National Agreement Between FNS and NTEU

Labor Management Relations for Headquarters, Northeast, Midwest, Mountain Plains, Southeast, Southwest & Western Regional Employees

Effective Date: January 16, 2025
Termination Date: January 15, 2030

USDA Food & Nutrition Service

NTEU National Treasury Employees Union

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PREAMBLE

Whereas Congress finds that experience in both private and public employment indicates that the statutory protection of the rights of employees to organize, bargain collectively, and participate through labor organizations of their own choosing, in decisions which affect them, safeguards the public interest, contributes to the effective conduct of public business, and facilitates and encourages the amicable settlement of disputes between employees and their Employers concerning conditions of employment.

Whereas the public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance, and the efficient accomplishment of the operations of the government. Therefore, it is resolved that labor organizations and collective bargaining in the Federal Service are in the public interest.

The parties agree that pre-decisional involvement is mutually beneficial by providing an opportunity for input during the decision-making process, even on matters that are not considered negotiable under the Statute. The parties have committed to demonstrate goodwill toward one another and provide appropriate opportunities for pre-decisional involvement. Such opportunities do not supplant impact and implementation negotiations, where applicable.

ARTICLE 1 RECOGNITION AND COVERAGE

Section 1.01. Exclusive Recognition

The Food and Nutrition Service (FNS), Headquarters, the Midwest Region (MWR), Mountain Plains Region (MPR), Northeast Region (NER), Southeast Region (SER), Southwest Region (SWR), and Western Region (WR) offices, hereinafter known as the Employer, recognizes the National Treasury Employees' Union (NTEU), hereinafter known as the Union, as the designated exclusive representative of the following consolidated bargaining unit:

1) **Headquarters** All professional and nonprofessional employees of the U.S. Department of Agriculture, Food and Nutrition Service (FNS) Headquarters, including employees of FNS Headquarters located outside the Park Office Center (POC) in offices throughout the United States and Puerto Rico, excluding all management officials, employees engaged in Federal personnel work in other than a purely clerical capacity, supervisors as defined in Title VII, Section 7112 of PL 95-454, Civil Service Reform Act of 1978, and employees described in 5 U.S.C. §7112(b)(2), (4), (6), and (7).

2) **Northeast Region,** all professional and nonprofessional employees employed by the U.S. Department of Agriculture, Food and Nutrition Service, Northeast Region, excluding all stay-in-school employees, supervisors, management officials, and employees described in 5 U.S.C. § 7112(b)(2), (3), (4), (6), and (7).

3) **Midwest Region,** all professional and nonprofessional employees of the U.S. Department of Agriculture, Food and Nutrition Service, Midwest Region, Chicago, Illinois, excluding all management officials, supervisors, and employees described in 5 U.S.C. §7112(b)(2), (3), (4), (6), and (7).

4) **Western Region,** all professional and nonprofessional employees of the U.S. Department of Agriculture, Food and Nutrition Service, Western Region, excluding all management officials, supervisors, and employees described in 5 U.S.C. §7112(b)(2), (3), (4), (6), and (7).

5) **Southwest Region,** all professional and nonprofessional employees of the U.S. Department of Agriculture, Food and Nutrition Service, Southwest Region, Dallas, Texas, excluding all management officials, supervisors, and employees described in 5 U.S.C. §7112(b)(2), (3), (4), (6), and (7).

6) **Southeast Region,** all professional and nonprofessional employees of the U.S. Department of Agriculture, Food and Nutrition Service, Southeast Region, excluding all management officials, supervisors, and employees described in 5 U.S.C. §7112(b)(2), (3), (4), (6), and (7).

7) **Mountain Plains Region,** all professional and nonprofessional employees of the U.S. Department of Agriculture, Food and Nutrition Service, Mountain Plains Region, excluding all employees engaged in Federal personnel work in other than a purely clerical capacity, confidential employees, management officials, supervisors, and employees described in 5 U.S.C. §7112(b)(2), (3), (4), (6), and (7).

ARTICLE 2 PUBLISHED RULES AND REGULATIONS

Section 2.01. Governing Laws, Rules, and Regulations

1) In the administration of all matters covered by this Agreement, the Union and the Employer will be governed by this Agreement, existing and future Employer rules, regulations, and policies not in conflict with this Agreement, governmentwide rules and regulation and/or Federal law. Where the terms of the Agreement conflict with Agency or Department rules and regulations effected after the effective date of this Agreement the terms of the Agreement shall be controlling.

2) If any provision of this Agreement shall be found contrary to Federal law or government-wide rules and regulations, such provision shall have effect only to the extent permitted by Federal law or government-wide rules and regulations, but all other provisions of this Agreement shall remain in full force and effect. Any provision found contrary to Federal law or government-wide rules and regulations shall be renegotiated in accordance with Article 53.

ARTICLE 3 RIGHTS OF THE EMPLOYER

Section 3.01. Authority of the Employer

In accordance with and subject to the Civil Service Reform Act of 1978, nothing shall affect the authority of the EMPLOYER:

1) To determine the mission, budget, organization, number of employees, and internal security practices of the Agency; and in accordance with applicable laws;

2) To hire, assign, direct, lay off, and retain employees in the agency, or to suspend, remove, reduce in grade, or pay, or take other disciplinary action against such employees;

3) To assign work, to make determinations with respect to contracting out, and to determine the personnel by which the agency operations shall be conducted;

4) With respect to filling positions, to make selections for appointments from:
   a) among properly ranked and certified candidates for promotion or;
   b) any other appropriate source; and

5) To take whatever actions may be necessary to carry out the Agency's mission during emergencies.

ARTICLE 4 EMPLOYEE RIGHTS

Section 4.01. Recognition

The Employer and the Union will recognize and respect the dignity of employees, supervisors and managers in the formulation and implementation of personnel policies, practices, and conditions of employment and, at all times, treat employees with courtesy and respect. Relationships between employees and their supervisors will be mutually conducted in a businesslike, courteous, and tactful manner.

Section 4.02. Exercising Rights Under Agreement

1) The initiation of a grievance in good faith by an employee will not cause any reflection on their standing with their supervisor or on the employee's loyalty or desirability to the organization. Employees who have relevant information concerning any matter for which remedial relief is available under this Agreement will, in seeking resolution of such matter, be assured freedom from restraint, interference, coercion, discrimination, intimidation or reprisal.

2) The Employer will not impose any restraint, interference, coercion, or discrimination against any employees in the exercise of their right to designate a Union Steward for the purpose of representing to the Employer any matter of concern over the interpretation or application of this Agreement or of representing the employees to any Government agency or official other than the Employer. The Parties recognize that this section grants such employees or stewards no official time for performing duties under provisions of this Agreement.

Section 4.03. Right to Union Representation

1) Any discussion with employees by representatives of the Employer which may reasonably be considered by an employee to lead to disciplinary action will be conducted in private. The employee, in such instance, has the right to have their Union representative at such meeting. If the employee requests representation, the Employer will delay the meeting long enough to permit the Union representative to attend.

2) If there is a disagreement between the employee and the Employer regarding the employee's right to Union representation, the meeting will be delayed to permit the Union representative to attend, or a separate meeting involving the Employer representative, employee and Union representative will be scheduled as soon as practicable.

3) The Parties recognize that the following meetings shall not normally lead to disciplinary action for the purpose of this Section:

    a) Counseling employees; and
    b) Discussing performance evaluations and appraisals with employees.

Section 4.04. Right to Written Instructions

Consistent with the employee's responsibility to carry out instructions, an employee who, due to past experience or the nature of the present assignment, determines that they need written clarification on a matter pertaining to the way in which work should be done, that employee may accurately reduce the supervisor's instructions to writing. The supervisor shall initial these written instructions if they accurately reflect the instructions given. If the written instructions do not accurately reflect the instructions given, the supervisor, at their option, will note the necessary corrections or ask the employee to redraft the original instructions and then initial.

Section 4.05. Investigative "Weingarten" Meetings

1) Employees shall have the right to have a Union representative present at any examination of any employee by a representative of the Employer in connection with an investigation if:

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

2) At any meeting as referenced in Section 4.05(1) above, the Employer agrees:

    a) To inform the employee in advance of the meeting, the general subject of the interview, including whether or not it is criminal in nature;
    b) That the interview will be scheduled to allow the employee an opportunity to seek the counsel of a Union representative and to prepare for the investigatory interview; and
    c) That the employee has the right to privately counsel with their representative during the investigatory interview before the employee must answer a particular question.

3) The Employer agrees to distribute annually to each bargaining unit employee, a notice advising each employee of the right to representation by NTEU if the employee reasonably believes an examination may result in disciplinary action and the employee requests representation.

Section 4.06. Role of Union Representative

1) When an employee being interviewed is accompanied by a Union representative, the role of the representative includes:

    a) Request that the interviewer clarify questions;
    b) Clarify the responses provided by the employee;
    c) Assist the employee in providing favorable extenuating facts;
    d) Suggest other employees who may have knowledge of relevant facts;
    e) Advise the employee in the meeting or in a caucus;
    f) Raise relevant questions that may assist the employee in responding to the questions raised by the interviewer; and
    g) Raise questions that are reasonably related to the matter being discussed.

2) When a Union representative attends an investigative (Weingarten) interview, they agree not to:

    a) Engage in conduct which is disruptive or precludes the Employer from conducting the investigation.

Section 4.07. Use of Official Government Property

All employees will be officially notified on an annual basis of the Employer's policies regarding the monitoring of employee use of official government property, including electronic equipment.

Section 4.08. Freedom from Discrimination

The Employer is committed to providing a work environment free of discrimination because of race, color, religion, sex (including pregnancy and gender identity), national origin, age (as defined by the Age Discrimination in Employment Act of 1967, as amended), disability, genetic information (including family medical history), marital status, political affiliation, sexual orientation, labor organization affiliation or non-affiliation, status as a parent, any other non-merit-based factor or any other protected class covered by the law, rule or regulation; or retaliation for exercising rights with respect to the categories enumerated above, where retaliation rights are available.

Section 4.09. Consultation with Union Benefits Counselor

Upon request, employees will be authorized up to a maximum of one (1) hour of administrative leave annually, or at the employee's option may use their lunch period, to consult with a national Union-sponsored benefits counselor. Supervisors will approve such requests unless precluded by the employee's workload.

Section 4.10. Right to Join or Assist Union

1) Each employee shall have the right to join or assist the Union freely without fear of penalty of reprisal, and each employee shall be protected in the exercise of such rights. Except as otherwise provided in law and this Agreement, such rights include the following:

    a) The right to act for the Union in the capacity of a representative;
    b) The right in that capacity, to present the views of the Union to heads of agencies and other officials of the executive branch of the Government, the Congress, or other appropriate authorities; and
    c) The right to engage in collective bargaining with respect to the conditions of employment through representatives of the Union.

Section 4.11. Voluntary Union Participation

Nothing in this Agreement will require an employee to become or remain a member of a labor organization or to pay money to the organization except pursuant to a voluntary written authorization by a member for payment of dues through payroll deductions or by voluntary cash dues payment by a member.

Section 4.12. Voluntary Contributions

Employee participation in the Combined Federal Campaign, blood drives, and other solicitations will be voluntary. Encouragement to participate will be directed to all employees subject to the solicitation. An immediate supervisor may not collect pledges or contributions from an employee under their supervision.

Section 4.13. Off-Duty Conduct

An employee's off-premises conduct during off-duty hours which does not interfere with or adversely impact the employee's ability to perform the duties of the position will not adversely impact the employee's performance evaluation and/or appraisal.

ARTICLE 5 UNION RIGHTS

Section 5.01. Recognition

The Union shall be the instrument through which bargaining unit employees participate in the formulation and implementation of personnel policies and practices that affect the conditions of their employment, as prescribed by Title VII of the Civil Service Reform Act of 1978, also known as the Federal Labor-Management Relations Statute. The Employer recognizes the Union's rights and agrees to deal with the Union's representatives on such matters. The Union may refuse to represent employees in disciplinary actions, statutory appeals (for example, adverse actions, unacceptable performance actions, and equal employment opportunity complaints) and any other matters permitted by law.

Section 5.02. Right to Negotiate Changes in Personnel Policies, Practices, and Matters Affecting Employees' Conditions of Employment

The Union has the right to negotiate with management, in good faith, with respect to changes in personnel policies and practices, and matters affecting the conditions of employment of bargaining unit employees in accordance with Article 53 of this Agreement.

Section 5.03. Formal Meetings

In accordance with 5 U.S.C. § 7114(a)(2), the Union will be given the opportunity to be represented at formal meetings between the Employer and bargaining unit employees concerning grievances, changes in personnel policies and practices, or other matters that affect conditions of employment. Normally, the Union will be given at least two (2) business days' notice of any formal meeting and the topics to be discussed. The Employer will permit the Union representative to participate in an orderly manner, to ask questions, and to present a brief statement related to the subject matter addressed at the meeting before the end of the meeting outlining the Union's position concerning the issues. The Employer retains the sole authority to summarize and terminate the meeting.

Section 5.04. Right to Represent Employees Without Restraint, Interference, Coercion, or Discrimination

The Employer shall not restrain, interfere with, coerce, or discriminate against designated Union representatives in the exercise of their representational functions for the purpose of collective bargaining, including the processing of grievances, or acting in accordance with applicable regulations and agreements on behalf of an employee or group of employees within the bargaining unit.

Section 5.05. Employer Access to Union Constitution and By-Laws

Upon the execution of this Agreement, the Union shall furnish a current copy of its constitution and bylaws, a roster of its officers, and a list of local officers and their phone numbers, email address and business mailing addresses to the Employer, and notify the Employer of any changes within ten (10) calendar days of the effective date of the change.

Section 5.06. New Bargaining Unit Employees

1) The Employer will inform each local Chapter of the time and place of the initial orientation of new bargaining unit employees and prior to such orientation, provide each local chapter with a list of the bargaining unit employees to include the employee's name, duty station, regional office, position, grade level, and expected reporting date. At the conclusion of the orientation session, a representative of the local Chapter will be authorized up to forty-five (45) minutes of official time to exclusively meet with new bargaining unit employee(s) for the purposes of informing said employee(s) of the Union's exclusive recognition status and providing the employee(s) with appropriate information and/or literature as determined by the local Chapter.

2) Local Chapters shall be given at least five (5) workdays advance notice of any orientation that includes bargaining unit employees. If no orientation sessions are held, the local Chapter will be authorized forty-five (45) minutes to meet with new employees without management present. Absent extenuating circumstances, Union presentations at orientation meetings shall be held telephonically or virtually to minimize travel costs.

Section 5.07. Briefing on Term Agreement

Each local Chapter shall be granted up to three (3) hours of official time to brief bargaining unit employees, without managers present, on the contents of the term agreement. However, the attendance at this briefing is not mandatory.

Section 5.08. Union Access to Information Regarding Changes in Personnel Policies, Practices, Conditions of Employment, and/or New Rules or Regulations

Each Union Chapter will have access to a copy of modifications to existing Agency policies and regulations concerning FNS personnel policies, practices, and the conditions of employment of bargaining unit employees, including USDA policies and guidelines.

Section 5.09. Bargaining Unit Roster

On a quarterly basis, the Employer will provide NTEU National with an electronic listing of all BU employees that contains the following information:

1) Last name, First name, Middle name/initial;
2) Official Title;
3) Entrance on Duty (EOD) Date;
4) Occupation Series;
5) Pay Plan;
6) Grade;
7) Step;
8) Pay Locality Area;
9) Duty Station;

10) Org Code: Level 2, Level 3, Level, 4, Level 5;
11) BUS Code/Chapter Local;
12) FERS, FERS-RAE, FERS-FRAE or CSRS;
13) Service Computation Date (SCD);
14) Tenure Group; Work Schedule (full-time, part-time, or intermittent); and
15) Email Address.

Section 5.10. Employee's Personally Identifiable Information

When there is an unauthorized disclosure or breach of any bargaining unit employee's personally identifiable information (PII) within the Agency's system of records, the Employer shall notify National NTEU and any impacted Local Chapters in writing upon discovering the incident and upon request provide the Union with a briefing unless directed to delay notification at the request of law enforcement. The Employer may provide to the employee(s) impacted by the breach free credit monitoring service for a reasonable period of time, as determined by the Employer. The Employer will provide the Union with regular updates on the status of any such unauthorized disclosures or breaches until the matter is addressed satisfactorily.

Section 5.11. Mandated Surveys

The Employer agrees that when bargaining unit employees are mandated to take a survey about any personnel policy or practices, or other general conditions of employment of bargaining unit employees, and not at the behest of an outside agency, the Union will be provided a copy of the survey and an opportunity to provide comment at least ten (10) days in advance of the scheduled distribution date. NTEU shall provide the Employer its feedback within six (6) days of receipt of the survey. If NTEU does not provide the Agency its feedback within six (6) days, the Employer may release the survey without having to wait until the 10-day mark. Survey results will be shared with NTEU.

Section 5.12. Workgroups

In the event the Employer establishes a workgroup, and if that workgroup includes bargaining unit employees, and impacts the terms and conditions of employment of bargaining unit employees, the Employer will provide NTEU with an opportunity to nominate employees to such workgroup.

ARTICLE 6 UNION REPRESENTATION AND OFFICIAL TIME

Section 6.01. Official Time. Union Stewards.

1) Official time shall be granted in accordance with Article 6, to employees who are representatives of the Union, who have been designated in writing and who are otherwise in a duty status, to accomplish the specified functions as set forth herein.

2) Union representatives are permitted to perform representational duties while on official time in an approved telework status.

3) The Union may designate up to fifteen (15) stewards for each local chapter. Stewards may represent any organizational segment within their office. The Union will provide the Employer with a roster of the names of stewards appointed pursuant to this section. One steward per chapter will be designated as a chief steward. Nothing in this section will preclude an NTEU national representative from representing the Union or an employee.

4) For each of the meetings with the Employer described in Section 6.02 below, the number of Union representatives entitled to official time is equal to the number of Employer representatives at such meetings, not to exceed two (2), except for Section 6.02(g) and (q).

5) The parties acknowledge that there exists a past practice whereby the Chapter President of NTEU Chapter 226 works 100% official time. The Chapter President of NTEU Chapter 226 may continue to work 100% official time or may vary the amount of official time worked so that other Union designated officials may work a portion of the 100% official time hours dedicated to Chapter President of NTEU Chapter 226. This provision will have no effect upon the amount of official time afforded other Union officials of Chapter 226 which will continue to be reasonable time in accordance with the provisions of this Article.

Section 6.02. Union Representational Functions Warranting Approval of a Reasonable Amount of Official Time

Union representatives will be granted a reasonable amount of official time in accordance with Section 6.05 to:

1) Present grievances at any step of the Negotiated Grievance Procedure;

2) Represent an employee or the Union at an arbitration hearing;

3) Appear as a witness at any step of a grievance;

4) Appear as a witness at any arbitration hearing;

5) Meet and confer with management;

6) Prepare for and represent an employee or the Union in appeal hearings covered by regulatory or statutory procedures (e.g., EEOC, MSPB, FLRA);

7) Attend meetings or committees on which Union representatives have authorized membership;

8) Represent the Union in formal meetings involving personnel policies, practices, working conditions, or grievances between bargaining unit employees and management, or any other matters covered by 5 U.S.C. § 7114 (a)(2)(A);

9) Represent employees in investigatory interviews if the employee reasonably believes that the examination may result in disciplinary action against the employee and the employee requests representation;

10) Prepare for meetings scheduled with management;

11) Assist employees when designated as their representatives in preparing and presenting a response to a proposed disciplinary, adverse, or unacceptable performance action;

12) Prepare responses to management-initiated correspondence;

13) Prepare employee and Union grievances and appeals;

14) Prepare for arbitration;

15) Attend meetings for the purpose of presenting replies to proposed termination of probationary employees;

16) Participate in training designed primarily to further the interest of government by bettering the labor-management relationship (e.g., national, and local Union training sessions) in accordance with Section 6.06;

17) Prepare and negotiate with the Employer, including mediation and impasse proceedings;

18) Confer with employees with respect to matters for which remedial relief may be sought pursuant to the terms of this Agreement;

19) Meet with national or field staff representatives of the Union in connection with a grievance, arbitration or ULP charge;

20) Prepare reconsideration statements and attend meetings in connection with the denial of within-grade increases;

21) Contact members of Congress and their staffs to discuss legislative and related matters affecting the Employer and its employees;

22) Prepare for and participate in local Labor Management Relations Committee meetings or national Labor Management Forum meetings; or

23) Engage in Pre-Decisional Involvement (PDI).

Section 6.03. Internal Union Business Precluding Granting Official Time

Any activities performed by Union representatives relating to the internal business of the Union (including the solicitation of membership, election of officials, and collection of dues) shall be during the time the Union representatives are in non-duty status.

Section 6.04. Excused Absence for Employees

1) Employees who are otherwise in a duty status will be granted an Administratively Excused Absence to participate in the activities listed in Section 6.02 3, 4, 6, 13, 14, 15, 18, 19, and 20.
2) In requesting release, the employee will follow the procedures delineated in Section 6.05. The Union will make every effort to ensure that employees do not use an unreasonable amount of excused absences.

Section 6.05. Procedure for Use of Official Time and Excused Absences

1) The following procedures shall apply to Union representatives and employees on official time, as authorized under this Agreement.

    a) Prior to using official time or an excused absence, the Union representative and the affected employee will seek supervisory approval and provide the supervisor or designee with an estimate of the time needed and include the nature of the function (e.g., Section 6.02). Union representatives will make every effort to properly designate the official time through the available transaction codes (e.g., Union Contract Negotiations (35), Midterm Negotiations (36), Labor Management Relations (37), and Grievances/Appeals (38). Official time and/or an excused absence will be granted provided that work requirements or work schedules do not prohibit release. If the supervisor is unable to grant the official time and/or excused absence when requested, the supervisor will advise the Union representative and/or employee of this and schedule an alternate time. The official time and/or excused absence will normally be scheduled within two (2) workdays.

    b) Requests and approvals or denials may be conveyed in person or by email and should provide sufficient information to identify the purpose of the requested time. However, any approved request for official time will be subsequently recorded in Web TA or any other successor electronic time and attendance system for the pay period in which it was used.

    c) Upon entering a work area other than their own to meet with unit employees, Union representatives shall advise the immediate supervisor of their presence, the employee(s) to be contacted and estimated duration.

    d) If the amount of official time or duration of an excused absence used differs from the amount requested and approved, Union representatives and employees shall advise their supervisors of the change upon return to their work area.

    e) It is understood that exigent, unanticipated circumstances will occur where advance supervisor approval is not practicable. In those situations, the supervisor will be notified at the conclusion of the unanticipated circumstances and the time will be recorded as union time with post approval.

Section 6.06. Official Time for Union Sponsored Training

1) NTEU Chapter 226 shall submit requests for official time to the Director, Human Resources or designee, normally at least five (5) workdays prior to the scheduled training. The other NTEU Chapters shall submit requests for official time to the local Human

Resources Liaison, normally at least five (5) workdays prior to the scheduled training. Such requests must include the content and schedule of such training and the names of representatives whose attendance is desired.

2) The Parties recognize that the training of chapter officers, chief stewards, stewards, and other chapter representatives is considered to be of mutual benefit to the Union and the Employer. Therefore, each chapter is granted 300 hours of official time for the training of such chapter representatives for each year of the contract and for each year that the contract is extended.

Section 6.07. Official Time for Midterm Bargaining

A number of bargaining unit employees equal to the number of the Employer's bargaining representatives (but not more than four (4) nor less than two (2) employees) will be granted official time to represent the Union in midterm negotiations during the life of this Agreement.

Section 6.08. Use of Official Time and Performance Assessment

1) Union representatives will not be disadvantaged in the assessment of their performance based on their use of official time when conducting labor-management business authorized by this Article. However, it is understood that performance problems unrelated to the use of official time may be addressed in accordance with other relevant provisions of this Agreement.

2) The performance of Union representatives will be rated on the basis of pro-rated work time (i.e., the work performed on available work time after official time has been subtracted) and the use of approved official time will not be the basis for downgrading the performance of Union representatives.

3) The Employer may consider reassigning work previously assigned to a Chapter President when it determines that the work cannot be timely performed due to their representational duties.

Section 6.09. Official Time to Participate in Third-Party Proceedings

1) When serving as a designated employee representative in an established appeal procedure, Union representatives shall receive such official time as may be provided or allowed in the law or regulations governing the appeal procedure.

2) Union representatives and employees shall be granted official time, as determined by the Federal Labor Relations Authority, for participation on behalf of the Union in any phase of proceedings before the Authority during the time the representative or employee would otherwise be in duty status.

Section 6.10. Official Time for Authorized Travel

Where official time is available to employees and Union representatives under the terms of this Article, it shall include all necessary travel time.

ARTICLE 7 USE OF OFFICIAL FACILITIES

Section 7.01. Meeting Space

Upon advance notice by the Union, the Employer will provide meeting space, if available, for meetings, during or after hours. The Union will comply with all security and housekeeping rules.

Section 7.02. Ballot Boxes

Upon advance request by the Union, the Employer will provide space for the placement of ballot boxes being used in conjunction with chapter elections governed by local bylaws. The union acknowledges that no responsibility for the safety or security of the ballot boxes is assumed by the Employer.

Section 7.03. Office Space and Furniture

Each local Union Chapter will be provided an enclosed office space, large enough to accommodate a minimum of one desk and a small (no less than desk size) worktable with four chairs. The Union will be provided with a minimum of one desk, four (4) chairs, one small (no less than desk size) table, one (1) metal 4-5 drawer lockable file cabinet, one telephone with long distance and speaker capability, one computer and printer. The Employer agrees to provide needed maintenance and repairs for this equipment.

Section 7.04. Union Access to Government Equipment

The Union will be granted reasonable access to photocopiers, LAN and electronic mail**,** TV/VCR, and facsimile, for official representational activities, not to include internal union business. The National Office of the Union will be granted access to the Employer's electronic mail system for the purpose of communicating with Chapter Presidents.

Section 7.05. Bulletin Boards

The Union will be entitled to the use of existing bulletin boards. The extent of use will be negotiated locally.

Section 7.06. Mail Distribution

1) The Union may distribute material in work areas provided the employee distributing the material is on non-work time and where distribution does not cause a disruption to the workflow in work areas.

2) The Union may use the Employer's internal and external mail system to distribute mail for official representational purposes. The use of the Employer's metered mail system is limited to $200 for each local annually.

Section 7.07. Posting and Distribution of Information by Union

The Union agrees that information posted or distributed will not violate any law, regulation, this Agreement, or the security of the Employer or contain libelous material regarding the Employer or the Federal Government.

Section 7.08. Access to Union Chapter President's Telephone Number

The name and Union office telephone number of the Union Chapter President shall be listed in the Employer's telephone directory.

Section 7.09. Employee Access to NTEU Health Insurance Information

Annually during the scheduled "open season" the Employer will make available to the employees a copy of the NTEU Health Insurance brochure. The Employer will allow a representative from the NTEU Health Plan to provide information on the plan during the "open season," as is allowed with other health care providers.

Section 7.10. Use of Cafeterias or Other Non-Work Areas

A Union representative, certified by the Union's National Office, upon advance notice, may visit the cafeterias or other non-work areas located on the Employer's premises to discuss appropriate Union business, including NTEU membership programs on non-work time.

Section 7.11. Advance Notice of Relocations or Renovations

The Employer agrees to notify the Union regarding any relocations or renovations prior to making any commitments to allow for bargaining as prescribed by applicable law.

Section 7.12. Distribution of Contract

1) The Employer will electronically provide a copy of this Agreement to every employee.

2) The Employer will provide each local Chapter with one (1) copy of this Agreement on computer disks in a format that is compatible with the local Chapter's software. Employees will be permitted to place a copy of the contract on their computer hard drive or to use in disk format.

ARTICLE 8 POSITION CLASSIFICATION

Section 8.01. Purpose of Position Descriptions

1) The purpose of a position description is to describe officially, for pay and classification purposes, the predominant skills, and duties particular to a position. A position description does not list every duty an employee may be assigned but reflects those major duties which are regular and recurring, as well as series and grade-controlling. The supervisor has final authority regarding assignment of work.

2) The Employer agrees that the position description will accurately reflect the actual duties of the employee. The work assignments of an employee may be changed provided such action does not prejudice an employee's classification appeal during the pendency of the appeal.

3) The Employer agrees that every effort will be made to properly classify all positions within a reasonable period of time and to place the position in the series which most appropriately reflects the responsibilities and duties performed by the employee.

Section 8.02. Content of Position Description

When the term "such other duties as assigned" or its equivalent is used in a position description, it is mutually understood to mean "tasks that are normally related to the position and are of an incidental nature." This does not preclude the Employer from assigning unrelated work to an employee on an irregular basis or when determined necessary.

Section 8.03. Union Access to Employee Classification Standards

1) The Employer will furnish the Union copies of proposed Office of Personnel Management classification standards for bargaining unit positions that are referred to the Employer for comment.

2) The Employer agrees to inform the Union as soon as possible of any reorganization and/or new or revised classification standards that will impact on bargaining unit employees.

Section 8.04. Union Input on Changes to Employee Position Description

1) The Employer agrees to consider the Union's written comments and suggestions when the Employer proposes changes or creates new position descriptions for bargaining unit employees. The employer will inform the Union of the results of the review in writing.

2) The Union may make recommendations regarding the accuracy of a standardized position description where a unit employee's duties significantly differ from the position description. The Employer agrees to review the recommendations of the Union and advise the Union of the basis for its decision regarding the Union's recommendations.

Section 8.05. Position Description Review. Classification Appeal.

1) Each employee will be given a copy of their position description and will be permitted to discuss any disagreement or inaccuracy with their supervisor.

2) When differences concerning the accuracy of a position description cannot be resolved, the employee may request an evaluation or audit from the Human Resources Division. If the request is submitted in writing, the Employer's response will be in writing. The employee may make supplemental statements concerning the duties prior to or during the audit.

3) Should the employee disagree with the audit decision the employee may file a position classification appeal in accordance with government regulations.

Section 8.06. Union Representation for Classification Appeals

An employee who has filed a classification appeal with the employer in which the employee is represented by the union may have their Union representative present when their position is audited if they have requested a Union representative prior to the audit. If a Union representative is present, they may not answer questions properly directed to the employee.

ARTICLE 9 PERFORMANCE APPRAISAL

Section 9.01. General

1) The Parties agree that the provisions in this Article go into effect on October 1, 2022. Performance ratings for FY-22 the Parties will follow the terms and procedures of Article 9 of the 2014 Agreement.

2) The provisions of the Article shall apply to all bargaining unit employees except those excluded by law or governmentwide regulation.

3) Performance appraisals will be based on a comparison of the employee's performance with the performance elements and standards established for the designated appraisal period. For a particular performance appraisal, the Employer will only consider employee performance which falls within the established appraisal period.

4) The Employer will conduct all performance appraisals, as defined by this Article, in an objective and equitable manner. The Employer shall consider factors which are beyond the employee's control and will not hold the employee responsible for such matters in conjunction with the rating process. The Employer shall not establish any pre-determined distribution of expected levels of performance (such as the requirement to rate on a bell curve).

5) The performance management program shall be in compliance with applicable law, regulations, Department Regulation 4040-430, and the terms of this Agreement; where there is conflict between this Agreement and the DR this Agreement shall take precedence and is controlling. The performance management program is designed to assist in establishing a performance culture that fosters a high performing organization through effective management of individual and organizational performance. The performance management program provides for:

    a) Establishing employee performance plans, including elements and performance standards;
    b) Communicating performance plans to employees at the beginning of an appraisal period;
    c) Evaluating each employee during the appraisal period on the employee’s elements and standards;
    d) Recognizing and rewarding employees whose performance so warrants;
    e) Assisting employees in improving unacceptable performance; and
    f) Reassigning, reducing in grade, or removing employees who continue to have unacceptable performance, but only after an opportunity to demonstrate acceptable performance.

6) The performance management program shall, to the maximum extent possible, provide a fair, accurate and objective evaluation of job performance and ensure that the employee’s rating of record is based only on actual job duties, responsibilities, and performance during the

designated appraisal period.

7) Ongoing, two-way communication and feedback is encouraged. With the exception of employees hired with less than 90-days before the end of the rating year, employees will receive written performance ratings at least annually, based on written performance standards and elements that are related to their official duties. The Employer may provide assistance to employees in meeting performance standards as needed, including providing training and developmental opportunities.

Section 9.02. Definitions

1) **Critical Element**: Means a work assignment or responsibility of such importance that unacceptable performance on the element would result in a determination that an employee's overall performance is unacceptable. Such elements shall be used to measure performance only at the individual level.

2) **Performance Standard**: Means the management-approved expression of the performance thresholds, requirements, and expectations an employee must meet for an element to be appraised at a specific level of performance. A performance standard may include, but is not limited to quality, quantity, timeliness, and manner of performance.

3) **Fully Successful Rating Level**: The employee has successfully performed their assigned duties and responsibilities in furtherance of the mission and goals of FNS.

4) **Unacceptable Rating Level**: The employee's performance of their assigned duties and responsibilities is unacceptable. An unacceptable rating may not be issued to an employee until and unless the employee receives a performance plan and a written improvement statement under 9.04 (3).

Section 9.03. Performance Elements and Standards

1) Employees will continue to operate under their existing elements and standards until such time that the Department issues updated priorities and objectives for the next fiscal year. Performance plans will be issued no later than thirty (30) calendar days from when the priorities and objectives are issued for the next fiscal year. The final authority for establishing elements and standards rests with the Employer. The Employer shall determine if performance standards should be comparable for subordinates with the same position, title, series, grade, and duties within a unit. Performance elements and standards will be based on work assignments and responsibilities of the employee's position. Each employee will have at least three (3) critical elements, but no more than five (5). The rating official should strive to describe performance standards in words and phrases that denote objectively verifiable qualities of the work performed.

2) An employee will have ten (10) calendar days after the receipt of the proposed elements and standards, including any performance elements and standards which have been carried over from the employee's previous performance plan, to submit oral and/or written comments on these elements and standards to their supervisor. The employee may seek the assistance of a Union representative in preparing their comments. Employees will be given a reasonable

amount of work time to prepare any comments.

3) The Employer will clearly define performance required for the employee to meet the level required to maintain "Fully Successful" for all elements of employee's performance plan.

4) Employees must be involved in the review and development of performance elements and standards. Employees can propose substantive projects and/or outcomes; however, the supervisor has the final authority to approve, disapprove, or alter the employee's performance element(s).

5) After consideration of any employee input, performance elements and standards shall be communicated in writing and discussed with each employee prior to the beginning of the rating period, if possible, and whenever elements and/or standards change. The performance plan will be signed/acknowledged and dated by the rating official and the employee.

    a) By signing/acknowledging, the employee signifies only receipt of the plan, not necessarily agreement. If an employee has an objection to the final elements or standards, they may note the objections in writing and attach them to the official performance plan or upload them to Enterprise Performance Management Application (EPMA).
    b) All employees will receive training on the EPMA before they are required to use the system.
        i) Employees will be provided with three (3) opportunities to register for and attend a webinar which shall provide all relevant information regarding the EPMA system.
        ii) Recorded video training will be accessible to all employees.
        iii) All training will be on duty time during employee work hours.

Section 9.04. Quarterly Conversations

Employees will receive quarterly conversations during the performance evaluation period at which time the rating official shall counsel the employee on their progress in meeting the standards.

1) In addition, the rating official and the employee may meet on a more frequent basis and are encouraged to have ongoing dialogue and feedback regarding performance, accomplishments, work unit goals, or training and development opportunities and needs.

2) If an employee disagrees with the rating official's quarterly conversation, as it relates to the assessment of the progress towards meeting the standards and measures in the performance plan, they may provide a written response via email and/or upload it EPMA to document the disagreement to serve as a record.

3) A written statement on how to improve performance shall be given to the employee within ten (10) calendar days after the quarterly conversation for each critical element where the employee is not meeting the standards. This will not take the place of the parties' obligations provided in Article 10 of this Agreement.

Section 9.05. Annual Performance Appraisal

1) Absent extenuating circumstances, appraisals will be completed, and the rating of record issued, to employees within thirty (30) days of the end of the rating period.

2) Only a supervisor of record may rate a bargaining unit employee's performance. In the event that the employee's supervisor has supervised the employee for less than ninety (90) days, the employee's previous supervisor must prepare the employee's advisory rating on each critical element. The previous supervisors must submit a written advisory rating to the employee's current supervisor no more than thirty (30) days after the previous supervisor leaves. The current supervisor must consider this advisory rating in preparing the annual performance rating. A copy of the advisory rating must be provided to the employee, upon request.

3) Unless required by the Rating or Reviewing Official, employees may submit an accomplishment report to their respective Rating Official. An accomplishment report will detail personal performance, contributions, and accomplishments that align with the standards and measures of the element(s) in the performance plan and any additional performance, contributions and accomplishments that are not specific to the expectations documented in their performance plan (e.g., letters, e-mails that the employee wishes to have considered) The employee may submit the materials up to seven (7) calendar days after the conclusion of the appraisal period. Employees will be allowed a reasonable amount of work time, not to exceed two (2) hours, to prepare such accomplishment reports.

4) Rating officials will identify the rating for each element. If an employee's performance is not at the Fully Successful level for every element before the rating of record deadline, the rating of record for that performance year is Unacceptable. The appraisal will be signed and dated by the rating official and the reviewing official.

5) Rating officials will complete a written narrative assessment of employee performance including accomplishments and may also discuss how employees could strengthen their performance and relevant developmental needs.

6) The employee should sign/acknowledge and date the appraisal in EPMA; however, the employee's signature/acknowledgement only signifies that the appraisal has been discussed, and not that the employee agrees with the rating. If an employee refuses to sign the appraisal, the rating official should note that on the appraisal document, and sign and date it. Whether or not the employee signs, the rating is official, and a copy of the appraisal and any attachments will be provided to the employee.

7) An employee who disputes a rating may grieve the rating in accordance with Article 50. The burden of proof is primarily on the employee to demonstrate that the rating should be fully successful, and primarily on the Employer to demonstrate that the rating should be less than fully successful.

8) The final performance rating for the most recent performance period is the rating of record until replaced by another.

9) Informal Appeal Process. Employees may make written comments concerning any disagreement with an annual performance rating. Employees should submit these

comments to the Reviewing Official (second-level Supervisor) within twenty (20) calendar days following receipt of the performance rating. The employee's comments will be attached to the appraisal form and will become part of the performance rating.

a) The Reviewing Official will consider the comments and discuss the final rating with the rating official.
b) If, after consideration, the Reviewing Official determines that the rating should be changed, they will notify the appropriate officials and the employee within fourteen (14) workdays following the receipt of the employee's comments.
c) If, after consideration, the Reviewing Official determines that the rating should not change, the Reviewing Official will inform the employee of their decision, along with the reasons for the decision, within fourteen (14) workdays of receipt of the comments. Upon the employee's request, the Reviewing Official will provide the decision and reasoning in writing.
d) In preparing for this informal appeal process, the employee has the right to review and obtain copies of any relevant and/or necessary documentation. If the employee disagrees with the Reviewing Official's determination, the employee may proceed directly to Step- 3 of the Grievance procedures contained in Section 50.08 of this Agreement. Employee grievances regarding annual performance ratings are subject to the burdens established by Section 9.07 of this Article.

Section 9.06. Minimum Appraisal Period

An employee must be in their current job for at least ninety (90) calendar days in order to receive a rating. If the minimum time requirement is not met at the end of the rating period, a rating of record for the performance year cannot be produced. If an employee worked for a supervisor who is different from the rating official for any part of the appraisal period, the rating official shall obtain input from the previous supervisor before issuing a final (or interim) rating. An employee detailed to a classified position for more than ninety (90) days shall be given the elements and standards for the detail position and receive an interim rating of their performance.

Section 9.07. Employee Grievances of Performance Ratings

1) Employees may file grievances regarding their annual performance ratings, pursuant to Article 50 of this Agreement. If the employee exhausts the informal appeal process described in Section 9.05, above, the employee may proceed directly to Step Three of the grievance process. If an employee chooses not to use the informal appeal process, the grievance processing begins at Step One.

2) If an employee files a grievance regarding their performance rating of record, the following burdens apply:
   a) Where an employee challenges a rating on the basis that they should have been rated "Fully Successful," the burden is on the employee to demonstrate that the rating was not proper.
   b) In all cases involving performance appraisals, neither Party will have to prove that the other Party's action(s) were arbitrary or capricious in order to sustain its claim(s).

3) For the purposes of this Section, the time limit for Grievances begins to run when the employee receives the final decision from the Reviewing Official. Employees may elect to proceed directly to Step Three of the Grievance procedure in Section 50.08.

Section 9.08. Release of Performance Information

If an employee transfers or is reassigned, the Employer agrees to release only those documents pertaining to the employee's performance as required by law and regulation.

Section 9.09. Summary Rating for Details

The Employer must prepare an employee's interim rating appraisal for details and temporary assignments of ninety (90) days or longer. When an employee works under a different supervisor for ninety (90) days or longer, or changes positions for ninety (90) days or longer during the appraisal period, the interim supervisor must submit a written interim rating to the employee's current supervisor no more than thirty (30) days after completion of the assignment. An interim rating is a written appraisal documented on Form AD-435 The current supervisor must consider these interim rating appraisals in the annual performance appraisal ratings.

Section 9.10. Negotiations for New Performance System

If the Employer proposes a new performance system, it will provide the Union with notice and an opportunity to bargain on those aspects of the change that are negotiable in accordance with applicable law, rule, regulation, and this Agreement.

ARTICLE 10 ACTIONS FOR UNACCEPTABLE PERFORMANCE

Section 10.01. General

The Employer, in taking any action based on unacceptable performance by an employee, will do so in a fair and objective way with particular attention given to avoiding disparate inequitable treatment of employees. The Employer will make every reasonable effort to assist the employee in improving deficient performance and will provide reasonable opportunity for the employee to correct performance problems before initiating any removal or demotion action.

Section 10.02. Notice of Action for Unacceptable Performance/Performance Improvement Plans

1) Unacceptable performance is performance which does not meet established "Fully Successful" performance standards in one or more critical elements of the employee's position. Prior to the Employer initiating a performance-based action, the employee will be given an opportunity to improve their performance under a Performance Improvement Plan ("PIP"). Actions taken under this Article to place an employee on a PIP shall be supported by substantial evidence in accordance with 5 CFR Part 1201.56(c)(1).

2) In the event FNS determines an employee should be placed on a PIP, FNS shall notify the employee in writing with a notice of action for unacceptable performance, and within seven
(7) calendar days thereof, a meeting shall take place between FNS, NTEU (if requested to attend by the employee), and the employee to discuss the employee's performance. During this meeting, the employee shall receive a PIP that provides the following information and rights:

   a) An identification of the critical elements and performance standards for which performance is unacceptable.
   b) An identification of FNS' performance expectations and the specific improvement needed to address the unacceptable performance;
   c) A statement that the employee has ninety (90) days in which to bring performance up to an acceptable level;
   d) A description of what the Employer will do to assist the employee to improve the unacceptable performance during the opportunity period. This shall include any training which may be provided by the Employer to help the employee meet performance expectations before taking action to remove the employee from their position. The Employer shall not unreasonably deny any request for training made by the employee during the opportunity period. Any training provided shall be documented. The employee shall be advised of a schedule of a minimum of four (4) meetings to be held between the employee and supervisor to review progress during the ninety-day PIP process. Other forms of assistance may include closer supervision, mentoring or counseling; and
   e) A statement that unless the employee's performance in the critical element(s) improves to and is sustained to an acceptable level, the employee may be reduced in grade or removed.

3) Both the notice of action for unacceptable performance and the PIP shall include a written statement that the employee may furnish a copy of the document to NTEU.

4) An employee, at their option, shall be given the opportunity to respond to the alleged deficiencies contained in the notice of action for unacceptable performance and the PIP within seven (7) calendar days of receipt of the aforementioned documents. The ninety-day PIP period will not commence until the Employer has had the opportunity to consider the employee's response. The employee will receive up to eight (8) hours of duty time for this purpose.

Section 10.03. Notice of Adverse Action

1) An employee whose reduction in grade or removal is proposed under this Article is entitled to thirty (30) days advance notice of the proposed action. The notice will contain the following information and employee rights:

   a) The action being proposed;
   b) The critical elements of the employee's position on which the performance is considered unacceptable;
   c) The specific instances of unacceptable performance on which the present action is based;
   d) The employee's right to be represented by an attorney or other representative;
   e) The employee's right to respond, orally and/or in writing, within twenty (20) calendar days, exclusive of the date of receipt of the notice of the adverse action, to the proposed action prior to a decision being made. The reply will be made to the deciding official or their designee. Upon request, a reasonable time for an extension may be granted provided the request is made prior to the expiration of the twenty-day reply period. The employee will be granted up to eight (8) hours of duty time to prepare their reply to the proposed action. The Employer will consider a written request from the employee for additional duty time to prepare their response;
   f) The name of the individual to whom the response shall be made;
   g) A copy of any information relied upon to support the proposed action;
   h) The thirty (30) day notice period shall begin on the next day following the date of receipt of the notice of the adverse action; and
   i) That a determination as to the reduction in grade or removal will be made after the expiration of the notice period.

2) If the employee elects to make an oral reply, it will be made to the deciding official or their designee, in person, unless agreed otherwise. The employee may submit a written outline of the points covered upon conclusion of the oral reply.

3) In reaching a final decision, the Employer may not rely on any alleged deficiency or criticism of the employee's performance which the employee has not been given the opportunity to reply to either orally or in writing. The Employer also agrees to give consideration to any mitigating circumstances before reaching a final decision, including but not limited to an employee's medical condition pursuant to 5 CFR Part 432.105(a)(4)(iv). The decision notice will include a statement indicating that the adverse action will be placed in the employee's e- OPF.

Section 10.04. Timeliness of Decision to Retain, Reduce in Grade, or Remove. Notice of Action to Reduce in Grade or Remove.

1) The decision to retain, reassign, reduce in grade, or remove the employee shall be made normally within thirty (30) days after the expiration of the notice period. The period may, if necessary, be extended for thirty (30) days.

   If the employee's performance substantially improves during the notice period and no action is to be taken, or if a determination is made that the employee shall be reduced in grade or removed, notification will be given to the employee. Such notification shall include the specific reasons for sustaining or canceling the proposed action, including a response to any mitigating circumstances raised by the employee. Pursuant to 5 CFR Part 432.105(a)(4)(iv), the Employer shall allow an employee who wishes to raise a medical condition which may have contributed to their unacceptable performance to furnish medical documentation of the condition for the Agency's consideration.

2) Notification of action to reduce in grade or remove shall include: the instances of unacceptable performance on which the action is based; the concurrence of a higher ranking official other than the official who proposed the action (unless proposed by the Head of the Agency); the effective date of the action, which shall normally be no sooner than two (2) weeks after the date of the decision. The action taken shall, in the case of a reduction in grade or removal, be based only on those instances of unacceptable performance by the employee which occurred during the one (1) year period ending on the date the advance notice was issued in accordance with 5 CFR Part 432.105 (b).

3) Consideration shall be given to reassigning the employee or reducing the employee's grade before taking action to remove the employee from their position.

4) An Employee will be given an opportunity to resign or, if eligible, to retire after receiving a notification of action to reduce in grade or remove. In such situations, the employee will be granted an opportunity before the effective date to make a decision, and on request, they will be advised of all rights and benefits to which the employee may be entitled, including but not limited to retirement, annuity, or health insurance. The employee will sign a statement indicating such resignation/retirement is voluntary.

Section 10.05. Right to Appeal

1) An employee may appeal an action taken pursuant to the Article in accordance with established laws, rules, and regulations by filing a grievance under the negotiated grievance procedure or filing an appeal with the Merit Systems Protection Board. An employee may not utilize both procedures but must elect one or the other in writing within the established time limits.
2) In filing a grievance with respect to a proposed action for unacceptable performance, the Union may elect to initiate the grievance procedure at the Step 3 level outlined in Section 50.08.

3) If the Union elects to appeal an unacceptable performance action by filing a grievance, the Union must give the Employer notice of its decision within thirty (30) calendar days of the employee's receipt of the Employer's final decision. The notice of appeal must be given by certified mail or by hand delivery to the appropriate deciding official. Notice of appeal by certified mail shall be effective when mailed and notice of appeal by hand

delivery shall be effective when received.

Section 10.06. Recordkeeping

If an action for unacceptable performance is canceled or overturned, all documentation relative to that action (or proposed action) in the employee's e-OPF will be removed.

Section 10.07. Improvement in Employee's Performance During One-Year Period

If, because of performance improvement by the employee during the notice period, the employee is not reduced in grade or removed and the employee's performance continues to be "Fully Successful" for one (1) year from the date of the advance written notice in accordance with 5 CFR Part 432.105(a)(4)(i), any entry or other notation of the unacceptable performance for which action was proposed shall be removed from any Agency record relating to the employee in accordance with 5 CFR Part 432.107.

ARTICLE 11 CAREER LADDER PROMOTIONS

Section 11.01. Criteria

Career ladder promotions will be made effective at the beginning of the first pay period (e.g., after the last workday of the 52nd week in their position or whatever lesser period satisfies the basic eligibility requirement) when:

a) The employee has met the minimum time in grade requirement;
b) The employee has a rating of record of at least "Fully Successful" on all critical elements; and
c) The Employee has demonstrated the ability to perform at the next higher level, as determined by their supervisor.

Section 11.02. Denied/Delayed Promotion

1) In the event that an employee is denied/delayed a career ladder promotion on the basis of Section 11.01(a)-(c), the employee's immediate supervisor will provide the employee with written notice that contains the following items:
   a) An explanation of their decision to deny the promotion;
   b) Feedback concerning what the employee can do to demonstrate their capability of performing at the next higher level; and
   c) A date when the employee will be reconsidered for their career ladder promotion, at a time not to exceed one year from the date of the denial.

2) Upon an employee's written request, the supervisor and employee will develop a plan tailored to assist the employee in meeting the requisite promotion criteria. The plan should include all applicable training, as well as any other appropriate support.

3) Nothing in this section diminishes the statutory right of the Union to request additional information where it is able to meet the statutory standard (i.e., particularized need).

Section 11.03. Processing of an Authorized Promotion

Employees who have been determined to be eligible for a career ladder promotion will be provided a signed and dated copy of their appropriate Standard Form (e.g., SF52) with the requested effective date annotated by their immediate supervisor. Employees will be promoted on the first pay period after the effective date listed on the Standard Form and the action has been approved by the servicing HRO. If a promotion is not timely processed, the employee shall be entitled to receive reasonable retroactive pay at the higher rate for the difference between the lower grade and the higher grade. Any claim seeking interest due to an unreasonable delay must be sought through the negotiated grievance procedures as articulated in Article 50 of this Agreement.

ARTICLE 12 MERIT PROMOTION

Section 12.01. General

1) The Employer will ensure fair consideration and merit selection for promotion. It is agreed that all promotions to bargaining unit positions and the placement actions as set forth below will be made using systematic and equitable procedures on the basis of merit, from among properly ranked and certified candidates or from other appropriate sources. However, nothing in this agreement will be construed as affecting the Employer's right to fill a vacancy, refrain from filling a vacancy, or to select from any appropriate source.

2) This Article as revised on December 6, 2024, replaces the Article 12 MOU dated December 4, 2023, by incorporating the provisions of the MOU into this Article.

Section 12.02. Definitions

Delegated Examining Unit (DEU): Delegated examining authority is the authority OPM delegates to agencies to fill competitive civil service jobs through a competitive process open to all U.S. citizens, including current Federal employees. Appointments made by agencies through delegated examining authority are subject to civil service laws and regulations. This is to preserve and protect fair and open competition, foster recruitment from all segments of society, and selection on the basis of the applicants' competencies or knowledge, skills, and abilities (KSA's) (See 5 U.S.C. § 2301(b)(1))

Section 12.03. Objectives of Merit Promotion Process

1) The objectives of the merit promotion process are:

    a) To bring the best qualified candidates to the attention of the Employer;
    b) To provide employees an opportunity to receive fair, equitable, and appropriate consideration for higher level positions;
    c) To provide an incentive for employees to improve their performance and develop their knowledge, skills, and abilities; and
    d) To provide qualified bargaining unit employees the opportunity for promotion.

Section 12.04. Inclusion in Merit Promotion Process

1) The Competitive Procedures set forth in this Article will apply to the following:

    a) Filling a position by promotion;
    b) Reassignment, reinstatement, transfer, or demotion to a position with more promotion potential than any position previously held on a permanent basis in the competitive service;
    c) Selection for temporary promotions or details to a higher graded position for more than one hundred and twenty (120) days;

d) Reinstatement to a permanent or temporary position at a higher grade or with more promotion potential than a previously held on a permanent position basis in competitive service if the individual did not wait 1 year or more after separating from Federal employment before applying for reinstatement, or did not receive a rating of record for his or her most recent career or career-conditional position of at least Fully Successful (or equivalent).
e) Transfer to a higher graded position; and
f) Selection for training where eligibility for promotion depends on whether the employee has completed training.

Section 12.05. Exclusion from Merit Promotion Process

1) The Competitive Procedures set forth in this Article will not apply to the following:

a) Promotions without current competition of an employee who was appointed in the competitive service from a Civil Service register, by direct hire, by non-competitive conversion, or under competitive promotion procedures, intended to prepare the employee for the position being filled (the intent must be made a matter of record and career ladders must be documented in the promotional plan);
b) Promotions resulting from an employee's position being classified at a higher grade because of additional duties and responsibilities;
c) Reinstatement, transfer, promotion (including temporary or term), reassignment or change to a lower grade provided the position to be filled is at no higher grade than that previously held on a permanent basis under a career or career conditional appointment;
d) A position change or transfer from a position having known promotion potential to a position having no higher potential;
e) Reinstatement consistent with law and government-wide regulations;
f) A temporary promotion of one hundred and twenty (120) days or less;
g) Details for one-hundred and twenty (120) days or less to a higher-grade position or to a position with known promotion potential;
h) A promotion resulting from the upgrading of a position without significant change in duties and responsibilities due to issuance of a new classification standard or the correction of an initial classification error;
i) A position change permitted by reduction-in-force procedures in 5 CFR Part 351;
j) Promotion to a grade previously held on a permanent basis in the competitive service from which an employee was separated or demoted for other than performance or conduct reasons;
k) Selection for training in accordance with Article 18; or
l) An action taken as a remedy for failure to receive proper consideration in a competitive promotion action.

Section 12.06. 120 Day Time Limit for Temporary Promotions and Details

1) Pursuant to 5 CFR Part 335.103 (c) (i) (ii), prior service during the preceding twelve (12) months under noncompetitive time-limited promotions and noncompetitive details to higher graded positions counts toward the one-hundred and twenty (120) day totals, referenced above.

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2) A temporary promotion may be made permanent without further competition provided the temporary promotion was originally made under competitive procedures and the fact that it might lead to a permanent promotion was made known to all potential candidates.

Section 12.07. Review of Internal and External Candidates

1) The Employer recognizes that in its search for the best qualified applicants to fill positions, internal candidates (FNS employees), are a valuable source, particularly when balancing recruitment needs against career development needs of current employees. The Employer agrees to first review the internal candidates generated by the merit promotion procedure for FNS employees prior to considering the external candidates. This does not preclude the Employer from seeking applicants from other sources.

2) The Employer will provide the NTEU Chapter President with the name of an employee selected to fill a bargaining unit position and whether the employee is a bargaining unit or non-bargaining unit employee.

3) The Employer will be able to limit the area of consideration to less than agency-wide if it determines that any the following conditions apply:

   a) Management determines that a sufficient number of well qualified applicants will be found within a more limited area of consideration;
   b) Budget or staffing allocations will not allow the valid consideration of applicants from other sources;
   c) New positions at higher grades are established in an organizational unit following a higher level directed reorganization and all the positions in the unit are encumbered; and
   d) Circumstances resulting from a reorganization or from other factors such as ceiling controls or hiring freezes that prevent the employing office from adding to the staff.

4) The existence of one or more of the following factors may justify extending the area of consideration beyond the areas defined above:

   a) The lack of sufficient number of well-qualified applicants demonstrated by a pattern of previously advertised positions with the same or similar classification as the position in question;
   b) The lack of sufficient number of well-qualified applicants with the negotiated area of consideration (i.e., as based on five (5) or fewer employees on board);
   c) A pattern of high turnover for the same or similar classification as the position in question; or
   d) Requirement for specific experiences as identified by the knowledge, skills, and abilities in the job analysis and/or specific educational background as identified in the Qualification Standard for General Schedule positions.

5) The area of consideration cannot be changed once the vacancy announcement is open.

6) In the event that the Employer determines not to limit the area of consideration for internal candidates in a vacancy announcement, it shall provide reasons for that determination to the Union, upon request.

Section 12.08. Posting Vacancy Announcements and Submitting Applications for Employment

1) The Agency will make available a link to all FNS vacancy announcements which may be viewed at any time on the FNCS Agency Home Page on the FNS Intranet landing page. In addition to the link, the Agency will make available resources for employees to create USAJobs accounts and establish email notifications for newly added job opportunities. Employees will receive periodic reminders concerning these links and resources.

2) The vacancy announcement, when posted, generally will remain open for applications for a minimum of five (5) workdays. In the case of a vacancy announcement with an applicant cut-off, the vacancy will close at 11:59 PM on the day the applicant cut-off threshold is met.

3) At a minimum, the vacancy announcement will contain:

   a) Announcement number;
   b) Opening and closing dates (an open continuous announcement will be indicated);
   c) Position title, series, and grade;
   d) Organizational location and duty station;
   e) Promotion and career ladder potential, if any;
   f) Area of consideration and whether applications will be accepted from outside of area of consideration;
   g) Principal duties including the amount of travel;
   h) Qualification Standard for General Schedule Positions or other qualification standards permitted by the OPM necessary for filling the position and any selective placement factors;
   i) Evaluation methods for vacant position;
   j) Procedures for applying;
   k) Statement of equal employment opportunity; and
   l) Number of positions expected to be filled if more than one position.

4) A copy of the bargaining unit vacancy announcements will be provided to the Chapter President or designee.

Section 12.09. Information Submitted with Application for Employment

1) All employees within the area of consideration will have the opportunity to be considered for promotion to positions for which they are eligible by submitting a complete and timely

application, which includes all information and documentation required in the vacancy announcement.

2) Employees who will be temporarily absent from the workplace and wish to be considered for vacancies should make appropriate arrangements.

Section 12.10. Minimum Requirements

1) The Employer agrees that selective placement factors will only be used when they are essential to the successful performance of the position. In such cases, they will constitute a part of the minimum requirements of the position and must be stated in writing with a copy of such going to the Merit Promotion file.

2) Applicants will be screened by the Human Resources Division, or its service provider if one exists, against basic eligibility requirements, time-in-grade restrictions, minimum qualifications, and any selective placement factors. Human Resources Division, or its service provider when one exists, will review all referable applicants against the minimum requirements.

3) If an employee has been determined "not qualified" following review of the application material, the employee may request reconsideration by providing a written request to the Human Resources Division, or its service provider if one exists, within three (3) workdays of the issuance of the determination. The request shall explain why the employee believes the determination was made in error and cite information in the original application material which supports reconsideration. No additional information may be submitted. The request will be assessed, and the minimum qualifications will be reconsidered by the Employer. The employee will receive written notification of the outcome of the reconsideration as soon as practicable.

Section 12.11. Candidate Evaluation

1) An automated staffing process shall be used. The automated system will assign a score based on applicants' answers to the assessment questions. The applicant's relevant education, training, experience, awards, and accomplishments, as documented in their application package shall be considered. The rating and ranking process that the Employer uses will be in accordance with all laws, rules, and regulations.

2) If the Employer decides that the applicant does not meet basic eligibility for the position because of lack of education, training, or specialized experience, the Employer will notify the employee in writing which basic eligibility requirement(s) were not met.

3) The applicant will be advised that they may submit a request for reconsideration within three (3) business days of receipt of the not qualified notification, identifying the material contained in the original application which they believe was not considered and is qualifying.

4) Upon request, the Employer will give the Union a copy of the documentation showing the 5 CFR Part 300 validation of the plan/guide, as well as any analysis of the impact of the plan/guide under the Uniform Guidelines on Employee Selection Procedures (1978): 43 Federal Register 38295 (August 25, 1978). All information that is collected in the application

process will conform to 5 CFR Part 300. In addition, the Employer will ensure that this process is consistent with and follows the guidelines outlined in Part 60-3, Uniform Guidelines on Employee Selection Procedures.

Section 12.12. Selection Process for Non-DEU Announcements

1) With the exception of DEU announcements, the selecting official has the right to select or not select from among the best qualified candidates identified by the competitive evaluation method. If only one or two candidates are best qualified, the selecting official may make a selection or request that the area of consideration be extended.

2) The selecting official is entitled to make the selection from any of the candidates on a selection certificate based on judgment of how well the candidates will perform in the particular job being filled. If one candidate is interviewed from the selection certificate, all must be interviewed. Any selection technique utilized by the selection official will be uniformly applied to all best qualified applicants referred to the selecting official.

3) The selecting official will make a decision to select or not select as soon as possible. Certificates expire fifteen (15) calendar days from issuance but may be extended in 15-day increments up to ninety (90) days from the date of issuance. If the selection certificate cannot be returned in 90 days, the NTEU Chapter President will receive an explanation upon request.

4) The selecting official will make a selection consistent with merit promotion principles.

5) Upon request, the Employer will inform the applicants of the status of their application.

6) The Employer will provide a written justification to an applicant for their non-selection, upon request.

7) Employees who meet the basic qualifications may request the following additional information from the Human Resources Division, or is service provider if one exists:

   a) Explanations of any part of the Merit Promotion Plan;

   b) Details of the evaluation techniques;

   c) The qualifications required for the position;

   d) If the employee was grouped among the best qualified;

   e) If the employee was minimally qualified for the position;

   f) The total points awarded on the assessment questionnaire in the automated staffing process;

   g) Minimum number for total points which were needed to make the best qualified list;

Section 12.13. Effective Date of Promotion

The effective date for a promotion will be the first day of the pay period in which the selectee assumes the duties of the position for which selected.

Section 12.14. Priority Consideration

1) If as a result of a grievance being filed under this Agreement, either the Employer agrees or an arbitrator decides that an employee was improperly excluded from the best qualified list, they will receive priority consideration for the next appropriate vacancy for which they are qualified. An appropriate vacancy is one at the same grade level, in the same area of consideration, and which has comparable promotion opportunities as the position for which the employee missed proper consideration. Priority consideration means that the employee alone must be given bona fide consideration by the selecting official before any other candidates (except for the Repromotion Priority Placement Plan eligibles) are referred for the position to be filled. The employee is not to be considered in competition with other candidates and is not to be compared with other candidates.

2) In the event that two or more employees receive priority consideration for the same promotion action, they may be referred together. However, priority consideration for separate actions will be referred separately and, in the order, received based on the date the determination of missed consideration is made.

3) An employee who receives priority consideration may request the geographic area in which they want to exercise priority consideration, provided the geographic area is within the original area of consideration.

4) Upon request, an employee with priority consideration will be provided written justification for the employee's non-selection.

5) An employee is entitled to retroactive pay in connection with an improper personnel action in accordance with 5 CFR Part 550.804(a) and other applicable laws, rules, or regulations.

Section 12.15. Release of Evaluative Material to Union

1) In accordance with 5 U.S.C. § 7114(b)(4), and in the processing of grievances related to actions taken under the terms of this Article, the employee's representative may, upon request, be furnished the relevant evaluative material used in assessing the qualifications of the eligible candidates in regard to a grieved promotion action subject to the following criteria and conditions:

    a) In order to safeguard the content of the assessment, questionnaires used in the automated staffing process, in lieu of releasing this material, the Employer will arrange for it to be reviewed in the presence of an authorized official; and
    b) The aforementioned information may be sanitized to protect an individual's right to privacy.

Section 12.16. Impact of Investigation on Consideration for Promotion

The fact that an employee is the subject of a conduct investigation will not prevent or delay their proper consideration for promotion.

Section 12.17. Demotion Due to Inability to Perform at Required Level

If an employee is promoted and subsequently within a year is demoted for inability to perform at the required level, the Employer agrees to make reasonable efforts to return the employee to their former or a like position.

Section 12.18. Release of Merit Promotion Information to Union

1) If the Union submits a valid information request under 5 U.S.C. § 7114(b)(4), the following information will be provided within a reasonable period of time, which will be properly sanitized in accordance with the Privacy Act, to protect the privacy of the eligible candidates and panel members:

    a) Announcement number;
    b) Date certificate of eligibles was issued;
    c) Number of vacancies;
    d) Scores of the candidates referred;
    e) The series, grade of the employees referred, and bargaining unit status;
    f) The race, national origin, gender, and age of each outside applicant, to the extent collected;
    g) Selection action;
    h) Date of selection action;
    i) Grade level determination; and
    j) Date eligible for promotion (selectee).

Section 12.21. Retention of Promotion and Selection Information

The Employer will maintain promotion and selection information for two (2) years in accordance with governing laws, rules, and regulations.

Section 12.22. Hardship in Submitting Electronic Application

If a hardship exists preventing the employee from submitting an electronic application (e.g., extended absence such as medical leave, military service, compensable job-related injury, etc.), the Employer may, on a case-by-case basis, consider other methods of applications. In such situations, the employee should contact Human Resources or the service provider, if one exists, for guidance and assistance with regards to submitting an application. The Employee must contact Human Resources or the service provider, if one exists, in advance of the closing date of the announcement and the application must be received by the closing date of the announcement. No extensions shall be granted.

ARTICLE 13 DETAILS

Section 13.01. Definition

A detail is defined as the temporary assignment of an employee to a different position for a temporary period. Details are intended to meet the temporary needs of the Employer's work, where applicable. The Employer will attempt to keep details within the shortest practicable time limits and to assure that the details are made according to requirements of the merit promotion plan.

Section 13.02. General

1) Selection for details will be accomplished in a fair and equitable manner.

2) Details will not be used as discipline and the Employer will give reasonable consideration to assertions by an employee that the detail will cause significant personal hardship.

3) A detail assignment lasting 30 calendar days or less will not be posted. When the Employer determines that a detail assignment, lasting more than 30 calendar days, is needed to correct a staffing imbalance or because of workload or training needs, and merit promotion competition does not apply; the Employer agrees to post the detail using the following procedures:

   a) The Employer will identify the position or positions to be detailed;
   b) The Employer shall seek volunteers via electronic media (e.g., email) solicitation that shall include pertinent information regarding the detail opportunity such as the qualifications, the duties of the position, the expected duration, and the organizational location;
   c) The Employer will solicit volunteers in the following order until the detail is filled:

      i) Local commuting area for either Headquarters or Regional Office (by program first then among all programs);
      ii) Region-wide including Field Offices or Headquarters-wide, including RIB Offices and other out-stationed employees assigned to Headquarters (by program first, then among all programs); and
      iii) FNS Nationwide (all Regions and programs).

   The Employer reserves the right to begin the above process at any of the steps identified above. However, in such an event, the Employer must include the preceding step or steps. For example, should the Employer wish to start the solicitation process at Step 2, Region-wide including Field Offices, it must also simultaneously solicit all employees within Step 1, Regional Office local commuting area.

   d) The Employer will consider all employees who have indicated an interest in the detail. In determining who will be detailed the Employer will consider the following factors:

i) Qualifications needed for an employee to satisfactorily perform in the position;
ii) The skills and knowledge needed to effectively and efficiently accomplish the work;
iii) Initial consideration given to location of employee;
iv) Whether the employee has had a detail opportunity in the past twelve months; and
v) Whether the employee can be spared from their position for the duration of the detail.

4) In cases of emergency, extreme hardship or exigent circumstances:

   a) The Employer may detail an employee without posting the affected position. Where details were not initially posted due to these reasons, the Agency agrees to subsequently post the detail within 120 calendar days according to the procedure in Section 13.02(3).

   b) The Employer may extend existing details beyond 120 days outside of the procedure set forth in Section 13.02(3) by renewing them for a period not to exceed 120 days, as provided for by 5 U.S.C. § 3341(b)(1). It is agreed that the detail will be extended only as necessary until the emergency, exigent, or extreme hardship circumstances have abated. In the event of such an extension, and upon request the Employer will notify NTEU, as soon as practicable, of the reason for the extension, the name of the employee, and the expected duration.

5) The Employer agrees to contemporaneously notify FNS local chapter presidents of all detail solicitations at the time of posting and the employees ultimately selected for details that are within their jurisdiction. This will be accomplished at the local level and may be done electronically or by written notice. The notice shall include the following information:

   a) The reason for the detail, except any reason that may violate privacy rights under subsection (4).
   b) The duration of the detail.

Section 13.03. Detail to Higher Graded Positions for More Than 30 Consecutive Calendar Days

1) It is agreed that an employee detailed to a higher graded position for more than thirty (30) consecutive calendar days will be temporarily promoted to that position effective with the beginning of the first full pay period following the 30th day of the detail, provided that the employee meets the appropriate qualification standards and time-in-grade requirements.

2) Details in excess of thirty (30) consecutive calendar days will be reported by the supervisor or other appropriate official to the Human Resources Division on Standard Form 52, "Request for Personnel Action" in accordance with applicable rules and regulations.

3) It is agreed that when an employee is detailed to a higher graded position for more than thirty (30) consecutive calendar days, but is not eligible for a temporary promotion, the employee's performance at an acceptable level of competence in a higher graded position will be cause for consideration for issuing a special achievement award to that employee.

4) When a detailed employee acquires eligibility for temporary promotion after the 30th day, but before the cessation of the detail, they will be temporarily promoted beginning the next full pay period after meeting applicable eligibility requirements.

Section 13.04. Detail to Higher Graded Position for More Than 120 Calendar Days

1) Any employee detailed for more than 120 calendar days to a higher graded position or to position with higher promotion potential must compete and be selected under competitive procedures in accordance with 5 CFR Part 335. Prior service during the preceding 12 months under noncompetitive details to higher graded positions and non-competitive temporary promotions count towards the 120 calendar days total.

2) If the Union believes that the Employer has violated the provisions of the Article it may exercise its grievance right under Article 50 on behalf of the employee(s).

Section 13.05. Interim Rating and Advisory Assessments for Details

An interim supervisor is the gaining supervisor who prepares the interim rating or advisory assessment in Article 9, Performance Appraisal, of this Agreement.

ARTICLE 14 REASSIGNMENTS

Section 14.01. General

1) Pursuant to 5 CFR Part 210.102 (b)(12), a Reassignment is defined as "a change of an employee, while serving continuously within the same agency, from one position to another without promotion or demotion." A reassignment is not a transfer-of-function personnel action which would include: (1) a change in duty station to a new geographic area; (2) mass transfer of position to a different agency; or (3) realignment of an employee and their position within their agency with no change to the impacted employee's position, grade, or pay.

2) The procedures set forth in this article only cover reassignments to vacant positions and do not apply to reassignments resulting from a classification change, disciplinary action, unacceptable performance, or merit promotion.

3) Consistent with Section 7106(b)(2) and (3) of the Federal Service Labor-Management Relations Statute, the Employer has the right to assign work, reassign employees, and determine the skills and qualifications necessary to perform a particular work assignment.

4) Consistent with law, the Employer's decision to reassign employees between positions or between work units must be based on a legitimate management reason. The Parties agree that nothing herein shall preclude the Agency from seeking candidates from any appropriate source or from extending the area of consideration.

5) Reassignments made in conjunction with disciplinary related actions will be made in accordance with appropriate due process requirements attached to applicable law, rule, or regulation.

Section 14.02. Reassignment "Opportunity" Procedures

When the Employer determines that a reassignment opportunity (Reassignment Opportunity) is available and there is a legitimate management reason for such reassignment, the Employer agrees to use the following procedures:

1) The Employer will prepare a courtesy notice of the Reassignment Opportunity and send it to the Union. The Union will receive notice at least two (2) workdays prior to issuance of the Announcement.

2) The Announcement will include the following information:

   a) Qualifications needed for an employee to satisfactorily perform in the positions, and
   b) The skills and knowledge needed to effectively and efficiently accomplish the work.

3) The Employer may also consider employees who have expressed an interest in a reassignment due to hardship, and meet the requirements outlines above in (2)(a) and (2)(b),

on a case-by-case basis. The Employer will not pay for employee expenses incurred as a result of any hardship reassignment. A hardship may include, but is not limited to, the following:

a) A serious medical condition affecting a member of an employee's immediate family, as defined in the Family Medical Leave Act;
b) Access to special education or a medical facility that is not available in the employee's current commuting area; or
c) The employee's spouse or life partner having military orders to relocate outside the employee's current commuting area.

4) On a case-by-case basis, the Employer may consider for reassignment, employees who have expressed an interest in a reassignment due to personal circumstances, such as the employee's spouse or life partner accepting a job in a new location outside the employee's current commuting area.

5) Before making a Management-directed reassignment, where appropriate, the Employer will solicit volunteers amongst those qualified bargaining unit employees to determine if anyone wishes to be voluntarily reassigned; if so, Management will consider that employee. Volunteers will not be solicited if only one person possesses the qualifications and skills required for the position.

6) If more than one individual volunteers, or if there are no volunteers, the Employer agrees to consider such factors as employees' experience, job performance, an employee's personal hardship which may result from the reassignment, and other relevant job qualifications in determining who will be reassigned. Any such reassignments will be made on a legitimate Management reason.

7) When making an involuntary Management-directed reassignment, the Employer agrees to first consider those qualified employees in the local area prior to involuntarily reassigning an employee from another location.

Section 14.03. Advance Notice of Management-Directed Reassignment

1) Prior to reassignment, the Employer will provide the reassigned employee no fewer than fifteen (15) calendar days' written notice where the employee is reassigned.

2) If the reassignment involves a change in duty station outside of the local commuting area, the Employer agrees to give the employee normally no fewer than sixty (60) calendar days to accomplish the change in duty station in an orderly manner. In documented, extenuating circumstances, the employee may request an extension of up to one-hundred and twenty (120) days to accomplish the change in duty station by submitting a request to the FNS Chief Human Capital Officer (CHCO) through their supervisory chain.

Section 14.04. Compensation for Change in Duty Station

If an involuntary Management-directed reassignment involves a change in duty station outside of an employee's commuting area, the Employer may reimburse that employee up to the amount authorized by applicable law, rules, and regulations for all reasonable expenses associated with the change of duty station.

ARTICLE 15 REDUCTION IN FORCE

Section 15.01. General

The Employer agrees to minimize the adverse effect of a staff reduction whenever feasible. Attrition will be utilized for this purpose, when possible. The Employer further agrees to inform NTEU of its intent with respect to a staff reduction or transfer of function of the work force as far in advance of notification to affected employees as possible, and prior to any final action taken on the matter. The Employer agrees to negotiate any changes to the conditions of employment of bargaining unit employees to the extent required by law.

Section 15.02 Advance Notification

1) At least thirty (30) calendar days before the Employer provides Certificates of Expected Separation, should the Employer elect to issue such Certificates, or formal RIF separation notices to all affected bargaining unit employees, the Employer shall inform NTEU in writing.

2) Within five (5) calendar days of the date of the Union is initially notified, the Employer shall schedule and host a briefing.

3) Following the briefing, the Union shall have ten (10) calendar days in which to submit its written comments regarding the Employer's determination and to meet with management executive officials to discuss the Union's comments. The Employer shall consider NTEU's comments before it issues formal notice of the RIF to the employee.

4) Where the Parties have unresolved issues following the discussion in 15.02(2), the Union will have ten (10) calendar days to invoke bargaining following the Employer's response to the Union's comments. Bargaining procedures will be conducted in accordance with Article 53 of the Agreement.

Section 15.03. VERA/VSIP Authority

The Employer shall make every effort to obtain Voluntary Early Retirement Authority (VERA) and Voluntary Separation Incentive Payment (VSIP) authority.

Section 15.04. Implementation. Notice to Employees and Union

1) The reduction in force (RIF) will be carried out in accordance with applicable laws, rules, and regulations.

2) The Employer's notice to the Union shall include the following information:

    a) The action to be taken and the reasons for the action taken;
    b) The approximate number of employees who may be affected;
    c) The type(s) of positions anticipated to be affected; and

d) The anticipated effective date that action will be taken.

3) The Employer will provide impacted employees with at least sixty (60) calendar day's written notice prior to the effective date of a reduction in force.

4) The specific written employee notice will contain all information required by 5 CFR Part 351, CFR Part 330 and to the extent it is consistent with law and regulation, the Office of Personnel Management's Workforce Reshaping Operations Handbook, in addition to a listing of potential job series and position(s) for which they are qualified.

Section 15.05. Records Validation

1) At the same time as the Employer provides specific notice to employees pursuant to Section 15.04(4), the Employer will provide each employee, who is in a position in a competitive area at or below the highest graded position to be abolished, with a summary notice of their relevant information concerning their own tenure group, length of service, their last three (3) performance ratings received during the last four (4) years (or, if fewer than three (3) appraisals are available, an indication of the number of performance appraisals in the employee's record) and veterans preference used to determine their retention standing, if any.

   Employees challenging any information contained within the summary notice will have thirty (30) calendar days after receipt of the summary notice to submit evidence to support their challenge. The Employer will consider all information provided by the employee. If updated, the Employer will provide the new summary notices to employees prior to implementing the RIF.

ARTICLE 16 ACCEPTABLE LEVEL OF COMPETENCE

Section 16.01. Criteria for Granting a Within-Grade Increase

1) An employee will be granted a within-grade increase when they have completed the required waiting period, and the employee has performed at an acceptable level of competence during the waiting period as follows:

   a) One year to move to Steps 2, 3 and 4;
   b) Two years to move to Steps 5, 6 and 7;
   c) Three years to move to Steps 8, 9 and 10.

2) Supervisors are responsible for keeping employees informed of the acceptability of their work on a regular basis.

3) An employee is regarded as having reached an acceptable level of competence when the employee's demonstrated work performance in all critical elements meets or exceeds standards established at the "Fully Successful" level, and when the employee's rating of record is "Fully Successful" or higher. If the current performance appraisal does not support the determination to grant or deny the within-grade increase, a new appraisal will be prepared by the supervisor which supports the determination.

4) Where employees have been assigned to their present supervisor for less than ninety (90) days, and the supervisor cannot adequately assess the employee's performance, the supervisor shall secure the views of the employee's previous supervisor, when available, before making a determination.

Section 16.02. Denial of Within-Grade Increase

1) Consistent with the principle in Article 9 (Performance Appraisal) a supervisor will give ample warning, not less than forty-five (45) calendar days prior to the within-grade increase due date, to an employee whose performance does not or will not meet the acceptable level of competence requirement. The supervisor will advise the employee of their deficiencies and tell the employee that they may not be certified as meeting the acceptable level of competence requirement unless performance improves. The supervisor will record the date and substance of this notification and provide a copy to the employee, which at a minimum shall include: those critical aspects of the employee's performance in which the employee is deficient and the extent of the deficiency; any instances, specifically described, which support the alleged deficiencies; assistance which will be offered so as to enable the employee to improve their performance so as to meet the requirements specified for the position.

2) An employee not under written performance elements and standards will have performance elements and standards established. A determination shall then be made upon completion of the minimum appraisal period of 90 days and shall be based on the employee's appraisal period of 90 days and shall be based on the employee's rating of record completed at that

time. In certain circumstances, the supervisor may postpone the acceptable level of competence determination, e.g., the employee did not receive performance standards at least ninety (90) days before the end of the waiting period and they are not performing at an acceptable level of competence. In such cases, the period of postponement shall be not less than ninety (90) days.

Section 16.03. Notification of Withholding of Within-Grade Increase

1) Written notification to the employee of a determination to withhold a within-grade increase will be given a soon as possible after completion of the waiting period. Such notification must:

   a) Set forth the reasons for the negative determination;
   b) Set forth the manner in which the employee must improve their performance in order to be granted a within-grade increase; and
   c) Notify the employee of their right to request reconsideration of the negative determination and file a written response within fifteen (15) workdays of receipt of the notice pursuant to Section 16.05 of this Article.

2) When an employee receives a negative determination, they shall be granted a reasonable amount of official time to review the material relied upon to make the determination. The employee must otherwise be in a pay status in order to be granted official time.

3) If a negative determination is reversed by the Agency (either before or upon reconsideration), the effective date of the increase will be the original due date.

Section 16.04. Reinstatement of Within-Grade Increase

After a within-grade increase has been withheld, the Employer will grant the within-grade increase after the employee has demonstrated sustained performance at an acceptable level of competence. After withholding a within-grade increase, the Employer, at a minimum, shall determine whether the employee's performance is at an acceptable level of competence after each fifty-two (52) weeks following the original due date for the within-grade increase.

Section 16.05. Appeal of Denial of Within-Grade Increase

1) An employee may request reconsideration of a denial of a within-grade increase by filing, with their supervisor, not more than 15 workdays after receiving notice of determination, a written response to the denial. This request for reconsideration shall set forth the reasons that the agency shall reconsider the determination. Upon request, the supervisor will meet with the employee and their representative. If the parties work within the local commuting area, this meeting shall be in person; otherwise, the meeting will be by teleconference unless the Parties mutually agree to a face-to-face meeting.

2) The Agency shall provide the employee with a written decision within 15 workdays of receipt of the request for reconsideration.

3) Where an employee is denied their within-grade increase by the reconsideration official, the letter transmitting the official's decision shall include a statement which informs the employee about their right to appeal the decision through the grievance procedure and the number of days in which the employee must request such an appeal through the Union.

4) When an employee is dissatisfied with the decision, they may invoke the grievance procedure at the 2nd Step, in accordance with Article 50 of this Agreement.

ARTICLE 17 AWARDS PROGRAMS

Section 17.01. General

1) Employer will administer its Awards Programs fairly and equitably and in accordance with Department Regulation 4040-430 ("DR") applicable laws, regulations, policies, and the terms of this Agreement; where there is conflict between this Agreement and the DR this Agreement shall take precedence and is controlling. All awards are granted by the Employer on the basis of merit, and within applicable budget limitations, to individual employees or groups of employees. While the criteria for different awards may vary, the decision to grant an award must be based on a careful evaluation of the merits of the job performance, special act or service, or the suggestion and/or invention.

2) Awards may be granted to an individual employee or group of employees for any of the following:

   a) Exceptional performance above minimum expectations;
   b) An exemplary accomplishment;
   c) Work that advances the quality, efficiency, economy, or other improvement of Government operations;
   d) Excellence in customer service;
   e) Achieving a significant reduction in paperwork;
   f) A special act or service in the public interest in connection with, or related to, the employee's official employment;
   g) A suggestion or invention that advances USDA's mission and services; and
   h) Any of the examples as listed in Table 7 of Appendix D.

Section 17.02. Awards Program

1) The Parties agree that an Awards Program is a necessary and useful mechanism through which employee accomplishments may be recognized.

2) The Employer will continue to foster and administer an on-going program which shall:

   a) Ensure consistency and equity in the application of standards and criteria established for making awards;
   b) Act promptly on employee contributions so as to encourage maximum employee participation; and
   c) Utilize management review processes to identify program or operational areas in which superior work results warrant the consideration of employees for awards.

3) Monetary Award Distribution:

   Subject to the availability of funds, the Employer shall distribute at least 1.85% of the total bargaining unit salary, as of the end of the prior fiscal year, to eligible bargaining unit employees on an annual basis. In the event the Employer is unable to distribute the 1.85% of the total bargaining unit salary, the Employer shall provide the Union notification of its intention at least forty-five (45) days in advance when possible.

4) Award pools will be created in each FNS Region and Headquarters organization with

awards funding allocated proportionately to each FNS Region and Headquarters organization based on the percentage of the total bargaining unit employee salary for that Region and/or Headquarters organization.

5) The Parties agree to meet annually to review awards distribution. If the Parties mutually agree that changes and modifications to this article are necessary, further negotiations regarding changes or modifications shall be conducted in accordance with the provisions of Article 53.

6) Should the Employer determine to change the budget for the bargaining unit award pool described above, it shall give the Union formal notification, at least forty-five (45) days in advance of its intention to do so when possible. Upon such notice, either party may reopen this Article to negotiate the implementation and impact of the Employer's proposed change. Such negotiations shall be conducted in accordance with the provisions of Article 53.

7) Generally, all bargaining unit employees with a current overall rating of record of "Meets" are eligible for awards as defined in this Article. These awards can be for individual or group contributions.

8) Because a two-tier summary rating pattern does not differentiate among levels of successful performance, monetary awards and time-off awards are not authorized on the basis of ratings of record in that summary rating pattern. Instead, non-rating-based Achievement Awards, and the Awards as defined in this Article, will be utilized to recognize specific accomplishments.

Section 17.03. Achievement Awards

Achievement awards are non-rating-based monetary awards that recognize specific accomplishments that are in the public interest and have exceeded normal job requirements. Achievement awards may be granted to individuals, groups of employees, and/or for an employee's or group's suggestion or invention. Achievement awards may be submitted and processed at any time throughout the fiscal year, subject to employee eligibility and the availability of budgeted award funds. Employees may receive more than one Achievement Award within the fiscal year, but not for the same accomplishment.

Section 17.04. Award Nomination Procedures for Achievement Awards

1) The Employer will provide, at minimum, annual reminders to employees on how to nominate fellow employees for Achievement Awards. As circumstances warrant, additional reminders may be provided throughout the year.

2) Nominations for awards under this process will be submitted in the following ways.

   a) Individual or group nominations may be submitted by the employee's supervisor or by an employee through the nominee/employee's supervisor. Bargaining unit employees submitting a nomination must complete the following sections of the AD-287-2 (or its equivalent):

      i. Block 2. Name;

      ii. Block 3. Title;

iii. Block 6. Agency, Division;

iv. Block 11, #1, #3, #4 (for group awards only);

v. Boxes 12-14. Justification

b) For those employees who are determined to be eligible under Section 17.04(3), the supervisor will complete the remaining sections of the AD-287-2 form in eHR apps to auto-generate the electronic AD-287-2 for quality review by HRD, as previously determined in the Awards announcement.

c) Where the award nomination is not forwarded to the allowance holder based upon the criteria established in Section 17.04(3), the supervisor will document, and when appropriate, notify the nominator in writing that the nomination will not be reviewed by the allowance holder.

d) An employee may request information from their first level supervisor concerning their eligibility for awards. This shall include information outlining the reasons why an award nomination was not forwarded to the allowance holder for consideration where the requesting employee was the subject nominee.

e) Groups/Teams may be nominated by a peer/coworker, sponsor, or supervisor of the group/team; and/or nominated by an employee who uses or benefits from the group's/team's services or products. Award nominations will be submitted by or through the group's/team's supervisor or sponsor as appropriate.

3) Supervisors will generally forward peer nominations to the allowance holder for consideration, except in the following circumstances:
   a) The nominee does not have a current overall rating of record of Fully Successful or "Meets"
   b) The accomplishment giving rise to the nomination does not constitute a specific accomplishment that is in the public interest and exceeds normal job requirements.
   c) The nominee has already received an award for the same accomplishment.
   d) The nominee is otherwise deemed ineligible for an award.

4) A supervisor may not arbitrarily refuse to submit an award nomination for consideration to the allowance holder.

Section 17.05. Quality Step Increases

1) A Quality Step Increase (QSI) award is designed to recognize General Schedule (GS) employees for sustained outstanding performance and service to the organization, and to provide appropriate incentive for excellence in performance by granting faster than normal step increases. A QSI is not required or automatically granted to employees who meet the basic eligibility criteria.

2) An employee is eligible for a QSI when the employee has met the following standards:

   a) Employee must have received a record of Fully Successful for the most recent performance year.

b) Employee has performed in the same grade and type of position for at least twelve (12) months and is expected to remain for at least ninety (90) days in the same position or in a similar position at the same grade level in which the performance can be expected to continue at the same level of effectiveness.
c) Employee is a General Schedule employee.
d) The employee has demonstrated sustained performance of the highest quality.
e) A QSI may not be granted to an employee who has received a QSI within the preceding 52 consecutive calendar weeks.
f) The employee has not received an award under this Article for the same act.
g) The employee has not reached the maximum step of their grade.

3) The AD-3115 Recommendation and Authorization of Quality Step Increase (QSI) will be utilized for QSI submissions, which are then reviewed by the QSI Panel per DR 4040-430.

Section 17.06. Suggestion and Invention Awards

1) The Employer will continue a program through which employees can submit suggestions concerning the improvement of the Employer's operations. The Employer will ensure that any suggestions submitted by an employee are responded to within a reasonable period of time, but no later than 90 days from the employee's submission. This response shall be in writing and include a decision as to whether or not the suggestion has been accepted, in whole or in part, as well as an explanation of the reasons for the Employer's adoption or rejection.

2) Suggestion and Invention awards are non-rating based monetary awards which may be given as a monetary and/or TOA, and which recognizes suggestions and inventions from employees or groups of employees that:

a) Further the mission of the Agency or other Federal government operations or interests;
b) Save the Agency or sub-organization money;
c) Promote internal communication or employee engagement;
d) Achieve a significant reduction in paperwork;
e) Improve customer service; or;
f) Improve efficiency.

3) An employee who has a suggestion adopted by the Employer will receive compensation in accordance with government-wide rules and regulations and in accordance with its impact using tables 4 and 5 in Appendix D of this Agreement.

4) In the event that a rejected suggestion is later implemented within a two (2) year period of the rejection date, and the employee is still employed by the Employer, the suggestion will be reconsidered at the employee's request and appropriate payment, or time off award will be awarded, subject to provisions in Section 17.02 and Section 17.07.

Section 17.07. Time-Off Awards

1) A Time-Off Award (TOA) means an excused absence granted to an employee without

charge to leave or loss of pay in recognition of a superior accomplishment or other personal effort that contributes to the quality, effort, or economy of Government operations.

2) Examples of employee achievement that might be considered for a time-off award include:

   a) Making a high-quality contribution involving a difficult or important project or assignment;
   b) Displaying a special initiative and skill in completing an assignment or project before deadline;
   c) Using initiative and creativity in making improvements in a product, activity, program, or service;
   d) Ensuring the mission of the unit is accomplished during a difficult period by successfully completing additional work or a project assignment while maintaining the employee's own workload; and
   e) Making a contribution to a project that is more than what is typically expected of an employee in that position.

3) As required by applicable regulation, TOAs are granted in increments of no less than one (1) hour. Full-time employees may be awarded up to eighty (80) hours of time off during a leave year, but not more than forty (40) hours in one award. Part-time employees may be granted TOAs up to the average number of work hours in the employee's biweekly scheduled tour of duty during a leave year. Employees may carry over up to 80 hours of TOAs at the end of each leave year. Reasonable and relevant criteria will be applied uniformly to all employees.

4) When physical incapacitation for duty occurs during a period of time-off granted under this section, an employee may request sick leave for the period of physical incapacitation and the time-off award will be scheduled at another time.

5) In accordance with applicable regulations (5 CFR Part 451), a time-off award may not be converted to a cash payment under any circumstances.

6) The receipt of a time-off award does not prevent an employee from receiving any other award. However, an employee cannot receive multiple awards for the same act and/or service.

7) The minimum amount of time for a time-off award will normally be four (4) hours. A time- off award may be used in single blocks of time or in one-hour increments.

8) The scheduling and use of time-off awards shall be subject to the same approval process as is used for annual leave. The time-off award must be scheduled and used within one (1) year after the effective date the award was granted, or it will be forfeited. Time-off awards should be scheduled so as not to conflict with use-or-lose annual leave.

9) A time-off award will be documented and retained in the employee's OPF.

10) TOA's may be submitted and processed at any time throughout the leave year, subject to employee eligibility.

Section 17.08. Spot Awards

1) Spot awards are a type of Achievement Award that is used to provide immediate recognition for a significant deed or accomplishment that may go unrecognized under normal incentive programs, or which is not at the level of benefit/application to warrant an Individual Achievement and Group Achievement Award.

2) Spot Awards shall be between $100 and $750 per award. An employee may only receive four (4) Spot Awards per fiscal year. Employees who receive Spot Awards are not precluded from receiving other awards under this Article, if otherwise eligible.

Section 17.09. Awards Program Information

1) The Employer shall annually provide the NTEU National Office with awards data for bargaining unit employees upon request. The Employer will also provide each FNS-NTEU Chapter President with the awards data for their respective region, annually, upon request. This data will consist of each recipient's name, grade, title, series, organizational unit, region/location, type or basis of award, amount of award (if monetary) and the effective date received. The data will designate, where applicable, instances in which one employee received more than one award.

2) The Annual MD-715 details the distribution of awards by race/ethnicity/national origin, age, and gender identification data, and will be made available in accordance with applicable rules and regulations.

Section 17.10. OPM Regulations

In the event that OPM issues regulations on this subject which are both significant and at variance with the above, this Article may be reopened for negotiations in accordance with law, rules, regulations, and this Agreement.

ARTICLE 18 TRAINING

Section 18.01. General

1) The Employer recognizes that a staff of well-trained employees is essential to the efficient accomplishment of its mission. While the Employer always attempts to recruit the best qualified persons available for employment, post-entry training is necessary if employees are to make their most effective and continuing contributions to the Employer's programs.

2) The Employer agrees to make available to all employees the training necessary for the performance of the employee's presently assigned duties or proposed assignment. Such training shall be made available to all employees without discrimination among them for non-merit reasons. Each employee is encouraged to show initiative in developmental opportunities that result from these activities. When an employee is selected for training, that employee is obligated to give their best thought and effort to that training.

Section 18.02. Criteria for Approving Training Beyond Employer's Facilities

An employee may request, and may be granted, training outside the Employer's facilities during their work hours without charge to leave. The request must be submitted in writing to the employee's immediate supervisor. The Employer shall consider the following factors in deciding whether such training should be approved, and if disapproved, to provide the employee, in writing, the basis for disapproval:

1) Severe workload problems do not preclude the employee's participation;
2) The training will enable the employee to increase their ability in their presently assigned duties or proposed assignment;
3) The training is not being taken solely for purposes of obtaining a degree;
4) The training requested represents a cost-effective source of the needed training; and
5) Funds are available.

Section 18.03. Reimbursement for Approved Training

1) An employee who has obtained prior approval from the Employer shall be reimbursed for all authorized expenses for training not conducted by FNS. Approval will be granted when the Employer reasonably determines that all the following circumstances are met:

    a) The training will enable the employee to increase their ability to perform their current job or a job they have been selected to fill;
    b) Comparable training is not available through Employer developed courses, and it would be too costly for the Employer to develop a suitable program at this time;
    c) Reasonable inquiry has failed to disclose suitable, adequate, and timely programs being offered by other government agencies, or other more cost-effective non-government sources;

d) The course meets the needs of the employee and the Employer as well as, or better than, other courses of its nature which may also be available at that time;
e) The course is not being taken solely for the purpose of obtaining a degree; and
f) Funds are available.

2) Employees who are reimbursed for education expenses will be obligated to remain in the employ of the Employer for no more than three times the total number of hours spent in the classroom (e.g., a 40-hour course would obligate an employee for 120 hours). In the case of full-time study, the length of the service agreement will be in accordance with applicable laws, rules, and regulations.

Section 18.04. Selection for Training Required for Promotion

If training is required before an employee may be considered for a promotion, within their career field, selection for the training will be made in accordance with competitive merit procedures.

Section 18.05. Dissemination of Information for Developmental Training Opportunities

The Parties recognize that there are a multitude of training opportunities available which are not required for promotion, but which are viewed as positive developmental experiences not designed primarily to enable an employee to increase their ability in their present position. To the greatest extent practicable, information about agency-sponsored training will be widely disseminated. If there are more employees interested than there are spaces available for this type of developmental experience, unless a separate application and selection procedure has been developed, slots will be assigned on a first-come, first-served basis and a waiting list created.
The Union will be consulted in the development of the procedures, when appropriate.

Section 18.06. Individual Development Plan

Employees who desire training beyond that discussed above are encouraged to work with their supervisor to develop an Individual Development Plan (IDP). Such plans shall be jointly established between the employer and the employee. The objectives of the plans will be to address skills needed by employees in their current positions, to prepare them for new career opportunities which may become available as a result of organizational restructuring or re-engineering of the positions of the Agency, and to address skills needed for advancement beyond their current grade levels. Each plan shall establish a series of milestones and shall state the responsibilities of each party to realize such milestones. Employees are encouraged to take initiative in their career development.

Section 18.07. Workload Management

The parties agree that mission accomplishment is the priority for both parties. The employee agrees to accept accountability to keep the supervisor informed about the status of their work especially in anticipation of an absence of a long duration.

Subject to mission accomplishment, once an employee is approved for a training course or program, the Employer will make adjustments to the employee's workload to ensure that the employee is able to meet all work-related deadlines.

Section 18.08. Access to Training Information

1) The Employer will make available to all employees the most current information available concerning training or educational programs provided by the Office of Personnel Management, the Department of Agriculture, and other appropriate sources on the FNS Intranet site.

2) Employees shall be reminded that this material is available in an annual written notice distributed to each employee.

Section 18.09. Training of Professional Employees

Any other training involving a professional employee will be administered in accordance with Section 18.02 and 18.03 of this Article.

Section 18.10. New Technology or Equipment Training

When new technology or equipment is introduced in a unit and creates the need for different skills, knowledge or abilities in that unit, the Employer agrees to provide training to those employees directly affected.

Section 18.11. Career Enhancement Program

1) The Employer and the Union agree to the principle of upward mobility and career advancement for all of its employees. In furtherance of this objective, the Parties agree to establish a joint work group to assess the effectiveness of the FNS existing Career Enhancement Program (CEP); to make recommendations on furthering the upward mobility of existing FNS employees; and to ensure the consideration of internal candidates as an appropriate source for filling internal vacancies through the CEP.

2) The work group will be comprised of an equal number of representatives from the Union and the Employer with representatives from Headquarters and the Regions. Bargaining unit employees serving on the work group will do so on official time; the Union may nominate bargaining unit employees to be considered by the Employer for inclusion in the work group.

ARTICLE 19 HOURS OF WORK

Section 19.01. General

The Parties recognize that the use of alternative work schedules has the potential to improve productivity and morale and result in greater service to the public. Accordingly, bargaining unit employees are encouraged to use the types of Alternative Work Schedules listed in the Article to the fullest extent allowed by the Agreement, law, rules, and regulations.

Section 19.02. Definitions

1) Basic Work Requirement – As defined by OPM, the number of hours, excluding overtime hours, that an employee is required to work or to account for by charging leave, credit hours, excused absence, holiday hours, compensatory time off, or time off as an award. In the case of full-time employee, eighty (80) hours biweekly.

2) Compressed Work Schedule (CWS) – As defined by OPM, in the case of a full-time employee, an eighty (80)-hour biweekly basic work requirement that is scheduled by an agency for less than ten (10) workdays. As defined by Section 19.03(2) of this Article, the available compressed schedules are limited to 5/4/9 and 4/10. In the case of a part-time employee, it is a biweekly basic work requirement of less than 80 hours which is scheduled for less than 10 workdays.

3) Core Hours – The time periods during the workday, workweek, or pay period that are within the tour of duty during which an employee covered by a flexible work schedule is required by the agency to be present for work. Core hours are from 10:00 a.m. to 2:00 p.m.

4) Credit Hours – As defined by OPM, those hours within a flexible work schedule that an employee elects to work in excess of their basic work requirement so as to vary the length of a workweek or workday. Section 19.04(5) of this Article further defines credit hours.

5) Flexible Hours/Flextime – The times during the workday, work week, or pay period within the tour of duty during which an employee covered by a flexible work schedule may choose to vary their times of arrival to and department from the work site by one hour.

6) Flexible work Schedule (FWS) – A work schedule established under 5 U.S.C. 6122 that:

   a) In the case of a full-time employee, has an eighty (80) hour biweekly basic work requirement that allows an employee to request their own schedule within the limits set by the Agency. Flexible work schedules consist of core hours and flexible hours to make up the basic work requirement. Flexible schedules are limited to Basic Flexible Schedule, 4/9/4, and Maxi flex as described in Section 19.04; and
   b) In the case of a part-time employee, has a biweekly basic work requirement of less than eighty (80) hours that allows an employee to determine their own schedule within the limits set by the agency. Flexible schedules for part-time employees are described in Section 19.06.

7) Maxi flex 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. An employee may vary the number of hours scheduled and worked on a given workday or the number of hours each week within the limits established by the Agency.

8) Tour of Duty – The hours of a day (i.e., a daily tour of duty) and the days of an administrative work week (i.e., a weekly tour of duty) that are scheduled in advance, by submitting a request in accordance with Section 19.05, and during which an employee is required to perform on a regularly recurring basis.

9) Work Schedule – A schedule, within a two-week pay period, for which an employee is scheduled to perform work.

10) Work Schedule Type – Types of work schedules are defined as either fixed work schedules or flexible work schedules.

11) Work Week – the days of the week which an employee is scheduled to work on their established work schedule. Available workdays are Monday through Friday.

12) Work Hours -Standard Agency work hours extend from 6:00 a.m. to 8:00 p.m. Absent legitimate business need, the Employer will not require employees to establish a tour of duty outside of standard Agency work hours. The parties agree that facilities services such as heating, air conditioning, security, etc., may not be available prior to 7:00 a.m. or after 8:00
p.m. without supervisory approval. If a specific extraordinary circumstance arises, the Agency may approve an earlier starting or later ending time on a case-by-case basis, upon the employee's written request to their supervisor. The supervisor will provide the employee with a written decision within two (2) workdays of this request.

Section 19.03. Fixed Work Schedule Options

The work schedule options described in this Section apply to full- time employees with a basic work requirement of eighty (80) hours per pay period. Work schedules for part-time employees are defined in Section 19.06.

1) Basic 40-Hour Work Schedule – This fixed schedule consists of work on each working day of the pay period and the working hours on each day are the same (8 hours per day, Monday through Friday). The non-overtime workday consists of eight hours. Employees on Basic 40- Hour Work Schedules:

   a) Will establish a tour of duty by submitting a request in accordance with Section 19.05 to include the days worked during the pay period and the start and stop times for each day. The tour of duty must incorporate the lunch period.
   b) May not vary their work schedules or individual tours of duty outside of the procedures established in this Article.
   c) May not earn credit hours.
   d) Will earn holiday pay for the eight (8) hours they are normally scheduled for that day for federal holidays when no work is performed.

2) Compressed Work Schedule – Employees may either work a 5/4/9 Compressed Work Schedule or a 4/10 Compressed Work Schedule.

   a) 5/4/9 – Within each two-week pay period, employees work eight nine (9) hour days, one eight (8) hour day and have one (1) day off.
   b) 4/10 – Within each two-week pay period, employees work eight ten (10)-hour days for eighty (80) hours during a pay period and have one (1) day off per week, for a total of two (2) days off per pay period.
   c) Employees on Compressed Work Schedules:

      i) Will establish an individual tour of duty by submitting a request in accordance with Section 19.05 to include the days worked during the pay period and start and stop times (working hours) for each day.
      ii) May not vary their actual start/stop times from their approved start/stop times.
      iii) May not earn credit hours.
      iv) Will earn holiday pay for the number of hours they are scheduled for the day the federal holiday is observed when no work is performed.

Section 19.04. Flexible Work Schedule Options

The flexible work schedule options listed below apply to full-time employees with a basic work requirement of eighty (80) hours per pay period. Employees may choose between one of three flexible work schedules:

1) Basic (Gliding) Flexible Schedule – Employees work ten (10) days and eighty (80) hours per pay period. Each scheduled workday shall consist of an eight (8) hour tour of duty. Employees may flex or vary their start and stop times and by up to one hour as described in Section 19.04(4)(iii). However, employees working Basic Flexible Schedules must still be present for core hours from 10:00 a.m. to 2:00 p.m.
2) Maxi Flex – 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. An employee may vary the number of hours scheduled and worked on a given workday or the number of hours each week within the limits established by the Agency. A workday can be varied from a minimum of four (4) hours to a maximum of ten (10) hours per workday. A workweek can be varied from a minimum of a total of thirty (30) hours to a maximum of fifty (50) hours per workweek. Employees must work between eight (8) and ten (10) days per pay period and may vary the days worked in any given week. Employees may vary their start and stop times by up to one as described in Section 19.04(4)(iii). Employees may not participate in Maxi flex schedules until they have completed ninety (90) days of employment with the agency. However, employees with civil service status who have transferred from other federal government agencies may participate in Maxi flex after the first pay period of employment with FNS.

3) 4/9/4 – A type of flexible work schedule where each work week, employees work four (4) nine (9) hour days and one (1) four (4) hour day.

4) Employees on Flexible Work Schedules:

a) Must establish a regular tour of duty to define their workdays and work hours by submitting a request in accordance with Section 19.05 below. The hours of work and total number of hours worked each day included in the tour of duty may vary. Regular tours of duty for employees on flexible schedules must be between four (4) to ten (10) hours per day and must include work on at least eight (8) days per pay period. An employee may request a schedule that allows for two (2) days off in a work week in the approved schedule.

b) Must be present for core hours, as defined by this Article. Core hours are from 10:00 a.m. to 2:00 p.m. Supervisors may waive the core hour requirement for up to two (2) days per pay period for those employees working a Maxi flex or 4/9/4 schedule. Core hours are those hours that employees on flexible schedules must work on each day that is included in their tour of duty.

c) Employees may deviate or flex from their established tour of duty by up to one (1) hour at the start and/or end of each workday without prior supervisory approval, as long as the total number of hours worked on that day does not deviate by more than one hour from the scheduled tour of duty. Employees are encouraged to provide notice to their immediate supervisor of such schedule changes. This flexibility does not apply to required core hours.

d) Full-time employees on flexible schedules earn eight (8) hours of pay on federal holidays when no work is performed. In coordination with their supervisor, employees on Maxi flex or a 4/9/4 schedule may need to adjust their schedule during pay periods that include holidays to ensure an 80 hour biweekly pay period when accounting for the 8-hour holiday pay.

5) Credit Hours – Credit hours are those that employees on flexible schedules may elect to work in excess of their scheduled tours of duty so as to vary the length of a workweek or workday. Employees on flexible schedules may earn and use credit hours, subject to the following limitations:

a) Credit hours are requested at the discretion of the employee and are not directed or ordered. A request to earn credit hours: must be submitted in writing in advance and must be approved by the supervisor. In considering credit hour requests, the supervisor shall ensure that the work to be performed supports the Agency mission and it can be performed at the requested time.

b) Credit hours may never be directed or ordered by a supervisor.

c) Generally, employees shall submit requests for credit hours at least two (2) days in advance, and supervisors will generally grant or deny such requests at least one (1) day in advance. These two (2) days written advance notice requirement may be waived by the supervisor; however, the requirement for advance supervisory approval may not be waived.

d) Supervisors will not unreasonably withhold or delay the approval of credit hours. When denying a request for credit hours, the supervisor must issue a written denial, stating the specific basis for denial. This denial will be issued to the employee and the appropriate NTEU Chapter President within five (5) days of the denial of the employee's request.

e) A full-time employee on a flexible schedule can accumulate no more than twenty-four (24) credit hours per pay period. An employee may use more than twenty-four (24) credit hours in a pay period based on carried over credit hours from the previous pay period.

f) Credit hours must be earned within available workdays and hours, as defined in Section 19.02.

g) Employees earning and using credit hours must do so in quarter-hour increments; credit hours must be earned before they can be used.

h) Employees on flexible schedules may use earned credit hours to reduce the number of hours worked in a pay period by crediting them towards their basic eighty (80)-hour work requirement, subject to supervisory approval.

6) Appendix B summarizes key feature of work schedule options.

Section 19.05. Submission and Approval of Work Schedules

1) Employees must select a fixed work schedule (basic or compressed) as set forth in Section 19.03 or a flexible work schedule (basic, 4/9/4, or Maxi flex) as set forth in Section 19.04.

2) Employees will submit their requested schedule via the current Time and Attendance systems used by the Agency or by paper form (FNS-725) if submission via Time and Attendance system is not available.

3) If the employee wishes to request a change in their current work schedule, the employee shall submit a work schedule option and requested tour of duty to the supervisor at least ten (10) calendar days prior to the first pay period of the quarter. Employees on a flexible work schedule can submit a request to change to a standard work schedule at any time; however, requests to reenter into a flexible work schedule arrangement must follow the procedure described above.

a) After receiving a request, the supervisor will evaluate them to determine if the approval of the request(s) will prevent adequate coverage. In general, at least 40% of employees in a work unit should be present during core hours. The term "present" means on duty within the boundaries of the official duty station, or at an approved telework location. However, management may, at its discretion, lower this requirement if circumstances warrant. If the submitted tour of duty schedules do not negatively impact these areas, then the supervisor will approve the requests.

b) Where an employee's request conflicts with the requests of other employees, to the extent that to grant approval would create a workload problem, the employee with the most seniority (fixed by earliest entry on duty date with FNS) will be given first priority.

c) The approved request establishes the employee's work schedule option and tour of duty. If the employee does not submit a timely request, the prior work schedule option and tour of duty shall remain in effect. This work schedule and tour of duty will remain in effect until the employee requests a change pursuant to Section 19.05(3).

d) Once a work schedule option and tour of duty request is approved, the Employer reserves the right to make changes in employees' work schedules or tours of duty, if it is determined that changes are necessary for the Employer to accomplish its work.

4) Employees on fixed compressed schedules as defined in 19.03(2) may alter their AWS day(s) once a quarter, with advance supervisory approval. A written request shall be submitted either through the Time and Attendance system, or via paper form by the Tuesday prior to the beginning of the pay period the change is requested. However, the supervisor may, at their discretion, waive the aforementioned time requirement. If no change is submitted, the originally approved tour of duty is in effect.

5) Employees on details may alter their work schedule type and/or duty schedule with the approval of the detail/temporary supervisor.

6) Employees who are reassigned, either temporarily or permanently, may alter their type of duty and duty schedule with the approval of their new supervisor.

7) Employees may not switch between fixed and flexible schedules, under any circumstances, in order to increase holiday hours when no work is performed.

Section 19.06 Flexible Schedules for Part-Time Employees

1) Part-time employees may work flexible schedules as follows:

   a) Tours of duty must be established which define the days worked per pay period and the hours worked each day. In defining the tour of duty, the employee and supervisor shall consider the total hours to be worked under the part time schedule and the work needs of the agency. All tours of duty are subject to supervisory approval. All part-time tours of duty must be worked during available work hours as defined in Section 19.02.
   b) Part-time employees on flexible schedules may vary their workday as described in Section 19.04(2).
   c) Part-time employees on flexible schedules may earn credit hours as defined in Section 19.04(5), except that the number of credit hours accumulated cannot be more than one- fourth of the part-time employee's biweekly work requirement. Only that amount may be carried over from one pay period to the next.
   d) On federal holidays when no work is performed, part-time employees shall receive pay for the typical, average, or scheduled number of hours the employee would have otherwise worked, per OPM guidance. If a part-time employee on a flexible schedule has maintained a reasonably consistent schedule for several pay periods, the employee will be paid for the number of hours they would have otherwise worked. If the part-time employee does not have a typical schedule, they will be paid for the average number of hours worked in prior weeks on days corresponding to the holiday. In no case can holiday pay exceed eight (8) hours.
   e) A part-time employee under a flexible schedule is entitled to holiday premium pay only for work performed during their basic work requirement on a holiday (not to exceed 8 hours). A part-time employee, scheduled to work on a day designated as an "in lieu of" holiday for full- time employees, is not entitled to holiday premium pay for work performed on that day. (5 CFR Part 610.405.)

Section 19.07. Lunch Period

1) Employees will be granted at least (30) minutes and no more than one (1) hour per day as a lunch period. The lunch period is unpaid time. Unpaid meal periods must provide bona fide breaks in the workday. If an employee is directed to work through their lunch period, the employee is entitled to pay for compensable work.

2) Employees may take their lunch period at any time, circumstances permitting, except during the first and last hours of a scheduled workday.

3) This thirty (30) minute to sixty (60) minute unpaid lunch period shall be included in the employee's approved work schedule as part of their scheduled daily tour of

duty.

4) Employees scheduled to work 4 hours are not entitled to take a lunch period.

5) Employees scheduled to work 4.25 hours, or more are required to take a lunch period.

6) Employees are not entitled to leave 30 minutes early (up to 1 hour if applicable) at the end of their scheduled workday because they did not take a lunch period.

Section 19.08. Employee Breaks

1) Employees may have two (2) fifteen (15) minute breaks per workday, one prior to and one subsequent to the lunch period. These breaks shall normally not occur during the first hour of the workday or the last hour of the workday of the individual employee.

2) Employees are not entitled to leave 15 minutes early (up to 30 minutes if applicable) at the end of their scheduled workday because they did not take their scheduled break(s).

Section 19.09. Adjustments in Work Schedules While in Travel Status

Employees in travel status or those attending training, conferences or other work-related offsite activities who are on alternative work schedules, may remain on such schedules for the duration of the activity provided that the employee is able to complete eighty (80) hours during the pay period. The Employer reserves the right to change an employee's work schedule to an eight (8) hour workday for the duration of the activity and/or for the remainder of the pay period, if the supervisor determines there is no legitimate work that may be assigned to the employee which would allow them to work the established tour of duty. If it is necessary to change the employee's work schedule to eight (8) hour workdays, the supervisor will notify the employee in writing not later than the last scheduled workday of the pay period prior to the pay period in which the change is effective. Upon completion of the pay period, the employee will be returned to the previously approved work schedule in place prior to the change being implemented.

ARTICLE 20 TELEWORK & REMOTE WORK ARRANGEMENTS

Section 20.01. General

1) Telework and Remote work will be in accordance with applicable law, Departmental Regulation (DR) 4080-811-002 dated November 22, 2021 (hereafter referenced as the DR) and this Agreement. For easy reference, Departmental Regulation 4080-811-002 has been attached as Appendix A to this Agreement.

2) Prior to providing NTEU represented employees with their individual position designations, the Agency will provide NTEU with a list of position designations and a 5-calendar day opportunity to comment.

3) Definitions:

   a) **Telework:** A work arrangement in which an employee performs and completes official duties and responsibilities from an alternate worksite. Telework may be authorized for an entire duty day or a portion of one. Telework does not include the following:

      i) Work performed while on official travel status;
      ii) Work performed while commuting to or from work;
      iii) Remote work; or
      iv) Mobile work (defined in Appendix B of the DR).

   b) **Remote Work:** A workforce flexibility arrangement under which an employee is scheduled to perform work within or outside the local commuting area of their mission area, Agency, or staff office's worksite, and is not required to report to the mission area, Agency, or staff office worksite on a regular and recurring basis.

4) The Parties recognize that the use of telework has the potential to improve productivity and morale, improve employee engagement, maintain talent, and to provide the public with greater service. FNS and NTEU jointly recognize the mutual benefits of a flexible workplace program to the Agency and its employees. Balancing work and family responsibilities and meeting environmental, financial, and commuting concerns are among its advantages. Telework or remote work shall not be used to accommodate an employee's needs as a care provider, though it may, however, reduce the number of hours of care necessary due to time saved from not having to commute. In recognizing these benefits, both parties also acknowledge the needs of FNS to accomplish its mission. While FNS employees are presumed eligible for telework, the use of telework and remote work are not entitlements. Telework and remote agreements may be approved when an employee meets the criteria for eligibility established under the DR and this Article.

Section 20.02. Eligibility for Telework

1) Pursuant to the DR, the Employer shall provide each employee with notice regarding their position's eligibility for remote work and telework and will notify employees of any changes in their eligibility.

a) An employee will be eligible to telework up to eight (8) days in a pay period in accordance with Section 4 of the DR.
b) An employee will be eligible for Remote Work in accordance with Section 6 of the DR.

Section 20.03. Requests for Telework and Remote Work

1) **Telework:**

a) A telework-eligible employee who desires to telework must submit a request with all necessary requirements to their supervisor through a proposed Telework Agreement utilizing an AD 3018. Employees may submit a request to participate in telework at any time.
b) The supervisor may approve an eligible employee's request for telework if they meet the requirements in Section 4 of the DR. (Note: Employees have no authorization, and supervisors may not approve employee's requests to telework from a foreign location without approval from USDA and the Department of State (see Section 10 of the DR)).

2) **Remote Work:**

a) A remote work eligible employee who desires to enter into a remote work agreement must submit a request with all necessary requirements to their supervisor utilizing a proposed Remote Work Agreement. Employees may submit a request to participate in remote work at any time.
b) The supervisor may approve an eligible employee's request for remote work if they meet the requirements in Section 6 of the DR. (Note: Employees have no authorization, and supervisors may not approve employee's requests to remote work from a foreign location without approval from USDA and the Department of State (see Section 10 of the DR)).
c) Generally, and as determined by the Agency, employees may be considered eligible for a remote work arrangement if their position has been designated remote work eligible. However, on a case-by-case basis, the Agency may deny a requested remote work arrangement. In considering whether to approve or deny an employee's request for a remote work arrangement the Agency, at a minimum, will consider:
    i) If the employee's duties can be performed at the remote location;
    ii) The amount of time required each week to participate in other aspects of the work unit operations such as training, meetings, or collaboration, including collaboration with stakeholders that cannot be conducted virtually;
    iii) The type and frequency of travel associated with the position;
    iv) Any requirement for accessing classified information; and
    v) Budget, business, and operational needs of the Agency.

d) However, as with telework, an employee becomes permanently ineligible for a remote work arrangement if they have been formally disciplined for either:
    i) A violation of Subpart G, Misuse of Position, of the Standards for Ethical Conduct for Employees of the Executive Branch for viewing, downloading, or exchanging pornography, including child pornography, on a Federal Government computing device to include cell phones and tablets or while performing official, Federal

Government duties; or

ii) Absence without leave (AWOL) for 5 or more days in any calendar year.

Section 20.04. Telework Agreements

1) **Telework** – All teleworkers must have a current, written Telework Agreement, including those employees desiring to telework on an ad hoc or episodic bases. Variances in the telework schedule as contained in the Telework Agreement are expected but are subject to supervisory approval. Requests for and approval of variances in the regular telework schedule will normally be in writing and may be communicated via e-mail. Upon approval of a request for telework and completion of the required training, the employee and the supervisor will sign an AD 3018 Telework Agreement in accordance with the procedures outlined in this Section and in the DR and this Article.

2) **Remote Work** – All remote workers must have a signed remote work agreement. Upon approval of a request for remote work and completion of the required training, the employee and the supervisor will sign the remote work agreement, in accordance with the procedures outlined in the DR and this Article.

   a) Remote work arrangement may result in a change in the employee's duty station in accordance with 5 CFR Part 531.605(d)(1). In the event such change is required under federal rules and regulations, the Employer will document it via a Notification of Personnel Action (Standard Form 50). The Employer will provide the employee with a copy of the completed Standard Form 50 in their electronic official personnel folder.

3) The following procedures apply to Telework and Remote Work Agreements:

   a) As required by the DR and Agency guidance, employees must complete all mandatory training. Employees are authorized up to three (3) hours to complete required and recommended training during their workday
   b) Supervisors will retain a copy of each executed Telework and Remote Work Agreement for their files and provide copies to the employee. Employees are encouraged to provide a copy to their Union Chapter President.
   c) If there is a change in position, or if a change in the terms of the agreement articulated in 3(b), such change will require a new or updated telework and/or remote work agreement to be completed.

Section 20.05. Time Frames and Procedures for Review of Telework Requests

1) Upon receipt of a request for telework, the supervisor and the employee will meet to discuss and review the request. The supervisor's decision is to be provided to the employee within

ten (10) workdays of the submission of the request. This timeframe may be extended by mutual agreement of the employee and supervisor.

2) If disapproved, the employee will be advised in writing with the reason(s) for disapproval. If the disapproval subsequently becomes the subject of arbitration, the parties will clarify all the issues in accordance with Article 51, of the National Agreement. The Union may file a grievance which is eligible for expedited arbitration in accordance with Articles 50 and 51.

3) If a request is approved, the specifications of the arrangement will be agreed upon, reduced to writing, and signed by both the supervisor and the employee. Unless otherwise agreed, the employee may begin working at the telework or remote work location starting with the next pay period following approval.

Section 20.06. Other Considerations for Approval of Telework or Remote Work Requests

1) The Parties recognize that the approval or disapproval of a telework or remote work agreement is a Management right. Accordingly, all telework, and remote work arrangements are subject to prior supervisory approval in accordance with the DR

2) Once a telework request is approved, the Employer reserves the right to make changes in an employee's telework schedule, if it is determined that a change in an employee's telework schedule is necessary for the Employer to accomplish its work. In such event the Employer will follow the procedures set forth in the DR and this Article.

Section 20.07. Telework and Remote Work Operating Principles

1) The governing rules, regulations, and policies concerning time and attendance, overtime and leave are unchanged by participation in telework or remote work. Employees will not perform overtime or night work, or earn credit hours, without advance supervisory approval. The provisions for employee breaks addressed in Article 19 continue to apply.

2) Injuries that arise in the performance of duty at the approved telework or remote work location are subject to the Federal Employees' Compensation Act.

3) Equipment and Work Environment:

   a) All telework and remote work employees are required to utilize Government Furnished Equipment (GFE), to include peripherals, for official use and authorized purposes only. Participating employees must protect GFE and information, and to use equipment and information only for official government purposes as described in this Agreement and in accordance with procedures established in the Federal Information Resources Management Regulation and related regulations and policies. Budget permitting, the Employer agrees to provide, service, and maintain all approved government furnished equipment and peripherals as necessary for telework and remote workers to fulfill their employment duties and responsibilities.
   b) The Employer is not responsible for operating costs, home maintenance, or any other

incidental costs to the employee (e.g., utilities, or internet costs). Employees on telework and remote work will be provided reasonable and necessary supplies such as paper, ink, toner, etc. for supervisor approved government furnished peripherals. Employees should follow appropriate Agency request procedures to procure office supplies. Incremental utility costs associated with working at an alternate worksite location will not be paid by the Employer. Potential savings to the employee resulting from reduced commuting, meals, etc. may offset any incidental increase in utility expenses. Exceptions apply only where the personal expense directly benefits the Government, e.g., business related long distance, or toll calls on the employee's personal phone where alternatives are not made available. Costs associated with the copying of work-related materials, fax charges, express mail, etc., require prior approval and will be reimbursed according to Agency procedures. Employees participating in the telework program should complete duties such as these while at the official duty station, to the extent possible.

c) The use of GFE for unauthorized official international travel overseas (outside the Continental United States (OCONUS and US Territories)) is considered high risk to the USDA and is not allowed. All telework and remote work employees will comply with the USDA policy for international travel. The Parties agree that USDA furnished mobile devices and removable media that is used domestically shall not be used while on international travel, unless the Employer has documented approval for the use of this equipment. When USDA authorizes such use, the Employer will provide a loaner or burner client device.

d) For scheduled outages, patches or updates, employees will normally be given a minimum of twenty-four (24) hours' advance notice regarding Management service or maintenance of government-owned property. Such service or maintenance will occur during the employee's normal work hours unless circumstances dictate otherwise. The employee is also responsible for returning Agency-owned equipment to a designated location when any maintenance or repair is required.
   i) In accordance with DR 3580-004 and FNS 160-4, personally owned devices and third party-controlled devices are prohibited from storing or downloading personally identifiable information (PII).
   ii) In alignment with USDA and FNS privacy policies, employees must appropriately safeguard personally identifiable information (PII) and report suspected PII breaches as outlined in DR 3505-005, Cybersecurity Incident Management.
   iii) Employees must comply with the policies outlines in DR 3515-002, which require that employees safeguard PII information from unauthorized disclosure and immediately report damaged, lost, or stolen USDA PII data to the Departments security incident response team as defined in the USDA Incident Response Plan (IRP).
   iv) Employees must manage and safeguard all USDA records in accordance with National Archives and Records Administration (NARA), USDA, and FNS records management regulations, and policies outlined in Federal Records Act 44 USC § 3301-3314; Federal Records Act 44 USC § 3105; 36 CFR Chapter 12; Presidential
   Memorandum M19-21; 5 USC § 552; DR 3090-001; DR 3080-001; DR 3099-001; and FNS Instruction 270-1.

4) Teleworking and remote work employees must be available and accessible to supervisors, co-workers, and customers at all duty times while performing work at an alternate worksite location. Employees must ensure that incoming calls, voicemails, and emails are handled seamlessly with the same expectations as if they were on-site. Similarly, an employee who teleworks or works remotely will have their work and conduct evaluated the same as employees at the traditional worksite. A supervisor's official relationship with, authority over, and accountability for an employee participating in the Employer's telework or remote work program is no different than their relationship with, authority over, and accountability for employees who are not participating in the telework or remote work program as required by the DR.

5) The Employer may require all employees to use a standard set of collaboration tools. These may include, but are not limited to, Microsoft Teams or equivalent instant messaging software, online project management collaboration tools, and conferencing software such as Adobe Connect, Go to Meeting, Zoom, Skype, etc. in order to facilitate communication between locations. The Employer also recognizes that an employee may not always be available to use the collaboration tools for virtual meetings when telework or remote working for issues beyond an employee's control such as, but not limited to, technical issues, power outages, or internet connectivity issues.

   The Employer agrees that the purpose of employees using collaboration tools is to perform work duties, complete the Agency mission, and to facilitate more efficient communication for employees who telework and remote work. Except in instances of suspected misconduct, such tools will not be used to store or track employee attendance, location, or work hours.

6) If, due to circumstances beyond an employee's control, the employee is unable to work at their telework location, the employee must contact their supervisor to request appropriate leave. When the inability to work arises as a result of a problem at the telework location, the employee must contact their supervisor in a timely manner, typically within thirty (30) minutes absent situations beyond the control of the employee, to request appropriate leave or return to the office.

7) Telework Recall Procedures
   a) Employees participating in telework programs must be accessible and available for recall to their regular offices for work needs that cannot be performed at the alternate worksite location. Examples include training, employee days, special meetings, new work requirements, emergencies, or other business needs of the Employer. These examples are for illustrative purposes and are not meant to be exhaustive.
   b) Management will take full advantage of existing technology to minimize recall.
   c) The Agency will generally provide recalled employees with at least one (1) day of advance notice, except where the employee will be required to travel a significant distance, in which case the Employer will provide notice as far in advance as feasible in light of business needs and commuting challenges.
   d) If an employee is recalled on the same day they are teleworking, travel time to the office is considered duty time. However, in such a situation, travel back home is not considered duty time.
   e) In the event an employee is recalled to the office on their telework day, the employee will be provided a mutually agreeable equivalent replacement time during which to telework within the pay period, to the extent practicable.
   f) In situations where the employee is given notice before the recall day, travel to and

from the office is not considered duty time.

8) If the Employer seeks to modify or terminate an employee's Telework Agreement, the following procedures apply:

   a) The Employer will provide appropriate advance notice of the modification or termination of any agreement to the extent practicable. The notice period will be at least ten (10) workdays in accordance with 5(b) of the DR; and
   b) Normally, the Employer will provide the employee with a Notice of Termination, in writing, indicating the reason(s) for termination of the Telework Agreement. Employees may provide a copy to their Union Chapter President.
   c) Termination of an employee's Telework Agreement does not prevent them from reapplying when they once again meet the criteria for telework.

9) Grievability: Employer's decisions on telework and remote work participation, recall and modification or termination of Telework Agreements are grievable. Decisions on requested variations in Telework Agreements are not grievable. However, if the employee alleges that a decision regarding a request for such variation is a prohibited personnel practice, the matter is grievable (see Article 50).

10) For employees who are approved to be on telework or remote work, the employee will have the option of selecting from work schedules offered in Article 19 of this Agreement.

11) Issue Resolution: Agency Managers and Union officials are encouraged to establish creative approaches to provide information and resolve problems regarding telework and/or remote work. Such approaches could include the local Labor-Management Relations Council (LMRC), joint task forces, joint committees, designated technical advisors, etc. Where there are disputes over participation, modification, recall or termination of a formal telework or remote work arrangements, the parties encourage Agency and Union officials to develop alternate dispute resolution methods to resolve such issues.

12) Employees scheduled to telework on a Federal holiday may not change their schedule to substitute an "in the office" day for the telework day unless their supervisor grants approval.

Section 20.08. Telework Information

To the extent that the Employer tracks and can report the following information, FNS will provide each Union Chapter President with a telework summary report containing the following information: employee's name; employee's grade; employee's series; employee's division and/or program; the date of the employee's request for telework; the date of approval or denial and reason(s) for any denials; the number of telework days requested; the number of telework days granted; the date of notice of any managerial terminations of telework and the reason(s) for such terminations. These reports will be distributed to NTEU Chapter Presidents on a semi-annual basis.

Section 20.09. Permanent Office Closures or Space Issues

In the event of an office closure or reduction in space, the Employer may permit employees

affected by such office closure to enter into a remote work agreement. Employees will be required to execute a Remote Work Agreement consistent with their approved tour of duty forms, the DR, and this Agreement.

Section 20.10. Inclement Weather, Hazardous Conditions or Other Safety Conditions

1) Except in rare circumstances teleworkers and remote workers generally are ineligible for weather and safety leave and are expected to remain in duty status when an office closure is announced. Exceptions to this requirement are found in Section 5 (b)(4) of the DR and further described in Article 27 of this Agreement.

2) The Employer may require any employee who has a telework or remote work agreement to work during inclement weather, hazardous conditions, or other emergency so long as the condition does not prevent the employee from safely performing the duties at the telework or remote work location.

3) The Employer will make reasonable efforts to approve voluntary requests made in anticipation of an inclement weather, hazardous, or emergency condition for employees who have work that can be performed at a telework location. Such approved telework will not count against the employee's maximum number of hours permitted under their telework agreement.

4) When the office is closed due to an inclement weather, hazardous, or emergency condition, telework-ready employees who perform unscheduled telework and who do not have sufficient work to fill their full tour of duty shall contact their supervisor who will provide direction on what tasks, assignments, trainings, etc. that the employee can do during the remainder of their tour of duty.

5) Employees who are required to work unscheduled telework will not have their previous scheduled telework days changed or cancelled. This provision does not prohibit management from changing or cancelling an employee's telework day, when necessary, but rather that an employee's previously scheduled telework day will not be automatically changed or cancelled because of unscheduled telework.

6) Employees on scheduled annual leave or sick leave, or who have a regular day off on a day of an office closure under this section, are expected to remain in their scheduled status. However, such employees with approved Telework agreements may choose to telework and cancel their previously scheduled leave.

ARTICLE 21 OVERTIME/COMPENSATORY TIME

Section 21.01. Definitions

1) Exempt Employees are employees *not covered* by the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA).

2) Non-Exempt Employees are employees *covered* by the minimum wage and overtime provisions of FLSA.

3) Overtime Pay is pay for hours of work officially ordered or approved in excess of 8 hours in a day or 40 hours in an administrative workweek. It includes regular and irregular or occasional overtime.

4) Regular Overtime means overtime work that is part of an employee's regularly scheduled administrative work week (i.e., a period of seven (7) consecutive calendar days designated in advance by the head of the agency) pursuant to 5 CFR Part 550.103. Regular overtime must be scheduled in advance of the Sunday prior to the work week.

5) Irregular or Occasional Overtime work means overtime work that is not part of an employee's regularly scheduled administrative workweek pursuant to 5 CFR Part 550.103. Pursuant to 5 CFR Part 551.501I, "irregular or occasional overtime work" is overtime work that is not scheduled in advance of the Sunday prior to the workweek.

6) Compensatory Time is time off with pay in lieu of overtime pay. An employer may only require an employee to accept compensatory time off in lieu of overtime pay if such employee is classified as exempt, has a basic 40-hour or a compressed work schedule, has a rate of basic pay that exceeds the maximum rate for a GS-10, Step 10, and has worked irregular or occasional overtime in accordance with Section 21.03(B)(2)(b) below.

7) Suffered or Permitted Work means any work performed by an employee for the benefit of the agency, whether requested or not, provided the employee's supervisor knows or has reason to believe that the work is being performed and has an opportunity to prevent the work from being performed. The concept of "suffered and permitted" overtime work is only applicable to non-exempt employees covered by FLSA.

Section 21.02. General

6) **General**

a) Premium pay such as overtime and compensatory time off will be earned in fifteen (15) minute increments and paid in accordance with applicable laws, rules, and regulations.
b) The Employer may require overtime/holiday work as a condition of employment and agrees to distribute overtime/holiday work to all qualified employees in Federal Service; enter on duty (EOD) order, on a rotational basis. If more than one employee is qualified to perform the work, the Employer agrees to give due consideration to employee's personal circumstances. Qualified volunteers will be used when available in Federal Service EOD order.

c) Absent extenuating circumstances, the Employer agrees to provide the employee reasonable notice when scheduling an employee to work beyond their normal tour of duty. Every effort will be made to provide the employee no less than three (3) days advance notice, if required to work beyond an employee's regular tour of duty.
d) The Employer will remind employees annually via a general notice to check their FLSA status on their official position description and their latest SF50 document in their Electronic Official Personnel Folder (eOPF). The notice will also include a definition of terms "exempt" and "non-exempt" as well as a definition of "compensatory time" and "overtime."

8) Overtime Rates

a) For employees with rates of basic pay equal to or less than the rate of basic pay for GS-10, Step 1, the overtime hourly rate is the employee's hourly rate of basic pay multiplied by 1.5.
b) For employees with rates of basic pay greater than the basic pay for GS-10, Step 1, the overtime hourly rate is the greater of:
c) The hourly rate of basic pay for GS-10, Step 1, multiplied by 1.5, or
d) The employee's hourly rate of basic pay.

Section 21.03. Statutory Requirements Governing Overtime for Exempt Employees

1) General

a) For exempt employees, overtime work means performed by an employee, in excess of 8 hours in a day or in excess of 40 hours in an administrative workweek that is officially ordered or approved, in writing by an officer or employee to whom this authorization has been specifically delegated.
b) For exempt employees on flexible work schedules, overtime work consists of hours of work that are in excess of eighty (80) hours in a pay period which are officially ordered in advance but does not include credit hours.
c) For full-time employees on compressed work schedules, overtime work consists of all hours of work in excess of the approved compressed work schedule.
d) For part-time employees overtime work must be hours in excess of the compressed work schedule for the day (more than at least 8 hours) or for the week (more than at least 40 hours).

2) Basic 40-Hour or Compressed Work Schedules

a) Regular Overtime (Exempt) For each exempt employee who works a basic 40-hour work scheduled or a compressed work schedule and performs regular overtime work outside of the employee's normal tour of duty, the employee shall be compensated by the payment of overtime.
b) Irregular or Occasional Overtime

i. For each exempt employee who works a basic 40-hour work schedule or a compressed work schedule and whose rate of basic pay does not exceed the maximum rate for GS-10 (GS-10, Step 10) and who performs irregular or occasional overtime work outside of the employee's normal tour of duty, the employee shall be compensated by the payment of overtime, or at the request of an employee, the Employer may grant compensatory time off from an employee's tour of duty instead of overtime pay, for an equal amount of irregular or occasional overtime work.

ii. For each employee who works a basic 40-hour work schedule or a compressed work schedule and who rate of pay exceeds the maximum rate for GS-10 (GS-10, Step 10), the employee shall be compensated for overtime work, which is irregular or occasional, with either an equivalent amount of compensatory time off from the employee's tour or overtime pay in accordance with Section 21.02(b)(2) above which is solely at the discretion of the Employer.

3) Flexible Schedules

For each exempt employee who works a flexible work schedule and performs overtime work outside of the employee's normal tour of duty, the employee shall be compensated by the payment of overtime, or at the request of the employee, the Employer may grant compensatory time off from an employee's tour of duty instead of overtime pay, for an equal amount of overtime work.

Section 21.04. FLSA Requirements Governing Overtime for Non-Exempt Employees

1) General

a) For non-exempt employees, overtime work means work performed by an employee, in excess of 8 hours in a day or in excess of 40 hours in an administrative workweek that is officially ordered or approved, in writing by an officer or employee to whom this authorization has been specifically delegated or work that is suffered or permitted.
b) For non-exempt employees on flexible work schedules, overtime work consists of hours of work that are in excess of eighty (80) hours in a pay period which are officially ordered in advance but does not include credit hours.
   i. For full-time employees on compressed work schedules, overtime work consists of all hours of work in excess of the approved compressed work schedule.
   ii. For part-time employees overtime work must be hours in excess of the compressed work schedule for the (more than at least 8 hours) or for the week (more than at least 40 hours).

2) Basic 40-Hour or Compressed Work Schedules,

a) Regular Overtime. for each non-exempt employee who works a basic 40-hour work schedule or a compressed work schedule and performs regular overtime work outside of the employee's normal tour of duty, the employee shall be compensated by the payment of overtime.
b) Irregular or Occasional Overtime, for each non-exempt employee who works a basic 40-hour work schedule, a compressed work schedule and performs irregular or occasional work outside of the employee's normal tour of duty, the employee shall be compensated by the payment of overtime, or at the request of the request of the employee, the Employer may grant compensatory time off from an employee's tour of duty instead of overtime pay, for an equal amount of overtime work.

3) Flexible Schedules

For each non-exempt employee who works a flexible work schedule and performs overtime work outside of the employee's normal tour of duty, the employee shall be compensated by the payment of overtime, or at the request of the employee, the Employer may grant compensatory time off from an employee's tour of duty instead of overtime pay, for an equal amount of overtime work.

Section 21.05. Compensatory Time

1) General
   a) Fifteen (15) minutes of compensatory time off is granted for fifteen (15) minutes of overtime work.
   b) In accordance with 29 CFR Part 553.25, compensatory time cannot be used as a means to avoid statutory overtime compensation. In accordance with 5 CFR Part 551.531(c), the Employer may not directly or indirectly coerce or attempt to coerce any employee for the purpose of interfering with such employee's rights to request or not to request compensatory time off in lieu of payment for overtime hours.
   c) An Employer may not require that an employee be compensated for overtime work an equivalent amount of compensatory time off from the employee's tour of duty, with exception to Section 21.03(C)(2) (i.e., an FLSA exempt employee whose rate of basic pay exceeds the maximum rate for GS-10 (GS-10, Step 10)).

2) Time Limits for Use of Compensatory Time

   a) In accordance with 29 CFR Part 553.25, an employee who has accrued compensatory time and requested use of this compensatory time, shall be permitted to use such time off within a "reasonable period" after making the request, as long as such use does not unduly disrupt the operations of the Agency.
   b) Subject to management approval, compensatory time must be used before annual leave provided this will not result in the forfeiture of annual leave.
   c) Employees must use accrued compensatory time off by the end of the 26th pay period after the pay period during which it was earned.
   d) If accrued compensatory time off is not used by an employee within 26 pay periods, or by the time of the employee's separation, transfer or resignation, an FLSA non-exempt employee must be paid for overtime work at the overtime rate in effect for the work period in which the compensatory time was earned. The Employer will make such payment to the employee within two (2) pay periods from the end of the 26th pay period after the pay period during which compensatory time off was earned. For exempt employees, they will be reimbursed in accordance with 5 CFR 550.114(d).

Section 21.06. Credit Hours Cannot Be Required In Lieu of Overtime

The Employer is prohibited from requiring an employee who works a flexible schedule from accepting credit hours in lieu of receiving overtime pay.

Section 21.07. Compensatory Time Off for Travel

Refer to Article 36, for the rules involving compensatory time off for travel. The parties have agreed to add the Decision Tree Summary Chart on Title 5 Overtime and Compensatory Time Off as Appendix C so long as it comports with this Article and law, rule, and regulation.

ARTICLE 22 PARKING

(This Article is Reserved for Local Bargaining)

ARTICLE 23 ANNUAL LEAVE

Section 23.01. Request for Annual Leave

1) Use of annual leave is a right of the employee, subject to approval by the Employer. Absent unforeseen circumstances, requests for annual leave should be submitted as far in advance as is reasonable possible to afford the supervisor sufficient time to make a determination, or at least twenty-four (24) hours in advance.

2) The employee must submit formal requests for annual leave through WebTA (or a successor time and attendance system). When the employee submits a formal request for annual leave through WebTA, the Employer will respond through WebTA.

3) If an employee submits an informal request for annual leave through email or other means, the Employer will respond using the same method of communication used by the employee (i.e., email or other means).

4) The Employer will approve or disapprove requests for leave. For requests submitted for a date that is fewer than thirty (30) calendar days in advance, the Employer will normally respond to such requests no later than three (3) days before the date of the proposed leave. When an employee makes a request for leave, the supervisor must either approve the request or, if that is not possible because of a business-related reason such as a project-related deadline or the agency's workload, deny such request. If a leave request is denied, the supervisor will provide specific reason(s) for the denial.

5) Employees who request leave at least thirty (30) calendar days prior to the proposed leave date will receive a response to their requests within fourteen (14) calendar days from the date of the request. The response may be an approval, a denial, or an acknowledgment of receipt.

6) Where an employee's request for annual leave conflicts with the requests of other employees, the employee who requested the leave on the earliest date shall be granted the leave. In the case of simultaneous requests, the employee with the most FNS seniority will be granted leave. If the request for leave is denied, the employee may request, and the Employer must provide specific reasons for the denial to the employee.

7) All employees must provide thirty (30) calendar days advance notice for the requests of one week or more of annual leave that fall on or between December 1st and January 15th.

Section 23.02. Extended Annual Leave and Leave Without Pay

Absent a business-related reason such as a project-related deadline or the agency's workload, the Employer agrees to authorize annual leave or leave without pay to Union representative(s) for the purpose of attending Union-sponsored trainings, Union meetings, or Union conventions, provided the employee requested the leave at least one (1) week in advance of the event.

Section 23.03. Annual Notice of Use or Lose Leave

On an annual basis, but no later than September of each year, the Employer will issue a notice advising and reminding employees of the regulations concerning use or lose annual leave and

the need to request annual leave to avoid unintended forfeiture.

Section 23.04. Denial of Annual Leave

The Employer may not deny annual leave as an act of discipline.

ARTICLE 24 SICK LEAVE

Section 24.01. Sick Leave Use

1) The employee shall earn and use sick leave in accordance with applicable laws and regulations. Sick leave shall be administered in accordance with applicable laws and regulations. The minimum increment for using sick leave shall be one-quarter hour. The use of sick leave includes time spent traveling to and from a medical appointment.

2) The Employer will grant accrued sick leave to an employee when the employee:

    a) Receives medical, dental, or optical examination or treatment;
    b) Is incapacitated for the performance of their duties by physical or mental disability, injury, pregnancy, or childbirth;
    c) Provides care for a family member who is incapacitated by a medical or mental condition or attends to a family member receiving medical, dental, or optical examination or treatment;
    d) Provides care for a family member with a serious health condition;
    e) In accordance with 5 CFR Part 630.401(a)(3)(iii), provides care for a family member who would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by that family member's presence in the community because of exposure to a communicable disease;
    f) Makes arrangements necessitated by the death of a family member or attends the funeral of a family member;
    g) Would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by their presence on the job because of exposure to a communicable disease; or
    h) Must be absent from duty for purposes related to their adoption of a child, including appointments with adoption agencies, social workers, and attorneys; court proceedings; required travel; and any other activities necessary to allow the adoption to proceed.

3) For purposes of this Article, a "family member" means an individual with any of the following relationships to the employee:

    a) Spouse, and parents thereof;
    b) Sons and daughters, and spouses thereof;
    c) Parents, and spouses thereof;
    d) Brothers and sisters, and spouses thereof;
    e) Grandparents and grandchildren, and spouses thereof;
    f) Domestic partner, and parent thereof (including domestic partners of any individual previously listed); and
    g) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

4) For purposes of this Article, a serious health condition shall have the meaning set forth in 5 CFR Part 630.1202.

Section 24.02. Limits on Sick Leave Usage to Care for Family Members

1) In accordance 5 CFR Part 630.401(b), An employee may use up to one hundred and four (104) hours of sick leave each leave year for the purposes described in Section 24.01(2)(c), (2)(e) and (2)(f) above. An employee may use up to 480 hours of sick leave each leave year for the purposes described in Section 24.01(2)(d) above.

2) For part-time employees, this subsection shall be applied in accordance with 5 CFR Part 630.401(b) and (c).

3) In accordance 5 CFR Part 630.401(d), if, at the time an employee uses sick leave to care for a family member with a serious health condition, they have used any portion of sick leave to care for family members authorized under Sections 24.01(2)(c), (2)(e) and/or (2)(f), that amount must be subtracted from the maximum number of hours authorized under Section 24.01(2)(d) to determine the total amount of sick leave the employee may use during the remainder of the leave year to care for a family member with a serious health condition. If an employee has previously used the maximum amount of sick leave permitted to care for a family member with a serious health condition in a leave year, they are not entitled to use additional sick leave to care for family members under Sections 24.01 (2)(c), (2)(e), and/or (2)(f).

Section 24.03. Procedures for Requesting Sick Leave

Whenever possible, employees must request the use of sick leave in advance. If the use of sick leave cannot be anticipated, the request for approval shall be communicated to the Employer within one (1) hour after the start of the employee's normal tour of duty on the first day of absence, unless the employee is precluded from doing so due to reasons beyond the employee's control. In this situation, the employee must document the request for the use of sick leave immediately upon their ability to do so, but no later than their return to work. Contact will be made with the employee's immediate supervisor or their designated official. In the event the employee does not contact their supervisor or designated official during the reporting period, the supervisor will not record the leave status until the end of the day, except for the need to process time and attendance reports. If the employee's leave status has not been clarified by the end of the day, the absence may be charged to AWOL. This will not preclude a later change in leave status for good and sufficient reasons. An employee will inform the supervisor of the anticipated extent of the absence. If the absence extends beyond the anticipated period, an employee will inform their supervisor of the situation promptly.

Section 24.04. Medical Documentation

1) An employee may be required to furnish an acceptable medical certificate to substantiate a request for approval of sick leave if the sick leave exceeds three (3) days.

2) "Medical certificate" is defined as a written statement signed by a registered practicing physician or other practitioner certifying to the incapacitation, examination or treatment, the period of disability while the patient was receiving professional treatment and the time when the employee is expected to return to full or limited duty.

3) Employees will not be required to furnish a medical certificate to substantiate a request for approval of sick leave for periods of three (3) consecutive workdays or less, except for situations addressed in Section 24.09.

4) Employees will not be required to furnish a medical certificate on a continuing basis if the employee suffers from a chronic illness or injury which does not necessarily require treatment, although absence from work may be necessary and the employee has furnished medical certification of the chronic condition. However, the medical certification is subject to periodic recertification by a competent medical authority.

5) In accordance with 5 CFR Part 630.405(c), an employee who requests sick leave to care for a family member with a serious health condition may be required to provide an additional written statement from the health care provider concerning the family member's need for psychological comfort and/or physical care. The statement must certify that the family member requires psychological comfort and/or physical care, the family member would benefit from the employee's care or presence and the specific amount of time the employee is needed to care for the family member.

6) In accordance with 5 CFR Part 630.405, an employee must provide administratively acceptable evidence or a medical certificate for a request for sick leave no later than 15 calendar days after the date the supervisor requests it. The Agency may consider an employee's self-certification as to the reason for their absence as administratively acceptable evidence, regardless of the duration of the absence. If it is not practicable under the particular circumstances to provide the requested documentation within 15 calendar days despite the employee's diligent, good faith efforts, the employee must provide it no later than 30 calendar days after the date it was requested. If an employee does not provide the requested documentation within the specified time period, they are not entitled to sick leave and may be charged annual leave, leave without pay or absent without leave, as subsequently requested and/or appropriate.

7) In the event that an Employer does not approve of the documentation that the employee provides and needs additional medical information:

    a) A health care provider representing the Employer, including a health care provider employed by the Employer or under administrative oversight of the Employer, may contact the health care provider who completed the medical certification, with the employee's permission, for purposes of clarifying the medical certification.
    b) If applicable, the Employer shall provide to the employee a list of the essential functions of their position which the health care provider will review for purposes of certifying that the employee was/is unable to perform an essential function and offer a brief explanation in accordance with the employee's privacy rights.

8) Both the Union and the Agency recognize the need to protect confidentiality and privacy with regard to medical information/documentation. The parties will only share medical information/documentation with those who have a work-related need to know and in accordance with the Privacy Act.

Section 24.05. Sick Leave to Attend Health Unit

1) Except for an emergency, an employee may only leave the work site to attend an appropriate agency health unit in a federally controlled building when they have provided prior notification to the Employer. An employee who is returned to duty within one (1) hour will not be charged with leave.

2) Should the health unit or Employer recommend that an employee be sent home, and the supervisor releases that employee, sick leave will be charged beginning at the time the employee told their supervisor that they were unable to continue working.

Section 24.06. Use of Other Leave in Lieu of Sick Leave

An approved absence, which would otherwise be chargeable to sick leave, will be charged to leave without pay or annual leave at the request of the employee.

Section 24.07. Use of Sick Leave During Annual Leave

An employee who becomes ill while on annual leave may have the time of illness changed to sick leave, if requested and available upon return to work.

Section 24.08. Approved Sick Leave as Basis for Personnel Action

The use of approved sick leave may not be relied upon in any personnel action such as an employee appraisal, evaluation, disciplinary action, career ladder promotion or merit promotion action, absent appropriate notice, subject to due process and in accordance with all applicable laws, rules, or regulations.

Section 24.09. Sick Leave Abuse

When a supervisor has reasonable grounds to believe an employee is abusing sick leave, the supervisor will counsel the employee with respect to the use of sick leave. The counseling will be documented in writing, with a copy to the employee, and the employee informed that they have a right to Union consultation, that restrictions may be imposed if the described abuse continues, and the nature of the potential restrictions. If the sick leave record does not show elimination of the described sick leave abuse after the counseling, the employee will be given written notification requiring the employee to provide a certificate from a competent medical authority for all absences of any duration for which sick leave is requested. This notice should contain justification as to why the employee was given this additional requirement, such as stating the number of hours of sick leave used in a specific period, their sick leave pattern, balance, etc. Once imposed, the requirement to furnish certificates from a competent medical authority will be reviewed no later than every six months to determine if it should be continued. At the time of the review, the employee will be counseled and advised in writing if the requirement is to be continued or canceled.

ARTICLE 25 ADVANCED ANNUAL/SICK LEAVE

Section 25.01. Criteria for Advancing Annual Leave

1) Employees will be given advanced annual leave, unless the Employer determines their services are necessary, when:

    a) They are eligible to earn annual leave;
    b) They have served more than ninety (90) days in their current appointment;
    c) Their request does not exceed the amount of annual leave they would earn during the remainder of the leave year;
    d) Valid requests for annual leave by other employees will take precedence over requests for advanced annual leave; and
    e) There is a reasonable expectation they will return to duty long enough after using the advanced annual leave to earn the leave granted before the end of the leave year. Annual leave may not be advanced when it is known (or reasonably expected) the employee will not return, such as when the employee has filed for disability retirement, after receiving notice of separation or furlough, or submitted a resignation.

Section 25.02. Criteria for Advancing Sick Leave

1) In accordance with 5 CFR Part 630.402, Employees eligible to earn sick leave may be granted advanced sick leave at any time during the leave year for the amounts and reasons as follows:

    a) Up to 240 hours for a full-time employee:
        i) Who is incapacitated for the performance of their duties by physical or mental illness, injury, pregnancy or childbirth;
        ii) For a serious health condition of the employee or a family member;
        iii) When the employee would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by their presence on the job because of exposure to a communicable disease;
        iv) For purposes related to the adoption of a child; or
        v) For the care of a covered service member with a serious injury or illness, provided the employee is exercising their entitlement under 5 U.S.C. 6382(a)(3).
    b) Up to 104 hours to a full-time employee:
        i) When they receive medical, dental, or optical examinations or treatment;
        ii) To provide care for a family member who is incapacitated by a medical or mental condition or to attend to a family member receiving medical, dental, or optical examination or treatment;
        iii) To provide care for a family member who would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by that family member's presence in the community because of exposure to a communicable disease; or
        iv) To make arrangements necessitated by the death of a family member or attend the funeral of a family member.

2) Two hundred forty (240) hours is the maximum amount of advanced sick leave employees may have to their credit at any one time. For part-time employees or employees on an uncommon tour of duty, the maximum amount of sick leave a supervisor may advance must be prorated according to the number of hours in the employee's regularly scheduled administrative workweek.

3) Sick leave may not be advanced when it is known (or reasonably expected) the employee will not return, such as when the employee has filed for disability retirement, after receiving notice of separation or furlough, or submitted a resignation.

4) The request for advanced sick leave must include a Medical Certificate or other administratively acceptable evidence. A supervisor has discretion to consider what constitutes administratively acceptable evidence in accordance with 5 CFR Part 630, Part D. "Medical certificate" is defined as a written statement signed by a registered practicing physician or other practitioner certifying to the incapacitation, examination or treatment, the estimated period of disability while the patient is expected to receive professional treatment, and the time when the employee is expected to return to full or limited duty.

    a) In the event that an Employer does not approve of the documentation that the employee provides and needs additional medical information:
        i) A health care provider representing the Employer, including a health care provider employed by the Employer or under administrative oversight of the Employer, may contact the health care provider who completed the medical certification, with the employee's permission, for purposes of clarifying the medical certification.
        ii) If applicable, the Employer shall provide to the employee a list of the essential functions of their position which the health care provider will review for purposes of certifying that the employee was/is unable to perform an essential function and offer a brief explanation in accordance with the employee's privacy rights.

Section 25.03. Serious Health Condition Defined

For purposes of this Article, a serious health condition shall have the meaning set forth in 5 CFR Part 630.1202.

Section 25.04. Advanced Leave Upon Separation

Employees who leave the Agency with a negative annual and/or sick leave balance are required to reimburse the Employer by refunding the amount paid for which they are indebted or having the amount deducted from any compensation due. Reimbursement is not required and will be waived if an employee is separated because of death, disability retirement, or resignation/removal for physical disability which prevents the employee from returning to duty or continuing in the service (which is evidenced by acceptable medical documentation).

ARTICLE 26 LEAVE OF ABSENCE

Section 26.01. Leave Without Pay and Disabled Veteran Medical Leave

1) LWOP: Leave without pay is a temporary non-pay status and nonduty status (or absence from a prescheduled tour of duty) for a short period of time, which, at the Agency's discretion, may be granted at the employee's request.

2) Under the provisions of Executive Order No. 5396, July 17, 1930, a disabled veteran shall be permitted to use sick leave, annual leave or leave without pay or any combination thereof, in order to receive medical treatment.

Section 26.02. Criteria for Approving Leave of Absence

1) Unless the Employer determines that the employee's services are necessary:

   a) The Employer agrees to approve leave of absence for any employee elected to a position of national office of the National Treasury Employees Union for the purpose of serving full time in the elective position.
   b) Such leave of absence will be for a period concurrent with the term of office of the elected official and will automatically be renewed by the Employer upon notification in writing from the elected official that they have been reelected and wishes to continue in a leave of absence status.
   c) The Employer agrees to approve leave of absence for employees for the purpose of serving in full time appointed positions for the National Treasury Employees Union. The term of the leave of absence will be no more than two (2) years.
   d) All affected employees will have their leave of absence renewed for an additional two (2) year period upon request.

Section 26.03. Criteria for Approving Leave Without Pay

1) Unless the Employer determines that the employee's services are necessary, leave without pay will be granted when it is of acceptable cost to the Employer and meets the needs of the employee and the Employer. The LWOP request must contain estimated duration and reason. Valid requests include:

   a) Attending school, if the course of study will increase skills on the job;
   b) For employees whose applications for disability compensation are pending;
   c) For illness or injury documented by medical evidence, if the employee is expected to return to duty;
   d) While being paid disability compensation unless permanently disabled;
   e) To teach at colleges and universities;
   f) To work in non-federal public or private enterprises as provided in current laws and regulations where the work is temporary, and the following provisions are met:
      i) The activity in which the employee is to be engaged is one of special interest to the Department and will result in increased job ability applicable to the work of the Department;
      ii) The work does not involve the use of information secured as a result of

employment in the Department to the detriment of public service;

iii) That such employment does not tend to bring criticism on the Department or cause embarrassment; and

iv) That the employee is not accepting office in organizations nor permitting the use of their name in the advertising matter of organizations commercializing the results of research work conducted by the Department, irrespective of any merits that such enterprise may appear to possess.

g) Subject to the provisions of the Family Medical Leave Act.

h) To engage in political activities permitted under the Hatch Act Reform Amendments of 1993 for up to 90 days.

2) A condition of granting leave without pay is that the employee will be expected to return to duty. Employees may request leave without pay in lieu of annual leave. Such leave will be granted unless the Employer reasonably determines that the employee's services are necessary.

ARTICLE 27 ADMINISTRATIVE LEAVE

Section 27.01. Overview

For purposes of this Article, administrative leave is leave without loss of or reduction in: (1) pay, or (2) leave to which an employee is otherwise entitled under law, or (3) credit for time or service; and that is not authorized under any other provision of law.

a) This Article is implemented in accordance with Title 5 United States Code (USC) § 6329a, Administrative Leave, Title 5 USC § 6329c, Weather and Safety Leave, enacted as part of the Administrative Leave Act of 2016. The Parties recognize that there are limitations on administrative leave contained in Section 6329a, including a limit of 80 hours per calendar year for full time employees and prorated equivalent limitations for part-time employees. The Administrator or their designee may grant employees paid administrative leave in accordance with, and for purposes authorized by, law, regulations, and Agency policy.

Section 27.02. Voting

1) Unless it will cause a significant disruption to the Agency's operations, the Employer will permit employees to use up to four (4) hours of administrative leave on election day or during early voting to vote in Federal, State, county, municipal, Tribal, territorial, Federal special Congressional elections, and in referendums on any civic matter in their community. When granting this leave, an employee's regular hours of work will be determined based on their typical arrival and departure times. If an employee needs to spend less than four (4) hours to vote under this section, then the Employer will only grant the needed amount.

2) Unless it will cause a significant disruption to the Agency's operations, the Employer will permit employees to use up to four (4) hours of administrative leave per leave year to serve as a non-partisan poll worker or participate in non-partisan observer activities at the Federal, State, county, municipal, Tribal, and territorial level. This leave is in addition to any administrative leave an employee uses to vote. If more than four (4) hours is needed, the employee may request annual leave, earned compensatory time off, credit hours earned under a flexible work schedule, or leave without pay for the additional period of absence.

3) All requests for administrative leave under this Article must be made in advance and in writing (i.e., submitted through the time and attendance system or requested by email from employee to supervisor). If administrative leave is denied for a business exigency, the supervisor will provide a written explanation for the denial.

Section 27.03. Administrative, Investigative Leave and Notice Leave

In the event OPM issues final regulations regarding administrative leave, investigative leave, or notice leave, pursuant to 5 U.S.C. § 6329(a) and/or 6329(b), the Parties will bargain pursuant to Article 53, and the law.

Section. 27.04. Weather and Safety Leave

Weather and safety leave is paid leave that may be granted to an employee without any loss of pay, leave, or credit to the employee for time or service.

1) In accordance with 5 U.S.C. 6329(c) and 5 CFR Part 630, Subpart P, weather and safety leave may be granted when an employee is prevented from safely traveling to or safely performing work at an approved location due to:

   a) An act of God;
   b) A terrorist attack; or
   c) Another condition that prevents the employee from safely traveling to or performing work at an approved location.

   As defined in 5 CFR Part 630.1602, and "Act of God" is defined as "an act of nature, including hurricanes, tornadoes, floods, wildfires, earthquakes, landslides, snowstorms and avalanches.

2) As used in this section, telework-ready means that an employee has an approved telework agreement and has the necessary equipment and work materials to perform their duties at their telework location when a weather/safety event occurs.

3) A communicable disease, as defined by CDC, may be a condition that prevents an employee from safely traveling to, or performing work at an approved location, as determined by the employer. Employees who do not participate in the telework program may be granted weather and safety leave in circumstances where requiring the employee to travel to or perform work at the employee's approved work location would pose a significant risk to the health and safety of the employee, other employees, or the general public. For example, weather and safety leave may granted in circumstances such as when an employee is subject to movement restrictions in connection with a quarantinable communicable disease, or when an employee who is at high risk of serious complications from a communicable disease, or when an employee who is at high risk of serious complications from a communicable disease is not eligible for telework as determined by Management. An employee with a Management-approved telework agreement, including ad-hoc and situational, in effect is considered telework ready.

4) Whenever it becomes necessary to change the operating status of an FNS office because of a weather or other safety condition, the Employer will inform impacted employees of the operating status by private or public media, including email, the MIR3, and other methods as appropriate and available such as the OPM status website. Where an office closure is expected on the following day, employees will be notified no later than 1:00pm on the day before the closure or as soon as is reasonably possible.

5) The primary operating status categories provided by OPM, and in accordance with the Governmentwide Dismissal and Closure procedures are currently (1) Open; (2) Open with the option for unscheduled leave or unscheduled telework; (3) X hours delayed arrival with

the option for unscheduled leave or unscheduled telework; (4) Early departure; and (5) Closed. Additional information about each of the five operating status categories is below:

a) **Open:** The office is open, and employees are expected to work their normal tour of duty (including flexibilities afforded by AWS). Employees who are scheduled to telework may do so. Employees who are not scheduled to telework will report to the office.
b) **Open With the Option for Unscheduled Leave or Unscheduled Telework:** The office is open, and employees are expected to work their normal hours of duty. Employees who are participants in a telework program and who are telework-ready may notify their supervisor that they will telework instead of reporting to their office; or they may elect to request any appropriate leave without the usually required advance notice.
c) **X Hours Delayed Arrival with The Option for Unscheduled Leave or Unscheduled Telework:** Employees will be granted weather and safety leave to arrive up to X hours past their normal expected arrival time. Employees who are participants in a telework program (including those who perform telework regularly and those who telework on an ad hoc basis) who choose not to report to the regular office must be prepared to telework, take unscheduled leave or other paid time off, or a combination-thereby accounting for the entire workday. In general, weather and safety leave are not available to telework employees who do not report to the regular office. Employees also may elect to use any appropriate leave without the usual required notice.
d) **Early Departure:** Employees will be granted weather and safety leave to depart from the office up to X hours prior to their usual departure time. Telework program participants (including those who perform telework regularly and those who telework on an ad hoc basis) working in the office when an early departure is announced will receive weather and safety leave only for the amount of time required to commute safely home (excluding the period of time for an unpaid lunch break, if applicable). Generally, this means that telework program participants must complete the remaining time in their workday either by teleworking or taking other leave or paid time off after arriving home. Teleworkers are expected to take any equipment home to ensure they are telework-ready. In rare cases, an early dismissal will not be optional, and all employees will be required to depart the office by a specified time, after which the office will close.
e) **Closed:** The office is closed for weather/safety reasons. In general, employees will be granted weather and safety leave for the number of hours they were scheduled to work unless they are (1) an emergency employee, (2) a telework program participant, (3) on official travel outside of the duty station, (4) on preapproved leave (paid or unpaid) or other time off, or (5) on an AWS day off or other non-workday. When inclement weather could be reasonably anticipated, employees who are telework ready are expected to work from their approved telework site and will not receive weather and safety leave, except when:

    i) The telework site is unsafe due to weather/safety conditions; or
    ii) They are prevented from getting to or working at the telework site (e.g., due to loss of power or other conditions caused by the weather or safety conditions).

6) With supervisory approval, telework-ready employees may receive weather and safety leave if the employee is prevented from safely working at the telework site (e.g., loss of power, disruption in phone service or internet access, or other conditions caused by inclement weather) as a result of the severe weather or other safety event. Employees may request Weather and Safety leave from their supervisors verbally or in writing. The employee must explain why they cannot safely perform work at their telework location because of a weather/safety or emergency condition.

   The Employer will consider the following factors to determine whether the bargaining unit employee could not safely perform work at their telework location, and these factors will be applied uniformly to all bargaining unit employees within the area affected by the weather/safety conditions:

   a) Whether the employee's telework location is in an area affected by a weather or other safety condition, or the employee must travel through an area affected by a weather or other safety condition to reach to reach the employees telework location;
   b) Whether the weather or other safety condition caused the employee to be unable to operate necessary equipment at their telework location (e.g., a power outage, disruption in phone service or internet access, etc.); and
   c) Any evacuation orders or, if the employee is required to travel, any applicable local travel restrictions.

   If the employee's request is denied, the Employer will provide a written explanation of the reasons the request was denied within three (3) workdays. The employee may challenge the denial through the grievance procedure set forth in Articles 50 and 51.

   There will be no loss of pay, leave, or credit to the employee for time or service when an employee is prevented from performing their regular duties because of technological or equipment failure. When this occurs, the employee will notify their supervisor and await instructions regarding the work the employee should perform until the technological or equipment failure is resolved. When the technological or equipment failure is resolved, the employee will resume their regular duties.

7) Bargaining unit Employees who are scheduled to work at a temporary duty location that is affected by weather/safety conditions will discuss the situation with their supervisor to determine whether alternate arrangements are feasible. In the event an employee is prevented from safely traveling to or working at the temporary duty location, the employee may receive weather and safety leave.

8) Nothing in this section prevents Management from taking whatever action may be necessary to respond to an emergency

Section 27.05. Occasional Absences and Tardiness

An employee may be granted an excused absence or administrative leave for a period of time not to exceed one (1) hour for occasional absences from duty and tardiness when the employee's supervisor determines the cause of the absence or tardiness to be reasonable and in accordance with USDA DR 4060-630-002 (for example, administrative leave for morning traffic delays or an excused absence to attend an office luncheon). The Employer, in its sole discretion, will determine the appropriate type of leave to be granted, based upon the definitions set forth in the aforementioned DR.

Occasional tardiness of up to one (1) hour beyond the employee's starting time may be excused without charge to leave for adequate reasons (for example, administrative leave for traffic or public transportation delays during the morning commute).

Section 27.06. Volunteer Work

In accordance with Departmental and/or OPM guidance and if workload permits, employees may be granted up to eight (8) hours of duty time per leave year to participate in Agency-sponsored or sanctioned volunteer activities directly related to the Agency's mission. Decisions regarding employees' participation in such events will be made on a case-by-case basis.

Section 27.07. Donation of Blood and Organ Donation

1) With prior supervisory approval, the Employer agrees to approve up to four (4) hours of administrative leave, as needed, for any employee who donates blood for the time spend being evaluated for the donation, donating blood, and rest and recuperation for which no compensation is being received. For time in excess of four (4) hours, the employee may request annual leave, sick leave, accrued compensatory time, LWOP, or any other appropriate leave.

2) Pursuant to 5 U.S.C. § 6327, an employee is annually entitled to no more than seven (7) days of administrative leave to serve as a bone-marrow donor, and no more than thirty (30) days of administrative leave to serve as an organ donor.

Section 27.08. Adverse Working Conditions

The Agency will ensure the office environment is maintained in accordance with Agency policy, established codes, and applicable laws and regulations. When adverse working conditions occur impacting employee health and safety, such as failures in heat, air conditioning, power failure, or sanitary conditions, or if the building temperature drops or rises below what is considered comfortable or any other condition exists that results in the building becoming unsafe, as determined by the Employer, the building may be closed until the unsafe conditions are resolved. When the building is closed, the Employer may direct employees who are telework ready to complete their tour of duty at an approved alternate work site. Telework-ready employees may choose to complete their workday at an approved telework location without any loss of or reduction in pay or leave, or the employee may choose to request any appropriate leave.

ARTICLE 28 FAMILY AND MEDICAL LEAVE

Section 28.01. Parental Leave

Paid Parental Leave (under 5 U.S.C. § 6382) may be requested by all eligible employees, in accordance with Agency guidance and procedures, for the birth of an employee's child or the placement of a child with an employee for adoption or foster care. Employees may also request any combination of sick leave, annual leave, leave without pay, and earned compensatory time, as appropriate and as approved by the supervisor. Available sick leave may be used for the time required for physical examinations and the period of incapacitation due to pregnancy and childbirth. Employees may also request advance sick leave in accordance with established procedures.

Section 28.02. Family Medical Leave

1) Pursuant to the Family Medical Leave Act, employees (male or female) shall be entitled to a total of 12 workweeks of leave during any 12-month period, in accordance with applicable laws and regulations, for one or more of the following reasons:

    a) The birth of a son or daughter of the employee or in order to care for such son or daughter.
    b) The placement of a son or daughter with the employee for adoption or foster care.
    c) To care for the spouse, or a son, daughter, parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition.
    d) Because of a serious health condition that makes the employee unable to perform the functions of the employee's position.
    e) Any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces.

2) If foreseeable, the employee shall provide the Employer with not less than 30 days advance notice before the date the leave is to begin, of the employee's intention to take leave under paragraph (1) above. However, if the date of the treatment requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable. The Employer may require the employee's request to be supported by certification issued by the health care provider of the employee, or the son, daughter, spouse, or parent of the employee, as appropriate. An employee who meets the criteria set forth above may not be denied leave.

Section 28.03. Serious Health Condition Defined

The term serious health condition means an illness, injury, impairment or physical or mental condition that involves:

a) Inpatient care in a hospital, hospice, or residential medical care facility; or
b) Continuing treatment by a health care provider.

ARTICLE 29 OTHER LEAVE PROVISIONS

Section 29.01. Religious Holiday

1) An employee will be granted annual leave or leave without pay for a workday, which occurs on a religious holiday, unless the Employer determines that the employee's services are necessary, so long as the employee requests such leave one workday in advance.

2) An employee whose personal religious beliefs require the abstention from work during certain periods of time may elect to engage in overtime work for time lost for meeting those religious requirements.

3) To the extent that such modifications in work schedules do not interfere with the efficient accomplishment of an agency's mission, the Employer shall, in each instance, afford the employee the opportunity to work compensatory overtime and shall, in each instance, grant compensatory time off to an employee requesting such time off for religious observances when the employee's personal religious beliefs require that the employee abstain from work during certain periods of the workday or workweek.

4) For the purpose stated in paragraph (2) above, the employee may work such compensatory overtime before or after the granting of compensatory time off. A granting of the advanced compensatory time off must be repaid by the appropriate amount of compensatory overtime work within a reasonable period of time, not to exceed 13-pay-periods. Compensatory overtime shall be credited to an employee on an hour for hour basis authorized fractions thereof. Appropriate records will be kept of compensatory overtime earned and used.

Section 29.02. Military Leave

Any full time permanent or part-time permanent employee who is a member of the National Guard or other reserve unit of the Armed Forces shall be entitled to military leave for each day of active duty in such organization up to a maximum of twenty (20) calendar days in a fiscal year. Unused military leave up to twenty (20) calendar days may be carried over for a maximum of forty (40) calendar days and used in the next year. Approval of the military leave provided in the foregoing shall be based on the copy of the military orders directing the employee to active duty. The employee must furnish a copy of the certification of completion of such duty to the supervisor when the employee returns to work.

Section 29.03. Court Leave

An employee with a regular scheduled tour of duty is entitled to court leave in accordance with applicable laws, rules, and regulations. Upon being notified an employee needs court leave, the Employer shall advise the employee as to overtime, fees, travel expenses, and other appropriate compensation.

ARTICLE 30 FITNESS-FOR-DUTY EXAMINATIONS

Section 30.01. General

The Employer may order an employee to undergo a fitness-for-duty examination only in accordance with those regulations set forth in 5 CFR Part 339.301.

Section 30.02. Advance Notice of Examination

Except in emergency situations, an employee is entitled to five (5) workdays advance written notice that they are to take a fitness-for-duty or psychiatric examination. In the event that the employee is requested to set up an appointment, they shall be allowed reasonable time to do so. The notice will set forth the reasons for the examination, and the general scope and character of the examination.

Section 30.03. Medical Documentation

The agency designates the examining physician or other appropriate practitioner but must offer the individual an opportunity to submit medical documentation from their personal physician or practitioner. The agency must review and consider all such documentation supplied by the individual's personal physician or practitioner.

Section 30.04. Reimbursement for Related Costs

The Employer will pay all costs directly related to an agency-directed medical examination.

Section 30.05. Release of Medical Documentation

1) The Employer will provide an employee who has been ordered to undergo a fitness- for-duty examination copies of correspondence, not specifically prohibited by applicable laws, government-wide rules, and regulations which the Employer has directed to the examining doctor(s). These copies will be forwarded to the employee when the Employer delivers the correspondence to the examining doctor.
2) Medical information concerning a mental or other condition of such a nature that a prudent physician would hesitate to inform a person suffering from it of its exact nature and probable outcome may be disclosed only to a licensed physician designated in writing for that purpose by the person or their designated representative. The employee will be notified in writing that correspondence of that nature has been provided to the doctor.

Section 30.06. Psychiatric Evaluation

The Employer shall order or offer a psychiatric evaluation to an employee only when the employee first provides results of a general medical or psychiatric examination or the Agency had first conducted a non-psychiatric medical examination, and after review of the documentation or examination report, the Employer's physician concurs that a psychiatric evaluation is warranted for medical reasons.

ARTICLE 31 OUTSIDE EMPLOYMENT AND ACTIVITIES

Section 31.01. Coverage

1) Employees shall not engage in any outside employment or other outside activities not compatible with the full and proper discharge of the duties and responsibilities of their Government employment, whether on their own behalf, or for private individuals, firms, companies, institutions, or State or local governments. The term "Outside employment" or "activity" does not include:

    a) Memberships in or volunteer work with, charitable, religious, social, fraternal, recreational, public service, civic, or similar non-business and non-profit organizations;
    b) Memberships in professional organizations;
    c) Performance of duties in the Armed Forces, Reserve, or National Guard; or
    d) Acting as an officer of a labor organization pursuant to Title VII, Section 7120 of the Civil Service Reform Act of 1978.

Section 31.02. Request to Engage in Outside Employment

1) Advance written approval is required to engage in outside employment or activity whether paid or unpaid. Employees shall forward a written request for approval to the Director, Human Resources Division, or Regional Personnel Officer, through supervisory channels as far in advance as possible. The written request shall include:

    a) Outside organization or company name and address.
    b) Whether the outside work or activity will interfere with FNS work.
    c) Statement that the outside employment or activity involves no conflict of interest and that, if the employee becomes aware of a conflict of interest arising as a result of the outside employment, they will promptly report such conflict to the Employer.

2) Within ten (10) workdays, the Director, Human Resources Division or designee, or Regional Personnel Officer, will approve or deny a written request of an employee to engage in outside employment or activities.

3) The Director, Human Resources Division or designee, or Regional Personnel Officer, will provide written notification of reasons to the employee whose request to engage in outside employment or activities is denied.

4) If the Employer subsequently withdraws an approved request, the Director of Human Resources Division or designee, or Regional Personnel Officer, shall provide the employee with a reasonable period of time to take the required action.

5) If an employee disagrees with the Human Resources Division Director's or Regional Personnel Officer's denial of their request to engage in outside employment or activities, the employee may file a grievance at the third step within 15 workdays of the denial, in accordance with Article 50 of this Agreement.

Section 31.03. Right to Reopen Article

The Parties agree that this Article may be reopened in the future, contingent upon the withdrawal of an approved request for outside employment.

ARTICLE 32 PERSONNEL RECORDS AND ACCESS TO INFORMATION

Section 32.01. Access To Personnel Records or Information

1) Employees or their personally designated representative(s) will, upon written request, have access to records or information pertaining to them with the exception of records restricted by law or Government-wide rule or regulation. Such access will take place in the presence of the individual(s) having official custody of the record(s). Before disclosure of a record is made to the employee or their personally designated representative, the identification of both must be verified. Employees must provide their prior written consent to the Employer before disclosure of their written record will be made to a designated representative or in the presence of a designated representative.

2) Access to personnel records of the employee by the employee and/or the authorized representative normally shall be granted within two (2) workdays of the request if such records are maintained on the premises in which the employee is located and are immediately available. If the records are not available, the Employer will initiate prompt action to obtain the records.

3) One copy of such documents will be furnished without cost to the employee and/or designated representative, upon written request. Charges for additional photocopies shall be in accordance with applicable laws, rules, and regulations.

Section 32.02. Authorized Personnel

All information made available to authorized personnel for inspection, review or duplication shall also be made available to the employee or their representative, upon request. Information will be made available to authorized personnel only for official use as provided for in the Privacy Act of 1974.

Section 32.03. Official Personnel Folders

It is agreed that the Official Personnel Folders (OPF's) and other personnel records will be maintained in accordance with applicable laws, rules, and regulations. OPF's are the property of the Office of Personnel Management, and the contents may not be removed, altered, or added to, except by proper authority.

Section 32.04. Release of Information by Former Supervisor

When an employee is reassigned from one supervisor to another, information retained by the former supervisor, which is exempt from disclosure requirements of the Privacy Act, will not be released to the new supervisor or to others in the supervisory chain.

Section 32.05. Union Request for Information

1) The Employer will notify the Union, normally within ten (10) calendar days, whether information requested under 5 U.S.C. §7114(b)(4) will be provided. Where the Employer has notified the Union that the information will be provided, the Parties agree that time limits for filing grievances, taking grievances to later steps, or submitting bargaining proposals will, at the Union's option, be suspended until the information is delivered. The Union understands that requests for information must comply with law.

2) In six (6) months, but no later than one (1) year, from the effective date of this Agreement, the Agency agrees to bargain with the Union the creation of a Union profile granting "routine user" access to completed promotion action files, in accordance with the Privacy Act.

Section 32.06. Determination to Contract Out Bargaining Unit Work

1) If the Employer determines to contract out work traditionally performed by bargaining unit employees it shall provide a notice to the Union as soon as practicable, but no later than sixty
(60) days in advance of contracting out:

   a) The bid specifications, including projected start date and the term of the contract;
   b) The work needed to be performed;
   c) The qualifications necessary to perform the work;
   d) The number of Agency employees needed to complete the work.

2) In the event that a contract has more than *de minimis* impact on the bargaining unit employees' conditions of employment, the parties will engage in impact and implementation bargaining, upon request.

3) Within ten (10) days of the effective date of the contract between the Agency and an outside vendor, pursuant to 32.06(1), the Agency shall provide a copy of the applicable contract to NTEU.

ARTICLE 33 COMMUNICATIONS

Section 33.01. Union Notification

When the Employer presents the employee with one of the following written notices, the employee will simultaneously receive a copy of that written notice which will state on the first page in capital letters: **THIS COPY MAY AT YOUR OWN OPTION BE FURNISHED TO NTEU CHAPTER** (insert local Chapter number).

Section 33.02. Application

This Article applies to the following material:

1) Letters of proposed disciplinary or adverse actions;
2) Letters of final decision in any disciplinary or adverse action;
3) Letters of advance notice or decisions to withhold a within-grade increase;
4) Letters of a decision to impose a reduction in force;
5) Letters of a decision to downgrade an employee's classification;
6) Letters denying outside employment requests;
7) Letters putting an employee on a work schedule or sick leave restriction;
8) Letters denying an employee advance annual or sick leave;
9) Letters in relation to unacceptable performance situations that provide a formal opportunity to improve performance; propose adverse action based on performance deficiencies; notify the employee of an unacceptable evaluation in one or more critical element; or transmit the final decision after a proposed action;
10) Letters denying an employee's access to their personnel records;
11) Letters denying a waiver of overpayment;
12) Letters denying an employee's request for part-time employment; and
13) Letters denying an employee's request for an alternative work schedule.

ARTICLE 34 WAIVER OF OVERPAYMENT

Section 34.01. Requests and Criteria for Waiver of Overpayment

1) An employee may request a waiver of overpayment of pay and allowances. If the overpayment involves an erroneous payment for travel, transportation or relocation expenses allowances, the request shall be sent to the Director, Human Resources Office.

2) If a requested waiver of overpayment is denied, the employee will be notified of any and all reasons for that denial.

Section 34.02. Request for Repayment Schedule

1) When an employee is not entitled to a waiver of overpayment and the employee receives an overpayment, such an employee should be permitted to repay the excess in accordance with 7 CFR, Part 3, Subpart C, and DPM Personnel Letter 550-94.

2) The Agency will approve an employee's request for a re-payment schedule of $25 per pay period if the employee establishes that a repayment schedule of 15% of their disposable pay per pay period will result in a financial hardship.

3) No overpayment of $25 or more will be collected without first providing thirty (30) days written notice of the overpayment to the timekeeper for transmittal to the employee.

4) 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.

5) If an employee terminates their employment with the Employer, prior to the liquidation of any overpayment described in paragraph (1) above, the Employer retains the right to satisfy any outstanding balance from any funds due and owing the employee.

ARTICLE 35 EQUAL EMPLOYMENT OPPORTUNITY

Section 35.01. General

The Employer and the Union agree to the principles of equal opportunity in employment for all persons and to prohibit discrimination because of age (40 or older), race, color, religion, sex (including sexual orientation, gender identity/expression, and pregnancy), national origin, marital status, genetic information, disabilities and any other protected class covered by law, rule, or regulation in personnel policies, practices, and employment conditions. Employees will be free from reprisal for exercising their EEO rights.

Section 35.02. Employee Participation in EEO Programs

The Union and Employer encourage all employees to actively participate in the EEO and employee resource Programs. This includes but are not limited to special interest activities such as the Federal Women's Program, the Hispanic Employment Program, Career Enhancement (Special Placement), and other programs as are appropriate.

Section 35.03. EEO Counselor Positions

If the Employer ever identifies a need to assign EEO Counselor duties that are collateral to an employee's current position, the Union will be invited to submit a list of candidates for consideration by the Employer.

Section 35.04. Meeting Space

EEO Counselors will ensure that confidential meeting space is available for all meetings with employees.

Section 35.05. EEO/Workforce Diversity Committee

The Parties share a commitment, and recognize the importance of, joint EEO/Workforce Diversity Committees in the workplace. EEO and Workforce Diversity Committees will normally be comprised of an equal number of representatives from the Union and the Employer and may include representatives from Headquarters and the Regions. Bargaining unit employees serving on these joint committees will do so on duty time. These committees may discuss such issues as the workplace culture, managing/valuing diversity, career enhancement programs, and any other applicable matters. When the committees are established, they will be responsible for drafting their own bylaws or rules concerning their governance.

Section 35.06. Union Access to EEO Report

The Employer will provide the Union with access to its Affirmative Action Employment Plan, Equal Employment Opportunity Commission MD-715 report, the USDA No FEAR Act report, the Equal Employment Opportunity Commission 462 report, the Food, Nutrition, and Consumer Services Recruitment Plan, and the USDA Federal Equal Opportunity Recruitment Program Plan.

Section 35.07. Official Time

1) At any stage in the process of an EEO grievance or complaint, the employee may be accompanied, represented, and advised by a Union representative if the employee designates the Union representative as their EEO representative.

2) An employee wishing to file a complaint or a grievance on a matter of alleged employment discrimination (i.e., discrimination based on those protected groups in section 35.01) may elect to challenge the matter by filing an EEO complaint or by filing a grievance under Article 50 of this Agreement, but not both.

3) In filing an EEO complaint, the employee shall have the right to be accompanied, represented, and advised by a representative of the employee's choice.

4) Upon written request, employees otherwise on duty shall be granted a reasonable amount of duty time to prepare their complaint, to respond to Agency and EEOC requests for information, and to prepare any appeals that may be filed with the EEOC. However, the Employer is not obligated to change work schedules, incur overtime wages, or pay travel expenses to facilitate the choice of a specific representative or to allow the complainant and representative to confer.

Section 35.08. Reasonable Accommodation

1) Pursuant to 29 CFR 1630.9 and other applicable law and regulation, the Employer will provide reasonable accommodations to employees with qualified disabilities (targeted or hidden) unless, as prescribed by regulation, the Employer can demonstrate that providing an accommodation would impose an undue hardship on the operation of the Agency.

2) The Employer is committed to providing employees with qualified disabilities with an equal opportunity to obtain and successfully perform a job to the same extent as employees without disabilities and to enjoy the benefits and privileges of employment.

3) Absent a direct threat or undue hardship, the Employer must provide an effective reasonable accommodation to a qualified employee to the extent that the employee has a qualified disability as defined by 29 CFR 1630 and can carry out the essential functions of their assigned duties.

4) Bargaining Unit Employees with a qualified disability may request reasonable accommodations in accordance with federal law, Department Regulation 4300-008, Department Manual 4300-002, the Employer's guidance and procedures, and this Agreement.

5) The Agency will maintain a copy of Department Regulation 4300-008, Department Manual 4300-002, and the Employer's Reasonable Accommodation guidance and procedures on the

   FNS intranet site.

6) Bargaining Unit Employees who request a reasonable accommodation may have a union representative participate in the interactive process.

7) The Employer will provide information to all bargaining unit employees on how to request a reasonable accommodation during new employee orientation. All bargaining unit employees may use duty time to review any provided materials.

ARTICLE 36 OFFICIAL TRAVEL AND PER DIEM

Section 36.01. Travel Outside Established Tour of Duty

1) To the maximum extent practicable, all authorized work-related travel shall be scheduled to occur during the employee's approved work hours and work week. Employees shall be compensated and reimbursed for authorized travel on official business in accordance with law, regulations, and this Agreement. No employee will be compensated for official travel where such travel is not authorized by the Employer and the Federal Travel Regulations.

2) Compensatory time off for travel (comp travel) is earned by an employee for time spent in a travel status away from the employee's official duty station when such time is outside of the employee's regular work hours and work week and the time is not otherwise compensable.

    a) Compensable refers to periods of time creditable as hours of work. This includes regular work hours, overtime pay, and compensatory time off in lieu of overtime.
    b) Comp travel is forfeited if not used by the end of the 26th pay period after the pay period during which it was earned or upon separation from the agency. Employees will not be compensated monetarily for unused comp travel.
    c) Creditable refers to travel time for work purposes that has been approved by an authorized agency official. This includes time spent:
        i) traveling between the official duty station and a temporary duty station;
        ii) traveling between two temporary duty stations;
        iii) waiting during travel (e.g., waiting at an airport or train station prior to departure); and
        iv) traveling between an employee's home and a temporary duty station (less the employee's regular commute time).
    d) If circumstances require an employee's presence on a Monday, too early to permit travel that day, the Employer may allow the employee to perform travel on the preceding Sunday.

Section 36.02. Official Travel During Established Tour of Duty

If circumstances require an employee's attendance on any day at a time too early to permit travel on that day during normal duty hours of the employee, the employee may travel during normal duty hours the preceding day as authorized by their supervisor for bona fide work-related reasons.

Section 36.03. Return to Duty Station

Employees at a temporary duty station who are prevented from returning to their assigned duty station during normal duty hours may return at a reasonable time period, as determined and authorized in advance by their supervisor or authorized management official.

Section 36.04. Advance Notice of Travel

1) If employees are required to travel, the Employer will provide employees with as much advance notice as is reasonably possible; and, where feasible, will provide employees with thirty (30) calendar days' notice.

2) Where an employee does not have a government issued credit card, the employee may request an advance of funds sufficient to cover per diem or actual subsistence expenses.

Section 36.05. Reimbursement of Business-Related Travel Expenses

1) For computing meals and incidental expenses reimbursement allowances, official travel begins when the employee leaves home, office or other authorized point of departure and ends when the employee returns home, to the office, or other authorized point at the conclusion of the workday or trip. A per diem allowance shall not be allowed for travel within the limits of the official duty station (a 50-mile radius from the office) or the vicinity of the employee's home (a 50-mile radius from the employee's residence).

2) Employees must submit a request for reimbursement within 5 days from conclusion of travel status.

3) The meals and incidental expenses (M&IE) allowance for a partial day of travel will be a flat three-fourths (3/4) of the applicable M&IE, or in accordance with current FTR.

4) For travel of more than twelve (12) hours and exceeding 50 miles from the official duty station or the employee's residence, as applicable, the meals and incidental expenses (M&IE) allowance will be a flat three-fourths (3/4) of the applicable M&IE, or in accordance with current FTR.

5) Payment of per diem allowance for travel of twelve (12) hours or less is prohibited.

Section 36.06. Use of Private Vehicle for Official Business

1) When use of a privately owned vehicle for official business is advantageous to the Employer, the employee providing such automobile will be reimbursed at the rate allowable by regulation. In no case may an employee be required to use their privately owned vehicle in connection with official business.

2) Employees in travel status using personal vehicles shall be treated in the same manner as employees in travel status using fleet or commercial rental vehicles with respect to pay status when unexpected emergencies or challenges are encountered. In such situations, the employee will, within the hour, if practicable, or as soon as is reasonably possible, provide the supervisor with an estimate of the situation and obtain appropriate instructions.

Section 36.07. Voluntary Return for Non-Workdays

1) When an employee in travel status voluntarily returns to their official duty station or residence for non-workdays, the maximum reimbursement for the round-trip transportation and per diem in route shall be limited to the per diem allowance and travel expenses which would have been allowed had the employee remained at the temporary duty station. The employee shall perform any such voluntary return travel during non-duty hours or periods of authorized leave.

2) Employees who are required to routinely perform extended periods of temporary duty may, at Agency discretion and within the limits of appropriations available for payment of travel expenses, be authorized round-trip transportation expenses and per diem in route for periodic return travel to their official duty station or residence for non-workdays.

Section 36.08. Illness During Travel

Where an employee in a travel status becomes ill and is expected to remain so for any significant length of time, the Employer will pick up all normal travel expenses in connection with returning that employee to their normal post of duty area as promptly as possible.

Section 36.09. Denial of Claim for Reimbursement of Local Travel Expenses

Upon request, the Employer agrees to advise the employee of the reasons for any claim for travel expenses being denied in writing.

Section 36.10. Access to Travel Regulations

A copy of official travel regulations and/or guidelines will be made accessible to employees and made available upon request. These guidelines will include the appropriate use of government credit cards. All such regulations and guidelines will be explained to employees upon request. The Employer agrees to provide the Union copies of changes to government travel regulations within a reasonable period of time after receipt.

Section 36.11. Travel Voucher

Departmental policy and the travel card use agreement that employees enter into require the employee to pay the full amount due on the credit card statement by the due date regardless of reimbursement status from the Agency.

Section 36.12. Time in Travel Status Defined

1) Time spent traveling shall be considered hours of work for employees non-exempt from the FLSA if:
   a) An employee is required to travel during regular working hours;
   b) An employee is required to drive a vehicle or perform other work while traveling;

c) An employee is required to travel as a passenger on a one-day assignment away from the official duty station; or

d) An employee is required to travel as a passenger on an overnight assignment away from the official duty station during hours on non-workdays that correspond to the employee's regular working hours.

2) Time in travel status away from the official duty station for employees exempt from the FLSA shall be deemed employment only when:

a) It is within their regularly scheduled administrative workweek, including regular overtime work; or

b) The travel –

i) involves the performance of actual work while traveling;

ii) is incident to travel that involves the performance of work while traveling;

iii) is carried out under such arduous and unusual conditions that the travel is inseparable from work; or,

iv) results from an event, which could not be scheduled or controlled administratively including, travel by an employee to such an event and the return of the employee to their official-duty station.

c) Travel comp time will be provided pursuit to OPM governmental regulations.

Section 36.13. Travel From Airports Other Than Those Nearest Official Duty Station

The Federal Travel Regulations require that official travel be performed for the least cost to the government. Personal convenience to the traveler is not a consideration. An employee is authorized to travel from an airport other than the one nearest to the official duty station, only if it is determined that the total cost of travel is equal to or less costly than travelling from the airport closest to the duty station. In the event that an employee travels from an airport where the cost is not the least costly alternative, reimbursement to the employee will be limited to the least costly amount.

ARTICLE 37 PROHIBITED PERSONNEL PRACTICES

Section 37.01. Merit System Principles (5 U.S.C. §2301)

1) The Parties mutually recognize that Federal personnel management should be implemented consistent with the following merit system principles:

    a) Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society. Selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills after fair and open competition which assures that all receive equal opportunity.
    b) All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or disabling condition, and with proper regard for their privacy and constitutional rights.
    c) Equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector. Appropriate incentives and recognition should be provided for excellence in performance.
    d) All employees should maintain high standards of integrity, conduct and concern for the public interest.
    e) The federal work force should be used efficiently and effectively.
    f) Employees should be retained on the basis of the adequacy of their performance. Inadequate performance should be corrected. Employees should be separated who cannot or will not improve their performance to meet required standards.
    g) Employees should be provided effective education and training in cases in which such education and training would result in better organizational and individual performance.

2) Employees should be:

    a) Protected against arbitrary action, personal favoritism, or coercion for partisan political purposes; and
    b) Prohibited from using their official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for election.

3) Employees should be protected against reprisal for the lawful disclosure of information which the employees reasonably believe evidence:

    a) A violation of any law, rule, or regulation; or
    b) Mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

Section 37.02. Definition

1) For the purpose of this Article and in accordance with 5 U.S.C. §2302, “prohibited personnel practice” means any action described in Section 37.03 below.

2) For the purpose of this Article, "personnel action" means:
   a) An appointment;
   b) A promotion;
   c) An action under Chapter 75 of the Civil Service Reform Act of 1978 or other disciplinary or corrective action;
   d) A detail, transfer, or reassignment;
   e) A reinstatement;
   f) A restoration;
   g) A reemployment;
   h) A performance evaluation under Chapter 43 of Title 5 of the United States Code;
   i) A decision concerning pay, benefits, or awards, or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other action described in this Subsection;
   j) A decision to order psychiatric testing or examination; or
   k) Any other significant change in duties or responsibilities which is inconsistent with the employee's salary or grade level.

Section 37.03. Prohibited Personnel Practices

1) In accordance with 5 U.S.C. § 2302, 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 or applicant for employment:
      i) On the basis of race, color, religion, sex, or national origin, as prohibited under Section 717 of the Civil Rights Act of 1964;
      ii) On the basis of age, as prohibited under Sections 12 and 15 of the Age Discrimination in Employment Act of 1967;
      iii) On the basis of sex, as prohibited under Section 6(d) of the Fair Labor Standards Act of 1938;
      iv) On the basis of a disabling condition, as prohibited under Section 501 of the Rehabilitation Act of 1973; or
      v) On the basis of marital status or political affiliation, 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:
      i) An evaluation of the work performance, ability, aptitude, or general qualifications of such individual; or
      ii) An evaluation of the character, loyalty, or suitability of such individual.

c) Coerce the political activity of any person (including the providing of any political contribution or service) or take any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity.

d) Deceive or willfully obstruct any person with respect to such person's right to compete for employment.

e) Influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment.

f) Grant any preference or advantage not authorized by law, rule or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment.

g) Appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in Title 5 of the United States Code) of such employee if such position in the agency in which such employee is serving as a public official (as defined in Title 5 of the United States Code) or over which such employee exercises jurisdiction or control as such an official.

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:

   i) Any 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 substantial and specific danger to public health or safety, if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

   ii) Any disclosure to the Special Counsel of 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 regulation; or
      (b) Gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

i) Take or fail to take, or threaten to take or fail to take, any personnel action against any employee or applicant for employment as a reprisal for the exercise of any appeal right granted by any law, rule, or regulation.

j) Discriminate for or against an employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others; except that nothing in this subsection shall prohibit an agency from taking into account in determining suitability or fitness any conviction of the

employee or applicant for any crime under the laws of any State, of the District of Columbia, or of the United States.

k) Take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning the merit systems principles contained in the Civil Service Reform Act of 1978.

Section 37.04. Governing Laws, Rules and Regulations

In accordance with 5 U.S.C. §2302, nothing in Section 37.03 above shall be construed to extinguish or lessen any effort to achieve equal employment opportunity through affirmative action or any right or remedy available to any employee or applicant for employment in the Civil Service under:

1) Section 717 of the Civil Rights Act of 1964 prohibiting discrimination on the basis of race, color, religion, sex, or national origin;
2) Sections 12 and 15 of the Age Discrimination in Employment Act of 1967, prohibiting discrimination on the basis of age;
3) Section 6(d) of the Fair Labor Standards Act of 1938, prohibiting discrimination on the basis of sex;
4) Section 501 of the Rehabilitation Act of 1973, prohibiting discrimination on the basis of a disabling condition; or
5) The provisions of any law, rule, or regulation prohibiting discrimination on the basis of marital status or political affiliation.

Section 37.05. Right to Select Statutory Procedure or Grievance Process

1) In accordance with 5 U.S.C. § 7121, an employee aggrieved under this Article may raise the matter under a statutory procedure or the negotiated grievance process provided in this Agreement, but not under both.

2) An employee shall be deemed to have exercised their option under this Section at such time as the employee timely initiates an action under the applicable statutory procedure or timely files a written grievance under the provisions of this Agreement, whichever event occurs first.

3) Selection of the grievance procedure contained in this Agreement in no manner prejudices the right of an aggrieved employee to request the Merit Systems Protection Board to review the final decision pursuant to Section 7702 of Title 5 of the United States Code in the case of any personnel actions that could have been appealed to the Board, or, where applicable, to request the Equal Employment Opportunity Commission to review a final decision in any other matter involving a complaint of discrimination of the type prohibited by any law administered by the Equal Employment Opportunity Commission.

ARTICLE 38 HEALTH AND SAFETY

Section 38.01. Occupational Health and Safety Standards

1) The Employer will provide a safe and healthy working environment consistent with applicable laws and regulations.

2) The Employer will comply with safety and health standards issued under the Occupational Safety and Health Act of 1970 (OSHA).

3) When the Employer discovers a violation of OSHA standards, it shall immediately take steps to rectify the situation and notify the Union and affected employees, as soon as possible, of the condition.

4) The Employer recognizes that pursuant to 29 CFR Part 1960, employees shall be free from reprisal, including charge to leave, when employees decline to perform their assigned task because of reasonable beliefs that, under the circumstances, the task poses an imminent risk of death and there is insufficient time to seek effective redress through normal hazard reporting and abatement procedures established by the Employer.

Section 38.02. Hazardous Working Conditions. Health and Safety Inspections

1) Employees are encouraged to inform the Employer of any condition at the workplace that poses a health or safety hazard. The Employer will take necessary steps to correct or address the hazardous condition and will notify the local Union Chapter what action has been or will be taken to correct or attempt to correct the reported condition.

2) The Employer will provide for annual health and safety inspections. The Employer will conduct fire and bomb drills. More frequent inspections and drills will be conducted on an as needed basis. Where the inspections and drills are outside of management's control, the Employer will encourage the building management to ensure that such inspections and drills take place. A Union official shall be afforded the opportunity to accompany the Employer or the building management on the inspection and shall be on official time.

Section 38.03. Unusual Temperature Levels

Individual employees affected by unusual levels of temperature, to the extent that they are incapacitated for duty or to the extent that continuance of duty would adversely affect their health, will be granted annual or sick leave, in accordance with this contract.

Section 38.04. Health and Safety Forum

Each region will establish a forum where health and safety issues can be addressed.

Section 38.05. Snow/Ice Conditions

The Employer will request the building management to clear walkways and ramps for persons with disabilities and, if needed, salt or sand as soon as possible after a snowfall or when ice conditions exist.

Section 38.06. Reasonable Accommodation

1) The Employer will make reasonable accommodations for employees who have a documented medical condition aggravated by the use of computer equipment (or other work assignments) in accordance with the recommendations made by medical or rehabilitation professionals.

2) The Employer shall provide employees who are required to use VDT equipment on the job with ergonomic furniture that meets accepted industry standards. Upon request, wrist rests will be provided to individual employees.

Section 38.07. High Crime Area Forum

The Parties agree to provide a forum in which the issue of working in high crime areas may be discussed and recommendations developed.

Section 38.08. Evacuation Procedures

The Employer will provide evacuation procedures for all employees including procedures for evacuating employees with physical disabilities. These procedures will be provided in an accessible format for persons with disabilities. The Union will be afforded the opportunity to bargain any changes in evacuation procedures in accordance with applicable law.

Section 38.09. Harmful Chemicals

1) The Employer will inform the Union of harmful chemicals that will be used in its buildings, such as paint, pesticides, or cleaning fluids, as soon as the Employer is aware that such chemicals will be used.

2) Where there is a reasonable likelihood of injury due to application of any harmful chemicals, employees will be directed to move to another work area until their area is determined safe for use.

Section 38.10. Union Notification of Health and Safety Accidents

1) The Employer will notify the local Chapter President of any health and safety accidents involving bargaining unit employees.

    a) Upon request, the Employer will supply the Union with copies of any occupational health and safety reports affecting bargaining unit employees, which are required to be filed.
    b) Upon request, the Employer will supply the Union with copies of reports of all health and safety accidents.

Section 38.11. First Aid Kits and CPR

1) In each regional office and at Headquarters, the Employer will provide a first aid kit and designate a responsible person to maintain the kit. The Employer will ensure that those designated to maintain first aid kits will receive training in the care and use of the kit.

2) At each regional office and at Headquarters, the Employer will request volunteers to be trained, at the Employer's expense, on the techniques of cardiopulmonary

resuscitation (CPR) unless there is a co-located Health Unit staffed by individuals trained in CPR.

3) The names of all employees who are assigned first aid kits or who are trained in CPR techniques shall be posted so as to insure proper employee awareness. Before the employee is given the training referenced in this section, the employee will agree to having their name posted.

Section 38.12. Procedures for Reporting and Filing Federal Worker's Compensation Act Claims

The Employer agrees to inform employees of the proper procedures to be followed in reporting and filing claims under the Federal Worker's Compensation Act.

Section 38.13. Emergency Contact

When it becomes necessary for an employee to leave work and return home because of illness or incapacitation, the Employer will contact the individual designated by the employee to contact in case of emergency or whomever the employee wishes the Employer to contact at the time. If the employee's condition is determined to be serious, the Employer will call for emergency assistance.

ARTICLE 39 TEMPORARILY DISABLED EMPLOYEES

Section 39.01. Light Duty Assignments. Medical Certification

The Employer will make every reasonable effort to provide light duty assignments for employees temporarily unable to do their regularly assigned tasks due to medical reasons, as verified by medical certification. In certain circumstances, the Employer may require a designated medical officer to verify an employee's medical condition. If the employee provides acceptable medical certification in accordance with Article 24, that they cannot carry out the alternate duties, they may request leave in accordance with this contract and/or applicable laws and regulations. This does not preclude any employee from filing an application for disability retirement or worker's compensation in accordance with applicable regulations.

ARTICLE 40 EMPLOYEE ASSISTANCE PROGRAM

Section 40.01. Coverage

The Employer agrees to continue an Employee Assistance Program (program for troubled individuals for alcoholism, drug abuse, emotional illness, and other personal problems that may affect job performance).

Section 40.02. Purpose

The Parties recognize that the program is designed to address problems at an early stage when the situation may be more likely to be correctable. If an employee participates in the program, the responsible supervisory official will give consideration to this fact in determining any appropriate disciplinary action.

Section 40.03. Notice, Use, and Leave Approval

1) The Employer will inform the employee about and encourage the employee to utilize the EAP as soon as the Employer is reasonably aware that the employee may be experiencing a problem of the type stated in Section 40.01. Employees will be granted a reasonable amount of administrative time to see a counselor in accordance with the applicable Employee Assistance Program contract.

2) Employees undergoing a prescribed program of treatment and care will be granted appropriate leave in accordance with applicable law and this Agreement. The Employer agrees to assist the employee in working out a regular schedule for taking such leave provided the employee wishes to have their treatment made known to the approving official.

Section 40.04. Confidentiality

The Employer will preserve the confidentiality of the medical records of employees in accordance with law.

ARTICLE 41 RETIREMENT/RESIGNATION

Section 41.01. Withdrawal of Resignation/Retirement Application

An employee may withdraw a resignation or retirement application at any time prior to its effective date, provided the withdrawal is communicated in writing to the Employer. Such withdrawals will be accepted by the Employer unless the Employer has made a written commitment to fill the position of the retiring or resigning employee to any specific person or is in the process of charting a reduction-in-force.

Section 41.02. Access to Union Retirement Information

The Employer will provide to all retiring employees a package of information to be provided by the local Union Chapter.

ARTICLE 42 TEMPORARY EMPLOYEES

Section 42.01. Purpose

The purpose of this Article is to clarify the rights of temporary employees.

Section 42.02. Non-Renewal of Appointment

Where possible, temporary employees serving in a temporary appointment will be given two (2) weeks advance notice when their appointment will not be renewed.

Section 42.03. Access to Vacancy Announcements

Upon request, temporary employees will be mailed copies of any vacancy announcements for which they are basically eligible for a three (3) month period following a non-disciplinary or non-performance related termination.

ARTICLE 43 PART-TIME EMPLOYMENT

Section 43.01. Definition

For the purpose of this Article, part-time employees are those who are employed in permanent positions with a pre-scheduled tour of duty of between sixteen (16) to thirty-two (32) hours per week.

Section 43.02. Criteria for Approval

The Employer will consider employee requests to work part-time and respond to requests in a timely manner. Requests will be in writing, contain the reasons for the change, and the duration of the part time employment period. Requests will be approved unless it is determined that the requested change would have an adverse effect on working unit's ability to function efficiently and effectively. Any denial will be in writing.

Section 43.03. Coverage

1) The Employer recognizes that part-time career employment may be appropriate, but in no way limited to, the following classes of employees:

    a) Older employees seeking gradual transition into retirement;
    b) Individuals with a disability or others who require a reduced work week;
    c) Parents who must balance family responsibilities with the need for additional income; and
    d) Students who must finance their own educational and vocational training.

Section 43.04. Benefits

A part-time employee will receive a full year of service credit for each calendar year worked. However, an employee must take into consideration the impact part-time employment has on their benefits. Before an employee is assigned to a part-time position, the Employer will inform them on the impact of the assignment in the following areas: leave earnings, health and life insurance, retirement benefits, and competitive levels for reduction in force.

Section 43.05. Holidays

When a holiday falls on a part-time employee's regularly scheduled workday, the employee will be paid for the number of hours they were scheduled for that day.

Section 43.06. Change in Employment Status

Any person who is employed on a full-time basis shall not be required to accept part-time employment as a condition of continued employment.

Section 43.07. Request to Return to Full-Time Status

An employee has no right to return to full-time status after having accepted a part-time position. However, the Employer will give serious consideration to a request to return to full time, consistent with workload and ceiling requirements. When such a request is rejected, the reasons for rejection will be explained in writing, if requested in writing.

Section 43.08. Job Sharing

Job-sharing is a form of part-time employment in which the tours of duty of two (2) employees are arranged in such a way as to cover a single full-time position using flexibility in the number of hours worked and the work schedules of each partner.

1) The Employer will consider requests to job-share and may grant these requests based on the need for the employees' services, the suitability of the position/employees for job-sharing, availability of resources, and the impact on the efficiency of the Agency.

2) Employee requests to job-share must be made to the immediate supervisor(s) in writing.

3) It is the responsibility of the requesting employee to find a suitable partner to share a position.

4) If one partner leaves the program for any reason, the other partner may, absent workload demands, have forty-five (45) days from receiving written notice from the Employer to find another partner or resume full-time employment unless management has agreed to allow part-time employment arrangements.

5) In any job-sharing arrangement, office space and equipment shall be shared. Alternatives may be considered by the Employer in unusual situations.

ARTICLE 44 PROBATIONARY EMPLOYEES

Section 44.01. General

The Parties recognize that new employees with the Federal Government require counseling and assistance during their probationary period. Every effort will be made to provide the probationary employee with the necessary counseling/assistance to enable the employee to demonstrate their ability to work successfully within the Federal work force.

Section 44.02. Probationary Trial Period Report

Prior to the end of the tenth month of the probationary period, the supervisor shall submit the probationary or trial period report to the Human Resources Office and provide a copy to the employee certifying that the employee's performance and conduct are satisfactory or unsatisfactory, and recommending that the employee be retained or separated.

Section 44.03. Termination of Probationers for Unsatisfactory Performance or Conduct

An employee's separation from the rolls under this Article must be affected before the employee has completed their probationary period. When an agency decides to terminate an employee serving a probationary or trial period because their work performance or conduct during this period fails to demonstrate their fitness or qualification for continued employment, it shall terminate their services by notifying them in writing as to the reason(s) for the termination and the effective date of the action. Such notice shall be accompanied by any material used to support the termination.

Section 44.04. Termination of Probationers for Conditions Arising Before Appointment

1) When an agency proposes to terminate an employee serving a probationary or trial period for reasons based in whole or in part on conditions arising before their appointment, the employee is entitled to the following:

    a) Written notice stating the reasons, specifically and in detail, for the proposed action.
    b) A reasonable time for filing a written answer to the notice of proposed adverse action and for furnishing affidavits in support of their answer. If the employee answers, the agency shall consider the answer in reaching its decision.
    c) Delivery of the decision at or before the time the action will be made effective. The notice shall be in writing, inform the employee of the reasons for the action, inform the employee of their right to appeal to the Merit Systems Protection Board (MSPB), and inform them of the time limit within which the appeal must be submitted as provided in 5 CFR Part 315.806(d).

Section 44.05. Right to Appeal to the Merit Systems Protection Board (MSPB)

1) An employee may appeal to the MSPB in writing an agency's decision to terminate them under 5 CFR Part 315.804 or Part 315.805 only as provided in paragraph (2) and (3) of this

Section. The MSPB review is confined to the issues stated in paragraph (2) and (3) of this Section.

2) A probationary employee may appeal under this paragraph a termination not required by statute which they allege was based on partisan political reasons or marital status.

3) A probationary employee whose termination is based on conditions arising before their appointment may appeal on the grounds that their termination was not affected in accordance with the procedural requirements of Section 44.04 (5 CFR Part 315.805).

4) An appeal alleging a discriminatory termination may be filed under this subsection only if such discrimination is raised in addition to one of the issues stated in paragraph b or c of this Section. An employee may appeal to the Board under this section a termination which the employee alleges was based on discrimination because of race, color, religion, sex, or national origin; or age (provided that at the time of the alleged discriminatory action the employee was at least 40 years of age); or because of a disabling condition if the individual meets the definition of person with a disability as set forth in regulations of the Equal Employment Opportunity Commission at 29 CFR Part 1614.

Section 44.06. Right to Appeal to Equal Employment Opportunity Commission

1) Where the probationary employee believes that their termination is based solely on grounds set forth in paragraph 44.05 (2) or (4) above, the employee may pursue an appropriate appeal to the Equal Employment Opportunity Commission.

2) The employee elects the forum by filing an appeal, in writing, within thirty (30) calendar days of the effective date of the action with the MSPB, or by filing a discrimination complaint within forty-five (45) calendar days in accordance with agency procedures. The employee may not utilize both procedures but must elect one or the other in writing.

Section 44.07. Voluntary Resignation in Lieu of Termination

Probationary employees may choose voluntary resignation in lieu of termination at any time prior to the date of their termination. If the probationary employee voluntarily resigns, the employee's official personnel folder will reflect the voluntary resignation.

ARTICLE 45 DISCIPLINARY ACTIONS

Section 45.01. Purpose

1) Disciplinary actions will be taken for such cause as will promote the efficiency of the service.

2) This Article applies to bargaining unit employees who have completed their probationary period or trial period.

3) Disciplinary actions for purposes of this Article shall include reprimands and suspensions of fourteen (14) calendar days or less.

    a) The Employer will follow the general principle of progressive discipline. Disciplinary action may be preceded wherever possible by counseling and assistance of an informal nature (which may include oral admonishments confirmed in writing). The Parties recognize that certain cases may warrant severe disciplinary action irrespective of whether previous actions have been taken against the employee.
    b) The parties agree that discipline is fundamentally corrective, rather than punitive; in effecting progressive discipline, the employer will consider those disciplinary and conduct-based adverse actions occurring within the most recent 2 years as prior discipline. Actions that happened outside that time period may only be referenced as evidence of clear notice.

4) Employees shall be provided the Employees' Responsibilities, Ethics and Conduct Handbook.

Section 45.02. Investigative "Weingarten" Meeting

1) As noted in Article 4.05, if the Employer conducts a meeting to examine an employee in connection with an investigation, the Union shall be given the opportunity to be present if:

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

Section 45.03. Counseling

1) Letters or Memoranda of Counseling for conduct are not disciplinary actions. They are preliminary warnings, which may be given in lieu of disciplinary action for less serious matters. Such letters are not put into the Official Personnel File.

2) A Letter or Memorandum of Counseling pertaining to conduct will be retained by the supervisor as an active record for a period of one (1) year. If the behavior has not been repeated in that timeframe and no other unrelated counseling records have been entered in the file, the letter will be considered an inactive record only. Employees will be informed of this time limitation on counseling records at the time counseling is conducted. Any and all copies

of these letters will be destroyed by the Employer after expiration of the designated period, or earlier, if the supervisor believes they have served their purpose.

3) A copy of such Letters or Memoranda of Counseling may be maintained by the Human Resources Division for historical record keeping and notice purposes.

4) Employees will be informed of this time limitation on counseling records at the time counseling is conducted.

Section 45.04 Official Reprimands

1) A Letter of Reprimand (LOR) is a formal disciplinary action. It is a written document describing the conduct giving rise to the reprimand and provides official notice that a failure to correct the conduct, or repeated instances, shall result in more severe disciplinary action. Reprimands shall not be retained in the employee's Official Personnel Folder (OPF) for more than two (2) years from the date of issuance. The period for retention may be reduced where the employee's supervisor determines circumstances warrant a shorter period.

2) A copy of a Letter of Reprimand may be maintained by the Human Resources Division for historical record keeping and notice purposes.

3) Employees will be informed that during that two (2) year period while the LOR is in the OPF, it may be used for the purposes of progressive discipline. Once it is removed from the employee's OPF, it cannot be used for the purpose of progressive discipline; however, the LOR may be used to demonstrate clear notice regarding the misconduct.

Section 45.05 Suspensions of Fourteen (14) Days or Less

1) A suspension for fourteen (14) days or less is the placing of an employee, for disciplinary reasons, in a temporary status without duties and pay. When the Employer proposes to suspend an employee for a period of fourteen (14) days or less, the following procedures will apply:

   a) The employee will be given written notice stating the specific reason(s) for the proposed disciplinary action no less than fifteen (15) calendar days in advance of the action, which will include the following:

      i) A statement that the employee has the right to be represented by an attorney, or the Union or other representative of their choice;
      ii) A statement that the employee, and their representative, shall receive reasonable time to review the material relied upon to support the charges and to prepare an answer to the charges orally and/or in writing;
      iii) The name of the official to whom the reply is to be made, who shall be a higher ranking official than the one proposing the action; and

   b) A copy of all documentation upon which a proposal for disciplinary action is based will

be furnished to the affected employee at the time the proposal is issued. A duplicate copy will be given to their designated representative, upon request;

c) The employee will be given ten (10) calendar days, exclusive of the date of receipt of the notice of the disciplinary action to respond orally and/or in writing to the proposed action prior to a decision being made. The reply will be made to the deciding official or their designee. Upon request, a reasonable time for an extension may be granted provided the request is made prior to the expiration of the 10-day reply period;

d) Where applicable or upon request, a summary or verbatim record of the oral reply will be made available to the employee and their designated representative for comment. Where an employee chooses to make an oral reply, such reply will be made at the work site of the employee, unless otherwise mutually agreed by the Parties. If the oral reply is to be made at a location other than the work site of the employee or the designated representative, the Employer will pay all the reasonable travel and per diem expenses of the employee and/or the designated representative who is an FNS employee. The Union agrees that when selecting a representative, the Union will make every reasonable effort to minimize travel costs incurred by the Employer.

Section 45.06. Off-Duty Misconduct

In cases where a Letter of Reprimand is issued or a suspension is proposed for reasons of off-duty misconduct, the Employer's written notification provided in keeping with the above sections, may also contain a statement of the nexus between the off-duty misconduct and the efficiency of the service. The notification will describe why and how there is a connection between the specific off-duty misconduct and the efficiency of the service.

Section 45.07. Notice of Final Decision

1) The notice of final decision will contain the reason(s) supporting the decision. In deciding what action may be appropriate, the Employer agrees to give due consideration to the relevance of any relevant mitigating and/or aggravating circumstances. The following factors, commonly known as the "Douglas Factors," listed herein for purposes of illustration, are neither meant to be exhaustive nor intended to be applied mechanically, but rather to outline the tolerable limits of reasonableness:

   a) The nature and seriousness of the offense, and the relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical and inadvertent, or was committed maliciously or for gain, or was frequently repeated;

   b) The employee's job level and type of employment including supervisory or fiduciary role, contacts with the public, and prominence of the position;

   c) The employee's past disciplinary record;

   d) The employee's past work record, including length of service, performance on the job, ability to get along with co-workers, and dependability;

   e) The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon the Employer's confidence in the employee's ability to perform assigned duties;

f) Consistency of the penalty with those imposed upon other employees for the same or similar offenses;
g) Consistency of the penalty with the applicable agency table of penalties;
h) The notoriety of the offense or its impact upon the reputation of the agency;
i) The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct of question;
j) Potential for the employee's rehabilitation;
k) Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment or bad faith malice or provocation on the part of others involved in the matter; and
l) The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

2) The Employer's written decision shall state the reason(s) for sustaining the proposed action, the rationale for mitigating the proposed action, or canceling the proposed action.

3) The notice of final decision will include a statement regarding the employee's right to file a grievance or an EEO complaint and provide the contacts and procedures for both.

4) If applicable, a copy of the decision letter will be provided to the employee's representative.

Section 45.08. Right to File a Grievance

If the Employer's final decision is to affect a suspension of fourteen (14) calendar days or less, the employee may file a grievance with the Step 3 official within fifteen (15) workdays of receipt of the final decision. Thereafter, all requirements associated with subsequent steps of the grievance procedure will apply.

Section 45.09. Documentation of Disciplinary Action

The decision notice will include a statement indicating that the suspension will be placed in the employee's e-OPF. If any disciplinary action against the employee is not sustained, all reference to such actions will be eliminated from the employee's Official Personnel Folder as soon as practicable. Upon request, a copy of any and all documentation upon which a disciplinary action is based will be furnished to the affected employee, and their designated representative. Any information not contrary to Privacy Act will be provided to the employee.

Section 45.10. Maintenance of Records

The Employer may retain records regarding disciplinary actions in accordance with retention requirements under law.

ARTICLE 46 ADVERSE ACTIONS

Section 46.01. Scope

1) This Article sets forth procedures for the processing of adverse actions against employees who have completed their probationary period. Adverse actions will be initiated by the Employer to promote the efficiency of the service.

2) For purposes of this Agreement, an adverse action shall include the following: suspension of more than fourteen (14) calendar days; removal; reduction in grade; reduction in pay; furlough of thirty (30) calendar days or less.

3) The Employer endorses the concept of progressive discipline. Disciplinary action will be preceded wherever possible by counseling and assistance, which will be informal in nature. Each situation warranting discipline must be evaluated individually and, in instances involving serious offenses, the Parties recognize that progressive discipline may not be appropriate. Major offenses may be cause for severe disciplinary action, including removal, irrespective of whether previous disciplinary or adverse action has been taken against the offending employee. Penalties will be applied in an equitable manner.

Section 46.02. Advance Written Notice

In all cases of proposed adverse actions, except as otherwise provided by applicable laws and government-wide rules and regulations, the following procedures will apply:

1) The employee will be given written notice stating the specific reason(s) for the proposed adverse action thirty (30) calendar days in advance of the action which will include the following:

    a) A statement that the employee has the right to be represented by an attorney, or the Union or other representative of their choice;
    b) A statement that the employee, and their representative, shall receive reasonable time to review the material relied upon to support the charges and to prepare an answer to the charges orally and/or in writing;
    c) The name of the deciding official to whom the reply is to be made, who shall be a higher ranking official than the one proposing the action; and

2) A copy of all documentation upon which a proposal for adverse action is based will be furnished to the affected employee at the time the proposal is issued. A duplicate copy will be given to their designated representative, upon request;

3) The employee will be given twenty (20) calendar days, exclusive of the date of receipt of the notice of the adverse action to respond orally and/or in writing to the proposed action prior to a decision being made. The reply will be made to the deciding official or their designee. Upon request, a reasonable time for an extension may be granted provided the request is made prior to the expiration of the 20-day reply period;

4) Where applicable or upon request, a summary or verbatim record of the oral reply will be made available to the employee and their designated representative for comment. Where an employee chooses to make an oral reply, such reply will be made at the work site of the employee, unless otherwise mutually agreed by the Parties. If the oral reply is to be made at a location other than the work site of the employee or the designated representative, the Employer will pay all the reasonable travel and per diem expenses of the employee and/or the designated representative who is an FNS employee. The Union agrees that when selecting a representative, the Union will make every reasonable effort to minimize travel costs incurred by the Employer.

Section 46.03. Notice of Final Decision

1) In deciding what action may be appropriate, the Employer agrees to give due consideration to the relevance of any mitigating and/or aggravating circumstances set forth in Section 45.07(1).

2) The Employer's written decision shall state the reason(s) for sustaining the proposed action, the rationale for mitigating the proposed action, or canceling the proposed action.

3) The notice of final decision will include a statement regarding the employee's right to file a grievance, EEO complaint, or an MSPB appeal and provide the contacts and procedures for all three. The employee will be informed that they may elect only one avenue and that their election will be considered final on the date any grievance, complaint, or appeal is filed.

4) The decision notice will include a statement indicating that the adverse action will be placed in the employee's e-OPF.

5) If applicable, a copy of the decision letter will be provided to the employee's representative.

Section 46.04. Optional Resignation/Retirement

Employees will be given an opportunity to resign or, if eligible, to retire after being informed that administrative charges will be brought with a view to removal. In such situations, the employee will be granted an opportunity before the effective date to make a decision, and, on request, they will be advised of retirement eligibility, if applicable, and given appropriate annuity figures. The employee will sign a statement indicating such resignation/retirement is voluntary.

Section 46.05. Documentation of Adverse Action

If the adverse action against the employee is not sustained after the final appeal/arbitration, all references to such action will be eliminated from the Official Personnel Folder.

ARTICLE 47 PROCEDURES FOR HANDLING UNFAIR LABOR PRACTICES

Section 47.01. Advance Notice

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 ten (10) days prior to filing an unfair labor practice. The Parties agree that reasonable efforts to address and correct misunderstandings will be addressed during the ten (10) day period.

ARTICLE 48 LABOR-MANAGEMENT RELATIONS COMMITTEE

Section 48.01. General

The Parties recognize that the negotiation of a formal agreement is but one element of a successful and effective Labor-Management Relations program. Therefore, the Parties agree to establish Regional and Headquarters Labor-Management Relations Committees for the purpose of exchanging information and discussing appropriate matters of concern and interest, personnel policies, practices, or working conditions.

Section 48.02. Membership

Each Committee shall normally consist of four (4) representatives of the Employer and four (4) representatives of the Union. By mutual consent this composition may be increased on either side for a particular meeting. Employee Union representatives will be on official time for these meetings, if otherwise in a duty status.

Section 48.03. Meetings

These Committees shall normally meet quarterly. Such meetings may be canceled or rescheduled by mutual agreement of the Parties. These meetings are in addition to any meetings between management officials and Union officials arising from situations demanding immediate attention.

Section 48.04. Purpose

These meetings shall not be used to discuss specific grievances, complaints or appeals but rather to discuss problems or general issues of interest. This does not, however, preclude the Parties from discussing general policies, practices or working conditions which may give rise to grievances, complaints, or appeals.

Section 48.05. Agenda

To facilitate the discussion and operation of the Committee, either Party may submit an agenda no later than five (5) workdays prior to the meeting. Such Committee meetings shall normally be held the first Friday of each fiscal quarter unless mutually agreed otherwise. The time shall be agreed upon at the submission of agenda items. The meetings will be held in a place provided by the Employer.

Section 48.06. Minutes

The Employer and the Union will alternate in preparing the minutes of the Labor-Management Committee meetings. At the conclusion of each meeting, the Party having the responsibility for preparing the minutes shall do so by including a statement of the agenda items with a brief review of the Parties' discussion. Those proposed minutes will be forwarded to the other Party for appropriate comments. Upon mutual agreement over the contents of the minutes, a final copy of the minutes will be forwarded to each Party.

Section 48.07. Travel and Per Diem

The Employer will pay all reasonable travel and per diem expenses of employees who

are selected by the Union to represent it at the Committee meetings or the Partnership Council meetings, however, not both.

Section 48.08. Suspension

Any Labor-Management Relations Committee will be suspended during the life of a corresponding Partnership Council.

ARTICLE 49 EATING FACILITIES

(This Article is Reserved for Local Bargaining)

ARTICLE 50 GRIEVANCE PROCEDURE

Section 50.01. General

1) The purpose of this Article is to provide a mutually acceptable method for prompt and equitable settlement of employee grievances. Most grievances arise from misunderstandings or disputes, which can be settled promptly and satisfactorily on an informal basis at the immediate supervisory level. Every appropriate effort shall be made to adjust grievances at the lowest level. Grievances shall be filed according to the procedures set forth in this Article and the Employer shall direct the grievance to the lowest level of authority at which relief can be granted.

2) A grievance may be initiated by an employee, a group of employees, the designated Union representative, the Union, or the Employer. The Union has the right to file a grievance on behalf of two or more employees within the jurisdiction of a single NTEU Chapter or multiple NTEU Chapters. It is understood that an employee processing a grievance under this Article shall be limited to Union representation or self-representation. The Parties will resolve all grievances consistent with the terms and conditions of the Agreement.

3) The Parties recognize that the Alternative Dispute Resolution (ADR) process is available with the mutual consent of the parties at any time in the grievance process. Either party may opt-out of the ADR process at any time. ADR proceedings shall remain confidential and all nonfactual information related to such proceeding shall not be used, or referred to, in the grievance/arbitration process.

4) Official time for employees and the Union to prepare for and present grievances will be in accordance with Article 6, Union Representation and Official Time.

5) A grievance is considered received by management on the next business day following submission of the grievance by the Union.

Section 50.02. Scope and Coverage

1) For the purpose of this Article, grievance means any complaint:

    a) By an employee concerning any matter relating to the employment of the employee;
    b) By the Union concerning any matter relating to the employment of an employee; or
    c) By any employee or the Union concerning:
        i) The effect or interpretation, or a claim of breach, of this Agreement; or
        ii) Any claimed violation, misinterpretation, or misapplication of any law, rule or regulation affecting conditions of employment; or
        iii) Any claimed violation, misinterpretation, or misapplication of the Agency's policies affecting conditions of employment.

Section 50.03. Filing a Grievance

Inasmuch as dissatisfactions and disagreements arise occasionally among people in any work situation, the filing of a grievance shall not be construed as reflecting unfavorably on an employee's good standing, performance, loyalty, or desirability to the organization.

Section 50.04. Union Observer at Grievances

In situations where employees present grievances on their own behalf to the Employer, the Union shall have the opportunity to have an observer present at all formal discussions and will normally be notified two (2) workdays in advance. The observer will take no part in the proceedings but will be allowed to present the Union's position to the Employer at a mutually agreed upon time. The employee has the right to be present during the Union presentation. All written grievance correspondence shall be provided to the Union.

Section 50.05. Matters Precluded from Negotiated Grievance Procedure

This procedure shall be the exclusive procedure for resolving all grievances except:

1) Any claimed violation of prohibited political activities;
2) Retirement, life insurance, or health insurance;
3) A suspension or removal for National Security reasons;
4) Any examination, certification, or appointment;
5) The classification of any position which does not result in the reduction in grade or pay of an employee;
6) The termination of a probationary employee;
7) Non-selection for promotion from a group of properly ranked and certified candidates from a properly certified register;
8) A preliminary warning notice of an action which, if effected, would be covered under the grievance system; and
9) Issues previously filed under any other statutory procedure.

Section 50.06. Right to Select Appeal Process

1) Adverse actions and performance-based actions may be raised under the appellate procedures to the Merit Systems Protection Board or the negotiated grievance procedures, but not both.

2) Employees shall be deemed to have exercised their option to raise a matter under any applicable statutory procedure or this negotiated grievance procedure at such time as employees timely file under any applicable statutory procedures or timely file a grievance in writing in accordance with the provisions of this Article, whichever occurs first.

Section 50.07. Procedure for Raising Disputes of Grievability/Arbitrability

1) The Parties will raise any questions of grievability or arbitrability of a grievance at the lowest level of the negotiated grievance procedure. In the event the Union amends and refiles a grievance, the Agency must raise any questions of grievability or arbitrability with respect to any new issues contained in the amended grievance within fifteen (15) calendar days of receipt of the amended grievance. If either party timely requests a determination on the grievability or arbitrability of the grievance presented for arbitration, the requesting party will notify the opposite party and the arbitrator at least twenty (20) days in advance of the scheduled hearing on the merits.

2) When the Employer alleges an issue is non-grievable or non-arbitrable, the Union will

have five (5) workdays to amend and refile the grievance. It will be resubmitted at the level at which the issue was raised and proceed as a normal grievance.

3) Where the grievance is filed and the Union or employee alleges a violation of rules or regulations, the Employer agrees that it will not dispose of the grievance solely because of an incorrect reference or citation.

Section 50.08. Negotiated Grievance Procedure

A grievance shall be processed as follows:

1) **Step 1** The aggrieved employee and/or Union representative shall first present the grievance in writing to the first level supervisor, along with a courtesy copy of the grievance to the FNS Talent Management Branch Chief. Where the first-level supervisor does not have the authority to grant the requested remedies, the FNS Human Resources Department (HRD) will internally route the grievance submission to the appropriate grievance deciding official. Grievances must be presented within thirty (30) calendar days from the date of the act or occurrence, or thirty (30) calendar days from the date the employee first became aware of the problem, unless the grievance is an issue covered by the terms of a statute, in which case any statutorily imposed time limits shall apply.
   a) The grievance will contain the following information:
      i. Date of the grievance and name of the grievant(s), or a statement that NTEU or the Employer is filing a grievance on its own behalf pursuant to Section 50.12 of this Article;
      ii. Issue and description of circumstances giving rise to the grievance, including approximate time, date, and place of the incident, if available;
      iii. If relevant, the article and section of the agreement or any rule, regulation, or law alleged to be violated;
      iv. The remedy or relief desired; and
      v. Name and signature of Union representative, if applicable.
   b) If a grievance submission fails to contain the above information, or sufficient information for a full and proper understanding of the grievance, the Agency may request, in writing, a supplemental statement to cure any grievance deficiencies. Absent extenuating circumstances, the requested information shall be provided within 5 business days. The agency's response, as required by 50.08 1)c), will be extended by the same number of days in which the aggrieved employee and/or Union representative takes to respond to the request.
   c) If requested, within thirty (30) calendar days of receipt of the written grievance, the supervisor, or appropriate grievance deciding official, will meet with the employee and/or representative. If the Parties work within the local commuting area, this meeting shall be in person; otherwise, the meeting will be by teleconference unless the Parties mutually agree to a face-to-face meeting.
   d) The supervisor or appropriate official shall render a decision, in writing, to the employee or the representative, if one has been designated, within fifteen (15) calendar days from the date of the step one meeting or receipt of the grievance, whichever is later. The decision will include, if the relief is denied or modified, the reason(s) for such actions, the name and location of the Step 2 official and the time limits for filing a Step 2 grievance.

2) **Step 2**

   a) If the matter is not satisfactorily settled within Step 1, the employee, and/or Union

representative may, within thirty (30) calendar days from the time the reply is received or should have been received, forward the matter, in writing, to the next level supervisor along with a courtesy copy of the grievance to the FNS Talent Management Branch Chief. If requested, within thirty (30) calendar days of receipt of the written grievance, the supervisor will meet with the employee and/or representative. If the Parties work within the local commuting area, this meeting shall be in person; otherwise, the meeting will be by teleconference unless the Parties mutually agree to a face-to-face meeting.

b) The supervisor or appropriate official shall render a decision, in writing, to the employee or the representative if one has been designated, within thirty (30) calendar days from the date of the step two meeting or receipt of the grievance, whichever is later. The decision will include, if the relief is denied or modified, the reason(s) for such actions, the name and location of the Step 3 official and the time limits for filing a Step 3 grievance.

3) **Step 3**

a) If the grievance is not satisfactorily settled within Step 2, the employee, and/or Union representative may, within thirty (30) calendar days from the time the reply is received or should have been received, forward the grievance to the next level supervisor for further consideration along with a courtesy copy of the grievance to the FNS Talent Management Branch Chief. If requested, the next level supervisor or designee will meet with the employee and or Union representative within thirty (30) calendar days from the date the meeting was requested. If the Parties work within the local commuting area, this meeting shall be in person; otherwise, the meeting will be by teleconference unless the Parties mutually agree to a face-to-face meeting. If the Parties mutually agree, the grievant(s) and the representative shall be allowed travel and per diem expenses for the third step meeting only when otherwise in a duty status. The Employer will consider the seriousness of the issues when making this determination.

b) The supervisor or designee shall render a decision, in writing, to the employee or the representative, if one has been designated, within thirty (30) calendar days from the date of the Step 3 meeting or receipt of the grievance, whichever is later. The decision will include, if the relief is denied or modified, the reason(s) for such actions, and will be sent to the Chapter President.

c) If the grievance cites the Regional Administrator or Deputy Regional Administrator with personal violations, the grievance will be filed with the Associate Administrator at Step 3 along with a courtesy copy of the grievance to the FNS Talent Management Branch Chief.

4) **Step 4**

a) If the grievance is not satisfactorily resolved at Step 3, the Union or the Employer may invoke arbitration. The decision to invoke arbitration shall be made within thirty (30) calendar days after the Union or the Employer receives the Step 3 written decision.

b) Only the Union or the Employer may invoke arbitration.

Section 50.09. Grievance Alleging Discrimination

Employees who believe they have been illegally discriminated against with regard to EEO laws, (e.g., including, but not limited to discrimination based on race, color, religion, sex, genetic information, pregnancy, national origin, age, or disability) have the right to raise the matter under the statutory procedure or the negotiated grievance procedure of this Agreement,

but not both.
Employees will have elected a forum (grievance or EEO procedure) if the grievance is reduced to writing and presented to the Employer as set forth in this Article alleging discrimination or a formal EEO complaint is filed. For grievances alleging discrimination as described above, the time limits for filing grievances shall be forty-five (45) calendar days.

Section 50.10. Extension and Waiver of Time Limits. Advancement of Grievance

1) The Parties agree that, by mutual consent, the time limits contained in this Article may be extended and any step waived in writing or by electronic mail.

2) Failure on the part of the Agency to respond to a grievance within the appropriate time frame will entitle the aggrieved, at their option, to advance the grievance to the next step. Failure on the part of the aggrieved or the Union to respond within the appropriate time frame may be cause for cancellation of the grievance.

3) Upon mutual agreement of the Parties, grievances may be combined and processed as one, up to and including arbitration.

Section 50.11. Request for Information

In accordance with the provisions identified in 5 U.S.C. § 7114(b)(4), the Union may request written information as is relevant to the subject matter of the grievance and necessary to its resolution. If the Employer refuses to provide all necessary and relevant information, that issue may be joined with the grievance and processed to arbitration. At arbitration, the arbitrator shall review the information denied "in camera" and decide whether it is to be provided to the requesting party.

Section 50.12. Filing Employer or Union Grievances

1) If the Employer is aggrieved at the local or national level, its representative shall file a grievance with the local or national Union President, as appropriate, within sixty (60) calendar days of the act or awareness of the act causing the grievance. At the request of the Employer, representatives of the Parties shall meet within fifteen (15) calendar days from the date of submission of the grievance. Within fifteen (15) calendar days of said meeting or receipt of the grievance, whichever is later, the Union Official shall render a decision, in writing, to the Employer. If such decision fails to resolve the matter, the Employer may invoke arbitration in accordance with procedures set forth in Article 51.

2) If the Union is aggrieved, the Union shall submit the grievance, in writing, to the FNS Administrator or Regional Administrator, as appropriate, along with a courtesy copy of the grievance of the FNS Talent Management Branch Chief within thirty (30) calendar days of the act or awareness of the act causing the grievance. At the request of the Union, representatives of the Parties shall meet within thirty (30) calendar days from the date of submission of the grievance. The FNS Administrator or Regional Administrator or their designee shall attend the grievance meeting. The Union will be informed in writing of the designee, if applicable. Within thirty (30) calendar days of said meeting or receipt of the grievance, whichever is later, the Employer shall render a decision, in writing, to the Union. If such decision fails to resolve the matter, the Union may invoke arbitration in accordance with the procedures set forth in Article 51.

ARTICLE 51 ARBITRATION

Section 51.01. Procedure for Invoking Arbitration

1) Any grievance that is not resolved during the grievance procedure set forth in Article 50 (Grievances) may be submitted to arbitration pursuant to the terms of this Article. Arbitration may be invoked only by the Union or the Employer.

2) If the day an action must be completed under any provision of the Article falls on a Saturday, Sunday, or Federal holiday, the deadline shall be the next workday.

3) Appeals to arbitration must be made in writing, may be submitted via email and must be submitted no later than thirty (30) calendar days from receipt of the final decision on the grievance. The final decision on the grievance is the Employer's decision issued under Section 50.08, or the Employer's decision issued in response to a Union grievance filed under Section 50.12(2) or this Agreement. For grievances submitted by the Employer, the final decision on the grievance is the Union's decision issued under Section 50.12(1) of this Agreement. If no final decision is issued within the thirty (30) calendar days afforded under this Agreement, arbitration may be invoked.

4) Appeals to arbitration must be served on the last known FNS Director of Human Resources and the last known ELRB Branch Chief or their designee, if filed by the Union; or on the last known NTEU National President or their designee, if filed by the Employer. Arbitration is deemed to be invoked on the date it is electronically mailed (emailed) to the appropriate Party. The Parties each will promptly inform the other of any changes.

Section 51.02. Arbitration Panels and Arbitrator Selection

1) Establishing the Arbitration Panels:

   a) The arbitration procedures contained herein shall be supported by two National Panels of arbitrators (East and West), as determined by the Parties at the national level. There will be five arbitrators on each Panel. Arbitrators' names will be placed alphabetically on each list.
   b) The Agency and the Union will each prepare and exchange a list with the names of ten (10) arbitrators. Up to five (5) arbitrators who appear on both lists will be invited to join the Arbitration Panel. If there are there are fewer than five (5) names common to both lists or if any arbitrator declines the Parties' invitation to join the Arbitration Panel, the Parties will repeat the process until a total of five (5) common names have been identified. Once established, the final lists (East and West) must be signed and dated by both Parties.
   c) Each Party shall maintain a current list of arbitrators that comprise each panel. Each list will be signed and dated by both the Employer and the Union.
   d) Any fees incurred as a result of establishing the Arbitration Panel will be borne equally by the Employer and the Union.

2) Maintaining the Arbitration Panels:

a) In replacing arbitrators or otherwise filling vacancies, the Parties will modify the list accordingly and sign and date an updated version of the list. Each Party may strike up to one (1) arbitrator from each National Panel once every calendar year by giving five (5) workdays' notice to the other Party.

b) Upon receipt of the notice regarding the striking of an arbitrator from a National Panel, no further cases will be assigned to that arbitrator, but the arbitrator will hear and decide any cases already assigned. The striking Party shall notify the arbitrator after all cases already assigned to them have been decided or otherwise resolved. Neither party will notify the arbitrator prior to that time.

c) In replacing arbitrators or otherwise filling vacancies, each party may submit two (2) names directly to the FMCS. The FMCS will add three (3) additional names, or the total number required to reach a total of seven (7) names. FMCS will then forward each party the list of seven (7) names without disclosing which names were added by the Parties. The Parties will then alternately strike names until the requisite number of name(s) remain to fill the vacancies.

d) The Parties will alternate who will make the first strike for each panel vacancy.

3) Selection for Case Assignments and Scheduling:

a) Cases will be assigned to an arbitrator from the designated panel on a rotating basis by invocation date. The invoking Party will identify the next arbitrator from the appropriate list and notify the other Party of the selection. Case assignments will be made by email between the designated representatives of the Parties.

b) Within forty-five (45) calendar days after arbitration has been invoked, the invoking Party shall contact the arbitrator for the purpose of scheduling mutually agreeable hearing dates. The hearing date will then be scheduled via email.

c) If, within twenty-one (21) calendar days of the date the arbitrator is first contacted, the Parties have not mutually agreed upon a date(s) for the hearing(s), the arbitrator shall, upon request by either Party, set a hearing date to occur no sooner than forty-five (45) calendar days and no later than sixty (60) calendar days from the date the request is made. However, if the arbitrator is not available within the aforementioned sixty (60) calendar day period, the arbitrator shall select the first date(s) they are available to convene the hearing(s).

d) Once the date for arbitration has been established, any party that unilaterally requests that an arbitration hearing be postponed, delayed, canceled, and/or withdrawn for whatever reason, which results in any fees being charged by the arbitrator, shall pay all such fees.

4) Administrative Matters:

a) Issues not raised by either the Employer or the Union during the grievance procedure may not be raised by either Party or the arbitrator during arbitration, except by written mutual agreement of the Parties.

b) Either Party may raise issues of grievability or arbitrability of the grievance; however,

such issues must comport with the terms of Article 50, Section 50.07. The requesting Party must notify the other Party and the arbitrator no fewer than twenty (20) workdays in advance of the scheduled hearing date. Unless the parties mutually agree to bifurcate the hearing, there will not be a separate hearing for arbitrability issues. Absent mutual agreement, the arbitrator will issue a single decision addressing the merits of the grievance and any timely presented arbitrability issues. The Parties may mutually agree otherwise, however, in highly complex cases which would involve several days of hearings.

c) Unless mutually agreed by the Parties, the arbitration hearing will be held on the Agency's premises at the most cost-effective location, as determined by the Agency, during the regular day shift hours of the basic workweek.

d) Either Party may request that witnesses be sequestered prior to and at any point during arbitration hearings. However, the grievant is entitled to be present at all times during the arbitration hearing.

e) Unless mutually agreed by the Parties, a transcript of the hearing is required. When used, the arbitrator and each of the Parties will be provided with a copy of the transcript. The cost of the court reporter and the transcript shall be covered by the Employer. No other audio or video recording shall be permitted without mutual consent of the Parties. All testimony shall be made by oath or affirmation.

f) The Parties will hold a pre-hearing conference with or without the arbitrator, at least fifteen (15) workdays prior to the hearing, to discuss possible settlement and/or means of expediting the hearing.

g) During this conference, the Parties will also exchange witness lists; determine whether any facts can be stipulated; and authenticate documents or exhibits, where possible. This discussion will not prejudice which witnesses are called to testify.

h) Upon submission of reasonable proof to the arbitrator that a witness who has personal knowledge of the facts involved cannot be physically present, the arbitrator may accept a sworn affidavit or testimony via teleconference. Copies of the affidavits shall be made available to all Parties concerned.

i) The arbitrator shall have no authority to add to, subtract from, or modify any provision or terms of this Agreement. The arbitrator shall be bound by the provisions of this Agreement and applicable laws, rules, and regulations.

j) There will be no formal rules of evidence at the hearing. While pre- or post-hearing briefs will not be required, either Party may choose to submit a brief. Pre-hearing discovery (i.e., interrogatories and depositions) is prohibited; however, the arbitrator has the authority to compel either Party to produce information and documents prior to the hearing.

k) The Parties have the right to issue opening and closing statements; to present and cross- examine witnesses, and to submit applicable case law.

l) The arbitrator may exclude any testimony or evidence which they determine to be irrelevant or unduly repetitious

Section 51.03. Arbitration Hearing

1) The grievant(s) and employee witnesses with personal knowledge of the facts at issue shall be in a paid status and granted travel and per diem as appropriate, in accordance with the law, rules, regulations, and policy.

2) Bargaining history testimony may be introduced in arbitration, as appropriate, if

notice is given to the other Party no later than the pre-hearing conference.

3) Witnesses will normally be present at the hearing only while testifying and should be permitted to testify only while in the presence of the aggrieved employee and their representative and the Agency's representative.

4) The Employer will make employees available as witnesses when requested by the Union as part of its exchanged witness list. Either Party shall raise any objections it has with the other Party's witness list by notifying the arbitrator in writing and copying the other Party within three (3) workdays of receiving the list.

5) The arbitrator will determine whether the witness(es) may testify. In making that determination, the arbitrator may not exclude a witness unless the arbitrator finds that any testimony that could be offered by the witness would be irrelevant or unduly repetitious.

Section 51.04. Arbitrator Fees and Other Costs

1) If neither party chooses to submit a post-hearing brief, the arbitrator may choose to issue a bench decision at the hearing or will be requested to issue a decision no later than thirty (30) workdays after the conclusion of the hearing, unless the Parties mutually agree to extend the time limit. If briefs are submitted, the arbitrator will be requested to render a decision no later than thirty (30) workdays after the submission of the Parties' post-hearing briefs unless the Parties mutually agree to extend the time limit. Post-hearing briefs must be submitted to the arbitrator no later than thirty (30) workdays from receipt of the transcript unless the Parties mutually agree to extend the time limit.

2) The Parties will each pay one-half (1/2) of the presiding arbitrator's regular fees and expenses, unless one Party substantially prevails as determined by the arbitrator. In such cases, the non-prevailing Party shall pay seventy-five percent (75%) of the presiding arbitrator's regular fees and expenses, and the prevailing Party shall pay twenty-five percent (25%).

3) The arbitrator's fees for travel and per diem allowances shall be limited by applicable laws, rules, and regulations.

Section 51.05. Final Awards

1) The Arbitrator's authority to make an award is subject to applicable law, regulation, and the terms of this Agreement.

2) The Arbitrator's award shall be final and binding. The arbitrator shall possess the authority to make an aggrieved employee whole to the extent that such remedy is not limited by law, including the authority to award back pay and interest, reinstatement, attorney fees, and to issue an order to expunge the record of all references to a disciplinary, adverse, or unacceptable performance action, if appropriate.

3) Any dispute over the meaning and/or application of the award shall be returned to the arbitrator for clarification. Both Parties shall be provided copies of the clarification.

4) Either Party to arbitration under this Article may file with the Federal Labor Relations Authority an exception to an arbitrator's award under regulations prescribed by the Authority, as provided for by applicable laws, rules and regulations.

Section 51.06. Expedited Arbitration – General

The purpose of the expedited arbitration procedure is to remedy immediate harm to aggrieved employees. The Parties agree that grievances on the following issues may be arbitrated using an expedited procedure, unless both Parties agree to refer the matter to the regular arbitration procedure. Further, the Parties may also agree to include any subject other than those listed below**:**

a. Suspensions of seven (7) calendar days or less;
b. Denials of annual, sick, or administrative leave or leave without pay;
c. Parking;
d. Performance appraisals;
e. Overtime;
f. Dues withholding;
g. Denials of any reasonable time Union representatives may be entitled to under this contract;
h. Involuntary reassignments that involve a change in duty station;
i. AWS disputes;
j. Denials of outside employment requests; and
k. Denials or termination of Telework Agreements.

Section 51.07. Process for Requesting Expedited Arbitration

1) Either Party may request expedited arbitration regarding a subject described above in Section 51.06. Requests must be made in writing (e.g., email) no later than twenty-five (25) calendar days from receipt of the final decision on the grievance. Failure to request expedited arbitration within this time frame will cause a case to default to the normal arbitration process.

2) Unless either Party asks for a delay, the arbitrator will conduct the hearing within fifteen (15) workdays after being notified of their selection. Each Party may request and receive one delay in the hearing date.

3) Expedited arbitration will proceed in the same fashion and observe the same procedures as the normal arbitration process except for the timeframes specified in this Section.

ARTICLE 52 DUES DEDUCTION

Section 52.01. Purpose and Coverage

The Parties agree that the provisions of this Article are subject to applicable Federal laws, rules, and regulations. This Article is for the purpose of authorizing eligible bargaining unit employees who are members of the Union to pay dues through voluntary allotments from their compensation.

1) Any bargaining unit employee may authorize the withholding of dues for the payment of Union membership, provided the employee:

    a) Is a member in good standing of the Union;
    b) Is an employee of the bargaining unit covered by this Agreement;
    c) Has voluntarily completed Standard Form 1187 (SF 1187), "Request and Authorization for a Voluntary Allotment of Compensation for Payment of Employee Organization Dues;" and
    d) Has a regular net salary, after other legal and required deductions, sufficient to cover the amount of the authorized allotment for dues.

Section 52.02. Certification and Remittance Procedures

Certification and remittance procedures shall be as follows:

1) Dues will be transferred using the electronic Funds Transfer (EFT) method to the bank account, as designated by the Union, on file with the Agency at the time of the request.

2) The Union's National President or any Chapter officer then currently on file with the Agency who has submitted proper notification to the servicing personnel office is authorized to make the necessary certification of SF-1187s.

Section 52.03. Union Responsibilities

The Union will:

1) Inform and educate its members on the voluntary nature of the system for allotment of Union dues, including the condition under which the allotment may be revoked;
2) Purchase or procure and distribute to its members SF-1187s;
3) Inform the Employer of changes in the certification and remittance procedures;
4) Forward properly executed and certified SF-1187s to the employee's servicing personnel office on a timely basis;
5) Forward an employee's revocation (SF-1188), "Revocation of Voluntary Authorization for Allotment of Compensation for Payment of Employee Organization Dues" to their servicing personnel office when such revocation is submitted to the Union;
6) Inform the employee's servicing personnel office of the name of any participating employee

who has been expelled or ceases to be a member in good standing in the Union within ten (10) workdays of the date of such final determination; and

7) Inform the Employer of any change in the formula for membership dues.

Section 52.04. Employer Responsibilities

Upon receipt of a properly certified SF-1187, the Employer will:

1) Withhold the amount of dues authorized by the most recent SF-1187 on file for the employee on a biweekly basis;
2) Discontinue allotments when required by OPM rules and regulations;
3) Notify the employee and the Union, within three (3) workdays if, for any reason, the SF-1187 cannot be processed and the reason(s); and
4) Transit dues by Electronic Funds Transfer (EFT) to the allotter designated by the Union.

Section 52.05. Errors and Omissions

1) In the event the Employer erroneously removes an employee from the bargaining unit as a result of administrative error(s) for which the Employer is responsible, and thereby inappropriately terminates a proper dues allotment as described under Section 52.01(1), or fails to begin dues withholding within one pay period following a properly submitted SF 1187, the Employer will:

    a) Initiate or reinstate the dues allotment no later than the following pay period after becoming aware of the error, notwithstanding situations beyond the Agency's control that would prevent the Agency from completing the action; and
    b) Pay the full amount owed to the Union and recoup the funds from the employee's salary through the establishment of a claim or a salary adjustment. These adjustments are subject to the employee's right to seek waiver of overpayment in accordance with the Debt Collection Act of 1982 and Article 34 of this Agreement.

2) Notwithstanding situations beyond the Agency's control that would prevent the Agency from completing the action, in the event the Employer fails to begin or reinstate dues allotment within one pay period following a properly completed and submitted SF-1187, the Employer will pay the full amount of back dues owed to the Union and recoup the funds from the employee's salary through the establishment of a claim or a salary adjustment. These adjustments are subject to the employee's right to seek waiver of overpayment in accordance with the Debt Collection Act of 1982 and Article 34 of this Agreement.

Section 52.06. Termination of Allotments

It is agreed that termination of allotments is mandated when one or more of the following conditions exists:

1) An employee is no longer a member in good standing of NTEU. The Employer will be

notified anytime NTEU has determined that an employee is no longer a member in good standing under this provision;

2) NTEU loses exclusive recognition for the covered unit;
3) The employee is reassigned, transferred, or promoted to a position that is excluded from the NTEU bargaining unit;
4) The allotter is separated from the Federal service; or
5) If dues withholdings are temporarily suspended by the Agency (i.e., at the beginning of the following pay period) for employees who are temporarily reassigned, transferred, or promoted to a non-bargaining unit position, they will be promptly restored at the end of such temporary reassignment, transfer, or promotion (i.e., at the beginning of the following pay period after the end of such reassignment).

Section 52.07. Effective Dates

The effective dates for actions under this Agreement are as follows:

1) Upon any NTEU administrative change in the formula for dues for FNS bargaining unit employees, the Employer will begin withholding dues no later than the pay period following the first pay period designated by the Union's National Office. NTEU National will provide the change in formula a minimum of thirty (30) days prior to its effective date.

    a) Revocation notices for employees who have had dues allotments in effect for more than one (1) year must be submitted to the payroll office during USDA pay period 15 each year. Revocations will become effective during USDA pay period 18.
    b) Revocation notices for employees who have had dues allotments in effect for more than one (1) year and whose SF-1187 was submitted after August 10, 2020, will become effective as soon as administratively feasible.[2]
    c) Revocations will be processed with the submission of a properly completed SF-1188 that has been signed by the employee and initialed by the NTEU Chapter President or their designee. If the SF-1188 is not initialed by the Union, the Employer will return the SF- 1188 to the employee and direct the employee to the Union for initialing.

2) Termination due to loss of membership in good standing will be effective on the beginning of the first pay period after the date of receipt of notification by the Employer

3) For termination due to separation or movement out of the exclusive unit a final deduction will be made for that pay period in which the action is effective.

Section 52.08. Back Pay Award

The Employer will deduct Union dues from an employee's back pay award when the employee has an allotment for dues withholding in effect at the time of the action giving rise to the back pay.

[2] Should there be any change to 5 CFR Part 2429.19, either party may request to reopen this Article following Article 53 procedures

Section 52.09. Monthly Dues Information

On a biweekly basis NFC will continue to provide the electronic Dues Withholding data files as follows:

a) Whether the employee retired, separated, or moved out of the bargaining unit; whether the employee is continuing to be carried in a long-term, non-duty status, if applicable;
b) Whether the employee is full time, part time, seasonal, intermittent, term, temporary, permanent, or career conditional, if applicable;
c) The duty station of each employee listed; and
d) The adjusted base pay of each employee, their grade and step, unique employee identifier (e.g., last 4 of the SSN), pay structure and the total dues withheld from each employee broken down by national dues withheld, local dues withheld, and the total dues withheld.

Section 52.10. Discretionary Allotments

Employees may elect as many as six (6) additional discretionary allotments (which are not saving allotments) that employees may use to have additional voluntary deductions withheld from their pay. Such discretionary allotments may be used, consistent with regulations, for various purposes such as insurance, the Union's Political Education Fund, day care facilities, or other benefits which may be offered by the Union.

ARTICLE 53 MIDTERM NEGOTIATIONS

Section 53.01. Coverage

At any time during the term of this agreement, either Party may make a written request to reopen negotiations. Where there is mutual agreement to reopen negotiations, each Party shall be limited to opening not more than four (4) Articles. For any Article the Parties mutually agree to reopen, each Party may reopen an additional Article. Negotiations shall not exceed fifteen (15) consecutive workdays in duration. The Employer shall pay up to five (5) days per diem and travel costs for an FNS employee to participate in these negotiations. The Parties may agree on mutually satisfactory arrangements for the conduct of these negotiations. Where they cannot agree, these negotiations will be conducted in accordance with the ground rules described below for mid-contract negotiations.

Section 53.02. Notification of Changes in Personnel Policies, Practices or Conditions of Employment. Contract Amendment

1) The Employer agrees not to unilaterally establish or change any personnel policy, practice or condition of employment which terminates or conflicts with specific terms or conditions of this Agreement. However, amendments to this contract may be required after the effective date of this Agreement because of new laws, or changes to existing laws. In such an event, the Parties shall meet within fifteen (15) workdays after receipt of a written request from either Party for the purpose of negotiating those amendments to the Agreement required to bring this Agreement into conformity with changes in law. The Parties shall agree on mutually satisfactory arrangements for the conduct of these required negotiations. Where they cannot agree, these negotiations will be conducted in accordance with the ground rules described below for normal mid-contract negotiations.

2) Where the Employer wishes to change a personnel policy, practice or condition of employment not controlled by the terms of this Agreement or where there is a change in law as described in subsection (1) above, and where the change affects more than one FNS region, it will notify the Union's National Office with a copy provided to the local Union chapter. Where the change affects one FNS region, notice will be provided to the affected Chapter President with a copy to the NTEU Field Representative and the NTEU National Negotiator.

    a) The Employer shall provide the Union with reasonable advance notice, but normally not less than fifteen (15) workdays, of the intended changes. The notice will include the following:
        i) A description of the desired change;
        ii) An analysis of the impact of this change on the bargaining unit;
        iii) An explanation of how this change will be implemented; and
        iv) An explanation of why the proposed change is necessary.
    b) The Union will have fifteen (15) workdays in which to invoke its right to negotiate over the requested changes.
        i) Where the Union wishes to negotiate over the requested change, the Employer will delay the implementation of such change until that time when the Parties have reached agreement on the proposed change unless required by law to implement prior to reaching agreement.

ii) The Union agrees that the Employer has the right to implement necessary changes in laws or in personnel policies, procedures and practices affecting the terms and conditions of employment after notice and an opportunity to negotiate have been afforded to the Union, if the Union fails to request the negotiations.

Section 53.03. Ground Rules for Midterm Negotiations

The following ground rules shall govern the conduct of midterm negotiations:

1) The Employer will provide a site for negotiations.
2) Negotiations shall take place during the regular administrative workday of the office where negotiations are taking place.
3) An employee representing the Union under this Article shall be authorized official time for such purposes during the time the employee otherwise would be in a duty status. The bargaining teams shall be limited to four (4) members for each Party unless the Parties mutually agree otherwise. In addition, the Union bargaining team may include an NTEU staff member. Midterm negotiations may be expanded to include advisors for each Party.
4) The Employer shall pay travel and per diem costs allowed by applicable laws, rules, and regulations, which are incurred by the employee negotiators. The Parties agree that every reasonable effort will be made wherever possible to avoid travel and per diem costs by utilizing such alternative methods such as conference calls.

Section 53.04. Process for Declaring Impasse and Requesting Assistance of the Federal Mediation Conciliation Service

Upon certification by the Federal Mediation and Conciliation Service of an impasse between the Parties in connection with mid-contract or midterm negotiations, either Party can appeal to the Federal Services Impasses Panel and may request arbitration. The Impasses Panel representative shall notify both Parties simultaneously of any information, procedures or decisions relating to the issue. If one of the Parties invokes the Impasse provisions, the Employer shall postpone the implementation of any change until the impasse is resolved, unless the law requires implementation prior to a decision by the Impasses Panel.

Section 53.05. Midterm Agreements, Memorandums of Understanding and Amendments. Waiver of Time Limits.

1) Except as provided in Subsection (2) below, a midterm agreement or an amendment shall be incorporated in this Agreement. It shall be executed upon signing by both Parties, unless otherwise specified, and subject to the final review and approval of the Agency head under § 7114(c) before becoming effective. The Parties may mutually agree to waive any of the negotiated time constraints set forth in this Article.

2) Agreements applicable to only a single work site or entity shall normally be in the form of a Memorandum of Understanding. Copies of each approved Memorandum of Understanding shall normally be filed with the Chapter President, and the labor relations office, and shall be viewed by the Parties as supplements, rather than amendments to the Agreement. Accordingly, they shall not necessarily run for a term concurrent with that of the Agreement, but instead may be for whatever duration is appropriate, but not beyond the term of this Agreement.

ARTICLE 54 PUBLIC TRANSPORTATION SUBSIDIES AND PRE-TAX PARKING BENEFITS

Section 54.01. Transit Subsidy Payments

1) The Employer will offer a monthly subsidy to employees who incur qualifying transportation expenses and are not receiving federally subsidized workplace parking benefits.

2) Employees may be required to provide proof of their expenses for the purposes of participating in the subsidy program. Federal employees who ride bicycles to and from work may claim the transit benefit to cover the cost of using mass transit as part of their commute.

3) The Employer will process transit subsidy applications and re-certifications within five (5) workdays of receipt of the request. If an employee's supervisor is out of the office for an extended period of time (e.g., Leave) when the application is submitted for approval, the Employer will, upon written request from the employee, timely inform the employee (e.g., via email correspondence) of the alternate management official who is available and has the authority to approve their application. The employee will then go into the Department of Transportation's platform (e.g., TRANServe) to select the appropriate supervisor to process the employee's application. The Employer is not liable for personal travel costs due to untimely employee submissions or delays outside the Employer's control.

4) Bargaining unit employees who are issued a parking pass are not eligible for the transportation subsidy. Where an employee is no longer eligible for a parking pass, the Employer will permit such employee to submit an application for a transportation subsidy.

Section 54.02. Pre-Tax Parking Benefit

1) Pre-tax parking is authorized for eligible employees to exclude certain parking expenses from their taxable income. This benefit is provided by 26 CFR Part 1.132.9, and 5 U.S.C. § 7905.

2) An employee is eligible if:

    a) The employee either takes mass transportation, rides in a vanpool, or in a carpool of two (2) or more persons from the parking location to work; or
    b) The employee parks at an eligible parking location:
        i) A metro-parking lot, commercial lot, privately owned parking lot, parking garage, parking meter, or Employer provided parking.

3) Eligible employees must submit a pre-tax parking application (form RD 2045-11 or its replacement, if applicable) to their designated transit subsidy coordinator. The transit subsidy coordinator will submit the approved application to the servicing personnel office for inputting into the National Finance Center's personnel/payroll system.

4) Eligible employees can receive both the transit subsidy and pre-tax parking benefits.

Section 54.03. Maximum Allowable Monthly Transit and Pre-Tax Parking Benefits

1) The Employer agrees to provide a monthly transit subsidy and pre-tax parking benefit for all qualifying bargaining unit employees in an amount that is equal to the employee's actual qualifying commuting costs, up to the maximum amount allowable under the law.

2) If the maximum allowable amount for the transit subsidy or pre-tax tax parking benefits increases or decreases in the future pursuant to law, rule, or regulation, all qualifying employees shall be entitled to their actual qualifying commuting costs, up to the maximum allowable amount under the law.

Section 54.04. Information on Transit Subsidies and Pre-Tax Parking Benefits

1) The Employer will notify all participating employees of annual renewal and recertification requirements, including the date by which transit subsidy applications and re-certifications must be submitted on the Department of Transportation's platform (e.g., TRANServe). The notice will be sent annually by email to all employees.

2) The Employer will also inform employees of their right to participate in the transit subsidy and pre-tax parking programs at new employee orientations.

Section 54.05. Retroactive Transit Subsidies and Pre-Tax Parking Benefits

This Section shall apply when any law and/or departmental regulation entitles an employee to a retroactive transit subsidy and/or pre-tax parking benefit and that employee's incurred transit/parking costs were greater than the previous maximum allowable benefit. In such circumstances, such employee shall be reimbursed from the retroactive date to the present for the difference between the employee's incurred transit/parking costs during this period and the previous maximum transit subsidy/parking benefit amount, up to the difference between the previous and retroactive benefits. The incurred transit/parking costs shall be based upon the employee's reported commuting/parking costs for this time period on their transit subsidy/pre- tax parking application form. This amount shall be distributed within ninety (90) days of the enactment of such law and/or departmental regulation or the timeframe established therein. In the event that the Agency lacks authorization to distribute by this time, it shall meet and confer with the Union within ninety (90) days of the enactment.

ARTICLE 55 CHILD CARE SUBSIDY PROGRAM

Section 55.01. General

The Employer shall establish a Child Care Subsidy Program (Program) in accordance with the terms of the National Agreement, subject to budgetary considerations. The intent of the Program will be to make childcare more affordable for lower income employees whose children are, or will be, enrolled in licensed home-based or center-based childcare provider.

Section 55.02. Establishing Program

The Employer will take the necessary steps to ensure the Program is established and operational not later than one (1) year following the effective date of this Agreement**,** subject to budgetary constraints.

Section 55.03. Publication

The Employer will publicize the availability and eligibility requirements of the Program on its Intranet site.

Section 55.04. Program Eligibility

1) All full and part-time employees who meet all of the following requirements are eligible to participate in the Program and receive a monthly subsidy in accordance with this Article:

    a) Total household income (based on Adjusted Gross Income on the prior year's tax return(s)) is GS-11, Step 4or less for the employee's Locality Pay Table;
    b) Has (or is the legal guardian of) a child or children aged thirteen (13) or younger (age eighteen (18) or younger if the child is disabled); and
    c) Uses a home-based or center-based childcare provider that is licensed or regulated by state and/or local authorities in the state or locality in which the provider operates.

2) The amount of the subsidy provided under this Program shall not exceed twenty-five percent (25%) of the Federal Poverty Guidelines for the 48 contiguous states and the District of Columbia for a family of four (4) in any calendar year.

3) In the event both parents (and legal guardians) work for Federal government agencies offering a childcare subsidy program, the Employee must select only one of the programs in which their family will participate (not both).

4) The monthly subsidies paid by the Employer will be calculated based on a percentage of the total household income according to the following formula and in accordance with employee's Locality Pay Table:

    a) A total household income equal to or below the locality pay rate of a GS-7, Step 3– 100%.

b) A total household income greater than the locality pay rate of a GS-7, Step 3 and less than or equal to a GS-10, Step 2 – 75%.
c) A total household income greater than the locality pay rate of a GS-10, Step 2 and less than or equal to a GS-11, Step 4 – 50%.

Section 55.05. Program Application Procedures

1) The Employer will establish Program application procedures in a manner that permits eligible employees to apply to participate in the program at any time.

2) At a minimum, the Employee's application will include:

a) Child Care Subsidy Application (OPM Form 1643), completed by the employee;
b) Child Care Provider Information for the Child Care Subsidy Program for Federal Employees (OPM Form 1644), completed by the childcare provider;
c) A copy of the prior year's signed and dated Federal Income Tax Return. For married employees who filed separately, this includes a signed and dated copy of the spouse's Return;
d) A copy of the most recent Wage and Tax Statement (Form W-2) for both parents (or legal guardians), if applicable;
e) A copy of the two most recent Leave and Earnings Statements (or equivalent) for both parents (or legal guardians), if applicable;
f) A copy of the employee's most recent Notification of Personnel Action (Form SF-50);
g) A copy of the child(ren)'s birth certificate;
h) A copy of the childcare provider's license;
i) A copy of childcare provider's schedule of fees; and
j) Proof of enrollment of the child(ren) in the childcare facility.

Section 55.06. Application Approval and Annual Recertification

The Employer will approve applications submitted by eligible employees that are complete and meet the criteria contained in applicable law and regulation, and the terms of this Agreement. On an annual basis, participating employees must submit an updated application for approval/recertification.

Section 55.07. Disapproval Notification

The Employer will notify the employee in writing as to whether their submitted application is approved, and if disapproved, the reasons for the disapproval.

Section 55.08. Payments

Once approved by the Employer, monthly subsidy payments under this Program will be made directly to the childcare provider based on services actually rendered. The Employer will make such payments when it receives the monthly invoice from the employee no later than the last day of the month following the month for which payment is requested (e.g., to obtain subsidy for services rendered in February, the employee must provide the invoice no later than March 31st).

Section 55.09. Changes Affecting Eligibility Criteria

In the event that an employee no longer meets the eligibility criteria or the employee's household income changes the monthly subsidy amount to be paid, the employee will notify the Employer immediately of the circumstances in writing. The employee will be responsible for reimbursing the Employer for any overpayment resulting from the employee's delay in notifying the Employer.

Section 55.10. Changes to Child Care Provider

If an employee changes their childcare provider, they must notify the Employer of such by completing the appropriate paperwork.

Section 55.11. Income Tax Consequences

Employees are responsible for determining and addressing all income tax consequences relating to the receipt of a subsidy under this Program.

ARTICLE 56 HOTELING AND DESK-SHARING

Section 56.01. General

The Employer may employ hoteling and desk-sharing at the National Office, Regional Offices, Retailer Management Centers, and any and all other offices across the FNS portfolio. Based on the determination of the Employer, hoteling and desk-sharing may be employed to comply with space reduction and space utilization mandates, address budgetary constraints or as necessary to accomplish the FNS mission.

Section 56.02. Definitions

1) **Assigned Workstation** – A dedicated, permanent workstation that is assigned to particular individual for their exclusive use.

2) **Desk-Sharing** – An arrangement in which two (2) or more employees share the same workstation in a typically pre-arranged manner that allows each of the employees to have sole access to the specified workstation on given days while the other employee(s) involved in the sharing arrangement work elsewhere.

3) **Hoteling Garage** – A storage unit assigned to an individual employee, who participates in the hotel system on a regular basis, for the purpose of storing the employee's work-related materials and personal belongings.

4) **Hoteling Station** – A non-dedicated, non-permanent workstation that is reserved in advance on an as-needed basis by employees.

Section 56.03. Workstations

1) Each employee will be provided with the necessary automation equipment, furniture, and supplies to perform the duties of their position. Each employee will either receive an assigned workstation, a desk-sharing station, or a hoteling station and garage based on the number of days that they are scheduled to be in the office per pay period. All employees who are scheduled to be physically in the office five (5) or more days per pay period are eligible to receive an assigned workstation. All employees who are scheduled to be physically in the office for four (4) or fewer days per pay period are eligible to either participate in a desk-sharing arrangement or to work from a hoteling station.
2) In the event that a change to an employee's telework arrangement or alternative work schedule results in the employee working in the office five (5) or more days per pay period on a regular basis, the employee will be eligible to receive an assigned and available workstation. The change to an assigned workstation will occur within two (2) full pay periods from the date the employee receives official approval of their request to change the telework agreement or work schedule.
3) Employees who desk-share or hotel will typically share a chair, docking station, keyboard, mouse, and mouse pad within their workstation. An employee may request a reasonable accommodation for the use of their own chair, monitor, keyboard, and/or mouse. An employee's reasonable accommodation request will be handled in accordance with Article 35, Section 35.08.
4) Design and color of workstations will be determined on a local basis in consultation with the NTEU Chapter President.

Section 56.04. Desk-Sharing

1) Desk-sharing employees will share the same workstation in a pre-arranged manner that allows each of the employees to have sole access to the specified workstation on given days while the other(s) involved in the arrangement work elsewhere.

2) Employees interested in desk-sharing are responsible for identifying and selecting desk-sharing partners. At any point, an employee may decide to switch to another desk-sharing partner or opt out of desk-sharing to participate in a hoteling arrangement. The new desk- sharing or hoteling arrangement will take effect the next pay period following the employee notifying the Employer.

3) Desk-sharing employees are encouraged to leave the workstation in a clean and orderly fashion at the end of their workday. Desk-sharing partners will discuss and agree upon the placement and storage of their work materials and personal belongings. All employees will utilize their government-issued computer and telephone.

Section 56.05. Hoteling

1) Hoteling employees will use non-dedicated, non-permanent hoteling station reserved in advance on an as-needed basis. Employees will reserve a hoteling station via an FNS-wide automated scheduling system. Hoteling stations can be reserved one pay period in advance.

2) Hoteling employees will be assigned a secured hoteling garage, or other typed of secured location, to store their work-related materials and personal belongings.

3) Hoteling employees are encouraged to leave the workstation in a clean and orderly fashion at the end of their workday. No personal items shall be left at the hoteling station. All work- related materials and personal belongings must be returned to hoteling garage or their assigned storage area.

Section 56.06. Other

1) **Job-Sharing Positions** – In accordance with Article 43, Section 43.08, job-sharing is a form of part-time employment in which the tours of duty of two (2) employees are arranged in such a way as to cover a single full-time position. Job-sharing positions shall be considered one job for purposes of determining whether the employees will be required to occupy a

hoteling station based on the combined number of days per pay period they are physically located in the office. For example, if two job-sharing employees are physically located in their office for five (5) or more days combined per pay period, they will be treated as desk sharers and are not required to occupy a hoteling station.

2) **Part-Time Positions** – In accordance with Article 43, Section 43.01, part-time employees are those who are employed in permanent positions with a pre-scheduled tour of duty of between sixteen (16) and thirty-two (32) hours per week. Any portion of a day in which a part-time employee is physically present in the office is considered a full day for purposes of determining the number of days in the office under this section. Part-time workers are eligible to receive an assigned workstation, desk-sharing arrangement or hoteling station based on the number of days they are physically present in the office.

ARTICLE 57 DURATION AND TERMINATION

Section 57.01. Effective Date of Agreement

This Agreement shall become effective on the date it is approved by the Agency Head of the Department of Agriculture or the thirty-first (31st) day after signing.

Section 57.02. Duration of Agreement

This agreement shall remain in effect for a period of Five (5) years from its effective date and shall be automatically renewable for an additional one (1) year period unless either Party notifies the other Party, in writing, at least sixty (60) days, but not more than 105 days prior to the expiration date of its intention to reopen, amend, modify, or terminate this Agreement. The Parties will agree on mutually satisfactory ground rules for the conduct of these negotiations. This Agreement shall continue in full force until a new Agreement has been approved.

SIGNATURE PAGE

This agreement is executed between the parties by signature on January 13, 2025. It shall become effective on the date it is approved by the Agency Head of the Department of Agriculture, or their designee, or the thirty-first (31st) day after signing.

CARLOS WORTHY Digitally signed by CARLOS WORTHY

Carlos Worthy
FNS Acting, Chief Operations Officer

Doreen P. Greenwald Digitally signed by Doreen P. Greenwald Date: 2025.01.15 07:12:32 -05'00'

Doreen Greenwald
NTEU National President

KENNETH HOCKENBERRY Digitally signed by KENNETH HOCKENBERRY

Ken Hockenberry
FNS Chief Human Capital Officer

John (Jake) DiMarzio Digitally signed by John (Jake) DiMarzio Date: 2025.01.15 13:58:46 -05'00'

Jake DiMarzio
Chief Negotiator & Assistant Counsel

MICHELLE SANDOVAL Digitally signed by MICHELLE SANDOVAL

Michelle Sandoval
FNS Chief Negotiator &
FNS HRD Chief Talent
Management Branch

APPENDIX A
USDA DEPARTMENTAL REGULATION 4080-811-002

U.S. DEPARTMENT OF AGRICULTURE
WASHINGTON, D.C. 20250

DEPARTMENTAL REGULATION	NUMBER: DR 4080-811-002
SUBJECT: Telework and Remote Work Programs	Date: November 22, 2021
OPI: Office of Human Resources Management	EXPIRATION DATE: November 22, 2026

1. PURPOSE

a. This Departmental Regulation (DR) sets forth the authority, policy, and responsibilities for managing the Telework and Remote Work Programs within the United States Department of Agriculture (USDA).

b. Effective use of telework and remote work enables USDA to recruit and retain a diverse workforce. Telework and remote work also may result in tangible savings in terms of reduced real estate and physical space demands, utilities, and transit subsidy costs.

2. SPECIAL INSTRUCTIONS/CANCELLATIONS

a. This DR supersedes the Step 1 interim telework guidance provided in Secretary Vilsack's memorandum, *Building a Model Workplace with Expanded Telework and Work Flexibilities – Our First Steps*, dated March 11, 2021, which repealed DR 4080-811-002, *USDA Telework Program*, dated January 4, 2018.

b. All USDA organizations must ensure compliance with the provisions of this regulation and applicable labor relations obligations.

c. Supplemental Guidance. To the extent the implementation of this directive may affect bargaining unit employees' conditions of employment, management must fulfill its statutory labor relations obligations prior to the directive being implemented. Consequently, Mission Areas, agencies, and staff offices may supplement this directive through the collective bargaining process, with the sole exception of an agency demonstrating a compelling need under the Federal Labor Relation Authority's regulation set forth in 5 Code of Federal Regulations (CFR) § 2424.50, (*Illustrative Criteria*).

3. SCOPE

a. This DR applies to all USDA Mission Areas, agencies, staff offices, organizations, and employees.

b. This DR requires close collaboration from Departmental, Mission Area, agency, and staff office leadership and across all support functions.

4. TELEWORK POLICY

a. USDA fully supports and promotes the use of telework for and by eligible employees. The USDA Telework Program is designed to fully implement the *Telework Enhancement Act of 2010* and enhance work-life balance for employees.

b. USDA permits telework up to 8 days per biweekly pay period based on the duties of the position.

c. A teleworker's official duty station will remain unchanged if they report physically to their employing office worksite location for 2 full workdays or a combination of workday and some form of personal leave each biweekly pay period on a regular and recurring basis. If a holiday falls on a teleworker's day to physically report to the employing office worksite, it is not required to add an alternate day to the employee's requirement to physically report to the employing office worksite for that specific biweekly pay period.

d. Telework should be used as a strategic tool to recruit and retain a diverse workforce and support employee work-life balance.

e. Use of telework is a key component of USDA's ability to operate in situations in which working from the official worksite is unsafe or unavailable. Unscheduled telework will be considered and may be authorized or required during inclement weather, emergency

situations that involve national security, extended emergencies, or other unique situations as determined by the Office of Personnel Management (OPM) or USDA. Mission Area, agencies, and staff offices should incorporate telework into their Continuity of Operations Plan (COOP).

f. Eligibility

(1) All USDA employees, regardless of tenure, grade, job series, title, or supervisory designation are presumed eligible for telework unless prohibited by other exclusionary provisions of this regulation or negotiated as part of a collective bargaining agreement (CBA).

(2) Employees occupying a telework eligible position may telework up to 8 days per pay period based on the duties of the position and the amount of onsite activities that must be performed. Employees, in positions ineligible for telework and those performing similar functions will be treated as fairly and equitably as those that telework. All approved telework arrangements must be documented on an Agriculture Department (AD) 3018, *USDA Telework Agreement* form and must conform to any applicable negotiated labor agreement.

(3) Positions may be identified as ineligible for telework based only on the following criteria:

(a) Position duties require daily physical presence and do not include any portable or administrative work that can be accomplished from an alternate office or location.

(b) Position responsibilities require daily access to specialized equipment located at the official worksite and do not include any portable or administrative work that can be accomplished from an alternate office or location.

(c) Position activities require daily access to classified materials and do not include any portable or administrative work that can be accomplished from an alternate office or location.

(4) Employees may be identified as ineligible for telework based only on the following criteria:

(a) Performance. An employee may be found ineligible for telework if their performance falls below fully successful. In such circumstances, supervisors are required to initiate corrective action in accordance with DR 4040-430, *Employee Performance and Awards*. The employee's eligibility for telework must be reassessed every 12 months from the date the supervisor determined that the performance fell short.

(b) Conduct. An employee may be found ineligible for telework if the employee was subject to formal disciplinary action, adverse action, or was placed on a leave restriction within the previous 12 months.

(c) Permanent Ineligibility. As specified in the *Telework Enhancement Act*, an employee is permanently ineligible for telework if they have been formally disciplined for the following:

1 Violation of 7 CFR § 2635, Subpart G, *Misuse of Position*, of the *Standards for Ethical Conduct for Employees of the Executive Branch* for viewing, downloading, or exchanging pornography, including child pornography, on a Federal Government computer or while performing their official duties; or

2 Absence Without Leave (AWOL). AWOL is a non-pay status that covers an absence from duty that is not approved. Any USDA employee AWOL for 5 or more days in any calendar year is permanently ineligible.

(d) Temporary Eligibility. In certain circumstances, an agency may temporarily designate the location of the agency worksite for an employee's position (i.e., the place where the employee would normally work, absent a Telework agreement) as the official worksite even though the employee is not able to report at least twice each biweekly pay period on a regular and recurring basis to the Mission Area, agency, or staff office worksite. The employee must be expected to return to the Mission Area, agency, or staff office worksite at some point in the future on a regular and recurring basis. It is the responsibility of the employee's immediate supervisor to decide when it no longer is proper to apply the temporary exception. However, if a teleworking employee is not expected to report to the Mission Area, agency, or staff office worksite on a regular and recurring basis in the future, the temporary exception would no longer be applicable. Supervisors must periodically review (at least every 3 months) an employee's temporary full-time telework arrangement to ensure any approved temporary exception continues to apply. A supervisor may waive this requirement on a temporary basis in situations such as:

1 Recovery from an injury or medical condition;

2 Emergency conditions that prevent an employee from commuting to the official worksite, such as a severe weather emergency or public health crisis;

3 An extended period of approved absence from work, e.g., paid leave;

4 A period during which the employee is in temporary duty travel status away from the official worksite; or

5 A period during which an employee is temporarily detailed to work at a location other than a location covered by a Telework agreement.

(e) Telework should be considered, when appropriate, for reasonable accommodation requests for employees with a disability or for accommodation of religious beliefs. All reasonable accommodation requests, including those

for telework, must comply with DR 4300-008, *Reasonable Accommodations and Personal Assistance Services for Employees and Applicants with Disabilities*.

5. TELEWORK PROCEDURES

a. Telework Participation

(1) Telework agreements remain in effect until a change is initiated, though it is a good practice for supervisors to review telework agreements with employees on an annual basis. Either management or an employee may initiate a change to a Telework agreement with a minimum of 45 calendar days advance written notification, or as required by the terms of a CBA, except in emergency situations where the timeframe may be shorter.

(a) Teleworking employees are expected to perform their duties and responsibilities at an acceptable level of competence. In accordance with the terms and provisions of any applicable CBA, participation in telework may be changed, suspended, or terminated by management if an employee no longer meets the eligibility criteria or performance expectations.

(b) Management will provide sufficient written notice, if possible, usually at least 45 calendar days, or as required by the terms of a CBA, before changing, suspending, or terminating a Telework agreement to allow the affected employee to make necessary arrangements. The notice will include the reason, effective date, and any appeals or grievance procedures available to the employee. Consent or acknowledgement via signature by the employee is not required for the modification or termination to take effect.

(c) Changes (e.g., change in position or change requested by management or employee) will require a new or updated Telework agreement to be completed. A new Telework agreement is not needed for temporary changes in position or supervisor (e.g., due to detail, temporary promotion, or assignments of a short duration).

(2) In accordance with this DR and the terms and provisions of any applicable CBA, management reserves the right to call employees back to the office, even on scheduled telework days, with at least a 24-hour notice.

(3) Teleworkers and remote workers may participate in flexible and compressed work schedules or other flexible work arrangements.

(4) Telework is voluntary for all USDA employees. At a minimum, every employee must decide either to participate in the telework program or affirmatively opt out of the telework program by completing the AD-3018 form and giving it to their immediate supervisor.

b. Unscheduled and Emergency Telework

(1) OPM or USDA authorized officials may announce emergency operating status guidance allowing for unscheduled or required telework beyond that outlined in the OPM early dismissal guidance for weather events.

(2) Management may order employees to evacuate from their worksite and perform work from their home, or an alternative location, during inclement weather, public health crisis, or other emergency without regard to whether the employee has a Telework agreement in place at the time the order to evacuate is issued. Departmental and Mission Area, agency, or staff office COOPs should be followed.

(3) Employees with a Telework agreement are expected to telework or take other authorized leave (paid or unpaid), paid time off or a combination of both, as approved by the Mission Area, agency, or staff office.

(4) Teleworkers generally are ineligible for weather and safety leave when a closure is announced, except in rare circumstances:

(a) Weather and safety leave may be granted to a telework-ready employee who, in the Mission Area, agency, or staff office's judgment, could not have reasonably anticipated the severe weather or other emergency condition so did not take home needed equipment or work.

(b) Weather and safety leave may be granted to a telework-ready employee who is prevented from safely working at the alternate site because of the severe weather or other emergency event (e.g., electrical power or broadband outage, fire, flooding or heating and cooling failures). In this case, the home or other approved telework site is also affected in such a way that work cannot be safely performed. Employees must communicate with their supervisors as soon as possible when such work disruptions occur. For more detailed guidance relative to weather and safety leave regulations see 5 CFR § 630.1603, *Authorization*, and OPM's *Governmentwide Dismissal and Closure Procedures*.

(c) Teleworkers who are working in the office when an early departure is announced generally may receive weather and safety leave for time required to commute home (excluding the period for an unpaid lunch break. This means that telework participants must complete the remaining hours of their workday (if any) either by teleworking or taking leave (paid or unpaid) or other paid time off once they arrive home.

c. Time and Attendance (applies to teleworkers and remote workers)

(1) Employees must follow their Mission Area, agency, or staff office-specific procedures for accurately coding time spent teleworking and working remotely.

(2) USDA procedures for requesting and approving overtime, credit hours, and leave apply to all USDA employees, including teleworkers and remote workers.

d. Safety

(1) USDA encourages teleworkers and remote workers to be proactive in ensuring a safe alternate worksite and safe work habits.

(2) As a remote worker or while teleworking from an alternate worksite, USDA employees may be covered by the following:

(a) *Federal Tort Claims Act* (FTCA), 28 United States Code (U.S.C.) §§ 2671-2680, *Tort Claims Procedure*; and

(b) Federal Employees' Compensation Act (FECA), 5 U.S.C. Chapter 81, *Compensation for Work Injuries*.

(3) Employees are covered by FECA at their alternate worksite if an injury occurs while performing their official duties.

(4) If an injury occurs, the employee must notify their supervisor immediately, provide details of the incident or injury, and complete the following Department of Labor (DOL), Occupational Safety and Health Administration (OSHA) forms:

(a) OSHA, Form 301, *Log of Work-Related Injuries and Illnesses*; and

(b) DOL, FECA Form CA-1, *Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation*; or

(c) DOL, FECA CA-2 Form(s):

1 Form CA-2, *Notice of Occupational Disease and Claim for Compensation*; and

2 Form CA-2a, *Notice of Recurrence*; and

(d) As applicable, for *Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation (CA-1)* situations, employees can access the DOL Employees' Compensation Operations and Management Portal (ECOMP) through the *How to File a Form* website.

(5) The Government is not liable for damages to the employee's personal or real property while the employee is teleworking, except to the extent the Government is held liable by the FTCA.

e. Reasonable Accommodation and Medical Telework

(1) An employee seeking to telework or work remotely as a reasonable accommodation is required to follow the policies and procedures outlined in DR 4300-008.

(2) It is not a requirement to document or track a Telework agreement or a Mission Area, agency or staff office unique remote work agreement approved for a reasonable accommodation. However, written documentation in another format

may be needed to document the efficacy of the organization's reasonable accommodation arrangement with the employee.

f. Telework Appeals

(1) Appeals of the denial of an employee's request to telework are governed by DR 4070-771-001, *Administrative Grievance System*, or the applicable negotiated grievance procedure for bargaining unit employees.

(2) Employees may appeal the following denials of telework:

(a) A written decision of ineligibility based on the duties of the position or the employee's suitability for telework;

(b) Denial of an employee's request to telework documented by the submission of a Telework agreement;

(c) Management termination of an existing Telework agreement; and

(d) Denial of an employee's request to telework without a valid business reason yet, the employee is approved for ad hoc telework.

6. REMOTE WORK POLICY

a. USDA fully supports and promotes remote work arrangements for and by employees occupying remote work eligible positions. The USDA remote work policy as described in this DR is intended to enhance the work-life balance for employees.

b. OPM permits Mission Areas, agencies, and staff offices to develop their own agency-specific remote work policies and forms and to implement a strategic and comprehensive framework for such policies. While employees and organizations benefit from remote work arrangements, such arrangements are subject to a Mission Area, agency, or staff office's budget, business and operational needs, this DR, and the terms and provisions of any applicable CBA. USDA organizations must create formal remote work agreement forms to document employee requests, approvals and denials of remote work opportunities.

c. Remote work is an arrangement under which USDA employees are scheduled to perform their position's job duties at an approved alternate worksite, typically the employee's residence. The remote worksite may be within or outside of the local commuting area of the Mission Area, agency, or staff office's worksite. Remote work employees will be expected to work at a designated approved location, typically the employee's residence, on a regular and continuing basis.

d. Remote work arrangements may be used for a variety of business reasons, including, but not limited to:

(1) Retaining high performing employees who must move for personal reasons and would otherwise leave the USDA;

(2) Recruiting employees with specialized skills, who may not want or be able to relocate for personal reasons;

(3) Achieving Mission Area, agency, or staff office real estate or other business cost reductions;

(4) Reducing costs associated with filling vacancies when employees must relocate; and

(5) Increasing employee work-life balance, resulting in increased morale.

e. Remote Work Eligibility. At a minimum, the following conditions or criteria will be considered when a remote work arrangement is requested or when included in a Job Opportunity Announcement (JOA):

(1) As part of the ongoing position management processes, each USDA Mission Area, agency, or staff office will review positions to determine eligibility for a remote work arrangement. Eligibility must be determined prior to posting a JOA; and

(2) A Mission Area, agency, or staff office must consider:

(a) Job duties that only can be performed onsite and the amount of time required to complete such duties in a typical bi-weekly pay period;

(b) The amount of time required each week to participate in other aspects of the work unit operations such as training, meetings, or collaboration, including collaboration with stakeholders that cannot be conducted virtually;

(c) The type and frequency of travel associated with the position; and

(d) Any requirement for accessing classified information.

7. REMOTE WORK PROCEDURES

a. Although remote employees generally are not expected to report to the Mission Area, agency, or staff office worksite, the supervisor can require the presence of a remote employee at the worksite in certain situations, e.g., random drug testing, training, or an official meeting. Supervisors should provide as much advance notice as possible.

b. Remote work arrangements should be cost-neutral or low-cost, to the extent practical, after factoring in the net cost savings accrued moving each employee to a remote arrangement. Supervisors should minimize official travel between the remote work location and the Mission Area, agency, or staff office worksite unless necessary to accomplish mission critical or operational needs or where alternative virtual communication means (e.g., teleconference, virtual meetings) are not suitable or available.

c. When travel is required, clear communication between the employee and supervisor will ensure an accurate understanding of mutual responsibilities and obligations. When a Mission Area, agency, or staff office authorizes a remote employee to travel to an office worksite for official duty, the agency will pay travel costs consistent with applicable travel regulations and policies.

d. Remote employees must be treated equitably for appraisals of job performance, training, awards, reassignment, promotions, changes in grade, work requirements, approval of overtime work, flexible and compressed work schedules, and other actions within management's discretion. Remote employees are entitled to receive progress reviews and annual performance appraisals from their supervisors in accordance with USDA's performance management policies.

8. ESTABLISHING OR CHANGING A REMOTE WORK ARRANGEMENT

a. When creating a JOA, hiring managers must identify:

(1) Whether the position is eligible for a telework or remote work arrangement; and

(2) Whether a remote work arrangement is required for the position. Candidates accepting a position where a remote work arrangement is required must accept the arrangement as a condition of employment.

b. USDA employees may request to work remotely, to change an existing remote work arrangement, or to terminate their remote work arrangement. Absent urgent circumstances and in accordance with the terms of an applicable CBA, employee requests to change their remote work location or remote work arrangement is limited to once every 6 months. The employee requesting a change must:

(1) Discuss the request with their supervisor. Changing the employee's duty station likely will affect the employee in several ways (e.g., locality pay, Reduction-in-Force (RIF) competitive area, bargaining unit status, unemployment compensation). When discussing such requests with the employee, management must address other available workplace flexibilities, including but not limited to, alternative work schedules, details, leave options (e.g., extended leave without pay (LWOP), and shared leave programs.

(2) The employee then may submit a request for a remote work arrangement, change to a remote work arrangement, or termination of a remote work arrangement in writing. The request must include the proposed duty station and effective date.

c. To the extent the eligibility criteria in Section 6e(2) of this directive are met, supervisors normally will approve requests to set up a remote work arrangement from employees occupying positions that are remote-eligible. Supervisors may consider, however, whether there is a need to limit the geographic location of the duty station for the remote work arrangement due to travel or other mission requirements.

d. Supervisory considerations of employee requests to change or terminate a remote work arrangement include:

(1) That the proposed creation or change of a remote work arrangement does not negatively affect the Mission Area, agency, or staff office's budget or ability to execute its mission; and

(2) Requests to terminate a remote work arrangement may be denied due to space limitations within a Mission Area, agency, or staff office worksite.

e. Generally, to the extent the eligibility criteria in Section 6e(2) of this directive are present, employees may be considered eligible for a remote work arrangement. However, as with telework, an employee becomes permanently ineligible for a remote work arrangement if they have been formally disciplined for either:

(1) A violation of Subpart G, *Misuse of Position*, of the *Standards for Ethical Conduct for Employees of the Executive Branch* for viewing, downloading, or exchanging pornography, including child pornography, on a Federal Government computing device to include cell phones and tablets or while performing official, Federal Government duties; or

(2) Absence without leave (AWOL) for 5 or more days in any calendar year.

f. Performance and Conduct. Employees on remote work arrangements are subject to the same laws, rules, regulations, and policies that address performance deficiencies and employee misconduct.

g. In USDA, appeals to a denial of a request for a remote work arrangement are governed by DR 4070-771-001or the applicable negotiated grievance procedure for bargaining unit employees.

9. PAY, HOLIDAY, AND TIME AND ATTENDANCE

a. The basic rate of pay of a remote employee is determined by the employee's base pay rate, the applicable locality pay rate and any special pay rate associated with the employee's official duty station of record, as recorded on the employee's OPM Standard Form (SF)-50, *Notification of Personnel Action*. For remote employees, the official worksite typically is their residence.

b. Teleworker and remote workers are required to follow Departmental policies and procedures for requesting and using approved leave. Leave should be requested and approved in accordance with standard leave approval procedures, with leave hours accurately recorded in the time and attendance system.

c. Mission Areas, agencies, and staff offices generally should not pay relocation expenses related to remote work arrangements such as expenses to relocate to a new official duty station or to return to the Mission Area, agency, or staff office worksite when such

arrangements were requested by the employee and is not the result of a directed reassignment.

d. Remote work employees traveling on official business are eligible for the same travel benefits as non-remote work employees. Supervisors should, whenever possible, minimize official travel for remote employees. Alternate communication technologies should be leveraged to the greatest extent possible to minimize travel unless necessary.

e. Remote work employees generally will not have an assigned or dedicated workspace at the Mission Area, agency, or staff office worksite. Performance issues of remote employees will be addressed in accordance with USDA policies, regulations, and applicable CBA provisions. Absent exigent circumstances, supervisors are expected to allow the employee to continue as a remote employee while addressing performance or conduct issues in accordance with USDA policies and in accordance with the terms and provisions of any applicable CBA.

f. All required training and travel for remote employees as determined by the supervisor (e.g., mandatory participation at meetings or conferences at the Mission Area, agency, or staff office worksite) will be subject to normal training approval requests, applicable travel regulations, and Mission Area, agency, or staff office funding.

g. Remote work employees may be eligible for Workers' Compensation benefits for work-related injuries or illnesses sustained while in the performance of duty under FECA, which is administered by the DOL's Office of Workers' Compensation Programs (OWCP). For further information, see 5 U.S.C. 81.

10. DOMESTIC EMPLOYEES TELEWORKING OVERSEAS

a. Domestic Employees Teleworking Overseas (DETO) are overseas work arrangements that allow Federal Executive Branch employees to perform the work requirements and duties of their positions temporarily from approved overseas locations via DETO agreements. Employees have no authorization to telework from a foreign location without approval from USDA and the Department of State (DOS).

b. USDA employees who may be considered for a DETO are those who are the spouse or domestic partner of a sponsoring Foreign Service Officer, Federal Civil Service employee, Department of Defense (DoD) employee, or uniformed service member assigned overseas. To be considered for a DETO, the USDA employee must be on the U.S. Government orders of the sponsoring individual assigned overseas.

c. DETO requests will be considered on a case-by-case basis. Employees must consult with the OHRM as early as possible in the process because DOS approval can take from 6 months to a year, if not longer.

d. Any DETO request must be approved by the applicable Mission Area, agency, or staff office prior to submission to the DOS and must follow the requirements in this DR, the DOS Executive Secretary Memorandum, *Requirements for Executive Branch Employees Teleworking in Foreign Locations*, dated June 7, 2016, and the DOS Foreign Affairs Manual (FAM), 3 FAM 2370, *Domestic Employee Teleworking Overseas (DETO)* policy guidance, dated August 11, 2021.

e. Before approval, the employee must complete a DETO agreement using the DOS DETO agreement form, fulfill any overseas training requirements, and obtain proper documentation (e.g., passports, visas, work permits) to perform work overseas. The completed DETO agreement must be submitted through the employee's supervisory chain of command for approval. Once approved, it must be submitted to the DOS.

f. A DETO may entail significant costs to the Mission Area, agency, or staff office, the employee, or both. Therefore, prior to approving a DETO agreement, the applicable Mission Area, agency, or staff office must be prepared to address any contingencies or problems with the overseas telework arrangement, including situations when the employee or Mission Area, agency, or staff office may need to terminate the DETO.

g. Upon approval of a DETO agreement, the approved case must be forwarded to the servicing Human Resource Office to change the employee's duty station to the overseas location. The DOS regulation 3 FAM 2370 governs the availability of overseas allowances, including the termination of locality pay, and other differentials for employees.

h. DOS policy requirements apply to all employees working under a DETO.

11. ROLES AND RESPONSIBILITES

a. The Director, Office of Human Resource Management (OHRM) serving as the USDA Chief Human Capital Officer (CHCO), or designee, will serve as the Telework Management Officer (TMO), as required by the *Telework Enhancement Act of 2010*. The TMO will:

(1) Advise the Secretary of Agriculture, Mission Area and Agency Heads, and Staff Office Directors of the development and implementation of policies, programs, and oversight of the USDA Telework and Remote Work Programs;

(2) Develop and interpret USDA policies and standards for the Telework and Remote Work Programs;

(3) Provide Mission Area, agency, and staff office officials with technical assistance and consultative services for Telework and Remote Work Program issues; and report statistics from all Telework Program Coordinators (TPC) as required; and

(4) Develop and interpret USDA policies and standards for the equitable implementation of remote work.

b. Mission Area and Agency Heads, and Staff Office Directors will:

(1) Promote the USDA Telework and Remote Work Programs and give all eligible employees the opportunity to participate in telework or remote work arrangements;

(2) Determine the suitability of positions for remote work arrangements; this responsibility may be delegated;

(3) Hold supervisors and managers accountable for implementing their respective Telework and Remote Work Programs in accordance with this DR;

(4) Incorporate information about the availability of telework, remote work, and related policies into new employee orientation and other training programs;

(5) Ensure supervisors and managers are held accountable for evaluating all teleworkers, remote workers, and non-teleworkers under the same employee performance management system and affording the same professional opportunities, assignments, and treatment about work projects assigned, appraisal of job performance, awards, recognition, training and developmental opportunities, promotions, and retention incentives; and

(6) Designate a Telework Program Coordinator to manage the program.

c. TPCs will:

(1) Administer the USDA Telework Program for their respective organizations per this DR and all applicable laws, rules, and regulations;

(2) Ensure supervisors are aware of the requirement to notify their employees;

(3) Ensure all employees are notified of their eligibility to telework and encourage them to annually review or update their *Telework* a*greement*s or opt-out by selecting the AD-3018 Opt-Out Section check boxes;

(4) Notify and provide new employees with a link to or copy of this policy.

(5) Ensure supervisors are aware of the requirement to provide written notification and explanation to ineligible employees who are not authorized to participate in the Telework and Remote Work Programs;

(6) Ensure supervisors are aware of their responsibility to account for Telework agreements;

(7) Ensure supervisors are aware of the requirement that teleworkers who are designated as emergency employees or mission-critical emergency employees are identified as such in their Telework agreements;

(8) Ensure managers are aware of the requirement for teleworkers and supervisors to complete required training prior to implementing a Telework arrangement;

(9) Coordinate with relevant parties on inventories of available computers, laptops, printers, and other office equipment for use in the Telework Program prior to

reporting the property as excess;

(10) Promote the appeals process as defined in this DR;

(11) Report the required telework program information, as requested by the TMO;

(12) Maintain all documentation in accordance with National Archives and Records Administration (NARA), General Records Schedule (GRS) 22.2, Section 080, *Supervisor's personnel files*, which requires Telework agreements to be retained for 1 year after the end of the employee's participation in the program;

(13) Ensure employees are provided information on the USDA Telework and Remote Work Programs, including eligibility criteria and application procedures;

(14) Ensure employees and supervisors accurately record official time spent in telework or remote work status in the time and attendance system.

(15) Establish a system to receive feedback from employees about the implementation effectiveness and impact of the Telework and Remote Work Programs; and

(16) Encourage supervisors to review Telework agreements with their employees annually.

d. USDA Supervisors and Managers will:

(1) Assist the TPC in administering the Telework and Remote Work Programs including providing copies of approved agreements and notices of agreement terminations;

(2) Complete the required Telework training in AgLearn or other specified training system;

(3) Notify all assigned employees of their eligibility to telework, work remotely, or opt-out;

(4) Within 10 business days of receipt of a telework or remote work request, meet with the employee to approve, modify, or deny the request based on the *Telework Enhancement Act of 2010* and this DR. If the request is denied or terminated, provide written justification to the employee and the Mission Area, agency, or staff office TPC;

(5) Provide written notification and explanation to employees who are not authorized to participate in the USDA Telework and Remote Work Programs;

(6) Review approved Telework agreements for all assigned employees annually;

(7) Ensure consistent and fair administration of the Telework and Remote Work

Programs policies and procedures in their areas of responsibility;

(8) Upon approval of a Telework agreement or Remote Work agreement, establish and communicate clear expectations with employees regarding methods of communication, (i.e., customer service, timeframes for returning phone calls, voicemail messages, and email communication), staff meeting attendance, duty hours, and the accurate coding of telework for time and attendance purposes;

(9) Evaluate all teleworkers, remote workers and opt-out workers under the same performance management system and afford the same professional opportunities, assignments, and treatment with regards to work projects assigned, periodic appraisal of job performance, awards, recognition, training and developmental opportunities, promotions, and retention incentives as those employees working from organization worksites;

(10) Ensure a personnel action is effected to document the correct official duty location for each employee approved for remote work. Temporary exceptions may apply as set out in Section 4f(4)(d), *Temporary Eligibility*, above;

(11) Resolve telework denial and remote work denial appeals or grievances in a timely manner;

(12) Ensure compliance with approved telework and remote work agreements in their areas of responsibility; and

(13) Ensure official time spent teleworking or working remotely is properly documented and recorded in the time and attendance system.

e. Teleworkers and Remote Workers will:

(1) Follow the conditions of their approved telework or remote work agreements;

(2) Follow USDA safety requirements and ensure proper security of USDA equipment, information, and materials;

(3) Provide the same level of support, availability, and accessibility to customers, coworkers, and their supervisor(s) as if working at a USDA official duty location;

(4) Meet organizational and individual work requirements as established (e.g., customer service, timeframe for returning phone calls, voicemail messages, and email communication), staff meeting attendance, duty hours, and accurately coding time and attendance;

(5) Complete all applicable mandatory training courses;

(6) Ensure appropriate arrangements for the care of dependents while teleworking. Telework is not a substitute for dependent care. However, this DR does not

preclude a teleworking employee from having a caregiver in the home who provides care to the dependent(s) while the employee teleworks. Also, a dependent may be permitted in the home provided they do not require constant supervision or care (i.e., older child or adolescent) and their presence does not disrupt the ability to telework effectively;

(7) Ensure the alternate worksite provides adequate connectivity and technology to accomplish work tasks. Employees are expected to provide internet service and other general utility costs at their own expense unless otherwise negotiated within a CBA;

(8) Acknowledge, in the applicable Telework or organizational remote work agreement forms that they are bound by the *Standards of Ethical Conduct for Employees of the Executive Branch* while teleworking or working remotely; and

(9) Understand that travel provisions applicable to employees working at an official duty station also apply to teleworkers and remote workers. A teleworker or remote worker who is directed to travel to another worksite (e.g., official duty station) during their regularly scheduled basic tour of duty would have the travel hours credited as hours of work. Similarly, teleworkers who are required to travel to the official duty location after their regularly scheduled telework basic tour of duty to perform irregular or occasional overtime work are entitled to at least 2 hours of overtime pay or compensatory time off (5 CFR § 550.112 (h), *Call-back overtime work*, and 5 CFR 551.401(e)).

12. INQUIRIES

Direct all inquiries about this DR to your employing organization's servicing human resources office. Organizational human resource directors or CHCOs will manage all inquiries coming from their employees. Any inquiries that cannot be satisfactorily responded to may be sent to the USDA CHCO for further discussion and resolution.

-END-

DR- APPENDIX A: ACRONYMS AND ABBREVIATIONS

AD	Agriculture Department (Departmental Form Prefix)
AWOL	Absence Without Leave
CBA	Collective Bargaining Agreement
CFR	Code of Federal Regulations
CHCO	Chief Human Capital Officer
COOP	Continuity of Operations Plan
CUI	Controlled Unclassified Information
DETO	Domestic Employees Teleworking Overseas
DM	Departmental Manual
DoD	Department of Defense
DOL	Department of Labor
DOS	Department of State
DR	Departmental Regulation
ECOMP	Employees' Compensation Operations and Management Portal (DOL)
FAM	Foreign Affairs Manual (DOS)
FECA	Federal Employees Compensation Act
GPPA	Guide to Processing Personnel Actions
GRS	General Records Schedule
JOA	Job Opportunity Announcement
LWOP	Leave Without Pay
NARA	National Archives and Records Administration
OHRM	Office of Human Resource Management
OMB	Office of Management and Budget
OPM	Office of Personnel Management
OSHA	Occupational Safety and Health Agency
OWCP	Office of Workers' Compensation Program
PII	Personally Identifiable Information
P.L.	Public Law
RIF	Reduction in Force
SF	Standard Form
TDY	Temporary Duty
TMO	Telework Management Officer
TPC	Telework Program Coordinator
U.S.	United States
U.S.C.	United States Code
USDA	United States Department of Agriculture

DR- APPENDIX B: DEFINITIONS

Alternate Worksite. A work location, other than the official worksite, that satisfies all requisite Federal health and safety laws, rules, and regulations pertaining to the workplace, where an employee performs their official duties. Supervisors may authorize telework from several alternate worksites. Temporary authorizations or changes in the location of designated alternative worksites do not require a new AD-3018, *USDA Telework Agreement*.

Locality Pay Area. An Office of Management and Budget (OMB) defined metropolitan statistical area or combined statistical area that determines certain location-based pay entitlements based on the employee's official duty station as documented on the employee's SF-50, *Notification of Personnel Action*.

Mobile Work. Work that is characterized by routine and regular travel to conduct work in a customer's or other worksite as opposed to a single authorized alternate worksite. Examples include site audits, site inspections, investigations, property management, and work performed while commuting, traveling between worksites, or on Temporary Duty (TDY). Mobile work is not considered telework; however, mobile workers may be eligible to participate in telework, as applicable.

Official Duty Station. For the purposes of this Departmental Regulation, the terms "Duty Station", "Official Duty Station", and "Official Worksite" are synonymous. The official duty station is the management-approved location where employees regularly perform their official duties. If an employee physically reports to the employing Mission Area, agency, or staff office official worksite at least twice in a bi-weekly pay period, the employing Mission Area, agency, or staff office official worksite will be designated as the employee's official duty station. If the employee's work involves recurring travel or the employee's work location varies (mobile work) on a recurring basis, the official worksite is the location where the work activities of the employee's position of record are based, as determined by the employing Mission Area, agency, or staff office, subject to the requirement that the official worksite must be in a locality pay area in which the employee is required to regularly perform work. A Mission Area, agency, or staff office must document an employee's official duty station on the employee's *Notification of Personnel Action* (Standard Form 50 (SF-50) or equivalent). Once the official duty station has been officially recorded on the SF-50, *Notification of Personnel Action* (OPM, *Guide to Processing Personnel Actions*, GPPA, Chapter 23, *Change in Duty Station*), it cannot be changed without prior approval of the employing Mission Area, agency, or staff office accompanied by processing a formal, documented personnel action.

Opt-Out. A telework-eligible and ready employee who voluntarily declines to participate in the USDA Telework Program. Employees who opt-out must sign and check the voluntary opt-out box on the AD-3018, *USDA Telework Agreement*.

Remote Work. A workforce flexibility arrangement under which an employee is scheduled to perform work within or outside the local commuting area of their Mission Area, agency, or staff office's worksite and is not required to report to the Mission Area, agency, or staff office worksite on a regular and recurring basis.

Remote Work Arrangement. A work arrangement in which:

a. The employee performs assigned official duties and other authorized activities at an approved alternate work location, typically the employee's residence, within or outside of the local commuting area of the Mission Area, agency, or staff office worksite;

b. On a regular and continuing basis;

c. Is not required to physically report to the Mission Area, agency, or staff office worksite on any frequent, regular, or recurring basis; and

d. The approved alternate worksite is, for pay and other purposes, the employee's official duty station, as indicated on the employee's SF-50, per 5 CFR § 531.605, *Determining an employee's official worksite*.

Remote Work Eligibility. A determination that a position's required duties and tasks can be completed away from the Mission Area, agency, or staff office's worksite with no frequent, regular, or recurring requirement to be physically present at the Mission Area, agency, or staff office worksite.

Routine Telework. Regularly scheduled telework that occurs no less than 1 day and no more than 8 days (without exception) scheduled per biweekly pay period, on a recurring basis and is part of an approved work schedule.

Situational Telework (also referred to as *ad hoc*, episodic, unscheduled, and intermittent). Telework that is approved on a case-by-case basis, where the hours worked were not part of a previously approved, ongoing, and regular, telework schedule.

Telework. A work arrangement in which an employee performs and completes official duties and responsibilities from an alternate worksite. Telework may be authorized for an entire duty day or a portion of one. Telework does not include the following:

a. Work performed while on official travel status;
b. Work performed while commuting to or from work;
c. Remote work; or
d. Mobile work.

Telework Agreement (AD-3018). A written agreement records the terms and conditions of the telework arrangement, as approved by the supervisor.

Telework-Ready. Refers to all eligible employees with an approved telework agreement and who are prepared and equipped to telework. If unable to telework when required, use of paid or unpaid leave may be required.

Teleworker. An eligible employee with an approved telework agreement who performs their official duties at an alternate worksite.

Unscheduled Telework. Telework that is authorized in response to specific duty status announcements issued by OPM or other authorized USDA officials for use during period of inclement weather, a pandemic or public health crisis, or other emergency situations, or with prior supervisory approval, telework used to maintain productivity during short-term disruptions to normal operating procedures.

DR- APPENDIX C: AUTHORITIES AND REFERENCES

Authorization, 5 CFR § 630.1603

Basic Principles, 5 CFR § 551.401

Computation of Overtime Work, 5 CFR § 550.112

Criteria for Determining Compelling Need for Agency Rules and Regulations, 5 CFR § 2424.50, *Illustrative Criteria*

Department of Transportation Appropriations Act of 2001, Public Law (P.L.) Number 106-346, Section 359, October 23, 2000

Determining an Employee's Official Worksite, 5 CFR § 531.605

Evacuation Payments During a Pandemic Health Crisis, 5 CFR § 550.409

Federal Employment Compensation Act (FECA), 5 U.S.C. Subpart G, Ch. 81, *Compensation for Work Injuries*

Department of Homeland Security, Federal Emergency Management Agency, Federal Continuity Directive 1, *Federal Executive Branch National Continuity Program and Requirements*, January 2017

DOL, Employees' Compensation Operations and Management Portal (ECOMP), *How to File a Form* website

DOL, Form CA-1, *Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation*, Rev. October 2018

DOL, Form CA-2, *Notice of Occupational Disease and Claim for Compensation*, Rev. October 2018

DOL, Form CA-2a, *Notice of Recurrence*, Rev. November 2017

DOL, OSHA, Form 301, *Log of Work-Related Injuries and Illnesses*, Rev. April 2004

DOS, 3 FAM 2370, *Domestic Employee Teleworking Overseas (DETO)*, August 11, 2021

DOS, Executive Secretary Memorandum, *Requirements for Executive Branch Employees Teleworking in Foreign Locations*, June 7, 2016

NARA, GRS 2.2, Section 080, *Supervisor's personnel files*, April 2020

Presidential Directive, National Security Presidential Directive 51 and Homeland Security Presidential Directive 20, *National Continuity Policy*, May 4, 2007

Presidential Memorandum, *Expanding Family-Friendly Work Arrangements in the Executive Branch*, July 11, 1994

Presidential Memorandum, *Implementing Federal Family Friendly Work Arrangements,* June 21, 1996

OMB, M-21-25, *Integrating Planning for A Safe Increased Return of Federal Employees and Contractors to Physical Workplaces with Post-Reentry Personnel Policies and Work Environment*, June 10, 2021

OPM, *Governmentwide Dismissal and Closure Procedures*, November 2018

OPM, *Guide to Processing Personnel Actions (GPPA)*, Chapter 23, *Change in Duty Station*, April 2013

OPM, *Guide to Telework in the Federal Government*, April 2011OPM,

OPM, Memorandum to Heads of Executive Departments and Agencies, *Establishing Telecommuting Policies*, February 9, 2001

OPM, SF-50, *Notification of Personnel Action*, Rev. July 1991

Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR Part 2635, as amended

Telework Enhancement Act of 2010, P.L. Number 111-292, December 9, 2010

Tort Claims Procedure, 28 U.S.C. §§ 2671-2680

Treasury, Postal Service, and General Government Appropriations Act of 1996, P.L. Number 104-52, November 19, 1995

USDA, AD-3018, *USDA Telework Agreement*, Rev. 2, January 2018 (as amended)

USDA, AD-xxxx, *USDA Remote Work Agreement*, forthcoming

USDA, DM 4300-002, *Reasonable Accommodation Procedures,* July 5, 2002

USDA, DR 3440-002, *Control and Protection of "Sensitive Security Information,"* January 30, 2003

USDA, DR 3440-003, *Controlled Unclassified Information (CUI) Program*, September 13, 2021

USDA, DR 3445-001, *Media Protection*, October 30, 2019

USDA, DR 3515-002, *Privacy Policy and Compliance for Personally Identifiable Information (PII)*, October 30, 2020

USDA, DR 4040-430, *Employee Performance and Awards*, June 24, 2020

USDA, DR 4070-771-001, *Administrative Grievance System*, November 27, 2020

USDA, DR 4300-008, *Reasonable Accommodations and Personal Assistance Services for Employees and Applicants with Disabilities*, October 27, 2020

USDA, DR 4430-004, *Workers' Compensation Program*, March 8, 2016

USDA, DR 4430-005, *Workers' Compensation Program: Return to Work*, December 17, 2014

USDA, Secretary Vilsack's Memorandum, *Building a Model Workplace with Expanded Telework and Work Flexibilities – Our First Steps*, March 11, 2021

APPENDIX B- WORK SCHEUDLES

Summary of Article 19 (Hours of Work) for Full-Time Employees

(All times shown are local time)

	BASIC SCHEDULE	**5/4/9 COMPRESSED WORK SCHEDULE**	**4/10 COMPRESSED WORK SCHEDULE**	**BASIC FLEXIBLE SCHEDULE**	**MAXIFLEX**	**4/9/4 FLEXIBLE SCHEDULE**
DAYS WORKED PER PAY PERIOD:	**10 Days** § 19.03(1)	**9 Days** §19.03(2)(a)	**8 Days** § 19.03(2)(b)	**10 Days** § 19.04(1)	**8, 9, or 10 Days** § 19.04(2)	**10 Days** § 19.04(3)
SCHEDULED HOURS PER DAY:	**8 Hours** § 19.03(1)	**9 hours x 8 days** **8 hours x 1 day** §19.03(2)(a)	**10 Hours** § 19.03(2)(b)	**Up to 10 Hours** § 19.04(1)	**Up to 10 Hours** § 19.04(2)	**9 Hours x 8 days** **4 Hours x 2 days** § 19.04(3)
EARLIEST START TIME*:	**6:00 am** § 19.02(12)	**6:00 am** § 19.02(12)	**6:00 am** § 19.02(12)	**6:00 am** § 19.02(12)	**6:00 am** § 19.02(12)	**6:00 am** § 19.02(12)
LATEST END-TIME*:	**8:00pm** § 19.02(12)	**8:00pm** § 19.02(12)	**8:00pm** § 19.02(12)	**8:00pm** § 19.02(12)	**8:00pm** § 19.02(12)	**8:00pm** § 19.02(12)

CORE HOURS:	**N/A****	**N/A****	**N/A****	**10:00am-2:00pm on days worked** § 19.02(3)	**10:00am-2:00pm on days worked** § 19.02(3)	**10:00am-2:00pm on days worked, except the 4-hour days** § 19.02(3)
DEVIATION FROM SCHEDULE:	**Not Permitted** § 19.03(1)(b)	**Not Permitted** § 1903(2)(c)(ii)	**Not Permitted** § 1903(2)(c)(ii)	**Permitted** § 19.04(4)(iii)	**Permitted** § 19.04(4)(iii)	**Permitted** § 19.04(4)(iii)
CREDIT HOURS:	**Not Permitted** § 19.03(1)(c) 5 U.S.C. § 6121(4)	**Not Permitted** § 19.03(2)(c)(iii) 5 U.S.C. § 6121(4)	**Not Permitted** § 19.03(2)(c)(iii) 5 U.S.C. § 6121(4)	**Permitted** § 19.04(5) 5 U.S.C. § 6121(4)	**Permitted** § 19.04(5) 5 U.S.C. § 6121(4)	**Permitted** § 19.04(5) 5 U.S.C. § 6121(4)
HOLIDAY PAY	**8 Hours** § 19.03(1)(d)	**Number of Hours Regularly Scheduled for that Day** § 19.03(2)(c)(iv)	**Number of Hours Regularly Scheduled for that Day** § 19.03(2)(c)(iv)	**8 Hours** § 19.04(4)(iv)	**8 Hours*** ** § 19.04(4)(iv)	**8 Hours*** ** § 19.04(4)(iv)

Table 1- Available Schedules Article 19

* Article 19, Section 19.02(12) contains limited exceptions to these requirements

** By operation, Basic and Compressed Work Schedules constitute the core hours on the days an employee is scheduled to work

*** In coordination with their supervisor, employees on Maxi flex or a 4/9/4 schedule may need to adjust their schedule during pay periods that include holidays to ensure an 80 hour biweekly pay period when accounting for the 8-hour holiday pay.

Work Hours – Employees may work between the hours of 6:00 a.m. and 8:00 p.m. The parties agree that facilities services such as heating, air conditioning, security, etc., may not be available prior to 7:00 a.m. or after 5:30 p.m. Regularly scheduled tours of duty under all work schedules (as defined in Section 19.05) may not begin before 6:00 a.m. nor extend beyond 8:00 p.m. without supervisory approval. If a specific extraordinary circumstance arises, the Agency may approve an earlier starting or later ending time on a case-by-case basis, upon the employee's written request to their supervisor. The supervisor will provide the employee with a written decision within two (2) workdays of this request

APPENDIX C- DECISION TREE FOR OVERTIME AND COMPENSATORY TIME

Several factors determine if an employee should receive overtime or compensatory time off in a given situation. The below two charts guide supervisors and managers through these factors to the appropriate compensation type.

See OPM Overtime Fact Sheet at: https://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/overtime-pay-title-5

See OPM Compensatory Fact Sheet at: https://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/compensatory-time-off/

FLSA Status	Schedule	Overtime Type	Rate of Pay	Compensation Type
Exempt (not covered by FLSA)	Standard 8-hour workday	Regular	N/A	Overtime pay required
Exempt (not covered by FLSA)	Standard 8-hour workday	Irregular/Occasional	> GS 10/10	Overtime or compensatory time is at the discretion of the Employer
Exempt (not covered by FLSA)	Standard 8-hour workday	Irregular/Occasional	≤ GS 10/10	Employee may **choose** overtime pay **or** compensatory time off
Exempt (not covered by FLSA)	Compressed Work Schedule (> hours required per day in compressed schedule)	Regular	N/A	Overtime pay required
Exempt (not covered by FLSA)	Compressed Work Schedule (> hours required per day in compressed schedule)	Irregular/Occasional	> GS 10/10	Overtime or compensatory time is at the discretion of the Employer
Exempt (not covered by FLSA)	Compressed Work Schedule (> hours required per day in compressed schedule)	Irregular/Occasional	≤ GS 10/10	Employee may **choose** overtime pay **or** compensatory time off
Exempt (not covered by FLSA)	Flexible Work Schedule (> 8 hours per day)	Regular	N/A	Employee may **choose** overtime pay **or** compensatory time off
Exempt (not covered by FLSA)	Flexible Work Schedule (> 8 hours per day)	Irregular/Occasional	N/A	Employee may **choose** overtime pay **or** compensatory time off

Table 2- Overtime versus Compensatory Time for FLSA Exempt Employees

FLSA Status	Schedule	Overtime Type	Rate of Pay	Compensation Type
Non- Exempt (Covered by FLSA)	Standard 8-hour workday	Regular	N/A	Overtime pay required
Non- Exempt (Covered by FLSA)	Standard 8-hour workday	Irregular/Occasional	N/A	Employee may choose overtime pay or compensatory time off
Non- Exempt (Covered by FLSA)	Compressed Work Schedule (> hours required per day in compressed schedule)	Regular	N/A	Overtime pay required
Non- Exempt (Covered by FLSA)	Compressed Work Schedule (> hours required per day in compressed schedule)	Irregular/Occasional	N/A	Employee may choose overtime pay or compensatory time off
Non- Exempt (Covered by FLSA)	Flexible Work Schedule (> 8 hours per day)	Regular	N/A	Employee may **choose** overtime pay **or** compensatory time off
Non- Exempt (Covered by FLSA)	Flexible Work Schedule (> 8 hours per day)	Irregular/Occasional	N/A	Employee may **choose** overtime pay **or** compensatory time off

Table 3-Overtime versus Compensatory Time for FLSA Non- Exempt Employees

- Overtime- Work that is performed by an employee that has been officially ordered or approved in excess of 8 hours in a day or 40 hours in an administrative workweek.

- Compensatory Time- Time off from an employee's tour of duty in lieu of overtime pay for an equal amount of overtime worked.

- Regularly scheduled overtime- is overtime which is scheduled in advance of the week in which it is worked.

- Irregular or occasional overtime- overtime work that is not part of an employee's regularly scheduled administrative workweek. (See also 5 CFR 551.501(c), which defines it as "overtime work that is not scheduled in advance of the workweek."

Note that all overtime or compensatory time must be requested and approved by an authorized supervisory or management official in advance of being worked.

APPENDIX D- MEASURABLE AND NON-MEASURABLE BENEFITS SCALES

Use the Measurable Benefits Scale when a contribution, suggestion, or invention results in a quantifiable benefit, such as a process improvement that saves a program a particular monetary amount. The benefit is calculated based on the first 52 weeks of the contribution, invention, or of the implemented improvement or suggestion.

Table 4. Measurable Benefits Scale

Benefit	Award
Up to $10,000	10% of the benefits
$10,001 - $100,000	$1,000 for the first $10,000 in benefits, plus 3% of benefits over $10,000
$100,001 or more	$3,700 for the first $100,000 in benefits, plus 0.005% of benefits over $100,000. Award amount may not exceed 20% of recipient's basic pay.

Use the Non-Measurable Benefits Scales when a contribution, suggestion or invention results in benefits which cannot be readily quantified, such as contributions described in the examples after Table 6.

Table 5. Non-Measurable Benefits Scale for Monetary Awards

Scope	Limited Contribution	Moderate Contribution	Significant Contribution	Substantial Contribution
Level 1	Up to $250	Up to $500	Up to $1,000	N/A
Level 2	Up to $500	Up to $750	Up to $1,500	N/A
Level 3	N/A	Up to $1,000	Up to $2,000	Up to $3,500
Level 4	N/A	Up to $1,250	Up to $3,000	Up to $5,000
Level 5	N/A	Up to $1,500	Up to $4,000	Up to $7,500
Level 6	N/A	Up to $2,000	Up to $5,000	Up to $10,000

Table 6. Non-Measurable Benefits Scale for Time Off Awards

Scope	Limited Contribution	Moderate Contribution	Significant Contribution	Substantial Contribution
Level 1	Up to 4 hours	Up to 8 hours	Up to 16 hours	N/A
Level 2	Up to 8 hours	Up to 10 hours	Up to 20 hours	N/A
Level 3	N/A	Up to 12 hours	Up to 24 hours	Up to 40 hours
Level 4	N/A	Up to 20 hours	Up to 30 hours	Up to 40 hours
Level 5	N/A	Up to 30 hours	Up to 40 hours	Up to 40 hours
Level 6	N/A	Up to 40 hours	Up to 40 hours	Up to 40 hours

Table 7. Key to Types of Contribution

Type	Examples
Limited	a. Assisted a colleague on a project to help meet a deadline; b. Provided support for a specific initiative by scheduling meetings, tracking documents through approval, following up on deliverable due dates, etc.; c. Served in an "acting" capacity for two pay periods (without a temporary promotion); and d. Served as a team member on a short-term project.
Moderate	a. Developed an administrative process improvement; b. Provided technical expertise and guidance to a project team; c. Performed an absent colleague's duties for 60 days, as well as the awardee's own workload; d. Served as the lead on a short-term project; and e. Served as a fully contributing team member on a large, long-term project.
Significant	a. Developed a strategic program enhancement which facilitated Mission Area, agency, or staff office decision-making, or improved delivery to external customers; b. Delivered an important project with high quality on a very short timeline; and c. Served as the lead on a large, long-term project, accountable for the results.
Substantial	a. Led an interagency initiative to develop a new methodology to improve program delivery to USDA's external stakeholders; and b. Led a research team that developed a ground-breaking agricultural industry innovation.

Table 8. Key to Scope of the Contribution's Impact

Scope	Definitions of Levels
Level 1- Branch	a. The operations of the immediate office; b. The employees of an entire State or Region up to 300 employees; or c. Equivalent.
Level 2- Region-wide or SES Org/Division-wide	a. The operations of a division, service center agency's District b. The services delivered to the local community; c. The employees of an entire State, Region, agency, or staff office up to 3,000 employees; or d. Equivalent
Level 3- FNS-wide	a. The operations of an entire medium State, or a small agency or staff office (up to 3,000 employees); b. The services delivered to an entire small State, or delivered by multiple agencies to the local community or service center agency's entire District; c. A significant mission-centric program delivered -Agency-wide; d. A subset of the general public equivalent to an entire small State; e. The employees of an entire medium agency (3,001 - 10,000) employees; or f. Equivalent.
Level 4- FNS- wide	a. The operations of an entire large State, multiple States, a Region, an entire medium agency (3,001 –10,000 employees), or all the offices of multiple agencies serving an entire State; b. The services delivered by multiple States, or by multiple agencies to the entire State; c. A mission program delivered agency-wide; d. A subset of the general public equivalent to an entire medium or large State; e. The employees of multiple agencies, or an entire large agency (over 10,000 employees); or f. Equivalent.
Level 5 Government-wide	a. The operations of an entire large agency (over 10,000 employees), multiple agencies, multiple Regions, or a bureau or independent agency outside USDA; b. The services delivered by multiple Regions; c. A program delivered Department-wide; d. A subset of the general public equivalent to multiple States; e. The employees of the entire Department; or f. Equivalent.
Level 6 Government-wide	a. The operations of the entire Department; b. A significant mission-centric program delivered Department-wide; c. The general public of the entire Nation; or d. Equivalent