving or disapproving leave. When it appears that an absence will extend beyond the original date of anticipated return to duty, the employee shall promptly notify the supervisor and request approval for the new anticipated date of return.
7. When leave scheduling conflicts arise and the employees are unable to reach agreement among themselves, the supervisor will make the final determination by giving consideration to circumstances such as, but not limited to: the mission of the agency, the nature of the leave requested, the date of request, and seniority based on service computation date for leave.
8. When unscheduled leave is necessary, the employee shall:
 - a. Determine the necessity for unscheduled leave (e.g., unanticipated illness, personal emergency, etc.).
 - b. Notify the first-level supervisor to request leave; if the first-level supervisor is unavailable, the second level supervisor shall be contacted. If the second level supervisor is unavailable, the employee may provide notification by email, voice mail or leave a message for the supervisor through a coworker. Notifications must include a telephone number where the employee may be reached.

- c. Submit the request in the timekeeping system along with any other documentation required under this Article to the supervisor as soon as reasonably possible under the applicable circumstances.
9. Substitution of leave without pay (LWOP), compensatory time, credit hours, or sick leave for annual leave must be made within the first pay period in which the employee returns to duty, or, if medical documentation is required, by the close of the following pay period after the illness occurs. Employees may change previously authorized annual leave to compensatory time or credit hours. Employees may change previously authorized annual leave to LWOP or sick leave, if appropriate, subject to approval by the supervisor. An approved absence which would otherwise be chargeable to sick leave may be charged to annual leave, compensatory time, credit hours, or LWOP when requested by the employee. However, substitution of annual leave, credit hours, or LWOP for earned sick leave previously granted and charged may be permitted under rules for amending leave records, but annual leave cannot be substituted for sick leave already granted in order to avoid forfeiture of annual leave at the end of the leave year.
 10. Employees in a use-or-lose annual leave situation (i.e., there is a possibility that some annual leave hours will be lost at the end of the leave year if adequate plans are not made to schedule and take that leave) must request use of that leave no later than the end of pay period 23. If, after receiving approval for use-or-lose leave, an exigency of public business occurs that prevents use of such leave prior to the end of the leave year, the employee may request to have his/her forfeited annual leave restored during the next leave year without permanently increasing the employee's annual leave ceiling. Any restored annual leave must be used during the new leave year or the leave year that follows.
 11. Requests for training shall not be denied for any arbitrary, capricious or discriminatory reason.

Section B. Advanced Annual Leave

1. A permanent employee who expects to remain in service through the leave year may request advancement of annual leave in an amount not to exceed that which the employee will accrue for the remainder of the leave year.
2. An employee who wishes to request advancement of annual leave shall submit the request in the timekeeping system and provide a written explanation of the reason for the request in the space provided for employee remarks. If the explanation requires more space than provided in the timekeeping system or additional documentation is needed, it will be submitted in writing either on paper or electronically as specified by the supervisor.

Section C. Sick Leave

1. Sick leave may be granted in accordance with 5 C.F.R. 630 Subpart D.
2. Sick leave may be granted for Family Care purposes as set forth in 5 C.F.R. 630.401(a)(3) and (4) and 5 C.F.R. 630 Subpart L.
3. When an employee knows in advance that sick leave will be required for a reason set forth in Paragraphs 1 or 2 (above), the employee will request sick leave at the time the necessity for the leave is determined.
4. Advanced Sick Leave
 - a. The supervisor may approve requests for advanced sick leave after considering the following factors:
 - 1) Leave is properly applied for in accordance with this Article.
 - 2) Repayment can reasonably be expected through leave accruals taking into account the employee's leave record, the employee's length of service, and the nature of the incapacitation.
 - 3) Accommodations can be made within the work unit to cover the work unit's critical functions. This factor may only be considered in situations in which the employee has substantial control over the circumstances and can reschedule the requested leave, such as elective surgery.
 - 4) The employee has a serious illness or injury.
 - 5) Medical documentation, if requested by the supervisor.
 - 6) Any other relevant factors.
 - b. As a maximum, a permanent employee may be advanced up to 240 hours of sick leave for personal medical situations. Advanced sick leave may not exceed 240 hours at any one time.
 - c. There is no limit on the number of times an employee may request advanced sick leave. The supervisor will consider each request for advanced sick leave on its individual merits and in accordance with the criteria described above.
5. Health Unit Visits
 - a. Employees may leave the work site to attend an on-site health unit. Except in cases of emergency, the employee shall obtain approval of the supervisor prior to leaving the work site.

- b. The employee may remain in the Health Unit as long as permitted by the Health Unit. If the employee is unable to return to work after two (2) hours, the employee will request appropriate leave for the remainder of his/her tour of duty. This provision applies only to employees who are ill while in duty status.
- c. Employees who are injured on the job will not be charged sick leave but shall be granted administrative leave to visit the Health Unit at the time or on the day of the on- the-job injury, in accordance with applicable worker's compensation procedures.

6. Abuse of Sick Leave

- a. When a supervisor has reasonable grounds to suspect an employee of sick leave abuse, the supervisor shall notify the employee of the suspected sick leave abuse and counsel the employee.
- b. The supervisor may notify the employee in writing that, for a stated period not to exceed six (6) months for the first offense, the employee will be on sick leave restriction, and all requests for sick leave will not be approved during the stated period unless supported by medical certification.
- c. Employees on leave restriction will be required to furnish medical certification. This certification must be provided within three (3) business days upon return to duty.

Section D. Medical Certification

1. "Medical certification" means a written statement signed by a registered practicing physician or other practitioner certifying to the incapacitation, examination, treatment or to the period of disability while the patient was receiving professional treatment (as noted in 5 C.F.R. § 630.201(b)). For sick leave requested because of exposure to a contagious disease, the medical certification should indicate the name of the disease and indicate that the disease is contagious, and the period of confinement and/or quarantine, if quarantine is required by ordinance or statute. However, if a medical practitioner certifies incapacity other than contagious disease, the employee need not disclose the details of an illness in his/her medical certificate. Medical certification must be submitted to the supervisor by the close of the following pay period after the employee's return to duty.
2. The employee may be required to provide medical certification:
 - a. For an unscheduled absence in excess of three (3) consecutive workdays.
 - b. For any use of sick leave if the employee is officially on sick leave restriction.
 - c. For a chronic condition which does not necessarily require medical treatment although absence from work may be necessary. If the employee has previously furnished a medical certificate of the chronic condition, the employee may not be required to furnish a medical certificate on a continuing basis. The supervisor may require reasonable updates to the medical certificate.

- d. To consider an employee's request for leave for medical reasons, including treatment and convalescence related to childbirth, and care for a spouse, son, daughter, parent, or legal ward with a serious health condition.
 - e. To consider an employee's request for special consideration such as reassignment or other reasonable accommodation, and there is a question as to the medical need for such accommodation.
 - f. To consider an employee's request for advanced sick leave under Paragraph 2(d) of this Section.
 - g. To support an employee's request for "family leave" under Section F, Family and Medical Leave, or Section G, Sick Leave for Family Care (below), or to support an application to become a leave recipient in the Leave Transfer and/or the Leave Bank Programs.
3. The supervisor may also request medical certification from a licensed physician stating that the employee can return to work and noting any applicable limitations.
 4. Employees cannot be denied or removed from consideration for promotion, training, or other opportunities as a result of approved use of sick leave.

Section E. Administrative Leave

1. Administrative leave is an excused absence from duty administratively authorized without loss of pay and without charge to other types of leave. The Agency will grant administrative leave in accordance with applicable law, rule, regulation and this Agreement.
2. For inclement weather or other emergency situations, the Agency will follow the OPM regulations issued at 5 C.F.R. § 630 Subpart P - Weather and Safety Leave and any applicable Washington, D.C. Metropolitan Area Emergency Dismissal or Closure Procedures.
3. Blood Donation
 - a. Upon advance request by the employee to the supervisor, an employee donating blood without compensation may be granted administrative leave of up to four (4) hours for donation unless to do so would interfere with work operations. The employee is not permitted to go home after the donation unless they feel sick and request leave (sick, annual, credit, compensatory, or LWOP).
 - b. An employee who is not accepted for donating blood is only entitled to time necessary to travel to and from the donation site and the time needed to make the determination.

- c. Appropriate documentation from the donation site may be required by the supervisor.
4. Employees will be granted administrative leave for bone marrow and/or organ donations in accordance with applicable law and regulation.
5. Voting: Employees may be excused from reporting to work for up to three (3) hours after the polls open or for leaving work up to three (3) hours before the polls close in their voting jurisdiction, whichever requires the lesser amount of time excused from duty. Exceptions to the 3-hour limits shall be considered for those commuting long distances, for heavy voter turnout, or other factors such as work schedules or day care limitations that would impair the ability to vote.
6. Employees may be excused for up to four (4) hours, subject to the approval of Management per calendar year for health care screenings.
7. Supervisors will permit employees who are breastfeeding to express/pump milk for their child and permit a reasonable and flexible time period to conduct this activity. Reasonable time will be permitted to go to and return from an adequate on-site location. No adverse action or recourse will be based on an employee's desire to breastfeed.

Section F. Family and Medical Leave (FMLA)

Family and Medical Leave shall be administered pursuant to 5 C.F.R. 630 Subpart L.

1. Leave Entitlement

- a. Permanent full and part-time employees serving on a temporary appointment with a time limitation of greater than one year rule eligible for family and medical leave provided they have completed at least 12 months of Federal service (not required to be 12 consecutive months).
- b. Upon request, an eligible employee is entitled to a total of 12 work weeks or 480 hours of unpaid leave during a 12-month period for the purposes of:
 - 1) The birth of a son or daughter of the employee and the care of such son or daughter;
 - 2) The placement of a son or daughter with the employee for adoption or foster care;
 - 3) Care of a family member who has a serious health condition; or,
 - 4) A serious health condition of the employee that makes the employee unable to perform the essential functions of the employee's job.
- c. For the purposes of Paragraphs (b)(1) and (2) of this Section:
 - 1) The family and medical leave may begin on, before, or after the actual date of birth or placement of the child, and must be for a continuous period of time, unless the employee and supervisor agree otherwise; and,

- 2) Entitlement for use of family and medical leave shall expire no later than 12 months after the date of birth or placement of the child.
- d. For the purposes of Paragraphs (b)(3) and (4) of this Section:
 - 1) Family and medical leave may be taken continuously, intermittently, or as part of a reduced work schedule; and,
 - 2) Entitlement for use of family and medical leave shall expire 12 months from the date the employee first takes leave for a family or medical need.
 - e. Leave under Paragraph b (above) will be made available for a full-time or part-time employee in direct proportion to the number of hours in the employee's regularly scheduled administrative workweek.
2. Consistent with law and regulation, an employee may substitute the following paid leave for any or all of the unpaid leave taken for FMLA purposes:
 - a. Accrued or advanced annual leave;
 - b. Accrued or advanced sick leave;
 - c. Donated leave made available through the Voluntary Leave Transfer or Leave Bank programs; and/or,
 - d. Accumulated compensatory time or credit hours.
 3. Supervisors may not require an employee to use accrued paid leave for LWOP. An employee cannot retroactively substitute paid leave for LWOP already taken during a period when family and medical leave was used.
 4. Requests and Approvals: When the need for leave is foreseeable, an employee shall request family and medical leave in the WebTA timekeeping system, or any future timekeeping system that may be prescribed for use by USDA under the provisions of this Section at least 30 days in advance to allow the supervisor time to prepare for any staffing adjustments necessary to compensate for the employee's anticipated absence. However, the Parties recognize that circumstances beyond the employee's control may arise and adjustments in the requested leave may be necessary.
 5. Medical Certification
 - a. The supervisor may require administratively acceptable medical certification as defined at 5 CFR § 630.1208 when an employee invokes his/her right to family and medical leave for purposes under Paragraphs 2 b (3) and (4) above.
 - b. The supervisor may require a copy of the legal documents when an employee invokes his/her right to family and medical leave for adoption or foster care.

- c. The supervisor may require, at the Agency's expense and by a health care provider designated or approved by the Agency, a second medical opinion to verify the validity of the certification provided by the employee. If the second opinion differs from the original certification, the supervisor may require, at the Agency's expense, certification from a third health care provider selected jointly by the Agency and employee.
6. Protection of Employment and Benefits Upon Return to Duty
7. An eligible employee who takes leave for family and medical purposes shall be entitled to return to the same or equivalent position, with equivalent benefits, pay, status, and other terms and conditions of employment, unless termination of employment is otherwise required by reduction-in-force, for cause, or for similar reasons unrelated to the use of leave under the FMLA.
8. The Agency understands that there may be a transitional period upon returning to the workforce and supervisors will work with employees to arrive at an appropriate work schedule during this transitional period.
9. An employee who invokes his/her right to LWOP under the FMLA may elect to continue health benefits coverage provided the employee pays his/her share of the cost. Employees may pay their share of the cost on a current basis or may pay upon return to work.

Section G. Use of Sick Leave for Family Care (SLFC)

Sick leave may be granted for family care purposes pursuant to 5 CFR 630 Subpart D:

1. In cases in which an employee is required to provide care for a family member who is incapacitated by a medical or mental condition or attend to a family member receiving medical, dental or optical examination or treatment.
2. To make arrangements necessitated by the death of a family member or to attend the funeral of a family member.
3. To provide care for a family member with a serious health condition.

Section H. Leave Without Pay

The Agency will grant LWOP in the following cases:

1. Disabled veterans who are entitled to LWOP for medical treatment under Executive Order 5396, when the veteran presents an official statement, from a registered practicing physician or other health care professional certifying that medical treatment is required. The disabled veteran must give advance notice of the period during which absence for treatment will occur.
2. Reservists and National Guardsmen who are entitled to a leave of absence for required military training under Title 5 U.S.C. Section 6323. LWOP will be approved if the employee has

exhausted or is not entitled to military leave. However, an employee may choose not to take military leave and instead take annual leave, compensatory time off for travel, or sick leave, if appropriate, in order to retain both civilian and military pay.

3. Employees receiving injury compensation under Title 5 U.S.C. Chapter 81 unless permanently disabled.
4. Employees meeting requirements for LWOP under the provisions of the FMLA.
5. Family Related LWOP
 - a. Approving officials may grant LWOP for such activities listed below, such requests are subject to the needs of the mission and Management's approval. Where paid leave is appropriate and not contrary to regulation, employees should be permitted its use prior to unpaid leave. Employees may also use earned credit hours and/or compensatory time.
 - b. School and early childhood educational activities: allows employees (including those who do not have children) to support a child's educational development and advancement by attending parent-teacher conferences, meeting with the child-care providers, interviewing for a new school or child-care facility, or participating in volunteer activities such as tutoring, coaching, etc. School is defined as an elementary or secondary school, Head Start Program, or a child-care facility.
 - c. Routine family medical purposes: allows parents to accompany children to routine medical or dental appointments, such as annual check-ups or vaccinations.
 - d. Elderly relatives' health or care needs: allows employees to accompany elderly relatives to routine medical or dental appointments or other professional services related to their care, such as making arrangements for housing, meals, phones, banking services, and other similar activities.
6. Special Considerations
 - a. Union Activity:
 - 1) Upon request of the appropriate Union officer or staff, the Agency will consider granting LWOP for them to engage in Union activity or to work in Union sponsored programs at the national or district level. The Agency agrees to render a timely determination, and if disapproved, provide its reasons.
 - 2) An employee returning from LWOP from engaging in Union activity will be placed in the same position that he/she previously held, if available. If that position is not available, the employee may be placed in another position, but he/she will not suffer any loss of grade or pay. Management will make every effort to ensure no change in series or bargaining unit status.
 - b. Employees whose application for disability retirement is pending.

- c. Employees receiving workers compensation benefits, unless it is known that they are permanently disabled. In these cases, supervisors should contact the SPO.

7. Other Requests for LWOP

- a. LWOP for purposes other than those identified in Section G 1 may be requested and approved in accordance with appropriate regulations. An employee may not demand LWOP as a matter of right, except in those cases defined in Sections H 1 and Section F of this Article, but all requests shall be considered objectively and with both the employee's and Agency's interest in mind.
- b. The immediate supervisor may approve an employee's request, with justification, for LWOP for up to four (4) weeks.
- c. Extended LWOP: The Director of Operations or his or her delegate may approve an employee's request, with justification, for extended LWOP (defined as LWOP in excess of four (4) work weeks) up to one year.

8. Retroactive Substitutions of Paid Leave for LWOP

LWOP may be retroactively changed to paid leave if:

- a. Due to an administrative error or misunderstanding the employee was not aware that he/she had a leave balance or that leave could have been used; or,
- b. The employee is accepted into the Voluntary Leave Transfer Program and/or the Voluntary Leave Bank and donated leave is available.

9. Paid leave cannot be substituted for LWOP granted under FMLA.

Section I. Military Leave

- 1. The Agency agrees to comply with 5 U.S. Code § 6323, or its successor, with respect to military leave. Any full-time permanent employee (working 80 hours per pay period) who is a member of the National Guard or other reserve unit of the Armed Forces shall be entitled to accrue 120 hours (or 15 days times eight (8) hours) of military leave in a fiscal year for active duty or inactive or active duty training. Military leave will be prorated for part-time employees based on the number of hours in their regularly scheduled biweekly pay period.
- 2. Charges for military leave will be in one hour increments and military leave will not be charged for military service on non-duty days (typically weekends and holidays). An employee may be charged military leave only for hours during which the employee would

otherwise have worked and received pay. Employees requesting military leave for inactive duty training (generally two (2), four (4), or six (6) hours in length) will be charged only the amount of military leave necessary to cover the period of training and necessary travel.

Hours in the civilian workday not chargeable to military leave must be worked or charged to another leave category, as appropriate.

3. Employees who are entitled to regular military leave but who do not use the entire 120 hours may carry over the unused portion from one fiscal year to the next fiscal year for a maximum cumulative total not to exceed 240 hours.
4. Approval of the military leave shall be granted based on a copy of the military orders directing the employee to duty or training. However, an employee may choose not to take military leave and instead take annual leave, compensatory time off for travel, or sick leave, if appropriate, in order to retain both civilian and military pay.

Section J. Court Leave

1. Court leave shall be approved pursuant to 5 U.S.C. § 6322.
2. Court leave is an authorized absence, without charge to leave or loss of pay, for jury service or witness service under certain conditions. All leave-earning employees are eligible for court leave.
3. Court leave is authorized for an employee summonsed or subpoenaed to serve as a witness on behalf of any party in a judicial proceeding to which the United States, the District of Columbia, a State, a U.S. territory or possession, or a local government is a party to the proceedings. The employee may be summonsed or subpoenaed in an official capacity as a Federal employee or unofficial capacity as a U.S. citizen. The employee must request use of his/her own accrued leave or LWOP when the summons or subpoena does not name the United States, the District of Columbia, a State, a U.S. territory or possession, or a local government as a party to the proceedings.
4. The employee must provide a copy of the subpoena or summons to the supervisor immediately upon receipt. Court leave must be requested using the current Time and Attendance system and a copy of the subpoena or court summons. If jury service or witness service lasts for more than 2 workdays, present to the supervisor evidence of court attendance, e.g., a jury duty certificate or written statement signed by an officer of the court.
5. An employee attending jury service or witness service is expected to return to duty once dismissed by the courts unless the return would be at the end of his/her scheduled workday. Employees who do not return to work shall request use of annual leave, credit hours, compensatory time, or LWOP for the balance of the workday.
6. In every instance, the employee may fulfill the citizenship responsibilities of jury duty. The Agency may petition the court to excuse the employee if jury duty will substantially interfere with the Agency's work.

Section K. Religious Observances

1. In accordance with law and government-wide rules and regulations, employees wishing to attend or participate in the observance of a religious holiday will be permitted to be absent from work using annual leave, credit hours, compensatory time, or LWOP so long as the employee requests such leave at least three (3) work days in advance and their absence will not cause an undue workload problem.
2. For the purpose stated in this Section, an employee may work compensatory time either before or after the grant of compensatory time off. A grant of advanced compensatory time off for these purposes shall be repaid by an equal amount of compensatory work within the earlier of six (6) pay periods of its use or the end of the leave year.
3. An employee's request for compensatory time off for religious observances must contain the date(s) and time(s) when the employee intends to be absent and a projected work schedule that accounts for the time necessary to pay back the granting of advanced compensatory time.
4. Failure to work the required amount of time to repay advanced compensatory time off will result in a charge to annual leave, if the employee so elects, or LWOP.

Section L. Leave Transfer Program

The Agency agrees to continue its Voluntary Leave Transfer Program in accordance with law and regulation.

ARTICLE 10: POSITION DESCRIPTIONS

Position Descriptions shall be administered pursuant to Departmental Regulation 4020-511-001, plus applicable law, rule, regulation and this Agreement.

Section A. Position Descriptions

1. When there is a significant change in an employee's responsibilities or grade controlling duties for a period to exceed thirty 30 calendar days, the employee shall be provided an accurate and updated position description within 15 work days from the date the position description is signed and dated by the SPO unless it is mutually agreed that additional time is needed.
2. Whenever a bargaining unit position description is amended, the SPO shall provide the Union a copy of the amended position description within 30 calendar days of the SPO's signature date.
3. In accordance with law and regulation, employees may grieve reductions in grade, pay, or loss of promotion potential that result from a classification decision following procedures in Article 32: Grievance Procedures, of this Agreement.

Section B. Classification Appeals

1. Employees or supervisors may file an appeal concerning a classification decision.
2. An employee may appeal the series or grade of the position to which the employee to which the employee is currently and officially assigned.
3. An appeal by an employee shall be in writing stating the reasons why the employee believes his/her position is erroneously classified.
4. The employee may choose to file at any level but an appeal made initially at a higher level will waive the employee's right to appeal to the lower level. The options for filing a classification appeal are as follows:
 - a. If the appeal is filed with the Director, Human Resources Operations Division (HROD), then the appeal may receive the maximum number of reviews and the decision serves as the final Agency determination.
 - b. If the appeal is filed with the Director, Office of Human Resources Management (OHRM), USDA, then the appeal may be filed with OPM and the decision serves as the final USDA determination.
 - c. If the appeal is filed with OPM then the decision is final and there is no further right of

appeal.

- d. If the appeal is filed at the OHRM or OPM level, a copy of the appeal will be provided to the Director, HROD.
5. An appeal decision that reverses a classification action that resulted in a downgrading or loss of compensation may entitle an employee to retroactive benefits if the classification appeal is filed with HROD, OHRM, or OPM within 15 calendar days after the effective date of the personnel action.
6. Subsequent appeals of lower level appellate decisions (Paragraphs 4(a) and (b), above) must be filed within 15 calendar days after the lower level decision.
7. Time limits may be extended if the employee can show that there was no notification of time limits or there were extenuating circumstances.
8. A guide to the appeal process providing information on how to file an appeal can be found on the OPM web site by searching on “classification appeal.”

ARTICLE 11: PERSONNEL RECORDS

Section A. Official Personnel Records

1. The official personnel records of OO employees are contained in Official Personnel Folders (OPFs) maintained by the Servicing Personnel Office (SPO). The SPO also maintains a copy of employee performance appraisals for the most recent three years in separate folders established for that purpose. Records of disciplinary and adverse action proposals including the documentation, upon which such proposals are based, are maintained by the SPO. If the proposed adverse action is sustained, a copy of the final decision memo is retained in the Employee and Labor Relations files, while the SF-50 documenting the action is filed in the OPF. Letters of reprimand are also filed in the OPF for no longer than two (2) years; however, the employer may remove the reprimand from the OPF at any time consistent with Article 25: Disciplinary and Adverse Actions. Employees may have access to all of these records under the conditions set forth in Article 2: Employee Rights.
2. Employees may obtain their personal OPF documents through their respective e-OPF account.

Section B. Supervisory Files

1. Supervisors of bargaining unit employees may maintain worksite files on such matters as emergency locator information, time and attendance records, training, award, and promotion histories, and other matters pertinent to the performance of their personnel management responsibilities. In most instances, such files will contain only information that is accessible to the employee through the records maintained by the SPO. To the extent that the supervisor maintains records containing information that does not duplicate material contained in the official files maintained by the SPO, such records, other than reports of an ongoing criminal investigation, shall be disclosed upon request to the employee who is the subject of the information or to his/her Union representative. Personal notes that a supervisor may keep as a memory jogger are not considered records and are not releasable to employees, unless relied upon by the supervisor in taking a formal disciplinary or adverse action or unless relevant to legal proceedings such as EEO complaints or grievances.
2. No record, information, or document in the supervisor's or personnel office's worksite file will be made available to any unauthorized persons to inspect, review, copy or photocopy. Such information will be made available to authorized persons only for official use, as specified by OPM, other applicable laws, and this Agreement.
3. The Employer will disclose to the employee all information, including worksite personnel files, used as a basis for disciplinary or adverse action at the time of the proposed action.

Section C. Form and Disposition of Records

1. All provisions of this Article apply to electronic as well as paper files.
2. All personnel files maintained by the Employer, including the OPF maintained by the SPO, shall be disposed of in accordance with the General Records Schedule, law, and this agreement.

Section D. Index of Systems of Records

Upon request, the Employer shall provide to the Union and/or to employees a list of the system of records it maintains.

Section E. Employee Records

1. The OPF prescribed by the Office of Personnel Management (OPM) is the official repository of records providing the basic source of factual data about the employee's employment history. The OPF may be used by the SPO as permitted by applicable law, rule, or regulation for any legitimate official purpose, including but not limited to, screening qualifications, determining status, computing length of service, and providing information for statistical purposes.
2. The OPF may be reviewed by or be used to furnish information to OPM and the Employer's officers and employees who have a need for the OPF or information contained therein, in the performance of their duties. Except for disclosure made in accordance with the previous sentence and to persons and entities engaged in law enforcement activities, the Employer will maintain a record of all other individuals who have reviewed the OPF.
3. Any employee, or Union representative who is authorized in writing by the employee, shall be granted access during scheduled business hours, to review and receive a copy under appropriate supervision, of any documents contained in the OPF in accordance with applicable law, rule and regulation. Normally, the Employer will make the copies, but if this would result in significant time delay, the employee may make the copies under appropriate supervision.
4. Any information, including documentary information, that is unfavorable, derogatory or which reflects adversely upon an employee's character or government service shall be maintained in the OPF only in accordance with applicable law, regulation and this Collective Bargaining Agreement. Employees may review and/or seek to amend any such information in accordance with 5 C.F.R. Part 297, Subpart C, entitled Amendment of Records.

ARTICLE 12: CAREER DEVELOPMENT AND TRAINING

Section A. General

Management retains the right to determine the type, frequency and duration of training.

1. The provisions of this Article are intended to create and foster a work environment conducive to the career development and training of bargaining unit employees. The Parties agree to support and encourage employees in developing their knowledge, skills, and abilities, and in contributing to the more effective utilization of available human and material resources in service to the Agency.
2. The Parties will encourage employees to take advantage of educational opportunities and training that enhance work efficiency and provide needed skills for advancement based on Agency priorities and availability of training funds.
3. The Agency agrees to maintain information and furnish guidance about suitable and available education, training, and career development resources, including specialized career development programs.
4. Employees should receive fair and equitable treatment in all aspects of the Agency's career development and training program, consistent with affirmative action and other broad staff development goals and be subject to the following:
 - a. The Government Employee Training Act (5 U.S.C. §§ 4101-4118) and regulations issued pursuant thereto;
 - b. The Equal Employment Opportunity Act (5 U.S.C. § 2000-e), as amended;
 - c. Available resources allocated for training purposes; and
 - d. Other applicable statutory or regulatory provisions.
5. The Agency agrees to assist employees, upon request, in the development of individual career development plans.
6. The Agency agrees to notify employees directly of selection or non-selection for Agency controlled training or educational opportunities for which they applied or were nominated within 15 work days of the closing date, or two (2) work days prior to the beginning of the training, whichever is sooner. It is understood by the Parties that for some classes or other opportunities which require paneling or recommendation by the Executive Advisory Group, this will not always be possible. In cases of non-selection, the employees may request in writing and receive a written explanation for the denial.

7. Employees may be excused, subject to supervisory approval, without loss of leave or pay for a reasonable period of time before and upon return from local area Government training including conferences, conventions or other special events. However, where practicable, an employee should request a temporary work schedule change to better coincide with the training times. A supervisor may also make a temporary change to an employee's work schedule, after giving timely notice to the employee.
8. The Agency agrees to make payment, subject to the availability of funds, for authorized expenses in connection with approved training.

Section B. Training

1. The following approaches to employee training may be utilized, as appropriate:
 - a. in-house, external, or on-the-job training to improve employee capabilities to perform their current duties;
 - b. training, detail, and rotational assignments in complementary positions;
 - c. enrollment of employees in part-time educational programs at local educational institutions, distance learning, and/or in online courses; and
2. When membership in a professional organization is not a trainer-determined or vendor determined prerequisite for attendance at a training session, the Agency shall not consider membership as the sole factor in determining which employees will receive the training.

Section C. Training Requests and Documentation

1. Training requests, documentation of completed training, and Individual Development Plans (IDP) will be processed and maintained through an Agency administered employee development system (e.g., USDA AgLearn). The system will allow employees access to their training records.
2. The agency will process approved training requests and related documents received within prescribed time limits to ensure employees are registered and notified in adequate time to prepare for their participation (e.g., make travel arrangements, obtain pre-class materials, etc.).
3. Normally, approved training may occur on duty time, subject to restrictions contained in Government-wide regulations and any voluntary agreements made between the Agency and employee, such as when the employee agrees to attend training events during non-duty hours on his/her own time in exchange for the Agency paying tuition/registration fees.
4. Employees will be notified of any agency-wide training requirements (e.g., Civil Rights, Ethics, etc.) and be provided a reasonable amount of official time to complete those

requirements in a timely manner.

5. The Agency will assist employees with resolving technical problems experienced while using the Agleam system.

Section D. Career Development Counseling

1. Employees shall be given reasonable opportunity and reasonable time necessary to discuss their career development with their supervisors and/or the SPO staff.
2. An employee may request a meeting with the appropriate Agency representative for the purpose of career counseling.

An employee's request for a lateral reassignment to a different job or a change to a lower- grade job shall not be considered a factor in any adverse action under Article 25, Disciplinary and Adverse Actions, concerning that employee.

Section E. Individual Development Plan (IDP)

1. The IDP is a tool by which employees and supervisors identify desired training and will to the extent possible, be followed and used as a basis to justify requested training, recognizing the approval of requested training is contingent on Agency priorities and the availability of training funds.
2. Supervisors and their employees shall discuss the employee's training needs using- an Agency-prescribed skills inventory to identify short-term (i.e., needs for current position) and long-term (i.e., needs for career advancement) training needs. The results of this skills inventory assessment will provide the framework for the IDP. Training needs for both the duties the employee currently performs or will be performing, as well as opportunities for career development will be considered, with priority given to the former. The employee shall have the opportunity to explain why particular job-related and career development training was requested and the most appropriate timing for the proposed training.
3. If at any stage of the IDP review process requested training and/or opportunity for career development is not approved, the employee shall be advised.
4. The IDP may be revisited at any time should the supervisor's assessment of the employee's training needs change, additional training be required, and/or the employee seeks training, including nomination/participation in specialized career development programs. When the employee seeks training, such requests will be considered as expeditiously as possible.

Section F. Tuition Assistance

An eligible employee (career or career-conditional employee who has completed one (1) year of

current, continuous federal service) who initiates a request for tuition assistance and obtains prior approval from the Agency will have tuition costs (tuition is defined as the cost of the course per credit hour) paid at educational institutions during their non-work hours, provided that:

1. The course will enable the employee to increase his or her ability in presently assigned duties or duties the employee will be performing (i.e., the course is job or Agency mission-related). If the latter, the course will be reviewed on a case-by-case basis by the Agency;
2. For courses of 80 or more classroom hours, the employee must agree in writing to stay with the Agency three (3) times the actual length of the course. Failure to complete this required service will result in the employee being required to repay costs incurred by the Agency. This requirement may be waived at the Agency's discretion;
3. An employee who fails to complete a course or receives a grade of less than C, shall reimburse the Agency unless a waiver is granted by the Agency;
4. The employee completes an Agency-provided course evaluation, if requested;
5. If a college course, the employee is required to provide a copy of the official final grade report;
6. Funds are available to pay for such training.

Section G. Variance in Work Hours

Requests for a variance in regular working hours and/or appropriate leave for educational purposes may be granted unless it will interfere with the performance of the day-to-day mission of the Agency as determined by Management.

A variance request may not be denied for any arbitrary, capricious or discriminatory reason.

ARTICLE 13: TELEWORK

Telework, also known as Flexiplace and Telecommuting, is a family-friendly work life benefit that allows eligible OO employees to work at Telework Centers or at home in lieu of the irregular work-site. In doing so, the program improves productivity, morale, and quality of work life issues.

Telework shall be administered pursuant to Departmental Regulation (DR) 4080-811-002, USDA Telework Program, law, rule, government-wide regulation and this Agreement.

ARTICLE 14: CAREER LADDER PROMOTIONS

Section A. Basic Eligibility Requirements

An employee in a career ladder generally should be promoted no earlier than the first full pay period after all of the following requirements are met:

1. The employee becomes eligible to be promoted after one (1) year in grade or whatever lesser period satisfies basic eligibility requirements;
2. The employee demonstrates the potential for satisfactory performance at the next higher level. In this regard, the supervisor must make this determination prior to the date the employee is eligible to be promoted;
3. The employee's current performance appraisal record must have an overall summary rating of not less than Fully Successful; and
4. All other requirements of law, rule, regulation, Departmental policy and this Agreement are met.

Section B. Supervisor Certification

1. Supervisors shall review the work of each employee in a career ladder position who will be eligible for a career ladder promotion prior to the employee's eligibility date. Employees who do not meet the requirements for promotion in accordance with Section A of this Article will be provided written notice to this effect by the supervisor no less than 30 calendar days prior to the eligibility date. The written notice will explain in what performance element area and how the employee's performance is lacking and advise as to what the employee must do to meet the requirements for promotion. If delays are for reasons other than performance, these will be explained in the advance notice.
2. Once an employee's performance improves to the requisite level as described in Section A of this Article, the supervisor may recommend the employee for promotion.
3. If advance notice requirements are not met, the promotion may be made retroactive to the date the employee met the basic eligibility requirements as noted in Section A of this Article.

ARTICLE 15: MERIT PROMOTION

Section A. General Provisions

Merit Promotions will be conducted in accordance with applicable law, rule, regulation (e.g., 5 C.F.R. § 330.102, 5 C.F.R. Part 335), Departmental policy and this Agreement.

1. The principle of merit promotion is to ensure that employees are given full and fair consideration for advancement and to ensure selection from among the best-qualified candidates. The Agency recognizes the value of promoting from within the Agency.
2. Positions in the Bargaining Unit will be filled on the basis of merit and in accordance with applicable law, rule, regulation, Departmental policy (e.g., DR 4030-335-002) and this Agreement.
3. Employees should review vacancy announcements and apply online at www.usa.jobs.gov/ or using any other available website. Employees who wish to be considered for vacancies but who are unable to apply online should take the necessary steps to contact the Point of Contact identified in the vacancy announcement to make appropriate arrangements to submit their applications.

Section B. Vacancy Announcements

1. Announcements for bargaining unit positions shall be open for at least five (5) workdays.
2. Announcements will be posted electronically by the opening date.
3. All vacancy announcements will contain the information required by 5 C.F.R. § 330.104:

Section C. Qualification Standards

1. Qualification requirements and selective placement factors for vacant positions will be job related.
2. Candidates will be rated basically eligible for a position if they meet the minimum qualification requirements for a General Schedule position described in the OPM Operating Manual for Qualifications Standards for General Schedule Positions based on the application, Knowledge, Skills and Abilities (KSA's), and performance appraisal (or Wage Grade Qualifications Standards, as appropriate) as supplemented by valid job-related selective placement factors, if any.
3. Selective placement factors may be used in determining basic qualifications if they are essential (not merely desirable) to successful performance in the position being filled. The inclusion of such factors must be supported by the position description.

Section D. Evaluation and Ranking Criteria

The best qualified candidates will be identified through an impartial evaluation of eligible candidates based upon uniformly applied job-related evaluation criteria. The following factors may provide a framework for determining the appropriate criteria for each position.

1. Experience. Experience is evaluated in terms of the position to be filled. Length of experience may be used only to the extent to which it can be shown to be a valid job-related factor for the position being filled. Experience (including leadership, supervisory and managerial) gained through employment in other public and private positions may be given credit.
2. Training and Education. Pertinent training, self-development, and outside activities determined to indicate effective performance in the position to be filled may be considered to the extent it is job-related.
3. Performance Appraisal. Bargaining unit employees must submit a copy of their latest performance appraisal rating when requested under the applicable job announcement.
4. Awards and Recognition. An employee's achievements that earned him/her special recognition may be noted in the resume.
5. Other such factors, as determined by Management, which would be noted in the vacancy announcement.

Section E. Evaluation and Ranking Procedures

1. Initial Review of Applications. Before beginning the evaluation and ranking procedures, the SPO will first review all applications to ensure that each applicant/application:
 - a. Is within the area of consideration;
 - b. Meets minimum qualifications, including selective placement factors, if applicable;
 - c. Meets time-in-grade requirements, if applicable; and
 - d. Has submitted all required documents.
2. Rating and Ranking
 - a. If there are 100 or more qualified competitive applicants:
 - 1) Evaluation for positions may be made with or without a Merit Promotion panel consisting of subject matter experts. A personnel specialist from the SPO may serve as a facilitator.
 - 2) Based upon the span of numerical scores, the evaluator(s) determine which of the qualified candidates are best qualified and should therefore be referred to the selecting official. The best qualified applicants are those with the highest scores. This may generally be determined by a significant or meaningful break in numerical rankings which separate the best qualified group from the remaining applicants.
 - 3) The best qualified applicants may be referred for each bargaining unit position. The number of best qualified applicants referred may vary based on a meaningful break in scores, the number of vacancies, or other relevant factors.

- b. The names of the best qualified applicants will be listed alphabetically for referral to the selecting official. Individual scores need not be listed.

Section F. Selection

1. All competitive bargaining unit applicants referred to the selecting official will be interviewed if one is interviewed. Telephone interviews are acceptable for those applicants not in the commuting area or not able to participate in a face-to-face interview due to unusual circumstances.
2. Bargaining Unit employees covered by this Agreement will be notified of their selection by the SPO and will be released from their existing positions if a promotion, normally at the end of the first full pay period after selection or typically within 30 calendar days if a lateral. Applicants not selected for the position may contact the hiring official to discuss reasons for their non-selection.

ARTICLE 16: REASSIGNMENTS

Reassignments will be made in accordance with applicable law, rule, regulation, Departmental policy and this Agreement.

Section A. Definition

A reassignment means a change of an employee, from one position to another within OO without promotion or demotion, while serving continuously within OO.

Section B. General

1. Reassignments of OO employees may be initiated for any of the following reasons:
 - a. To accomplish the mission and/or maintain the integrity of the Agency;
 - b. To improve economy or efficiency;
 - c. To assure the better utilization of employee skills or abilities;
 - d. To make the best use of current staff and other resources;
 - e. To provide employees with opportunities to broaden their qualifications, skills, abilities, and experience in areas of work performed by the Employer;
 - f. To resolve work-related problems;
 - g. To resolve employee hardship and reasonable accommodation concerns; or
 - h. To grant an employee request; when feasible.
2. Although the Employer will make a good faith effort to honor an employee's request for reassignment, it is understood that the Employer may not be able to fulfill all employee requested reassignments.
3. The Union will receive five (5) work days advance notice of any reassignment actions involving bargaining unit employees.
4. The Employer will notify the affected employee(s) in writing of the specifics in advance of the reassignment(s).

Section C. Procedures - Employee Requests

1. Employees may request a reassignment, in writing, to their immediate supervisor. Employees may request a Union representative to assist in the reassignment(s).

2. The Employer will respond, in writing, within 60 calendar days of receiving an employee's request. If the request is disapproved, the Employer's written response must provide the reasons for the disapproval.
3. When a reassignment involves a change in duty station to or from outside the Washington, DC area, the Employer agrees to give the employee a reasonable amount of time to accomplish the change in duty station in an orderly manner.

ARTICLE 17: DETAILS

Section A. General

Details will be made in accordance with applicable law (e.g., 5 U.S.C. § 3341), rule, regulation (e.g., 5 C.F.R. § 300.301, 5 C.F.R. § 335.103), Departmental policy and this Agreement.

1. Definition: For the purposes of this Article, the term detail means the temporary assignment by the Agency of an employee to new duties, unclassified duties, or to another position.
2. Employees are encouraged to take advantage of detail opportunities that may enhance work efficiency and provide needed skills.
3. For employees detailed for 120 days or less, supervisors are encouraged to provide a write-up of not more than one page on the employee's performance under the detail, if requested by the employee.
4. Employees detailed to positions with different elements and standards expected to exceed 120 days will be issued a performance plan no later than 30 days of entering the new position or starting the detail.

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

1. Length of Detail. The detail of an employee to a position at the same or lower grade level will generally not exceed 120 calendar days.
2. Documentation. Details for more than 30 calendar days within the Agency shall be documented by a position description if available or a memorandum containing a brief description of duties (e-mail acceptable) to the employee and signed by the detail supervisor.
3. Impact on Merit Promotion Procedures. Merit promotion procedures do not apply when a detail is to a position at the same or lower grade level.

Section C. Details to a Higher-Graded Position

1. Length of Non-Competitive Detail. An employee may not be non-competitively detailed to a higher graded position for more than 120 calendar days. A detail to a higher graded position expected to last for more than 30 days requires a temporary promotion if basic eligibility criteria for promotion are met. This provision may not be circumvented by rotating an employee in and out of a detail position.
2. Documentation. Details under this section will be documented by:
 - a. an SF-50 for a temporary promotion; and
 - b. an SF-52 for a detail of more than 30 calendar days.

3. Details will not be used to circumvent competitive procedures or be used to give an unfair competitive advantage to the employee detailed to a higher-graded position. For non-competitive details, the supervisor shall endeavor to rotate the detail opportunity(ies) among equally qualified work unit employees, when possible.

Section D. Return to Original Assignment

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

Section E. Training and Developmental Assignments

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

Section F. Miscellaneous Provisions

1. Upon request, the Employer shall provide the name, job title, duties and responsibilities, location, and length of any detail pursuant to this section.
2. Nothing in this Article precludes the Union from suggesting the use of details as a grievance resolution and/or to address personnel conflicts in the workplace.

ARTICLE 18: PROBATIONARY EMPLOYEES

Section A. Definition

A probationary bargaining unit employee is a bargaining unit employee who has been given a career or career-conditional appointment and who is serving his/her first year of federal service and who meets the further requirements described in 5 C.F.R., Part 315. The Parties recognize that there are circumstances that may require an employee to serve more than one (1) probationary period.

Section B. Procedures

1. The Agency agrees to discuss and advise a probationary bargaining unit employee of his/her performance progress at any time but no later than the required mid-term progress review.
2. The Agency may discharge probationary employees at any time during their probationary period.
3. When the Agency decides to terminate a bargaining unit employee serving a probationary period, the Agency shall terminate them by notifying them in writing why they are being separated and the effective date of the action.
4. The Agency may allow a probationary bargaining unit employee the opportunity to resign his/her position in lieu of termination.

ARTICLE 19: FURLOUGH AND REDUCTION-IN-FORCE (RIF)

Except as otherwise provided for in this Article, a Reduction-in-Force (RIF), transfer of function, or furlough of more than 30 calendar days, shall be administered pursuant to 5 C.F.R. Part 351 and applicable law, rule, regulation, Departmental policy and this Agreement. Nothing in this Article waives any rights employees would otherwise have in the course of their employment under the CBA, law, rule or regulation.

Section A. Furloughs

1. The following procedures shall apply if Management determines it necessary to furlough employees because of a lapse in appropriations, lack of work or funds or other non-disciplinary reasons.
2. Management will notify the Union at the appropriate level(s), depending on the scope of a proposed furlough, at least 15 days before the employees are notified. At that time, Management will advise the Union of the reason for the furlough; the number, names, titles, series, and grade of all employees affected; and the measures that Management proposes to take to reduce the adverse impact on employees. The employees will be given specific notice (30-day notice for furlough of less than 30 days, 60 days for furloughs in excess of 30 days).
3. Emergency Furloughs: Consistent with 5 C.F.R. § 752.404(d)(2), advance written notice to employees with an opportunity to answer are not necessary for furlough without pay due to unforeseeable circumstances, such as equipment breakdown, act of God, or sudden emergencies requiring the immediate curtailment of activities. When Management is made aware of a possible Government shutdown, it will:
 - a. Notify the Union and provide copies of any official notices that advise the agency of a potential furlough.
 - b. Provide bargaining unit employees potentially affected by such a furlough with written information addressing their rights, benefits, and obligations.
4. When applicable, furlough documents will be made available to the affected employee(s) and the Union.
5. Furloughs for More Than 30Days:
 - a. Furloughs for more than 30 days will be performed in accordance with 5 C.F.R. Part 351 and Office of Personnel Management (OPM) guidance.
 - b. Where furlough involves only a segment of an organization within a commuting area and the furloughs are for more than 30 days, Management will consider the following:
 - 1) Detailing or reassigning employees to vacant positions.

- 2) Restructuring of positions, including unfilled trainee positions to allow adversely affected employees to fill positions.
 - 3) Waiving qualifications in order to assign an employee subject to furlough to a vacancy for which he or she might not otherwise qualify.
- c. Management may fill a vacant position, by internal placement, when an employee on furlough in the same competitive area is qualified and available for a position at the same or lower grade from which they were furloughed.

6. Identification of Furloughed Employees:

a. Furloughs of 30 days or less:

- 1) Volunteers: When it has been determined to furlough some, but not all, employees in the same competitive level, Management agrees to first solicit volunteers. If more volunteers are available than furloughed positions, selection will be based on the service computation date (SCD) starting with the longest reduction-in-force (RIF) service computation. Non-selection of volunteers will be based on legitimate job-related reasons.
- 2) If a sufficient number of volunteers are not available for furloughed positions, selection for furlough beyond the volunteers will be based on SCD starting with the least RIF service computation.

7. Recall of Employees from Furlough:

Furloughs of 30 days or less: When Management recalls employees to duty in the same competitive level from which they were furloughed, it will do so in order of SCD ranking starting with the longest RIF service computation. Recall from furlough for placement in other competitive levels is determined by the qualifications, availability, and SCD ranking of the furloughed employee.

8. An Internet-based site and a toll-free number will be established to give furloughed employees a "place" to get updates on furloughs when away from work.
9. Employees will be asked to provide their supervisors with updated contact information for callbacks (e.g., phone number, personal e-mail address, etc.).

10. Scheduling:

- a. For furloughs of 30 days or less (short furlough), the total number of days that the employee may be furloughed shall not exceed 30 days (if consecutive) or 22 workdays (if non-continuous).
- b. Furloughs can be for consecutive or non-consecutive days normally at the employee's option. Management will inform the employees how many consecutive days of furlough will qualify them for unemployment benefits. Management will consider employee personal needs such as child care and outside employment as relevant factors in determining which days will be worked during non-consecutive furloughs. Furloughs will be recorded in the correct manner to ensure unemployment benefits are afforded to

eligible employees.

- c. Management may reduce the number of days of the furlough if it finds that fewer days are necessary due to changed circumstances. To increase the number of days, a new notice and identification process is required.

11. Leave During Furloughs:

- a. When making determinations regarding administrative furloughs, for hardship cases Management will consider deferring a furlough for employees on sick leave to the extent provided for in law, government-wide rule or regulation.
- b. The provisions of leave restoration will apply to "use it or lose it" annual leave.
- c. When an employee is furloughed, they shall have the option of electing days of leave without pay in place of days they are placed in furlough status.

12. Management will consider various forms of recognition, including nominating employees for awards pursuant to Article 22, Awards and Recognition, for those employees required to work during a furlough.

Section B. Impact and Implementation

Prior to the decision to institute a RIF that may result from a reorganization or other change, the Agency shall fulfill its obligations pursuant to Article 30, Bargaining During the Term of the Agreement, over provisions not covered by this Agreement. This provision in no way negates the Agency's right to implement a RIF, nor does it constitute a waiver of the Union's right to bargain to the full extent of the law over matters not otherwise covered by this Agreement.

Section C. RIF Appeals

Any employee who has been separated or demoted under RIF and believes that the provisions of this Article, or of applicable law, rules, or regulations have not been correctly applied, may file an appeal with the Merit Systems Protection Board (MSPB) or a grievance under Article 34, Section E, Grievance Procedure. However, an employee who has accepted an offer of another position at the same grade and same representative rate may not appeal to MSPB in accordance with applicable Federal regulations.

ARTICLE 20: WITHIN-GRADE INCREASES

Within-Grade-Increases:

Within-grade increases (WGs) or step increases are periodic increases in a General Schedule (GS) employee's rate of basic pay from one step of the grade of his or her position to the next higher step of that grade. For WGI purposes, an employee's rate of basic pay is the rate of pay fixed by law or administrative action for the position held by the employee before any deductions and exclusive of additional pay of any kind.

WGs apply only to GS employees occupying permanent positions. "Permanent position" is defined in 5 C.F.R. § 531.403 as a position filled by an employee whose appointment is not designated as temporary and does not have a definite time limitation of one year or less. "Permanent position" includes a position to which an employee is promoted on a temporary or term basis for at least one year. The term does not include a position filled by an employee whose appointment is limited to one year or less and subsequently extended so that the total time of the appointment exceeds one year.

- A. Employees may be granted WGI's when the current level of performance and most recent rating of record are at least "Fully Successful" or its equivalent. If the employee has met the above, then the WGI will be effective the first pay period following completion of the required waiting period.
- B. When a supervisor concludes that an employee's work is not at least at the "Fully Successful" or its equivalent level, the supervisor will notify the employee in writing, as soon as possible but at least 15 calendar days in advance of the scheduled effective date, that the WGI will be denied. The notification will state the element(s) and standard(s) where the employee has failed to perform at the "Fully Successful" or its equivalent level, including examples of performance that did not meet expectations, and information as to what areas of competencies need to be improved to bring the performance to the "Fully Successful" or its equivalent level. The notice will also advise the employee of his/her reconsideration rights. A denial of a WGI after a mid-year progress review, which did not identify areas needing improvement, should stipulate how performance declined in the second-half of the performance cycle.
- C. An employee may request reconsideration of a negative level of competence determination by filing, not more than 15 calendar days after the scheduled effective date of the WGI, a written response setting forth the reasons the Agency should reconsider the determination. Requests for reconsideration shall be filed with the employee's second level supervisor.
- D. Neither the substantive nor procedural aspects of WGI denials may be grieved until a reconsideration decision is due or issued, whichever is earlier. A reconsideration decision is due 20 calendar days from the date of the second level supervisor's receipt of the employee's written request.
- E. Upon a review that finds an employee to have been eligible for a WGI, the WGI will be made retroactive with pay to the original effective date.

ARTICLE 21: UNACCEPTABLE PERFORMANCE

Section A. Scope and Definitions

1. For purposes of this Article, acceptable performance is performance that meets the performance requirement(s) or standard(s) at a level of performance above "unacceptable" in the critical element(s) at issue.
2. An action based on unacceptable performance is defined as the reassignment, reduction in grade or removal of an employee whose performance is unacceptable in one or more critical elements of the employee's position.
3. This section applies only to employees who have completed their probationary or trial period. It does not apply to employees serving on a temporary appointment.
4. A reassignment related to unacceptable performance will follow the procedures in Article 16: Reassignments.

Section B. Procedural Requirements

1. Because performance evaluation is a continuous process, the following procedures, consistent with 5 C.F.R. Part 432 and this Agreement shall be followed at any time during the year when a supervisor concludes that a bargaining unit employee's performance on any critical element is unacceptable and would be rated at the "Unacceptable" level.
2. There must be a discussion between the supervisor and the bargaining unit employee for the purpose of:
 - a. Advising the employee of specific shortcomings between observed performance in the performance element(s) under scrutiny and the performance standard(s) associated with that particular element(s);
 - b. Providing the employee with a full opportunity to explain the observed deficiencies; and,
 - c. Advising the employee of opportunities to attend counseling and training.
3. After the discussion, the supervisor should determine what action is best suited to the particular circumstances. Unacceptable performance may lead to reassignment, reduction in grade or removal.
4. Performance Improvement Plan: For each critical element in which the employee's

performance is unacceptable, the rating official must afford the employee a reasonable opportunity to demonstrate acceptable performance commensurate with the duties and responsibilities of the employee's position and place the employee on a performance improvement plan.

- a. When an employee is placed on a performance improvement plan, the opportunity period must be at least 60 calendar days. The performance improvement plan must clearly identify and describe the performance deficiencies in the performance elements and standards for which the employee's performance is at the unacceptable level. If the rating official concludes that additional time is required to assess the employee's performance progress, the initial opportunity period may be extended. If the opportunity period is extended, the rating official must notify the employee in writing, of the extension.
 - b. If the employee does not demonstrate an acceptable level of performance for a critical element during or following the opportunity period, the rating official may initiate a reassignment, reduction in grade, or removal action.
 - c. If an employee has performed acceptably for one year from the beginning of an opportunity period and the employee's performance again becomes unacceptable, the rating official must afford the employee an additional opportunity to demonstrate acceptable performance before determining whether to propose a reassignment, reduction in grade or removal action. A proposed action may be based upon instances of unacceptable performance which occur within a one-year period ending on the date of the notice of proposed action.
5. Notice of Proposed Adverse Action: An employee whose reduction in grade or removal is proposed is entitled to 30 calendar day's advance written notice which informs the employee:
- a. Of the nature of the proposed action:
 - b. Of the critical element(s) of the employee's position involved in each instance of unacceptable performance;
 - c. Of the specific instance(s) which demonstrate(s) unacceptable performance by the employee on which the proposed action is based;
 - d. The time to reply and to whom;
 - e. The right to be represented by the Union, an attorney or other designated representative; and,
 - f. The right to make an oral and/or written reply and to receive a written decision with applicable appeal rights.

6. Employee Response:

- a. The employee will be given the opportunity to respond orally and/or in writing prior to a decision. Any request for an oral reply must be submitted within seven (7) calendar days. Written replies must be submitted, and oral replies made within 15 calendar days of receipt of the notice of proposed action.
- b. If the employee elects to make an oral reply, the Agency shall make a written report of the oral reply and provide a copy to the employee.

7. Decision Letter:

- a. The deciding official will be an official occupying a higher position (if one exists) than the official proposing the action.
- b. The deciding official shall prepare a decision letter, which shall include all of the following:
 - 1) A determination of the final action;
 - 2) Findings with response to each instance of unacceptable performance listed in the letter proposing the action;
 - 3) Findings with response to each dispute, if any, raised by the employee's reply;
 - 4) The effective date of the action. The effective date must be no earlier than 30 calendar days after the date on which the employee received the proposed notice of adverse action;
 - 5) Written concurrence of the action by an official occupying a higher position (if one exists) than the official proposing the action;
 - 6) Notice to the employee that he or she has the option to appeal the action to the Merit Systems Protection Board (MSPB) or through the negotiated grievance procedure, but not both; and,
 - 7) Notice to the employee that he or she will be deemed to have exercised his/her option to raise the matter under one procedure or the other at the time the employee timely files a written grievance or files a notice of appeal under the applicable MSPB procedure.
- c. If the employee is the subject of an action based on unacceptable performance related to a disability, and the employee is eligible and files for disability retirement, and the Agency recommends approval, the Agency may delay the action to allow a determination concerning the disability retirement.

8. Time Extensions: Except for the ‘advanced notice’ period in Section B 5, any of the time limits set forth in this Article may be extended or waived by mutual agreement of the parties.

ARTICLE 22: AWARDS & RECOGNITION

Award programs provide recognition based on employee performance, improvement, contributions and achievements that contribute to an Agency's mission. An effective awards program is intended to motivate and reward employees to continually strive for excellence. Managers are encouraged to recognize and reward employees that exceed expectations. Management may set aside funds for the award program, if funds are available.

Section A. Administration and Eligibility

Awards and Recognition shall be administered pursuant to the criteria and direction contained in the Departmental Regulation 4040-451-1, Employee Awards and Recognition Program, law (e.g. 5 U.S.C. Chapter 45), rule, government-wide regulation (e.g., 5 C.F.R. Part 531) and this Agreement. Accordingly, all bargaining unit employees may be eligible for most types of awards and recognition if nominated and approved by their manager. Nomination and approval does not automatically guarantee awards to employees.

Section B. Fairness

The awards system shall be administered in a manner that is fair, equitable, and non-discriminatory, and which does not favor one group over another, such as by organization, by personnel system (e.g. Civil Service), by grade, by job series, or by prohibited or discriminatory categorization, as defined in Article 23: Prohibited Personnel Practices and Article 31: Equal Employment Opportunity of this Agreement.

Receipt or non-receipt of an award is not grievable.

Section C.

The Union reserves the right to request the number of agency employees who received awards identified by grade, series, bargaining unit status, and the type of award (i.e. QSI, individual cash awards, group cash awards, and time off awards).

ARTICLE 23: PROHIBITED PERSONNEL PRACTICES

Section A. Purpose

1. For the purpose of this Article, and in accordance with the Civil Service Reform Act of 1978, (5 U.S.C. § 2302), prohibited personnel practice means any action described in Section B (1) below.
2. For the purpose of this Article with respect to an employee in or applicant for a covered position in the agency, personnel action means:
 - a. An appointment;
 - b. A promotion;
 - c. An action under the Civil Service Reform Act of 1978 (5 U.S.C. Chapter 75) or other disciplinary or corrective action;
 - d. A detail, transfer, or reassignment;
 - e. A reinstatement;
 - f. A restoration;
 - g. Reemployment;
 - h. A performance evaluation under Chapter 43 of the Civil Service Reform Act of 1978 (5 U.S.C. Chapter 43);
 - i. A decision concerning pay, benefits, or awards; or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other action described in this subsection; and
 - j. Any other significant change in duties or responsibilities or working conditions which is inconsistent with the employee's salary or grade level.
 - k. The implementation or enforcement of any nondisclosure policy, form, or agreement.
 - l. A decision to order psychiatric testing or examination.

Section B. Practices

1. Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority:
 - a. Discriminate for or against any employee for employment:
 - 1) On the basis of race, color, religion, sex, or national origin, as prohibited under Title 7, Section 703 of the Civil Rights Act of 1964 (42 U.S.C. § 2000e-16);
 - 2) On the basis of age as prohibited under Section 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. §§ 631, 633a);

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

applicant reasonably believes evidences:

- a) A violation of any law, rule, or regulation, or
 - b) Gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, if such disclosure is not specifically prohibited by law, if such information is not specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs; or
- 2) Any disclosure to the Special Counsel for the Merit Systems Protection Board, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences:
- a) A violation of any law, rule or regulations, or
 - b) Gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;
- i. Take or fail to take, or threaten to take or fail to take, any personnel action against any employee or applicant for employment as reprisal for the exercise of (1) any appeal right granted by any law, rule, or regulation; (2) testifying for or otherwise lawfully assisting any individual in the exercise of any right referred to in subsection (1) of this provision; (3) cooperating with or disclosing information to the Inspector General of an agency, or the Special Counsel, in accordance with applicable provisions of law; or (4) for refusing to obey an order that would require the individual to violate the law.
 - j. Discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others; except that nothing in this paragraph shall prohibit an agency, from taking into account in determining suitability or fitness, any conviction of the employee or applicant for any crime under the laws of any state, the District of Columbia, or the United States;
 - k. Take or fail to take, recommend or approve any personnel action if the taking or failure to take such action would violate a veterans' preference requirement;
 - l. Take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in 5 U.S.C. § 2301;
 - m. Implement or enforce any nondisclosure policy, form or agreement, if such policy, form or agreement does not contain the following statement: "These provisions are consistent with and do not supersede, conflict with or otherwise alter the employee obligations,

rights or liabilities created by existing statute or executive order relation to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions and liabilities created by controlling executive orders and statutory provisions are incorporated into this agreement and are controlling; or,

- n. Access the medical record of another employee or an applicant for employment as a part of, or otherwise in furtherance of, any conduct described in paragraphs (a) through (k).

Section C. Withholding of Information

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

Section D. Equal Employment Opportunity

Nothing in Section B shall be construed to extinguish or lessen any effect to achieve equal employment opportunity through affirmative action or any right or remedy available to any employee in the civil service.

Section E. Prohibited Personnel Practice

An employee affected by a prohibited personnel practice may raise the matter under a statutory procedure or the negotiated grievance procedure (Article 34: Grievance Procedures), but not both, unless permitted by law.

ARTICLE 24: PERFORMANCE APPRAISAL

Both Parties agree that the Agency will strive for excellence in Agency performance in order to fulfill its commitment to providing the highest quality public service. Performance appraisal is a joint process designed to increase constructive communication between the supervisor and the employee, and to improve the employee's performance. Performance work plans, including elements and standards, shall be based on the requirements of the position description.

Performance Management shall be administered pursuant to Departmental Regulation Employee Performance Management, 4040-430, law (e.g. (5 U.S.C. § 4303), rule, government-wide regulation (e.g., 5 C.F.R. Part 430) and this Agreement. Ratings of record may be grieved in accordance with Article 34 of this Agreement.

ARTICLE 25: DISCIPLINARY AND ADVERSE ACTIONS

Section A. Definitions

For the purposes of this Agreement, the following definitions are used:

1. A **suspension** is defined as the placing of an employee, for disciplinary reasons, in a temporary status without duties and pay.
2. A **disciplinary action** is defined as a letter of official reprimand or a suspension of 14 calendar days or less.
3. A **reprimand** is defined as a written document describing the inappropriate conduct or other deficiency (e.g., failure to obtain prior approval for outside employment) giving rise to the reprimand and provides official notice that a failure to correct the inappropriate conduct or deficiency, or future misconduct, may result in a more severe action.
4. An **adverse action** is defined as a suspension of more than 14 calendar days, involuntary reduction in grade or pay, or removal.

Section B. General Provisions

1. Employees will not be disciplined for exercising their rights or on the basis of the protections afforded them under Article 23: Prohibited Personnel Practices and Article 31: Equal Employment Opportunity of this Agreement.
2. No bargaining unit employee will be disciplined and/or subject to adverse actions except for such cause as will promote the efficiency of the Service. The Employer agrees that any disciplinary and/or adverse action will be taken in accordance with applicable law, rule, government-wide regulation, Departmental policy and this Agreement. In those instances where employees have engaged in inappropriate behavior that does not result in discipline, Management shall counsel and/or warn that such unacceptable behavior, if continued, constitute grounds for future disciplinary and/or adverse action. Management will consider the applicable Douglas Factors, Departmental policy, USDA Table of Penalties and this Agreement, before deciding on a particular penalty.
3. Unless otherwise stated within this Article, disciplinary/adverse actions will be administered as timely as possible.
4. The employee will be furnished with a copy of the material relied upon by the Employer when taking a disciplinary or adverse action.
5. Employees may grieve those items in accordance with the terms of Article 34: Grievance Procedures.
6. The Agency will comply with employee rights associated with investigative meetings as found in Article 2 (Employee Rights), Sections B.

Section C. Reprimand

Reprimands shall be maintained in the employee's Official Personnel Folder (OPF) for a period of up to two (2) years. This time period will be stated in the letter of reprimand. The period of retention may subsequently be reduced when the employee's supervisor determines that circumstances warrant a shorter period. Such determination may be made in response to an employee's request to remove the reprimand from the employee's OPF. Such reprimands which have been overturned as a result of grievance or other authority shall be immediately removed from the OPF.

Section D. Suspensions of 14 Days or Less: Cause

1. The Employer may suspend an employee for 14 calendar days or less for such cause as will promote the efficiency of the Service, including discourteous conduct to the public confirmed by the immediate supervisor's report or any other discourteous conduct.
2. To clarify the alleged misconduct(s) and, if necessary, help correct employee behavior, the supervisor will discuss the pattern of conduct in a timely fashion with the employee, consistent with Section B2 of this Article and Article 2, Employee Rights.
3. The Employer may not suspend an employee on the basis of any reason prohibited by 5 U.S.C. § 2302 (Prohibited Personnel Practices).
4. Procedures: When the Employer proposes to suspend an employee for 14 calendar days or less, the following procedures will apply:
 - a. A notice of proposed suspension of 14 calendar days or less will be provided to the employee at least 14 calendar days prior to the effective date of the action. The proposed notice will inform the employee of:
 - 1) The proposed action;
 - 2) The specific reason(s) for the proposed action;
 - 3) The opportunity to review the evidence that is relied upon to support the charges;
 - 4) The time to reply and to whom to furnish affidavits and other documentary evidence in support of the reply;
 - 5) The right to be represented by the Union (per Article 2 - Employee Rights, Section B);
 - 6) The right to make an oral and/or written reply within seven (7) calendar days from the receipt of the proposed action; and
 - 7) The right to a reasonable amount of official time as specified in Section F (Employee Replies) of this Article.
 - b. The Agency will issue a final decision after receipt of the written and/or oral reply or the

termination of the 14-calendar day notice period. In arriving at its decision, the Agency will consider: only those reasons specified in the notice of proposed action and any reply made by the employee and/or the employee's Union representative. The decision letter will state which reason(s) and specification(s) are sustained and will address factual disputes, if any, raised in the employee's reply by stating the reasons why each factual dispute was rejected.

Section E. Suspensions of More Than 14 Days, Reductions in Grade, and Removals

1. Notice of Proposed Adverse Action: Unless otherwise provided by law (e.g., the crime provision of 5 U.S.C. § 7513 (b)), an employee who receives a proposal for an adverse action is entitled to 30 calendar days advance written notice which informs the employee of:
 - a. The proposed action;
 - b. The specific reason(s) for the proposed action;
 - c. The opportunity to review the evidence that is relied upon to support the charges;
 - d. The right to be represented by the Union (per Article 2 - Employee Rights);
 - e. The right to make an oral and/or written reply within 14 calendar days from the receipt of the proposed action;
 - f. To whom to reply and submit any documentary evidence in support of such reply; and
 - g. The right to a reasonable amount of official time as specified in Section F (Employee Replies) of this Article.
2. Action by the Deciding Official
 - a. After carefully considering the proposed letter, evidence of record, and the employee's response, if any, including any mitigating factors, the deciding official shall decide whether:
 - 1) To institute the proposed action; or
 - 2) To propose alternative discipline (if not a decision to remove); or
 - 3) To institute a lesser action; or
 - 4) To withdraw the proposed action.
 - b. Normally, the Agency will issue a final decision within 30 calendar days after receipt of the written and/or oral reply, or after the time limit for reply has expired, whichever comes last. The final decision letter will state which reasons and specifications are sustained and will address factual disputes raised in the employee's reply. The decision letter will also advise the employee of his or her right to grieve or appeal the Agency's decision. Such notice shall be delivered to the employee on or before the date of the decision.
 - c. In arriving at his or her decision, the deciding official will consider: only those reasons specified in the notice of proposed action and any reply made by the employee and/or the

employee's Union representative.

- d. If the decision is not to remove the employee, the Employer may defer the effective date of the action(s) for up to 14 calendar days at the request of the employee.
- e. Normally, the deciding official must be a higher-ranking official in the Agency than the official proposing the action if one exists in OO.

If discipline is imposed, the decision letter will inform the employee of his/her option to appeal the action to the Merit Systems Protection Board (MSPB) or, in some instances, grieve through the Negotiated Grievance Procedure, but not both, and will inform the employee that he/she will be deemed to have exercised his/her option to raise the matter under one procedure or the other at the time the employee timely files a written grievance or files a notice of appeal under the applicable MSPB procedure.

Section F. Employee Replies

1. In all matters where disciplinary action is being proposed, an employee may exercise his or her right to reply either orally and/or in writing and to furnish affidavits and other documentary evidence in support of his or her reply. Such replies will be made on official time if the employee is otherwise in an active duty status.
2. If the proposed suspension is covered by Section D of this Article, the Agency will provide the employee who is in an active duty status a reasonable amount of official time to: (1) review all material relevant to his or her case; and (2) consult with his or her Union representative with regard to his or her case.
3. If the proposed action being taken is covered by Section E of this Article, the Agency must give the employee who is in an active duty status a reasonable amount of official time to: (1) review all material relevant to his or her case; (2) prepare his or her oral and/or written reply; (3) consult with his or her Union representative with regard to his or her case; and (4) if applicable, secure any pertinent affidavits. Should the employee wish the Agency to consider any medical condition which may have contributed to his or her situation, the Agency must allow the employee a reasonable amount of time to retrieve such information.

Section G. Disability Retirement

In those cases where the employee has applied for disability retirement prior to the decision to remove him or her, the Agency, upon request by the employee or his or her Union representative, may consider either placing that employee in LWOP status or delaying his or her removal, pending a decision on the employee's disability retirement application.

Section H. Alternative Discipline

1. Whenever the Agency offers the opportunity for an employee to enter into an alternative disciplinary agreement (including last chance agreements), the subject employee has the right to consult with and have a Union representative present at any meeting or discussion with an Agency representative concerning a proposed agreement.

2. Alternative discipline processes and agreements will comply with Departmental regulation and be voluntary on the part of the employee. An employee who is being provided the option to enter into an alternative discipline agreement shall be given a reasonable amount of official time to: (1) review all material relevant to his or her case, including documents cited in Sections D and E of this Article, as applicable; and (2) consult with his or her Union representative with regard to the case and proposed agreement.

Section I. Time Limit Extensions

Subject to applicable law, rule, regulation, Departmental policy and this Agreement, any of the time limits set forth in this Article may be extended by mutual agreement of the parties.

Section J. Notice to Employees

1. When the Employer presents written notice to a bargaining unit employee concerning a personnel action in which the employee has appeal rights in accordance with applicable law, rule, regulation, Departmental policy and this Agreement, the Employer will provide the employee with an original and one copy of the notice.
2. This copy at his or her option may be furnished to AFSCME Council 20 to determine if a grievance, where applicable, should be filed. All disciplinary action, including Letters of Reprimand, Suspensions, Notices of Furlough, Notices of Reduction in Grade, or Notices of Proposed Removals will notify employees of their rights and when they may utilize the negotiated grievance procedure.

ARTICLE 26: RETIREMENT COUNSELING AND RESIGNATION

Section A. Retirement Counseling

1. Employees within five (5) years of retirement eligibility may have a reasonable amount of time, without charge to leave, to consult with a retirement counselor.
2. Employees within five (5) years of retirement eligibility may be allowed, with the Supervisor's approval, to attend Agency-sponsored retirement training sessions or events on duty time.
3. Employees within five (5) years of retirement eligibility may be granted annual leave to attend non-Agency sponsored retirement seminars.
4. The Employer agrees to make a good faith effort to ensure information is provided for all bargaining unit employees whenever significant changes to retirement legislation or regulations occur.
5. Requests for counseling pursuant to this section shall not be denied for any arbitrary, capricious or discriminatory reason.

Section B. Resignation

An employee may withdraw a resignation at any time prior to its effective date provided:

1. The withdrawal is communicated in writing (e-mail acceptable) to the Employer; and
2. The Employer has not made a commitment to any specific person to fill the position.
3. After the effective date of a resignation the employee may no longer change or withdraw the resignation.

ARTICLE 27: TRANSIT SUBSIDY

- A. The transit subsidy is a monetary benefit where the Agency provides a specified amount to subsidize an employee's monthly commuting costs. Agency will continue to implement a Transit Benefits Subsidy Program in accordance with USDA Directive 4080-811-04, to the extent that it is fully subsidized by the Department of Transportation for USDA employees.
- B. The Transit Benefits Subsidy Program policies and procedures are available on the following website: <https://www.ocio.usda.gov/document/departmental-regulation-4080-811-04>. Questions and answers regarding the Transit Benefits Subsidy Program may be found at the following website: <https://www.transportation.gov/transerve>.
- C. The Agency will provide transit benefits up to the maximum allowed by current regulations and policies for an employee's particular circumstance. However, the Parties recognize that continuation of transit benefits is dependent on the availability of funds. Should Congress or the Department of Transportation propose to reduce the transit subsidy benefits to the employees, the Agency will provide the Union with a written statement describing the proposed changes.
- D. Neither public transportation subsidies, pre-tax transit, parking benefits, nor any other media to which they are converted may be transferred from the recipient to any other individual. Moreover, benefits may only be used for eligible commuting to and from work; not for personal trips or trips between office locations. Inappropriate conversion or use will result in the employee's removal from the program and may result in disciplinary action and/or criminal prosecution, as appropriate.
- E. One or more Agency employee(s) will be designated to serve as the coordinator for transit benefits.
- F. Employees receiving transit or parking benefits are responsible for informing their Transit Coordinator any time their commuting patterns change, resulting in a change in either eligibility for the transit/parking benefit itself or eligibility for the overall amount of the benefit.
- G. Employees are not eligible to receive transit or parking benefits retroactively, unless authorized by applicable law, rule or regulation.
- H. Participating employees that separate from USDA immediately lose all transit and parking benefits upon their separation.
- I. The application form and a copy of the program rules will be provided to eligible employees interested in participating in the program.
- J. The Agency reserves the right to terminate the program upon the announcement of reduction in force and/or furlough actions that may be necessitated by budget or ceiling constraints or other constraints beyond its control.

ARTICLE 28: EMPLOYEE ASSISTANCE PROGRAM

Section A. Objective

The Employer and the Union support the practice of offering the services of the Departmental Employee Assistance Program (EAP) to employees. Some of the services offered by EAP include help for alcoholism, drug abuse, duress, financial or legal concerns, manage or family concerns, or other personal problems.

Section B. Union Cooperation

Employees are free to seek rehabilitation and other assistance made available under the provisions of the EAP.

Section C. Confidentiality

Employee participation in the EAP will be strictly confidential, unless the employee signs a waiver releasing this confidentiality, or a waiver is contained in a settlement agreement. The Employer may request an employee to sign release forms; however, this does not obligate the employee to do so.

Section D. Notification to Employees

The Employer will continue to provide notice to employees explaining the EAP and the services it provides. An EAP flyer or poster containing the contact information for EAP will be conspicuously posted on bulletin boards.

Section E. Program Participation

1. The parties recognize that the EAP is designed to deal with problems at an early stage when the situation may more likely be correctable. If an employee participates in the EAP, the responsible supervisory official may give consideration to this fact in determining any appropriate disciplinary and/or adverse action, if applicable.
2. The Employer will not take disciplinary action against an employee for seeking assistance through the EAP. Participation in the EAP will not prevent the Employer from proposing and taking conduct and performance-based actions.
3. Employees requesting the services of EAP will be granted the opportunity to contact EAP, during work hours, subject to the approval of the supervisor. The Employer agrees to assist employees by providing information and encouragement to use counseling services as needed. Should counseling appointments require absence from the workplace, employees must make the appropriate advance arrangements with their supervisors.
4. When the Employer determines that a conduct or performance problem exists which may be

drug or alcohol related and refers the employee to EAP, the Employer may take appropriate disciplinary or adverse action, consistent with the charges and applicable law, rule, regulation, Departmental policy and this Agreement. In certain instances, access to EAP may be considered a reasonable accommodation.

Section F. Leave During Duty Hours

With supervisory approval, employees may be allowed up to one hour (or more as necessitated by travel time) of excused absence for the initial counseling session(s) during the assessment/referral phase of rehabilitation. Thereafter, absences during duty hours for rehabilitation or treatment must be charged to the appropriate leave category. Employees may request sick leave, annual leave or LWOP to attend and participate in a substance abuse treatment program. The utmost confidentiality should be exercised in these instances.

Supervisors have the right to verify the employee's attendance with an EAP counselor.

Section G. New Hire Orientation

Newly hired employees will receive appropriate EAP information and materials.

ARTICLE 29: HEALTH AND SAFETY

Section A. General

1. Consistent with applicable law, Executive Order 12196, Occupational, Safety, Health Administration requirements, and Departmental policy (e.g., DR 4430-002 Safety Management Program) as well as other applicable health and safety codes, the Agency will support the maintenance of safe and healthful working conditions for all employees. If an appropriate authority determines there is a significant health or safety problem and the Department does not take timely action on the problem, the Agency, to the extent of its authority, will provide an appropriate remedy to address the needs of employees. Both Parties will cooperate to that end and will encourage employees to work in a safe manner.
2. Pursuant to applicable law and regulation, no employee shall be subject to restraint, interference, coercion, discrimination, or reprisal for filing a report of an unsafe or unhealthful working condition, or other participation in Agency occupational safety and health program activities, or because of the exercise by such employee on their behalf or another's of any right afforded by Section 19 of the Occupational Safety and Health Act (29 U.S.C. Chapter 15, Section 668), Executive Order 12196, or 29 C.F.R. Part 1960. These rights include, among others, the right of an employee to decline to perform their assigned task because of a reasonable belief that, under the circumstances, the task poses an imminent risk of death or serious bodily harm coupled with a reasonable belief that there is insufficient time to seek effective redress through normal hazard reporting.

Section B. Agency Action

1. The Agency will work with all persons, entities, or organizations which own and/or control work space to which bargaining unit employees are assigned to ensure that healthy and safe working conditions are maintained and to ensure compliance with applicable law, rule, regulation, Departmental policy and this Agreement. The Agency will provide feedback to employees and the Union regarding the results of any action taken.
2. The Agency agrees:
 - a. To provide information concerning Federal Employee Health Benefits (FEHB) and Life Insurance Programs, pre-retirement planning, retirement benefits information, the USDA's TARGET center, and the Employee Assistance Program (EAP);
 - b. To make information available to employees on health benefits open season activities and maintain copies of offered health plans for review upon request;
 - c. To work with the building manager, the Department, General Services Administration (GSA) and private lessors, as applicable, to have safe electrical equipment, and adequate light and ventilation in all work areas;

- d. To provide information available through the Department about ergonomic hazards and how to prevent ergonomic related injuries;
- e. To grant periodic relief to employees using video display terminals (VDTs) for extended periods during the course of a day, by interspersing other work tasks requiring less visual concentration;
- f. To provide, to the extent possible, safety devices, such as anti-glare screens and wrist props, which will promote greater safety and comfort for VDT operators;
- g. To follow the Americans With Disabilities Act and GSA regulations in providing facilities appropriate and adequate to accommodate the needs of disabled employees;
- h. To make available for review by the Union all safety reports generated by or available to the Agency that are required by law, rule, regulation, Departmental policy and this Agreement; and
- i. To assure the provision of safe, potable, drinking water to all unit employees within ready access of working areas. Ready access is defined as a distance no more than the location of the nearest gender appropriate restroom.

Section C. Union Action

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

Section D. Employee Reports of Unsafe or Unhealthy Working Conditions

1. Each bargaining unit employee is encouraged to report any unsafe or unhealthy working conditions to his or her immediate supervisor as soon as any such conditions come to his or her attention.
2. The Agency will:
 - a. Investigate the reported condition as soon as is practicable, and may refer the situation to:
 - 1) The appropriate OO or USDA office;
 - 2) GSA;
 - 3) The OSHA of the Department of Labor;
 - 4) The Health Unit, or
 - 5) Other appropriate official(s) for further investigation.
 - b. To the extent possible, the Union will be given an opportunity to accompany any inspector who responds on such a complaint during the inspector's physical inspection of the workplace unless it would be hazardous to accompany the inspector.

3. The Agency will ensure a timely response to an employee report of hazardous conditions. No employee will be unreasonably required to continue working in a situation determined to pose the threat of imminent danger or significant health hazard as determined by the appropriate authorities.
4. If an employee is assigned duties which he/she reasonably believes could possibly endanger his/her health or well-being, the employee will immediately notify his/her immediate or second-line supervisor of the situation.
 - a. If the supervisor cannot solve the problem and agrees with the employee, the supervisor will, under normal circumstances, delay the assignment and refer the matter through the proper channels for appropriate action, unless the delay would unduly interfere with the Agency's operation.
 - b. When the supervisor does not agree with the employee's concerns, the employee has the right to consult the Union and the right to file a report in accordance with applicable regulations.

Section E. Occupational Injury or Illness

Employees who become injured or occupationally ill in the performance of duties shall report the injury or illness to their supervisor immediately. The supervisor will refer the employee to the Human Resources Division, the Health Unit, or other medical service as appropriate and as permitted by applicable law, rule or regulation. The supervisor shall also advise the employee to contact the Servicing Personnel Office (SPO) to obtain information on benefits under the Federal Employees' Compensation Act (5 U.S.C. §§ 8101-8193). The Agency and employee shall cooperate in promptly processing all paperwork in connection with compensation claims.

Section F. Occupant Emergency Plan

Each building in which bargaining unit employees are stationed within the United States will have an Occupant Emergency Plan. The Agency will issue an annual reminder of the Occupant Emergency Program Plan.

Section G. First-Aid

1. The Agency will provide first-aid kits at Agency building locations for use when Health Unit facilities are not available.
2. The Agency may provide for training to interested employees for cardiopulmonary resuscitation (CPR) during duty or non-duty hours. If during duty hours, official time will be given to those approved in advance for participation.

Section H. Health Unit

1. The Agency currently operates health units at the South Building and the George Washington Carver Center. Both Parties will work cooperatively to ensure that the Department continues to

maintain health units at these sites.

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2. In the event an employee becomes incapacitated on the job, the Agency will notify Health Unit personnel who may call for emergency transportation if deemed appropriate.

ARTICLE 30: BARGAINING DURING THE TERM OF THE AGREEMENT

Section A. Purpose and Expectation

Policy

The provisions of this Article cover the policies and procedures for engaging in collective bargaining. Except in cases of emergency, as provided for in the Federal Service Labor-Management Relations Statute, the Agency shall provide reasonable advance notice of intended changes to the Union where the reasonably foreseeable adverse effect of the change on the bargaining unit's conditions of employment is more than de minimis in nature and not covered by the terms of this Agreement.

If the Union elects to bargain, the Union shall submit a written request to bargain along with proposals to the OO Point of Contact (POC) within 10 work days of receipt of the Agency's notice.

The request to bargain shall designate the Union's chief spokesperson. The Union may request that the Agency brief the Union on intended change(s) via conference call, video conferencing or face-to-face. The Agency agrees to honor such a request.

1. The advance written notice of the proposed change provided to the Union shall include a description of the proposed change, an explanation of why and how the change will be implemented, the proposed implementation date, the Agency's Chief Spokesperson, and/or a POC for additional questions or information.
2. If the Union does not exercise its option to request bargaining as stated in this Article, the Agency may proceed to implement the change(s) on the proposed implementation date.

Reopener

Certain provisions and/or Articles of the Agreement may be reopened when any of the following apply:

- 1) a change in federal statute, case law, Government-wide rule or regulation;
- 2) a change in Executive Order or Departmental policy not in conflict with this Agreement;
- 3) by mutual agreement of the Parties;
- 4) should a provision of this Agreement be nullified or otherwise affected by appropriate authority (i.e., by federal statute or Government-wide rules or regulations implementing 5 U.S.C. 2302) changes in law, order, rulings, judicial decisions, or third-party decisions after

the effective date of this Agreement, either Party may reopen the specifically affected sections and all other provisions directly affected by those sections;

- 5) the Parties did not anticipate a term or condition of employment during negotiations of this Agreement; and,
- 6) a change in conditions of employment of bargaining unit employees, which is more than de minimis, precipitated by a change in the Agency's mission or higher authority.

Bargaining Routine

Should the Union elect to bargain, the following bargaining routine shall apply:

1. Bargaining shall begin as soon as possible, but no later than 15 work days after the Union's written request to bargain. Should a federal holiday fall within the specified timeframe for bargaining, the timeframe may be extended by an equivalent number of days.
2. If the Union is unable to submit its proposals along with its demand to bargain, it may request an extension from Management. If Management grants the extension, the Union's proposals shall be due within seven (7) calendar days of the extension, unless the Parties mutually agree to a longer period. Proposals shall be reasonably related to the proposed change; and where offered as an appropriate arrangement, shall identify the adverse impact upon the employees which the proposal is intended to reduce or remedy.
3. All bargaining sessions shall be held in the Washington, DC metropolitan area, unless the parties mutually agree to conduct bargaining at an alternate site. The bargaining sessions shall commence at 9:30 a.m. and conclude at 3:30 p.m., with 30 minutes allocated for lunch.
4. Bargaining shall normally be held on three (3) consecutive workdays, Tuesday through Thursday.
5. The Agency shall provide a meeting room for bargaining held at the Agency's facilities in the Washington, DC metropolitan area.
6. Either Party's Chief Negotiator may call a caucus during negotiations without the consent of the other, when necessary. Caucuses shall not exceed 15 minutes unless mutually agreed otherwise. The party calling a caucus will endeavor to keep caucusing to a minimum. When either party desires to caucus, its team will withdraw from the room to a designated location.

Section B. General Provisions

The chief spokesperson (or designee) must have authority to bargain and reach agreement on behalf of their respective party. The chief spokesperson for each party shall signify agreement on each section or page by initialing and dating the agreed-upon section or page.

This will not preclude the parties from reconsidering or revising any agreed-upon section by mutual consent.

1. The number of union representatives authorized official time for bargaining shall not exceed the number of individuals designated by the Agency. The parties shall exchange the names of their bargaining team members for the specific issues to be negotiated normally within 10 calendar days of bargaining. This provision does not preclude the attendance of an observer or a subject matter expert. The requesting party will be responsible for all cost associated with the attendance of an observer or a subject matter expert.
2. Alternates may substitute for bargaining team members provided notice is conveyed to the other party at least 24 hours in advance.
3. The parties shall be deemed to be at impasse after three (3) bargaining sessions, unless mutually agreed otherwise. Upon completion of two bargaining sessions the parties shall request the assistance of the Federal Mediation and Conciliation Service (FMCS) to mediate a subsequent bargaining session as soon as possible. The parties shall strive to reach agreement over tabled provisions despite waiting the availability of a FMCS Commissioner. Both parties reserve the right to request the assistance of a mediator from the Federal Mediation and Conciliation Service (FMCS) at any time during the course of bargaining.
4. If necessary, the Chief Negotiators may mutually agree to an additional session to be held on a date to be determined by the Parties. This session will be used to dispense with any remaining issues in dispute, each day shall be face-to-face negotiations.
5. Any impasse not resolved through the FMCS may be submitted by either party to the FSIP to consider the matter under its regulations.
6. Any agreement entered into during the life of this collective bargaining agreement shall be considered an addendum to this contract and subject to its duration unless agreed otherwise. The Agency will make appropriate distribution to affected bargaining unit employees. Agreements will be written and signed by both parties.
7. If any proposal is claimed to be non-negotiable by either party and subsequently determined to be negotiable; or the declaring party withdraws its allegations of non-negotiability, the proposal will, upon request, be reopened within one (1) calendar day.
8. Service may be by facsimile, email, hand delivery, or email. If hand delivery is used, the notice will be documented immediately to show the receipt date.
9. Time limits in this Article may be extended by mutual agreement.

ARTICLE 31: EQUAL EMPLOYMENT OPPORTUNITY

Section A. General

1. The Employer affirms its commitment to the policy of providing equal employment opportunities to all employees and of prohibiting discrimination on the basis of race, color, religion, sex (including pregnancy and gender identity), national origin, political affiliation, sexual orientation, marital status, disability, genetic information, age, membership in an employee organization, retaliation, parental status, military service, or other non-merit factor, and reprisal for previous Equal Employment Opportunity (EEO) activity. The Employer will remain vigilant in seeking to identify and eliminate any internal policy, practice or procedure which has the purpose or effect of impermissibly denying equal employment opportunities or equal access to OO programs or services. The Employer will also cooperate and work to resolve any discrimination inquiries or complaints. The parties agree that equal employment opportunity shall be administered in accordance with Title 7 of the Civil Rights Act of 1964 (42 U.S.C. Chapter 21, Subchapter VI), 29 C.F.R. Part 1614, Title 5 U.S.C., Executive Order, applicable rule regulation and Departmental policy.
2. The Union reserves its right to file information requests pursuant to 5 U.S.C. § 7114(b)(4) regarding summary statistical data, according to job series, grade level, sex, age, and disability.
3. The Union agrees to cooperate with the Employer in assuring equal employment opportunity and equal access to OO programs and services. The Union may, when it deems appropriate and can be mutually scheduled, meet with, advise, and present proposed solutions to the appropriate officials within the Agency related to any problems or potential problems it perceives in the area of equal employment opportunity and equal access to OO programs and services.

Section B. Employee Rights

1. In accordance with applicable law, rule, Federal regulation, Departmental policy and this Agreement, any employee who believes that he or she has been discriminated against on the grounds set forth in Section A of this Article, may file either a grievance under the provisions of this Agreement (Article 34: Grievance Procedures), or a complaint under an appropriate complaint or appeals procedure, but may not file under more than one procedure.
2. Any employee who wishes to file or has filed a grievance or complaint shall be free from coercion, interference, and reprisal, and shall be entitled to expeditious processing of the grievance or EEO complaint process within time limits prescribed by regulations or this Agreement.
3. In the case of alleged discrimination on any basis prohibited by law, rule, regulation, or policy described and cited in Sections A.1 of this Article and in Article 23: Prohibited Personnel Practices of this Agreement, an employee has the right to seek redress through either the negotiated grievance procedure Article 34: Grievance Procedures or procedures established by the Office of Special Counsel, the Merit Systems Protection Board or the Equal Employment Opportunity Commission in accordance with applicable Federal regulation.

4. In accordance with employee rights under the Uniformed Services Employment and Reemployment Rights Act (USERRA), veterans who believe their rights have been violated, may initiate a complaint with the U.S. Department of Labor, Veterans Employment and Training Service or the Office of Special Counsel.

Section C. Representation

Whether the employee chooses to file under EEO complaint process or under the negotiated grievance procedure (Article 34: Grievance Procedures), employees have a right to be represented or to represent themselves.

1. For complaints filed under EEO procedures, the complainant shall have the right to be accompanied, represented, and advised by a representative of the complainant's choice.
2. For complaints filed under the negotiated grievance procedure (Article 34: Grievance Procedures), the representative is a Union representative or a Union-designated representative. If the employee elects to process the grievance without Union representation, the Union shall have the right to be present at any meeting between the Employer and the employee concerning the grievance, to ensure fair treatment and procedural adherence to the terms of Article 34: Grievance Procedures.

Section D. Settlement

Prior to implementing terms of any settlement agreement, that may adversely affect conditions of employment and are more than de minimis of bargaining unit employees, the Agency will provide the Union with prior notice and fulfill its duty to bargain under the Statute.

Section E. EEO Information

1. EEO complaint procedures will be posted electronically and will be available to all bargaining unit employees. The Union will also be given a copy of the complaint procedures.
2. The Employer shall electronically post and maintain the names, phone numbers, and work locations of EEO staff and counselors.
3. In all vacancy announcements for positions within the Agency which are posted on the USAJobs.gov website, the Employer will provide a link to the United States Government EEO Policy Statement.

Section F. Obligations

Where the development and implementation of the Employer's Equal Employment Opportunity plans and programs involve changes to conditions of employment which are more than de minimis, the Employer will fulfill its bargaining obligations with the Union pursuant to 5 U.S.C. Chapter 71, Federal Service Labor-Management Relations Statute and this Agreement.

ARTICLE 32: OFFICIAL TIME AND UNION REPRESENTATION

Section A: Representatives

1. Only employees officially designated by AFSCME Council 20, Local 2846 in accordance with this Agreement will be entitled to use official time, LWOP or leave. Five (5) executive officers and two (2) shop stewards designated by the Union will serve as Representatives.
2. AFSCME Council 20, Local 2846 will provide the Agency with the list of Representatives within 30 calendar days of the effective date of (the date of the signature of the last signatory to) this Agreement. Such list shall be maintained on a current basis. Any changes to the list will be submitted to the Agency in writing within five (5) days before the newly appointed or elected representative is expected to begin performing representational duties.
3. The Union may assign Representatives to any case or jurisdiction area within the bargaining unit. However, Representatives will normally be responsible for the locations where they are assigned to offset the need to travel. Representatives requiring the use of travel time for the fulfillment of their representational duties shall be allowed a reasonable amount of travel time.

Section B: Official Time Procedure

The Union is committed to, as far as is practicable, minimizing disruptions caused by the use of official time, especially with respect to the Agency's ongoing mission.

1. Prior to using official time, LWOP or leave, the Representative will request approval in writing from his or her responsible management official (RMO), using the Request Form (Appendix A). The Representative will not be released from his or her work assignments until the RMO issues written approval on the Request Form. Everything in this Article applies whether the Representative will be using official time, LWOP or leave at his or her work station or away from his or her work station. For brief incoming and outgoing telephone calls or brief unscheduled visits to the Representative's worksite, no prior approval is required.
2. The request must include the actual or estimated amount of time needed.
3. The RMO may grant the official time, LWOP or leave request unless mission requirements preclude such a grant. If the RMO denies the request, the supervisor will notify the Representative with as much advance notice as possible so that the Union may select an alternate representative. Upon such notification, the RMO should supply the Representative with a completed Request Form, providing the reason for denial. Within one (1) work day, the RMO will notify the Representative of a time when he or she can be released from official duties. In the event of disapproval or delay, the Agency will make a reasonable attempt to reschedule the representational activity.
4. Once the Representative has obtained approval from the RMO and the RMO has signed the Request Form, the Representative will indicate the exact time that he or she is leaving the workstation on Section 3 of the Request Form.
5. Normally, in the event the Representative requires additional time due to unforeseen

circumstances, after initial approval has been given, the Representative shall request an extension of time by telephone. The Representative shall request the extension from the RMO. The RMO will grant the extension unless work deadline requirements preclude such a grant.

6. Once the official time use is concluded and the Representative has returned to his or her workstation, the Representative will complete Section 3 of the Request Form, indicating the exact time that he or she returned to the workstation. The Representative is responsible for having the RMO initial the return time. The supervisor or designee will give the Representative back a copy of the form once he or she has initialed it.
7. The Representative shall be responsible for coding his or her Time and Attendance Log or time sheet.
8. In the event that a Representative's request for official time is denied or delayed and the request involved a representational matter subject to a deadline, any window under the control of the Agency with respect to such deadline will be extended for a time equal to the delay, if no other Representative is available.

Section C. Purposes of Official Time

For the purposes of this Article, official time for representational purposes or representational activities is covered by 5 U.S.C. Section 7131 and shall include the following:

1. Any formal discussion between one or more representatives of the Agency and one or more employees in the unit or their representatives concerning any grievance, personnel policy or practices or other general conditions of employment, except as noted in Article 3: Section C.
2. Any examination of an employee in the unit by a representative of the Agency in connection with an interview or investigation if:
 - a. The employee reasonably believes the examination may result in disciplinary action against the employee; and
 - b. The employee requests representation.
3. Participation in bargaining, including mediation and/or the resolution of any bargaining impasse and/or negotiability question.
4. The participation in proceedings in connection with statutory or regulatory appeal procedures involving any member of the bargaining unit unless the employee request the exclusion of the union for valid personal reasons (e.g. sexual harassment).
5. Preparation for the above activities.
6. Preparation and participation in grievance or arbitration procedures under this Agreement.
7. To act for the Union in a representational capacity before Congress on matters related to conditions of employment for bargaining unit employees. This will be limited to no more than three (3) Representatives.

8. The preparation of financial and membership reports required by the U.S. Government, including reports to the U.S. Department of Labor and Internal Revenue Service.

Section D. Official Time Allocation

1. Requests for official time for purposes other than those enumerated in Section C of this Article will be considered by the Agency and responded to in a timely manner. Such requests shall be made by the Representative to the RMO and to the servicing Labor Relations Officer.
2. Official time shall not be used to earn overtime, compensatory time, or credit hours. Official time shall not be used while in a telework status or for representing employees in other bargaining units.

Section E. Training

Official time, LWOP or annual leave, in an amount not to exceed forty (40) hours in the first twelve months of the Agreement and sixteen (16) hours for each incumbent representative per calendar year thereafter (on January 1), shall be authorized for each Representative recognized under Section A to participate, if otherwise in a duty status, in labor management relations training. Up to forty (40) hours of official time, LWOP or annual leave shall be authorized in the first twelve months of service for newly designated representatives to participate, if otherwise in a duty status, in labor management relations training.

1. The Representative will request approval for training in writing from his or her supervisor. The completed Training Request Form (Appendix B) must describe the training requested and indicate the expected benefits of the training to both the Union and the Agency. The Representative shall indicate on the Request Form the exact dates of the training program and submit the form to the RMO no less than 30 days prior to the beginning of the requested training.
2. The RMO will review and grant the request for official time, LWOP or annual leave for training unless work deadline requirements preclude such a grant.
3. The Representative shall submit a copy of each completed and approved Training Request Form to the Representative's Time and Attendance Timekeeper or RMO for the pay period(s) in which the official time, LWOP or annual leave is used.
4. The Representative shall be responsible for coding his or her Time and Attendance Log or time sheet in accordance with Section 8 of this Article.
5. The Agency will not be responsible for training program fees and travel expenses related to training.
6. Representatives are not entitled or permitted to accrue compensatory time for travel or from labor management relations training under this Article.

Section F. Union Business

A Representative shall not use official time or duty time to conduct internal Union business. Internal Union business includes but is not limited to the following:

1. Solicitation of membership;
2. Elections of labor organization officials; and
3. Collection of dues.

Section G. Record Keeping

Pursuant to USDA guidance, official time used is to be recorded on the Union representative's biweekly time sheet using the following codes:

35	Union Contract Negotiations
36	Base/Mid-term Negotiations
37	Ongoing Labor-Management Relations
38	Grievance/Appeals

These codes are subject to change.

Section H. Disputes

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

ARTICLE 33: FACILITIES AND SERVICES

Section A. Union Facilities and Services

The Agency shall provide an enclosed, secure office with the following furniture and equipment: desk, desk chair, conference table, conference table chairs, computer, printer, fax machine, color copier, side table to hold fax machine and file cabinets.

1. The office shall be in the building housing the most bargaining unit employees.
2. The union office is currently located in Room 0618 of the South Building.
3. It is the intent of the Agency to allow the Union to retain the office currently occupied in room 0618 South Building throughout the life of this Agreement. Should the Union be required to vacate Room 0618 due to reasons outside the Agency's control, or for major repairs or renovations of lengthy duration, the Agency will provide the Union with reasonable advance notice and negotiate in good faith to acquire comparable office space to the extent possible.

Section B. Keys

The Agency will provide one (1) key for each officer and steward for the exclusive use of the Union.

Section C. Telephones

1. The Agency will provide one additional telephone jack in close proximity to the conference table located in room 0618.
2. The telephone line will be available on all telephones in the suite.

ARTICLE 34: GRIEVANCE PROCEDURE

Section A. Purpose

The purpose of this agreement is to provide a mutually acceptable method for prompt and equitable settlement of grievances. The Parties agree to attempt to settle grievances at the lowest possible level and at any time during the process.

Section B. Definitions

A grievance is any complaint:

1. By any Bargaining Unit Employee concerning any matter relating to the employment of the employee;
2. By the Union concerning any matter relating to the employment of the employee;
3. By any Bargaining Unit Employee, the Union, or the Agency concerning:
 - a. The effect or interpretation, or a claim of breach, of a negotiated agreement between the parties;
 - b. Any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.

Section C. Scope and Exclusions

1. The procedures set forth in this Article shall be the procedures available to bargaining unit employees and the Parties to this Agreement for the resolution of grievances covered under the terms of this agreement.
2. Exclusions: The following matters are not grievable under these procedures and are specifically excluded from the coverage of this Agreement.
 - a. Any claimed violation of subchapter III of Title 5 USC, Chapter 73, relating to prohibited political activities (Hatch Act);
 - b. Retirement, life insurance, or health insurance;
 - c. A suspension or removal under Title 5 USC, Section 7532 relating to National Security;
 - d. Any examination, certification, or appointment;
 - e. The classification of any position which does not result in the reduction in grade or pay of any employee;

- f. The Agency's decision to conduct a reduction-in-force or non-disciplinary furloughs or furlough for more than 30 calendar days;
- g. Grievances asking for a change to established personnel policies and practices or contract provisions which are properly subject to negotiations between the Office of Operations and the Union;
- h. Non-selection for promotion from a group of properly ranked and certified candidates;
- i. An action terminating a temporary promotion and returning the employee to the position that is not a lower grade or level than the position from which he or she was temporarily promoted;
- j. A proposed disciplinary or adverse action, if effected, would be covered under this procedure or under a statutory appeals procedure. Nothing in this Agreement will affect the employee's right to reply or otherwise respond to a notice of adverse action, disciplinary action or unacceptable performance pursuant to 5 U.S.C. Sections 43 and 75;
- k. Termination of a probationary employee during the probationary period;
- l. The content of a published agency regulation and policy. Nothing in this Agreement will affect the employee's ability to file a grievance concerning the application of a published agency regulation or policy;
- m. An action for which the desired relief may be obtained through a request made to the Federal Labor Relations Authority (FLRA) for a bargaining unit determination;
- n. Claims that have been filed, pursuant to 5 U.S.C. § 7121(g), with the Merit Systems Protection Board, EEOC or Office of Special Council;
- o. A failure to receive any type of an award (e.g., performance award).

Section D. Application and Representative

1. Bargaining Unit Employees presenting grievances may elect to be represented by the Union or to represent themselves in processing the grievance through the steps provided by this Article.
2. In the event an employee presents a grievance without representation by the Union, the Union will be given the opportunity to be present at any formal meetings held in processing and adjusting the grievance. However, should the aggrieved employee request the Union not be present for personal reasons, the employee's request will be honored by the Union and Management. The Agency will provide the Union with copies of the written grievance and written decisions exchanged between the Parties.
3. Only the Union, or a Representative designated by the Union, may represent bargaining unit employee in grievances.

4. Any resolution of a grievance must be consistent with the terms of this Agreement and applicable law, rule and regulation.
5. An employee is entitled to be accompanied, represented and advised at any stage of the grievance procedure by a Union representative.

Section E. Procedure

At each step of the grievance procedure, grievances must state the nature of the grievance, any known violations of law, rule, regulation, or Article and section of this Agreement, all relevant facts known at the time, and the corrective action or requested relief.

If the deciding official at any step believes the grievance lacks sufficient information to decide the allegations, or is otherwise deficient, he/she will issue a decision stating the alleged defect. In that case, the grievant is free to resubmit a corrected grievance or submit the grievance to the next step of the procedure. Grievances must be signed by the grievant(s) or the Union representative filing the grievance.

The Parties shall note the use of the following terminology when responding to a grievance.
Terminology:

1. Accept: The grievance meets all contractual requirements for filing.
2. Reject: The grievance fails in one or more respects to meet the contractual requirements for filing. The reason for the rejection will be stated in the response rejecting the grievance.
3. Deny: The decision concludes that the evidence does not support the allegations put forth in the grievance in whole or in part. The reason for the denial will be stated in the grievance response.
4. Sustain: The grievance review concludes that the evidence supports the grievance in whole or in part.
5. Return: A grievance timely filed by an employee on his/her own behalf may be returned to the employee for clarification where the responding official determines further clarification is needed to respond to the grievance. Such a grievant will be granted up to three (3) business days, as determined by the responding official, to submit the requested clarification.
6. Rejection of a grievance may be based upon any of the following reasons:
 - a. Failure to meet grievance filing timelines at any Step;
 - b. Grievance (or part of the grievance) not raised at an earlier step;

- c. Substance of the grievance is not covered by this negotiated grievance procedure;
- d. Grievance is procedurally deficient (either does not contain the required information or was not presented to the appropriate person); or
- e. Relief requested is not personal to the grievant, if applicable; and,
- f. Failure to timely request invocation of arbitration.

A grievance may be filed as follows:

Step 1 Grievance

1. A grievance shall be presented in writing by the Grievant(s) to the Step 1 Official, or designee, within 20 work days of the occurrence that led to the grievance or 20 work days after the grievant knew or should have known of the occurrence that led to the grievance. In the case of an ongoing or recurring occurrence, a grievance may be filed within 20 work days of the most recent occurrence. If the Step 1 Official does not have the authority to grant the relief requested, he or she shall refer the grievance to the appropriate person, with the authority to respond to the grievance.
2. The written Step 1 grievance shall be provided using the OO Grievance Form (Appendix C) or its equivalent. If required information is omitted from the written Step 1 grievance, the grievance will be returned by the responding official for correction to or addition of the required information. Filing deadlines will not be extended to accommodate such a correction or necessary additional information, except as noted above (under Terminology section in Section E, #5).
3. The Step 1 Official or designee, shall schedule a grievance meeting within 10 work days of receipt of the written grievance in order to resolve, discuss, and/or clarify facts and issues which might impact their decision. The employee may be accompanied by his or her Union representative at the meeting. The Step 1 Official will make whatever investigation he or she deems necessary and give his or her written response within 10 work days after meeting with the employee.
4. The response will include the decision sustaining or denying the grievance as well as a referral to the appropriate Step 2 Official for filing a Step 2 Grievance, if not sustained.
5. Any grievance filed by a Grievant whose first-level supervisor of record is the Step 2 Official should skip Step 1 and proceed to Step 2. The Step 1 timeframes will apply in such instances.
6. If the OO Deputy Director is the Step 1 deciding official, the grievance shall be elevated to Step 2. The Step 1 timeframes will continue to apply in such instances.

Step 2 Grievance

1. If the matter is not satisfactorily resolved at Step 1, the grievant may, within 15 work days of the receipt of the Step 1 decision, submit the matter in writing to the Step 2 Official and the servicing Labor Relations Officer. If the Step 2 Official does not have the authority to grant the requested relief, the Step 2 Official shall elevate the grievance to the appropriate Management Official able to respond to the grievance.
2. The Step 2 grievance shall be provided using the Grievance Form or written equivalent.
3. The Step 2 Official, or designee, will meet with the employee and/or the Union representative within 15 work days in order to resolve, discuss, and/or clarify facts and issues which might impact their decision and will render a written decision within 10 work days after the meeting.
4. The response will include the Step 2 Official's decision.
5. If the grievance is not satisfactorily settled at Step 2, the Union may invoke arbitration in accordance with Article 35 of this Agreement.

A. Grievance of Disciplinary Actions and Adverse Actions:

A grievance filed in response to a written decision letter notifying the employee of an action under 5 U.S.C. Chapter 75 (Disciplinary and Adverse Actions) or 5 U.S.C. Chapter 43 (e.g., Suspension, Reduction in Grade, Removal/Reassignment for Unacceptable Performance) must be filed in writing with the OO Deputy Director or his/her designee at Step 2, within 15 work days of receipt of the decision letter.

B. Group Grievances:

Bargaining Unit Employees may join in submitting a grievance as a group provided that the issues and the remedy sought are identical for each. A group grievance will be processed as a single grievance in the name of either a Representative or one employee designated by the others to act for them.

1. If the Grievants are supervised by different supervisors but within the line of authority of one Division Director/Chief, the grievance may be submitted directly at Step 1. If the Grievants' line of authority includes more than one Division Director/Chief, the grievance may be submitted directly at Step 2. In both instances, the time frames for filing a grievance shall be as provided for in a Step 1 grievance.
2. All employees joining the grievance must be identified and all employees in the group must sign the written grievance at the initial Step of the grievance procedure. These signatures will remain valid at each subsequent step of the grievance process unless the employee withdraws from the group grievance. An employee may withdraw from a group grievance, in writing, at any time before a decision is rendered; however, he or she may not then initiate the same or substantially similar grievance in his or her own name. A decision rendered on a group grievance applies to all employees in the group unless otherwise specified in the decision.

3. The time frames for meetings held between the responding official and the grievant(s) and/or representative shall be the same as those provided for in Section A.

C. Union/Agency Grievances:

The following procedure shall apply in processing Union and Agency institutional grievances covered by this Article. A Union grievance shall be filed with the Director, Office of Operations, or his/her designee. An Agency grievance shall be filed with the Executive Director, AFSCME Council 20 or his/her designee. Grievances must be filed within 30 calendar days of the event giving rise to the grievance. The written grievance shall include all of the information required by the first two paragraphs under Section E.

The Responding Official shall issue a written decision within 30 work days of receipt of the grievance. Should the issue remain unresolved, the grieving party may invoke arbitration under Article 35.

D. Written Decisions: Any decision rendered by either the Agency or the Union shall be a written decision. The possible responses to a grievance include:

1. Decision finding no violation;
2. Decision finding a violation, with a statement of the remedy to be provided;
3. Mutual agreement, reduced to writing and signed by both Parties and their representative(s) (if any), containing the statement that the agreement constitutes the full and complete resolution of the grievance;

No person may serve as a subsequent reviewer of a grievance decision which he or she made at a lower level.

Section F. Time Limits and Extensions

1. The limits, including any extensions, will be strictly observed. Extensions must be requested at least one work day prior to the deadline and mutually agreed to in writing.
2. Failure by the grievant(s) to adhere to a time limit for filing a grievance at any step shall result in the grievance being rejected and unable to proceed to arbitration, unless "mitigating circumstances" prevail.
3. Mitigating circumstances are limited to approved extended absences, military leave, detail or temporary duty travel, approved sick leave, or Family and Medical Leave Act leave.
4. Failure of the responding Party to respond to a grievance at any step within the given time limit, or one modified by agreement of the Parties shall permit the Grievant to escalate the grievance to the next step. If a Party fails to respond timely at the step that precedes

arbitration, the grieving Party may invoke arbitration.

Section G. Requests for Information Necessary to Evaluate and Process Grievances

The Union may request information pursuant to 5 U.S.C. Section 7114(b)(4) when the Union believes that such information is necessary to evaluate and/or process a grievance. The Union's request for such information will be in writing and will not delay the time limits for filing grievances.

Section H. Service and Time Limits

All time limits stated in the grievance procedure may be extended by written mutual consent of the parties involved. Service of grievances and the decision thereof, including arbitration notices, shall be accomplished either by personal delivery, U.S. Mail, facsimile, or by other recognized delivery service(s) (e.g., FedEx, etc.). As applicable, time limits shall begin to run from the day following the date of receipt of the document that triggers that particular time limit. Service will be deemed timely if the required document is personally delivered, postmarked, confirmed, or receipted within the specified time limit. The parties agree that they will act in good faith in the receipting for documents and will not attempt to evade the service of documents upon them.

ARTICLE 35: ARBITRATION

Section A. Right to Arbitration

1. If the decision in a grievance processed under the negotiated grievance procedure is not satisfactory, the Agency or the Union, either as the grievant or as a representative of the grievant, may refer the issue to arbitration. A grievance may be referred to arbitration only by the Agency or the Union.
2. A request to refer an issue to arbitration must be in writing and submitted to the other Party within 20 work days following receipt of the final decision by the aggrieved Party. Union requests made under this provision shall be submitted to the OO Labor Relations Officer or designee. Agency requests made under this provision shall be submitted to the Union Executive Director, AFSCME Council 20 or his/her designee.

Section B: Selection of the Arbitrator

1. Unless otherwise agreed, the invoking Party will, within 20 calendar days, submit a request to the Federal Mediation and Conciliation Service (FMCS) for a list of seven (7) impartial persons qualified to act as arbitrators, and shall provide the other Party with a copy of the request.
2. Within 10 calendar days after receipt of such list from the FMCS, the Parties will meet to select an arbitrator. The Parties shall first attempt to agree upon an arbitrator. However, if the Parties are unable to agree upon one of the listed persons, the Agency and the Union will each alternately strike one name from the list until only one arbitrator's name remains. The last remaining name shall be the duly selected arbitrator. The Party requesting arbitration shall strike the first name.
3. If either Party fails to participate in the selection of the arbitrator, the other Party will select the arbitrator from the list.

Section C: Fees and Expenses

1. The arbitrator's fees and expenses shall be borne by the losing Party, except in cases where the arbitrator sustains the grievance in part. In such instances the arbitrator shall have the authority and discretion to apportion his or her fees and costs in a manner which is proportionate to his or her decision.
2. Except as provided for below in Section G of this Article, the cost of transcripts shall be borne by the Party requesting a transcript; if both Parties request transcripts, both Parties will share the costs. If the Union subsequently makes an information request for a transcript paid for by the Agency for a matter related to the grievance at issue (e.g. an exception or appeal of that decision), the Union will pay their share of the cost of the transcript.

Section D. Arbitration Process

1. The Party invoking arbitration may opt to postpone the arbitration hearing date if the Party has filed an Unfair Labor Practice Charge, alleging that information relevant to the case has been

withheld, until the FLRA has rendered its decision.

2. Whenever possible, the arbitration hearing will be held at the Agency's premises in Washington, DC during the regular work hours of the basic work week.
3. The arbitrator shall have the authority to decide arbitrability issues, including but not limited to timeliness and other jurisdictional issues. Questions of jurisdiction (non-grievability or non-arbitrability) and other threshold issues will be bifurcated and decided before any hearing on the merits or on the appropriate remedy on the same hearing date as the hearing on the merits of the case, unless otherwise agreed to by the Parties. In cases where either Party raises a question of jurisdiction, both Parties will submit written briefs to the arbitrator. In jurisdiction cases, the losing Party will be assessed only the portion of the costs for the bifurcated hearing on the record.
4. The Parties may agree that a "stipulation of facts" to the arbitrator may be appropriate where there are no factual disputes. All facts, data, documentation, etc., are jointly submitted to the arbitrator with a request for a decision based upon the facts presented.
5. If the Parties do not agree to utilize either the "stipulations of facts" or the mini-arbitration as provided in Section G of this Article, an arbitration hearing will be convened and conducted by the arbitrator. When arbitration hearing is used, the arbitrator will develop a full and appropriate formal record and establish the facts relevant to the issue.
6. The Parties agree that a joint submission of the issues is most desirable and will work diligently to arrive at one. To that effect, they will meet within 10 work days of selection of the arbitrator for purposes of reaching agreement upon a joint statement of issues. If the Parties cannot agree upon a joint submission of the issue within 10 work days of the selection of the arbitrator, either Party upon giving notice to the other, may decide to submit a separate statement of the issue, and the arbitrator shall determine the issue or issues to be decided.

Section E. Time Limits

The arbitrator will be requested to render his or her decision and the proposed remedy to the Agency and Union within 30 calendar days after the conclusion of the hearing, unless the Parties agree otherwise.

Section F: Mini-Arbitration

1. The Parties may mutually agree to an expedited arbitration process (i.e. mini-arbitration) whereby Parties present evidence and argument to the arbitrator, and the arbitrator issues a brief, written summary decision.
2. No transcripts shall be made and no briefs filed in mini-arbitration, though the arbitrator shall conduct the hearing in the same manner as in regular arbitration proceedings.
3. The decision in mini-arbitration shall be dispositive of that case only and shall not be considered precedential.

Section G: Arbitrator's Authority

1. The arbitrator's decision and proposed remedy will be final and binding on both Parties and shall be implemented without delay, unless appealed or excepted under the provisions of Section H of this Article.
2. The arbitrator's authority shall be limited to the adjudication of issue(s) raised in the grievance before him or her. The arbitrator shall have the authority to interpret and define the terms of any negotiated agreement between the Parties, or any applicable law, rule or regulation, as necessary to render a decision. He or she shall have no authority to add to, subtract from or modify and terms of an agreement between the Parties or published Agency policy.

Section H. Exceptions to Arbitration Award

Either Party may:

1. Seek judicial review of the arbitrator's decision which might otherwise have been appealed to the Merit Systems Protection Board (MSPB); or
2. File exceptions to all other decisions with the FLRA. If no exception or appeal to the arbitrator's award is filed within 30 calendar days of the award having been served, the award shall be final and binding.

Section I. Failure to Arbitrate

The moving party shall make a good faith effort to arbitrate a grievance within six (6) months of the selection of the arbitrator. Failure to do so, and without a valid explanation acceptable to the other party, shall render the grievance rejected for failure to timely arbitrate under this Article. Further, this issue may be raised as a threshold issue at arbitration, if necessary. Scheduling delays by the arbitrator shall not be considered as a failure to arbitrate for purposes of this section.

ARTICLE 36: UNFAIR LABOR PRACTICE CHARGES

Each Party shall make every reasonable effort to prevent the occurrence of any Unfair Labor Practice under 5 U.S.C. 7116 and to attempt to resolve any Unfair Labor Practice, if possible, prior to filing a charge with the Federal Labor Relations Authority (FLRA). Nothing herein shall in any way limit the rights each Party has in accordance with 5 U.S.C. 7118, and any relevant regulations issued by the FLRA.

Notwithstanding the Union's right to file an unfair labor practice, the Parties, in principle, agree that it would be in the best interest of labor management relations to notify the other Party 10 calendar days prior to filing an unfair labor practice. The Parties agree that reasonable efforts to address and correct misunderstandings will be addressed during the 10-calendar day period.

ARTICLE 37: DURATION

Section A. Effective Date

1. This Agreement will be submitted for Agency Head review upon signature by the parties.
2. Upon review and approval of the Department Head or after the date on which the 30-day time limit for Agency Head review expires, the Parties will implement the terms of this Agreement. This Agreement is effective on May 16, 2019.

Section B. Duration

1. This Agreement shall remain in effect for three (3) years from its effective date. Afterwards, it shall automatically renew in increments of one (1) year beginning on the day after the anniversary of the effective date, unless either Party serves the other with written notice of a desire to renegotiate or modify this Agreement in whole or in part in which case this Agreement shall stay in effect until negotiations are completed and the revised Agreement takes effect. Such notice shall be provided to the other Party not more than 120 calendar days, but not less than 60 calendar days prior to the expiration date of this Agreement.
2. Upon receipt by either Party of notice, both parties shall meet within 15 calendar days of receipt of a proposal to begin negotiations, unless mutually agreed otherwise. When either Party notifies the other that it wishes to modify this Agreement within the time limits specified in Section B.1 of this Article, this Agreement will be extended until the effective date of the modified agreement.
3. Except as specified in this Article or where affected by changes of law, rule, regulation, Departmental policy, mutual agreement, or executive order, the provisions of any Article in this Agreement may only be reopened pursuant to Article 30: Bargaining During the Term of this Agreement.

Section C. Severability

Should any part, term, condition or provision of this collective bargaining agreement be declared or determined by any court, head of the agency, or arbitrator to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby, and said illegal or invalid part, term or provision shall be deemed not to be a part of this agreement. However, to the extent any remaining part is affected or cannot operate independent of the invalid part, the parties will renegotiate those provisions pursuant to Article 30, Bargaining During the Term of the Agreement.



UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY

U.S. DEPARTMENT OF AGRICULTURE
OFFICE OF OPERATIONS
(Agency)

and

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

and

AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES, DISTRICT
COUNCIL 20, AFL-CIO
(Labor Organization)

CASE NO. WA-RP-18-0008

AMENDED CERTIFICATION OF REPRESENTATIVE

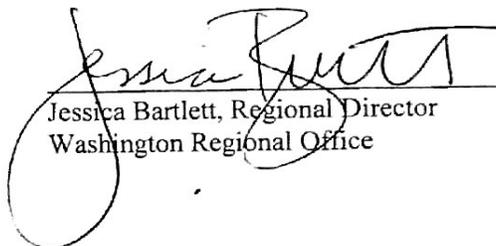
Pursuant to the Rules and Regulations of the Federal Labor Relations Authority, a petition was filed seeking to reflect a change in designation of the exclusive representative from American Federation of State, County and Municipal County Employees, Council 26, AFL-CIO to the American Federation of State, County and Municipal County Employees, District Council 20, AFL-CIO.

On December 21, 2017, the Regional Director, Washington Region, Federal Labor Relations Authority, issued a Decision and Order finding that the certification issued in Case No. Case No. WA-RP-05-0054 may be amended to change the designation of the exclusive representative from the American Federation of State, County and Municipal County Employees, Council 26, AFL-CIO to the American Federation of State, County and Municipal County Employees, District Council 20, AFL-CIO.

Pursuant to authority vested in the undersigned, **IT IS HEREBY CERTIFIED** that the American Federation of State, County and Municipal County Employees, District Council 20, AFL-CIO, is the exclusive representative of the following unit:

Included: All professional and nonprofessional employees employed by the U.S. Department of Agriculture, Office of Operations, in the Washington, D.C. metropolitan area.

Excluded: Supervisors, guards, management officials, and employees described in 5 U.S.C. 7112(b)(2),(3),(4),(6), and (7).


Jessica Bartlett, Regional Director
Washington Regional Office

Dated: December 21, 2017

APPENDIX 1 – FLRA CERTIFICATION



United States Department of Agriculture

United States
Department of
Agriculture

Office of the
Assistant Secretary
for Administration

Office of
Human Resources
Management

1400 Independence
Avenue, SW
Washington, DC
20250-9600

**UNITED STATES DEPARTMENT OF
AGRICULTURE
OFFICE OF HUMAN RESOURCES MANAGEMENT
WASHINGTON, D.C. 20250**

Annual Weingarten Notice

**MEMORANDUM TO ALL USDA OFFICES
(For Posting or Distribution to Bargaining Unit Employees)
June 1, 2018**

The Federal Service Labor-Management Relations Statute (FSLMRS), 5 U.S.C. Chapter 71, Section 7114(a)(2)(B) provides Federal employees represented by a labor organization the right to request a union representative in conjunction with investigations conducted by agency representatives under certain conditions. This memorandum fulfills the USDA's obligation under the FSLMRS to annually remind employees of their rights and the conditions when those rights may be exercised.

As a bargaining unit employee represented by a labor organization, you have the right to request representation from your certified labor organization at any investigative examination/interview where you reasonably believe the examination might result in disciplinary action being taken against you. You may make this request at any time prior to or during the interview. If you request union representation, your agency may opt to: (1) suspend questioning and grant your request then resume the interview; (2) discontinue the interview; or (3) offer you the choice to proceed with the interview without a Union representative or to forego the interview.

Sources of additional information concerning your rights to representation include union officials within the labor organization having exclusive recognition for employees in your work unit, the collective bargaining agreement for your bargaining unit, and the Federal Labor Relations Authority (FLRA) at www.flra.gov.

Daniel M. Kline

Daniel M. Kline
Branch Chief, Labor Relations

Office of Operations Request for Official Time Form

Part 1 To be completed by the Representative and submitted to the supervisor or supervisor's designee

Representative's Name

Date and Time

Purpose (provide amount of time requested and a brief description)

Term Contract Negotiations TC-35	TIME Estimated:	Actual:_____	Prep for Term
Contract Negotiations TC-35	TIME Estimated:	Actual:_____	Bargaining
During the Agreement TC-36	TIME Estimated:	Actual:_____	Prep for Mid
Term Negotiations TC-36	TIME Estimated:	Actual:_____	Grievances,
Charges and Appeals TC-38	TIME Estimated:	Actual:_____	Prep for
Grievances, Charges and Appeals TC-38	TIME Estimated:	Actual:_____	Ongoing
Labor/Management Relations TC-37	TIME Estimated:	Actual:_____	

Subject: _____

Part 2 to be completed by the supervisor or supervisor's designee

_____ Approved _____ Disapproved

Reason(s) for Disapproval: _____

Signature of Supervisor or Supervisor's Designee

Part 3 to be completed by the Representative & supervisor/supervisor's designee

_____ Time Out _____ Supervisor's Initials

_____ Time In _____ Supervisor's Initials

APPENDIX 3 – THE OFFICE OF OPERATIONS REQUEST FOR OFFICIAL TIME

Office of Operations Request for Official Time for Training Form

Part 1 to be completed by the Representative and submitted to the supervisor or supervisor's designee

Representative's Name

Date

Please provide a general description of the training offered and the expected benefits of attending the training:

Dates of training program: _____

Part 2 to be completed by the supervisor or supervisor's designee

_____ Approved _____ Disapproved

Reason(s) for
Disapproval: _____

Signature of Supervisor or Supervisor's Designee

APPENDIX 4 - THE OFFICE OF OPERATIONS REQUEST FOR OFFICIAL TIME FOR TRAVEL

NAME	TELEPHONE NUMBER
ORGANIZATION (OFFICE, DIVISION, BRANCH, ETC)	UNION REPRESENTATION (IF ANY) AND TELEPHONE NUMBER
THIS IS A PRESENTATION AT (CHECK ONE) <i>STEP 1 _____ STEP 2 _____</i> IF THIS IS A STEP 2 GRIEVANCE, PLEASE ATTACH THE PREVIOUS GRIEVANCES & RESPONSE(S), IF APPLICABLE	
PLEASE PROVIDE A STATEMENT OF (Attach additional pages if necessary)	FACTS SURROUNDING THE GRIEVANCE
PLEASE PROVIDE A LIST OF WITNESSES WITH DIRECT KNOWLEDGE OF THE EVENTS SURROUNDING THE GRIEVANCE	
PLEASE REFERENCE THE SPECIFIC LAWS AND/OR ARTICLES OF THE NEGOTIATED AGREEMENT THAT YOU BELIEVE HAVE BEEN VIOLATED, TO THE EXTENT THAT YOU ARE AWARE OF THEM (OPTIONAL)	
THE SPECIFIC RELIEF REQUESTED IS:	
SIGNATURE OF GRIEVANT:	DATE:

APPENDIX 5 – THE OFFICE OF OPERATIONS GRIEVANCE FORM

**COLLECTIVE BARGAINING AGREEMENT
BETWEEN
AFSCME COUNCIL 20 – LOCAL 2846
AND
USDA OFFICE OF OPERATIONS**

This agreement between the American Federation of State, County, and Municipal Employees Council 20 – Local 2846 and the United States Department of Agriculture’s Office of Operations is entered into on the date shown below.

On behalf of the Office of Operations

Duane Williams
USDA
Director, Office of Operations



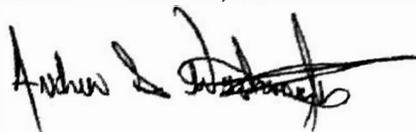
Signature

5/16/19

Date

On behalf of AFSCME Council 20

Andrew Washington
AFSCME
Executive Director, Council 20



Signature

5/16/2019

Date