

**Management Final Offer
February 21, 2003**

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Article 1

5 **GOVERNING LAWS, REGULATIONS AND DEFINITIONS**

6 **Section 1. Relationship to Laws and Government-Wide Rules and Regulations**

7 The Parties will be governed by this Agreement, existing and future laws, existing
8 Government-wide rules and regulations and subsequently-enacted Government-wide
9 rules and regulations implementing 5 U.S.C. § 2302 in accordance with 5 U.S.C. Chapter
10 71.

11 **Section 2. Other Agreements**

12 Any Memoranda of Understanding, Memoranda of Agreement, or any other written
13 agreements between the Parties that preexisted this Agreement and that are not covered
14 by this Agreement shall be treated as past practices and shall not be changed except in
15 accordance with 5 U.S.C. Chapter 71.

16 **Section 3. Past Practices**

17 In order to change any past practices that were in effect on the effective date of this
18 Agreement and that are not covered by this Agreement, the Agency shall provide notice
19 and, upon request, bargain with the union to the extent required by law and in accordance
20 with the mid-term bargaining provisions of this Agreement.

21 **Section 4. Definitions Applicable to this Agreement**

22 “Days” means calendar days, unless otherwise specified.

23 “Employee” means bargaining unit employee, unless otherwise specified.

24 “Position” means bargaining unit position, unless otherwise specified.

Article 3

EMPLOYEE RIGHTS

Section 1. Right to Unionism

A. Each employee will have the right to join, or assist the union, or to refrain from such activity, freely and without fear of penalty or reprisal, and each employee will be protected in the exercise of such right. Except as otherwise provided under law, such right includes the right:

1. to act for the union in the capacity of a representative, and 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
2. to engage in collective bargaining with respect to conditions of employment through representatives.

Section 2. Whistleblower Protection

Employees will be protected against reprisal for the disclosure of information which the employee reasonably believes evidences a violation of any law, rule, or regulation, or gross mismanagement, a gross waste of funds, an abuse of authority or a substantial and specific danger to public health or safety, unless the disclosure is specifically prohibited by law, in accordance with 5 U.S.C. § 2302(b)(8).

1 **Section 3 . Individual Employee Personnel Records**

2 A. No individual employee personnel records may be collected, maintained, retained
3 or disclosed by the Agency except in accordance with law and Government-wide
4 rule or regulation, including the provisions of the Privacy Act, 5 U.S.C. 552a.

5 B. Individual employee personnel records include the Official Personnel Folder
6 (OPF), the Employee Performance File System Records (EPF) and the Employee
7 Medical File System Records (EMF) as prescribed under 5 C.F.R. Part 293.

8 Other individual employee personnel records which may be collected, maintained
9 and retained and are subject to Privacy Act requirements are provided for in the
10 Office of Personnel Management’s Privacy Act notice. They include records such
11 as: general personnel records, records of adverse actions, performance based
12 reduction in grade and removal actions and resignation/termination of
13 probationers, recruiting, examining and placement records, applicant race, sex,
14 national origin and disability status records and position classification appeal
15 records.

16 C. All individual employee personnel records are confidential and must be retained
17 in a secure location. In accordance with the Privacy Act, 5 U.S.C. 552a(b)(1),
18 disclosure of individual employee personnel records are prohibited without prior
19 written consent of the individual to who the record pertains, unless the disclosure
20 is to Agency employees who have a need for the record in the performance of
21 their duties.

22 D. Employees and/or their authorized representatives, who have been so authorized
23 in writing, have the right to examine any of their individual employee personnel

1 records in the presence of a management official. Upon request by the employee,
2 a reasonable amount of duty time will be granted for this purpose by the
3 employee's manager. Access to official personnel records will be granted within
4 two working days of the request if the records are maintained on the premises
5 where the employee is located. If records are not so maintained, the Agency will
6 immediately initiate action to obtain the records from their location and will make
7 them available to the employee as soon as possible. Grievance time limits should
8 be stayed in the event of undue delay in the provision of relevant records.

9 **Section 4. Supervisory Working Files**

- 10 A. Individual managers may maintain a supervisory working file (also known as
11 "supervisory working folder") on each of their employees. These files are subject
12 to the same collection, maintenance, retention and disclosure requirements
13 pertaining to other individual employee records, including the provisions of the
14 Privacy Act, 5 U.S.C. 552.
- 15 B. Supervisory working files are used by managers in carrying out personnel
16 management responsibilities. As such, these files may include documents
17 concerning individual employee development plans, recommendations for
18 awards, training plans or history, discipline or performance, and other such
19 records the manager determines to be appropriate for carrying out his/her ongoing
20 personnel management responsibilities.
- 21 C. Supervisory working files should be kept in a secure location, e.g., a locked desk,
22 cabinet, etc., to ensure their security and confidentiality.

1 D. Employees shall be notified and given a photocopy of any documents placed in
2 their supervisory working file within three working days after the document is
3 placed in the file by the manager. Upon request, employees may review the
4 documents contained in the supervisory working files in the presence of a
5 designated management official.

6 E. These files should be screened and purged on a regular basis.

7 **Section 5. Memory Joggers**

8 A. Managers may prepare and retain memory joggers concerning individual
9 employees.

10 B. Memory joggers are private notes retained and used for the personal use of the
11 manager to recall events or aid memory. Memory joggers may be prepared,
12 retained or discarded at the author's discretion. Memory joggers shall not be
13 provided to any person.

14 C. These records are not individual employee personnel records subject to the
15 requirements of the Privacy Act or records subject to the requirements of 5 U.S.C.
16 § 7114(b)(4).

17 D. The union is not entitled to a manager's memory joggers under this Agreement.

18 **Section 6. Right to Union Representation**

19 A. If an employee wishes to discuss a representational matter with a union
20 representative on duty time, the employee shall request from his/her manager to
21 be released from duty for the approximate time it will take to hold the discussion.

22 B. If the discussion will take place away from the worksite, the employee shall
23 identify the location where he/she can be contacted.

1 C. The manager (his/her designee or second-line manager, in the event of the
2 absence of the manager) will release the employee from duty unless the manager
3 determines the presence of the employee at the worksite is necessary to meet
4 current or immediate work requirements.

5 **Section 7. Investigatory Examinations (*Weingarten*)**

6 The manager will inform the employee of the general purpose of any meeting that the
7 employee is asked to attend that the manager believes may result in disciplinary action.
8 In accordance with 5 U.S.C. § 7114(a)(2)(B), a representative of the union will be given
9 an opportunity to be present at any examination, discussion, or interview involving an
10 employee if the employee reasonably believes (either prior to or during the examination,
11 discussion, or interview) that a disciplinary action may result and the employee requests
12 such representation. These meetings are often referred to as “investigatory
13 examinations” or “*Weingarten*” meetings.

14 **Section 8. Formal Discussions**

15 The union will be given the opportunity to be represented at all formal discussions as
16 defined in 5 U.S.C. § 7114(a)(2)(A). The Agency will notify the union designee as far in
17 advance of the formal discussion as is reasonably possible under the circumstances. The
18 union representative will be acknowledged at the start of the formal discussion and given
19 an opportunity to participate, which includes the opportunity to speak, comment and
20 make statements. However, the union representative will not interfere with or disrupt the
21 meeting or its purpose. The Agency is under no obligation to delay the start of the
22 meeting if the union representative is not present.

23

1 **Section 9. Privacy Act Protection for Collection of Information**

2 In conducting investigations that may result in an adverse determination about an
3 employee’s rights, benefits and privileges, the Parties are reminded that the Privacy Act
4 requires that, to the greatest extent practicable, information should be collected directly
5 from the subject employee.

6 **Section 10. Duty of Respect**

7 Employees and managers will be treated with mutual respect. Employees and managers
8 should refrain from coercive, intimidating, loud or abusive behavior.

9 **Section 11. Warrants and Subpoenas**

10 If an employee is served with a warrant or subpoena, it will be done in private to the
11 extent the Agency has knowledge of and can exercise control over the service.

12 **Section 12. Lawful Orders**

13 No employee will be disciplined or retaliated against solely as a result of carrying out the
14 lawful instructions of an Agency management official with real or apparent authority. If
15 there is a disagreement between the employee and the management official, the employee
16 will comply with the instructions and, if desired, grieve the matter later. The refusal to
17 obey an unlawful order will not subject the employee to disciplinary or adverse action.

18 **Section 13. Retirement**

19 An employee’s decision to resign or retire shall be made freely and in accordance with
20 applicable law and Government-wide rule or regulation. The Agency agrees to provide
21 retirement seminars to employees who are within five years of retirement eligibility.

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1 **Section 14. 5 U.S.C. § 2301 and 5 U.S.C. § 2302 Rights**

2 Personnel management shall be conducted in accordance with the provisions of 5 U.S.C.
3 § 2301, Merit System Principles, and 5 U.S.C. § 2302, Prohibited Personnel Practices.

4 All employees should receive fair and equitable treatment in all aspects of personnel
5 management without regard to political affiliation, race, color, religion, national origin,
6 sex, marital status, age or handicapping condition, and with proper regard for their
7 privacy and constitutional rights, in accordance with 5 U.S.C. § 2301(b). These sections
8 will be made available electronically to all employees.

9 **Section 15. Employee Express**

10 All employees are required to use Employee Express to process his/her payroll and
11 personnel information. Employees who have physical impairments will receive
12 assistance, upon request, in order to process his/her payroll and personnel information
13 using Employee Express. Information about Employee Express will be made available
14 electronically to all employees.

15 **Section 16. Timely and Proper Compensation**

16 A. All employees are entitled to timely receipt of all wages earned. Employees are
17 responsible for reviewing their earnings and leave statements upon receipt and
18 notifying their managers of any unexplained changes or irregularities. Employees
19 are responsible for arranging for the timely repayment of overpayments. Where
20 employees have been overpaid, the Agency will advise employees of the
21 procedures available and provide the necessary forms for filing a request for
22 waiver of all overpayment of pay received in good faith.

23 B. All employees are required to use direct deposit for salary payment unless the

1 employee meets the requirements for waiver under 31 C.F.R. § 208.

2 C. Employees who do not receive timely wages may request an emergency salary
3 payment. An emergency salary payment will be issued promptly after notification
4 by the employee to the designated human resources official.

5 D. Obtaining an emergency salary payment under false pretenses may serve as the
6 basis for disciplinary action.

7 **Section 17. Voluntary Activities**

8 Employee participation in the Combined Federal Campaign, Blood Donor Drives, Bond
9 Campaigns or other worthy projects will be on a voluntary basis. This does not preclude
10 giving general publicity and encouragement to employees to participate. Participation or
11 non-participation will not advantage or disadvantage employees. Employees who desire
12 to participate in voluntary activities that are not Agency-sponsored or approved should
13 consult with the Agency's ethics office to be sure there is no ethical conflict between the
14 employee's official duties and the voluntary proposed activities.

15 **Section 18. Dress Code**

16 A. A dress code promotes the Agency's professional image to our beneficiaries,
17 providers, and other stakeholders and focuses attention on excellence and
18 professionalism in the performance of the Agency's mission.

19 B. Employees are expected to dress neatly, professionally and in a manner that is
20 appropriate for their assigned duties.

21 C. On Monday through Thursday, employees are expected to dress in appropriate
22 business office attire. Managers may grant exceptions based upon the nature of
23 work assignments or the location in which the work is being performed.

1 D. On Fridays, employees may choose to dress in business casual attire. Business
2 casual attire is neat and professional attire that reflects an appropriate, positive
3 image of the Agency while promoting a comfortable work environment for
4 employees.

Article 4

NEGOTIATIONS DURING THE TERM OF THE AGREEMENT

Section 1. Agreement to Bargain

The Agency and the Union, through appropriate representatives, will meet and negotiate in good faith for the purpose of collective bargaining as required by law and this Agreement.

Section 2. Procedures for Bargaining Changes in Conditions of Employment

A. The Agency will provide the union with reasonable advance written notice prior to the proposed implementation date of changes affecting conditions of employment subject to bargaining. The notice will contain the following information:

1. the nature and scope of the proposed change; and
2. the proposed implementation date.

B. The union will be provided 10 working days from receipt of the notice to request to bargain. The union will submit written bargaining proposals or request additional information or a briefing with its request to bargain. If the union has requested additional information or a briefing with its request to bargain, the union will submit written bargaining proposals within five working days of the Agency's response to the request for information or the date of the briefing.

C. If the union fails to request to bargain within 10 working days from receipt of the Agency's notice or fails to submit written proposals within the required time frames, the Agency may implement the changes.

1 D. The first negotiating session will take place as soon as possible but no later than
2 five working days from receipt of the union's written proposals.

3 E. The time frames set forth in this section may be modified in writing by mutual
4 agreement of the Parties.

5 **Section 3. Bargaining Levels**

6 A. National Level

7 1. Changes affecting Central Office (including the Washington D.C. office)
8 or two or more regional offices will be bargained at the national level.

9 2. Location of Bargaining.

10 Bargaining of changes that affect Central Office (including the
11 Washington D.C. office) will take place at the Central Office location or
12 other mutually agreed upon site. Bargaining of changes affecting two or
13 more regional offices will take place at the election of the Agency either at
14 the Central Office location or at one of the regional offices affected by the
15 changes.

16 3. Travel and Per Diem.

17 If face-to-face negotiations occur, the Agency will pay travel and per diem
18 expenses for one union negotiator. The Agency and the union will each
19 pay one-half the travel and per diem expenses for one additional union
20 negotiator. Payment of travel expenses and per diem will be governed by
21 applicable law, the Department of Health and Human Services (HHS)
22 supplemental policy guidance (HHS Travel Manual), the Agency's Travel
23 Handbook, and Government-wide rule and regulation.

1 B. Local Level

2 1. Changes which affect only one regional office will be bargained at the
3 local level.

4 2. Location of Bargaining. Bargaining will take place at the affected
5 regional office or at another mutually agreed upon site.

6 3. Travel and Per Diem. The Agency will not pay for travel and per diem
7 expenses for any union negotiators.

8 **Section 4. Ground Rules for Mid-Term Bargaining**

9 A. In order to save resources and costs, the Parties agree to use available technology
10 (e.g., Pictoretel, teleconference) to negotiate as an alternative to face-to-face
11 bargaining.

12 B. The Agency will provide a meeting room for negotiations and reasonable
13 equipment.

14 C. The Agency and the union will be represented at the negotiations at all times by
15 one duly authorized chief negotiator who is authorized to execute agreements.

16 D. During negotiations, the chief negotiator for each party will signify agreement on
17 each section by initialing the agreed-upon section. The chief negotiator for each
18 party will retain his/her copies and initial the other party's copy. This will not
19 preclude the parties from reconsidering or revising any agreed-upon section by
20 mutual consent.

21 E. The union will be authorized the same number of union representatives on official
22 time as the Agency has representatives at the negotiations table. The designated
23 union negotiators will be granted official time for time spent during the actual

1 negotiations, including attendance at impasse proceeding during the time the
2 employee would otherwise be in a duty status. The union will be permitted to
3 have negotiators who are not employees of the Agency. If the union chooses to
4 exercise this option, it agrees to pay any and all costs incurred by these
5 negotiators.

6 F. If any proposal is claimed to be non-negotiable and is subsequently determined to
7 be negotiable, or the declaring party withdraws its allegations of non-
8 negotiability, the proposal will, upon request, be reopened within 30 days.

9 Nothing in this provision will preclude the right of judicial appeal.

10 **Section 5. Execution of Agreements**

11 All written agreements or memoranda of understanding reached under the provisions of
12 this Article will be duly executed and incorporated into, and to the extent not inconsistent
13 with this Agreement, will be subject to all the terms and conditions of this Agreement.

14 **Section 6. No Waivers**

15 Nothing in this Agreement shall be deemed to waive either party's statutory rights
16 including, without limitation, the right to assert the covered by doctrine.

Article 6

DUES WITHHOLDING

Management proposes the current contract with the following exceptions:

Section 4. Effective Dates

4. Termination due to separation Beginning the first full pay period after
or movement outside unit of computer acceptance of information.
recognition.

Section 5. Disputed Eligibility

When the Agency believes a position subject to dues withholding is no longer eligible for
such deduction, the Union will be notified in writing.

Article 7

DURATION OF AGREEMENT

Section 1. Effective Date

This Agreement will be implemented and become effective when it has been signed by the parties, including review and approval pursuant to 5 U.S.C. § 7114(c).

Section 2. Duration of Agreement

This Agreement will remain in full force and effect for a period of three years after its effective date. At the expiration of three years from its effective date, the Agreement will automatically renew for one-year periods unless the Agency or the union requests to renegotiate the Agreement.

Section 3. Renegotiation

A. The Agency or the union may request to renegotiate the Agreement by submitting a notice in writing to the other party at least 60 days, but not more than 120 days, prior to the expiration date. Once the Agency or the union submits a request to renegotiate under this Article, the entire Agreement is subject to renegotiation.

B. When notice of intent to renegotiate is given, the Parties shall meet to negotiate ground rules. This meeting shall occur not later than 30 days prior to the expiration date. The provisions of Article 4 do not apply to negotiations under this Article.

C. The ground rules which are negotiated shall be reduced to writing and shall include, at a minimum, procedures governing submission of written proposals, scheduling and caucuses.

1 D. If the Agency or the union timely requests to renegotiate the Agreement, the
2 Agreement will be automatically extended until negotiations are completed, but in
3 no event for a period greater than 60 days after the expiration date. This
4 Agreement may be further extended by the mutual written consent of the parties.

Article 9

HEALTH AND SAFETY

Management proposes the current contract with the following exceptions:

Section 5. Health and Safety Committees (HSC)

- A. The Parties agree that union/management participation in the Agency's Occupational Safety and Health Program at all levels is essential for the overall success of the program. There will be a joint Health and Safety Committee (HSC) in Central Office and in each Regional Office. In the regional offices, the Parties are encouraged to participate in established multi-agency HSC's at the facility.
- B. The purpose of the HSC's are to monitor, advise and assist in the development and operation of the Agency's occupational safety and health program.
- C. Each HSC will consist of four members – two management and two union representatives.
- D. The functions of the HSC include but are not limited to:
 - 1. Receiving employee reports of unsafe and unhealthy conditions;
 - 2. Referring matters to the Agency's designated Health and Safety officials as appropriate;
 - 3. Receiving copies of any written notice referred by an Agency official in response to an employee report of an unsafe or unhealthful conditions;

- 1 4. Conducting job safety analysis if there appears to be a pattern of accidents,
2 disabling injuries and/or illnesses, and making recommendations to
3 eliminate any hazards identified; and
- 4 5. Encouraging employees to submit suggestions or recommendations for
5 improving the health and safety program.
- 6 6. Receiving and reviewing all health and safety material produced by the
7 Agency for distribution to employees and assisting in planning any
8 employee meetings held by the Agency on occupational health and safety
9 programs.
- 10 E. The Agency will pay registration and related expenses (generally not to exceed
11 \$100) for each HSC member to attend at least one local health and safety related
12 conference each year.
- 13 F. The Agency will post the names and telephone numbers of the HSC members on
14 the Agency's Intranet.
- 15 G. The Agency will annually provide the Occupational Health and Safety Report for
16 each facility to the HSC for that location.
- 17 H. Each HSC will meet at least once a year to discuss health and safety issues that
18 impact its location. Each HSC may agree to meet more regularly (e.g., quarterly).

19 **Section 6. Safe and Healthy Working Environment**

- 20 I. (Management proposes that subsections I.5, I.6. and I.7. be deleted.)
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1 L. Smoking

2 Smoking will not be permitted anywhere on the Agency single site campus.

3 Smoking will not be permitted anywhere in Regional Offices or Washington D.C.

4 Office locations unless permitted by GSA guidelines or local lessor requirements.

5 **Section 7. Medical Services and Health Programs**

6 G. (Management proposes that this subsection be deleted in its entirety.)

7 **Section 9. Violence in the Workplace**

8 The prevention of violence in the workplace is of mutual interest to both the Agency and
9 the Union. Threatening or intimidating behavior and violence in the workplace are
10 unacceptable forms of conduct and will not be tolerated.

11 **Section 10. Drug Testing**

12 A. Employees who occupy positions subject to drug testing will be notified by the
13 Agency.

14 B. Agency drug testing will be carried out in accordance with all applicable laws and
15 Government-wide rules and regulations. The methods and procedures used for
16 drug testing will be in accordance with the HHS Drug-Free Workplace Drug
17 Testing Program.

18 C. Employees subject to random drug testing are those who are in sensitive Testing
19 Designated Positions (TDP's). Applicants in TDP's are also subject to drug
20 testing. The designation of a TDP is made in accordance with applicable laws,
21 Government-wide rules and regulations.

1 D. Test results will be protected under the provisions of the Privacy Act, 5 U.S.C. §
2 552a, and P. L. 100-71, Section 503. Employees subject to drug testing shall,
3 upon written request, have access to any records relating to his or her drug test.

Article 10

HOURS OF WORK

Section 1. Purpose

The Parties recognize that in order to build a high quality, customer-focused team, it is necessary to create a high quality, family-friendly work environment that will attract and retain highly qualified, professional employees. The Parties agree that the primary mission of the Agency is to serve the needs of its customers and partners. Within the need to serve both customers and partners, the Parties are committed to establishing and supporting flexible work arrangements so employees can balance work with personal and family life. The purpose of this Article is to prescribe the policies and procedures covering hours of work for all employees in accordance with applicable law and Government-wide rule or regulation.

Section 2. Definitions & Basic Provisions

A. Normal Business Day and Basic Workweek

The normal business day consists of an eight-hour workday, 8:30 a.m. to 5:00 p.m. (including a 30-minute, non-paid, lunch break), Monday through Friday, inclusive, which taken together form the basic work week. The occurrence of holidays will not affect the designation of the basic workweek.

B. Basic Work Requirement

The basic work requirement is the number of hours, excluding overtime hours, which an employee is required to work or is required to account for by charging leave, excused absence, holiday hours, compensatory time off, or time off as an

1 award. For full-time employees, the basic work requirement is 80 hours per
2 biweekly pay period. A part-time employee's basic work requirement is the
3 number of hours the employee is scheduled to work in a biweekly pay period.

4 C. Tour of Duty

5 The tour of duty defines the limits within which an employee must complete his
6 or her basic work requirement.

7 Central Office Single Site (Baltimore)

8 The Agency's tour of duty at Central Office single site (Baltimore) is Monday
9 through Friday, 6:00 a.m. to 6:00 p.m.

10 Washington, D.C. Office

11 For the Washington D.C. office, the Agency's tour of duty is Monday through
12 Friday, 7:00 a.m. to 8:30 p.m. Employees shall complete their regular working
13 hours before 6:30 p.m.

14 Regional Offices and Satellite Offices

15 For other locations, including Regional Office and Satellite Office locations, the
16 Agency's tour of duty begins at 6:00 a.m. and may be extended by the Agency to
17 7:00 p.m., depending upon the business needs of the office. In those offices that
18 extend their tours of duty beyond 6:00 p.m., employees shall complete their
19 regular working hours before 6:00 p.m.

20 D. Regular Working Hours

21 Those hours (i.e., for full-time employees, 8 ½, 9 ½, or 10 ½ hours) an employee
22 is scheduled in advance to work within the Agency's established tour of duty.

23

1 E. Flexible Work Schedule (“Flextime”)

2 A flexible work schedule (hereinafter referred to as “flextime”) is defined as an 8
3 ½-hour (or less, if part-time), 9 ½-hour or 10 ½-hour work schedule, Monday
4 through Friday, in which an employee is allowed to vary his/her arrival time on a
5 daily basis within the Agency’s established arrival times outlined in Section 5 of
6 this Article. A full-time employee on a 9 ½-hour flextime schedule works eight, 9
7 ½-hour days, one 8 ½-hour day and one non-work day during the biweekly pay
8 period. A full-time employee on a 10 ½-hour flextime schedule works eight, 10
9 ½-hour days and two non-work days during the biweekly pay period.

10 F. Credit Hours

11 Credit hours are hours within a 8 ½-hour or less (i.e. part-time) flexible work
12 schedule which are in excess of an employee’s basic work requirement and which
13 the employee elects, subject to advance management approval, to work so as to
14 vary the length of a subsequent workweek or a workday.

15 G. Flexiplace

16 Flexiplace is a telecommuting program that enables an employee on an 8 ½-hour
17 flexible work schedule to work at an alternative duty station (hereinafter referred
18 to as “ADS”), subject to management approval and the eligibility criteria outlined
19 in Article 29. An ADS may include an employee’s residence or other location
20 designated by management. The Flexiplace program is outlined by Article 29.

21 H. Core Days

22 Core days are those days of the week for which a flextime non-workday or a
23 flexiplace day is not available. Each organizational head directly below the

1 Agency Head may designate core days for his/her particular organization. The
2 number of core days may not exceed four days per week.

3 **Section 3. Work Schedule Adjustments**

4 The Agency may set different work schedules for selected positions when it determines it
5 is appropriate in order to meet coverage requirements, because of the nature of the work
6 performed or the need to respond to or be available to the public or to Agency or external
7 customers. For these positions, the Agency may set fixed work schedules or flexible
8 work schedules with different arrival bands than those designated in Section 5. These
9 positions are excluded from eligibility for flexiplace.

10 **Section 4. Work Schedule Options**

11 All employees who do not occupy positions designated for the work schedules identified
12 in Section 3. above may work one of the following work schedule options to fulfill their
13 basic work requirement, subject to the requesting and approval procedures for each work
14 schedule option: (1) 8 ½-hour flextime schedule, (2) 9 ½-hour flextime schedule or (3)
15 10 ½-hour flextime schedule. Employees working 9 ½- or 10 ½-hour flextime schedules
16 are not eligible to earn credit hours and are not eligible for the Agency's scheduled
17 flexiplace program (SFP) outlined in Article 29.

18 **Section 5. Central and Regional Office Arrival Times**

19 A. 8 ½-hour flextime schedules

- 20 1. Employees in Central Office single site (Baltimore) who work an 8 ½-
21 hour or less (part-time) flextime schedule must report for duty between
22 6:30 a.m. and 9:30 a.m.

1 2. Employees in the Washington, D.C. Office who work an 8 ½-hour or less
2 (part-time) flextime schedule must report for duty between 8:00 a.m. and
3 10:00 a.m.

4 3. Employees in Regional or Satellite Office locations in the Pacific time
5 zone who work an 8 ½-hour or less (part-time) flextime schedule must
6 report for duty between 6:00 a.m. and 9:00 a.m.

7 4. For other Regional Office locations, including Satellite Office locations,
8 employees who work an 8 ½-hour or less (part-time) flextime schedule
9 must report for duty between 6:30 a.m. and 9:30 a.m.

10 B. 9 ½- hour flextime schedules

11 Central Office Single Site (Baltimore) and Regional/Satellite Offices

12 Employees who work a 9 ½-hour flextime schedule must report for duty between
13 6:00 a.m. and 8:30 a.m. On their 8 ½-hour day, employees must report for duty
14 between 6:30 a.m. to 9:30 a.m. (For Regional or Satellite Office locations in the
15 Pacific time zone, employees must report for duty between 6:00 a.m. and 9:00
16 a.m. on their 8 ½-hour day.)

17 Washington, D.C. Office

18 Employees who work a 9 ½-hour flextime schedule must report for duty between
19 7:00 a.m. and 9:00 a.m. On their 8 ½-hour day, employees must report for duty
20 between 8:00 a.m. to 10:00 a.m.

21 C. 10 ½-hour flextime schedules

22 Central Office Single Site (Baltimore) and Regional/Satellite Offices

1 Employees who work a 10 ½-hour flextime schedule must report for duty
2 between 6:00 a.m. and 7:30 a.m.

3 Washington, D.C. Office

4 Employees who work a 10 ½-hour flextime schedule must report for duty
5 between 7:00 a.m. and 8:00 a.m.

6 D. Flex Out/Flex In

7 Employees on flextime schedules may be allowed to flex out/flex in during the
8 workday subject to advance management approval. A manager may require an
9 employee to document in writing his or her request to flex out and/or his or her
10 flex out/in departure/arrival times (e.g., by sending the manager an email). If an
11 employee cannot complete his or her daily work schedule before 6:00 p.m. (or
12 6:30 p.m. in Washington D.C.), the employee will be charged leave at his or her
13 request or, if warranted, charged AWOL. Employees may not take their 30-
14 minute lunch period at the end of their regular working hours in order to depart 30
15 minutes prior to the end of their work schedule.

16 E. Late Openings

17 When the opening of the Agency is delayed due to hazardous weather or other
18 conditions beyond the control of the Agency, all employees in the affected
19 locations will revert to a 7:30 a.m. fixed starting time for that day (8:00 a.m. in
20 Washington D.C.). Ending times will depend upon the employee's regular
21 working hours for that day.

22

23

1 F. Adjustments of Arrival/Departure Times

2 1. Occasionally, an employee may be required to arrive/depart at a specific
3 time on a particular day (e.g., to attend a meeting, to participate in a multi-
4 time zone teleconference, etc.). If the circumstances requiring such a
5 change permit, the Agency will provide the employee with a one-day
6 notice.

7 2. Managers may adjust the bi-weekly work schedules of employees in travel
8 or training status to a schedule that will fulfill the purpose of the training
9 or travel.

10 **Section 6. 9 ½- and 10 ½-hour flextime schedules**

11 A. Requesting Procedures

12 Employees will have the option prior to the beginning of any calendar quarter
13 (January, April, July, October) to request a 9 ½- or 10 ½-hour flextime schedule
14 or modify their non-work day designation. Requests must be submitted at least
15 five working days before the beginning of a calendar quarter. Employees may
16 withdraw from a 9 ½- or 10 ½-hour flextime schedule at the end of any pay
17 period.

18 1. Employees requesting a 9 ½-hour flextime schedule must designate the
19 same non-work day each biweekly pay period.

20 2. Employees requesting a 10 ½-hour flextime schedule must designate the
21 same non-work day each week.

22

23

1 B. Review and Approval Process

2 Requests will be reviewed at least two working days prior to the beginning of a
3 calendar quarter. Managers may deny an employee's request for a 9 ½- or 10 ½-
4 hour schedule or require the employee to designate a different non-workday when
5 the manager determines that the employee's participation could impact the work
6 unit's coverage requirements, the nature of the work performed or the need to
7 respond to or be available to the public or to Agency or external customers. If the
8 requested schedule is denied, the manager will provide the employee with an
9 explanation for the denial.

10 C. Change of Employee's Designated Non-work Day

11 A manager may change an employee's designated non-work day when the
12 manager determines that the employee's absence on the designated non-work day
13 could impact the work unit's coverage requirements, the nature of the work
14 performed or the need to respond to or be available to the public or to Agency or
15 external customers.

16 D. Holidays

17 1. Holiday Pay

18 Employees working a 9 ½- or 10 ½-hour flextime schedule who are
19 prevented from working on a day designated as a holiday or an "in lieu of
20 holiday" by Federal statute or Executive Order are entitled to only eight
21 hours of pay for the holiday. Employees on these schedules shall account
22 for the additional one or two hours by requesting one or two hours of
23 leave. In the case of a 9 ½-hour employee, in order to account for the

1 additional one hour, the employee may request to change his or her 8 ½-
2 hour day to the holiday.

3 2. “In Lieu of” Holiday

4 Except as provided in subsections a. and b. below, if a Federal holiday
5 falls on an employee’s non-work day, the employee’s preceding work day
6 will be the designated “in lieu of” holiday. (i.e., if the actual holiday falls
7 on an employee’s non-work day Monday, the employee’s non-work day
8 would be a Friday.)

9 a. Exception: If an actual holiday falls on a Sunday, and the Federal
10 holiday is observed on a Monday, the subsequent work day (rather
11 than the preceding work day) will be the employee’s designated
12 “in lieu of” holiday. (i.e., if the Fourth of July falls on a Sunday,
13 the Federal holiday will be observed on Monday, July 5. In this
14 situation, the employee’s non-work day would be Tuesday, July 6.)

15 b. The Agency head may also prescribe rules under which a different
16 “in lieu of” holiday is designated when the Agency head
17 determines that a different “in lieu of” holiday is necessary to
18 prevent an “adverse agency impact.” The Agency may also
19 change an employee’s schedule for operational reasons.

20 **Section 7. Suspension of Work Schedules**

21 In order to meet workload or programmatic objectives (e.g., coverage requirements or
22 the need to respond to or be available to the public or to Agency or external customers),
23 the Agency may temporarily change, for a specified period of time, an employee’s work

1 schedule (e.g., require the employee to come off of a 9 ½ or 10 ½ -hour schedule and
2 work a traditional five day workweek or designate the starting/ending times for an
3 employee on any schedule). If the circumstances requiring such a change permit, the
4 Agency will provide the employee with advance notice of at least one pay period. The
5 Agency will limit this change to as short a time as necessary to meet workload or
6 programmatic objectives.

7 **Section 8. Credit Hours**

8 A. Eligibility

- 9 1. Credit hours may be earned only by those employees working a 8 ½-hour
10 (or less, i.e., part-time) flextime schedule. Employees who occupy
11 positions designated for fixed work schedules and employees working 9
12 ½- and 10 ½-hour flextime schedules are not eligible to earn credit hours.
- 13 2. Credit hours may not be earned while working at an ADS under the
14 Flexiplace program unless an exception is specifically authorized in
15 writing by the employee's manager.

16 B. Requesting/Approval Procedures

- 17 1. An employee shall make a written request in advance to work credit hours
18 (either on the "Request for Approval to Earn Credit Hours" form or via e-
19 mail). The request will be approved or denied by the manager, or his/her
20 designee, as soon as possible.
- 21 2. Upon request of the employee, the earning of credit hours may be
22 approved retroactively where the circumstances warrant (e.g., where it was
23 impractical for the employee to obtain advance approval).

1 3. If credit hours are approved and overtime is subsequently made available
2 prior to the working of the credit hours, the employee will be afforded the
3 opportunity to elect to work the overtime.

4 C. Earning Credit Hours

- 5 1. Eligible employees may earn credit hours provided there is work available
6 for the employee and such work can be performed at the requested time(s).
7 2. Credit hours may not be earned outside the Agency's established tour of
8 duty for the employee's official duty station.
9 3. Employees may begin to earn credit hours only after completion of the
10 their regular working hours for that day.
11 4. Credit hours may be earned in ¼-hour increments.
12 5. A full-time employee can accumulate and carry over from one pay period
13 to another a total of no more than 24 credit hours. A part-time employee
14 can accumulate and carry over from one pay period to another a total of no
15 more than one-fourth of the hours in such employee's biweekly basic
16 work requirement.

17 D. Using Credit Hours

18 Use of credit hours will be subject to the same criteria for approval as annual or
19 sick leave. An employee may elect to use earned credit hours for all or any part
20 of any approved leave. Credit hours must be earned before they may be used.
21 Credit hours may be used in ¼-hour increments. Any credit hours in excess of 24
22 hours must be used within the pay period in which they are earned or will be
23 forfeited.

1 **Section 9. Time and Attendance Certification**

2 A. All employees are required to record and certify their attendance in accordance
3 with 5 U.S.C. Chapter 61.

4 B. Time and Attendance Certification Procedures Under TAIMS (Time and
5 Attendance Information Management System)

- 6
- 7 1. Biweekly certification forms will be distributed to each employee on or
8 before the beginning of each pay period. The employee must record daily
9 actual arrival and departure times and total hours worked on this form.
- 10 2. The employee will record any leave, absence, overtime, compensatory
11 time or credit hours earned and/or used for each day of the pay period.
12 Employees must attest to the accuracy of their forms by signing the form
13 in the space provided. An employee’s certification form will be
14 maintained at his or her workstation and will be available and accessible
15 for review by his or her manager.
- 16 3. On the established closeout day of every pay period, each employee is
17 responsible for submitting the fully completed certification form to his or
18 her manager for certification.
- 19 4. An employee’s failure to timely submit the certification form to the
20 manager may result in inaccurate or delayed payment of salary checks. If
21 an employee is unable to transmit the completed certification form to his
22 or her manager, it is the responsibility of the employee to make
23 arrangements with the manger to ensure that the certification form is
24 timely completed and transmitted to the timekeeper. All certification
25 forms are to be retained by each timekeeper for later evaluation.

1 C. Time and Attendance Certification Procedures Under the Integrated Time and
2 Attendance System (ITAS)
3

4 1. The Integrated Time and Attendance System (ITAS) is a time and
5 attendance/payroll system which will be phased in over time by
6 organizational component in order to replace the existing TAIMS (Time
7 and Attendance Information Management System) time and leave/payroll
8 system. Once ITAS is implemented for a particular organizational
9 component, the certification procedures under TAIMS will no longer be
10 applicable.

11 2. Employees will activate the on-line certification feature (verify) of the
12 ITAS system and will verify their time records before the end of each
13 biweekly pay period. The act of verifying means that the employee
14 certifies that his or her time card for that pay period is correctly stated and
15 that he or she understands that willful falsification of any time records
16 may result in severe disciplinary action, including a fine of not more than
17 \$10,000 or imprisonment or both (18 U.S.C. 287, 1001).

18 3. A manager may institute additional certification or time and leave
19 reporting procedures for an employee if the manager determines that
20 additional accountability procedures are necessary because of time and
21 leave concerns with that employee or for a group of employees if the
22 manager determines that additional accountability procedures are
23 necessary to meet the legitimate business needs of the unit (e.g., sign
24 in/sign out board).

1 **Section 10. Overtime Provisions**

2 A. Overtime will be paid in accordance with either the Fair Labor Standards Act
3 (FLSA), 29 U.S.C. §§ 201-219, or Title 5 of the U.S. Code.

4 B. In accordance with 5 U.S.C. Chapter 61, an employee waives his or her right to
5 premium pay for overtime work (including compensatory time in lieu of
6 overtime) for the time spent working credit hours.

7 C. When used, overtime will normally be distributed to employees whose
8 performance is at least successful.

9 D. Overtime will not be distributed or withheld as a reward or penalty.

10 E. When an employee, whether covered by the FLSA or exempt, works regular
11 overtime, such overtime will be scheduled and paid in increments of 15 minutes.

12 When an employee, whether covered by the FLSA or exempt, works
13 irregular/occasional overtime, such overtime will be scheduled and paid in
14 increments of 15 minutes.

15 F. When approved by the Agency, employees can accrue and use compensatory time
16 in accordance with applicable law and Government-wide rule and regulation.

17 When feasible, the Agency will grant an employee's request for compensatory
18 time rather than payment for overtime.

19 G. Employees who are: 1) called back for a period of overtime, or 2) who work
20 overtime on Saturday and/or Sunday, are entitled to a minimum of two hours of
21 overtime pay. Employees who work on a Federal holiday are entitled to a
22 minimum of two hours of holiday pay.

- 1 H. When scheduled overtime is to be mandated for all employees in the operating
2 entity, employees will be notified at least two days in advance. Notice of one day
3 will be given for all other scheduled overtime work whenever possible.
- 4 I. When the Agency decides to use overtime, volunteers will be solicited from
5 among qualified volunteers before using non-volunteers.

Article 11

UNION USE OF AGENCY FACILITIES & SERVICES

Section 1. Access to Internet

The Agency will furnish the union with Internet access for representational purposes.

Section 2. Telephone System

The Agency will equip each Agency-provided union office space with a telephone system commensurate with its location (i.e., Central or Regional Office).

Section 3. Miscellaneous Services

The Agency agrees to provide routine cleaning and maintenance services in each Agency-provided union office space and, where available, access to shuttle service and reasonable access and use of photocopiers for representational activities.

Section 4. Agency-Provided Office Space, Computers and Furnishings

- A. The Agency agrees to provide office space to the union to carry out its representational duties.
- B. The union office located in Central Office will be provided with the following:
 - 1. four personal computers equipped with available standard software programs and four printers; and
 - 2. office furnishings (i.e., desks, chairs, lockable file cabinet).
- C. Each of the union offices located in the Regional Offices will be provided with the following:

- 1 1. one personal computer equipped with available standard software
- 2 programs and one printer; and
- 3 2. office furnishings (i.e., desks, chairs, lockable file cabinet).

4 D. The union may use Agency conference rooms for representational discussions
5 between employees and union officials provided the conference space is available
6 and provided the Agency determines the conference room is not needed for
7 Agency work at the time requested. The union will adhere to the conference
8 room reservation process in place where the conference space is located.
9 Conference rooms or any other Agency space may not be used for any non-
10 representational activities (e.g., internal union business activities).

11 **Section 5. Mail**

12 The Agency will provide the union use of the Agency's mail system, including, where
13 necessary, the external postage-paid mail system, to transmit or receive representational
14 correspondence. The external (postage-paid) mail system will be limited to first class
15 mail and will not be used where another system exists for internal transmission of mail
16 (e.g., inter-office pick-up/delivery service or E-mail). The union agrees that use of the
17 Agency's internal and external mail systems will be limited solely to representational
18 matters and will not be used for internal mass mailings or for any internal union business
19 activities (including the solicitation of membership, election of union officials, and
20 collection of dues) as set forth in 5 U.S.C. § 7131(b).

Article 12

UNION COMMUNICATIONS

Section 1. General Requirements

- A. The union's access to and use of the Agency's communication resources (e.g. bulletin boards, publication racks, Intranet, E-mail) shall not interfere with the mission or operation of the Agency.
- B. Any and all union communications using Agency communication resources or distributed on Agency premises will not violate the law, advocate violating the law, or contain items relating to partisan political matters and will not malign, disparage or harm the character of any individual or the Agency.

Section 2. Bulletin Boards

- A. The Agency agrees to provide the union with use of approximately 33% of the space on official bulletin boards which the Agency has on its premises. The Agency agrees to provide at least one union bulletin board on each floor of buildings occupied by the Agency. In no event will any Regional Office lose bulletin board space that it currently has available. The union agrees that all postings will be on designated union bulletin boards only.
- B. The union agrees to furnish a copy of any information scheduled to be posted on the bulletin boards to the Agency labor relations officer (Central Office) or the Deputy Regional Administrator (Regional Offices) at least one work day in advance prior to posting.

1 **Section 3. Distribution of Paper or Hard Copy Materials**

2 A. The union may distribute paper (i.e., hard copy or leaflet) material on the
3 Agency’s premises in work areas to individual employees before and after the
4 Agency’s tour of duty, subject to internal security requirements, and in the non-
5 work areas, provided that both the employee distributing and the employee
6 receiving such material are not in duty status. All such material will be properly
7 identified as official union material.

8 B. The union agrees to furnish a copy of any paper material scheduled for
9 distribution to the Agency labor relations officer (Central Office) or the Deputy
10 Regional Administrator (Regional Offices) at least one work day in advance prior
11 to distribution.

12 **Section 4. Publication Racks**

13 The Agency will provide space for union publication racks in each building for the
14 purpose of distributing union newspapers and other union material.

15 **Section 5. Copies of Agreement**

16 A. For purposes of ratification, the Agency will provide the union 125 copies of this
17 Agreement and place it on the Intranet.

18 B. Once ratified, the Agency will provide, at no cost, copies of this Agreement to
19 each employee on duty at the distribution date and to all employees entering on
20 duty after that date. The Agency will also provide a reasonable number of
21 additional copies to the union.

22 C. The Agency will make appropriate arrangements to accommodate visually-
23 impaired employees.

1 **Section 6. New Employees**

2 The Agency will make arrangements for the union to meet new employees at the time of
3 their entrance on duty or at such other times mutually agreed to by both Parties. Official
4 time will be granted for one union official/representative to make a brief presentation to
5 new employee(s) about the union. The presentation will not exceed 45 minutes in
6 duration. The union agrees that this time will not be used for any internal union business
7 activities (including the solicitation of membership, election of union officials, and
8 collection of dues), as set forth in 5 U.S.C. § 7131(b).

9 **Section 7. Agency IntraNet**

- 10 A. The Agency will provide the union a “home page” on the Agency IntraNet for
11 employee information on matters such as union programs, benefits and initiatives.
12 The union “home page” will be identified by an ICON or link on the main
13 Agency IntraNet menu/home page.
- 14 B. The union will have direct access to the Agency IntraNet for purposes of
15 uploading or updating information on the union’s “home page.”
- 16 C. The union will provide the Agency the names of its representatives who may
17 authorize and/or upload information to the union’s home page and will update the
18 list of names as needed.
- 19 D. The information which the Union displays on its home page will be exclusively
20 governed by the provisions set forth in this Section. Information placed on the
21 Union’s home page will comply with this Agreement.

22

23

1 **Section 8. E-mail**

2 A. The Union may use E-mail to communicate with employees by having access to
3 established e-mail groups. However, the Union will not use E-mail to
4 communicate partisan political material.

5 B. The Agency e-mail system shall not be used for any internal union business
6 activities (including the solicitation of membership, election of union officials,
7 and collection of dues), as set forth in 5 U.S.C. § 7131(b).

Article 13

PARKING AND TRANSPORTATION

The Parties have agreed to this Article (see attached) with the exception of the items in bold below:

Section 3. Transportation Policies

Public transportation subsidies will continue to be provided where funds and authorizing regulations permit, in the following manner:

A. Washington D.C. Office

In accordance with 5 U.S.C. § 7905 and Executive Order No.13150, employees whose official duty station is the Agency's Washington D.C. office will be paid a public transportation subsidy equal to their eligible commuting costs, not to exceed \$100 per month.

B. Central Office and Regional Offices

Employees whose official duty station is other than the Washington D.C. office will be paid a public transportation subsidy equal to their eligible commuting costs, not to exceed \$40 a month.

C. Employees will follow the applicable procedures established for their official duty station location for the public transportation subsidy that includes completing, signing and certifying all necessary forms.

Article 14

REDUCTION-IN-FORCE AND TRANSFER OF FUNCTION

Section 1. Purpose

This Article establishes and describes the procedures the Agency will take in the event of a reduction-in-force or transfer of function in accordance with applicable law (5 U.S.C. §§ 3502 and 3203), Government-wide rule or regulation (5 C.F.R. Part 351) and this Article. This Article is intended to protect the interests of employees while allowing the Agency to exercise its rights and duties in carrying out the mission of the Agency. The Agency is responsible for assuring that 5 C.F.R. Part 351, and this Article are uniformly and consistently applied to any one reduction in force.

Section 2. Definitions

For purposes of this Article, the following terms and expressions will have the following meanings in accordance with 5 C.F.R Part 351:

A. Reduction-In-Force (RIF):

A "reduction in force" (RIF) means the release of a competing employee from his or her competitive level by furlough for more than 30 days; separation, demotion, or reassignment requiring displacement, when the release is required because of lack of work; shortage of funds; insufficient personnel ceiling; reorganization; the exercise of reemployment rights or restoration rights; or reclassification of an employee's position due to erosion of duties when such action will take effect after the Agency has formally announced a reduction-in-force in the employee's competitive area and when the reduction-in-force will take effect within 180 days.

1 B. Transfer of Function:

2 Transfer of function means the transfer of the performance of a continuing
3 function from one competitive area and its addition to one or more other
4 competitive areas, except when the function involved is virtually identical to
5 functions already being performed in the other competitive area(s) affected; or the
6 movement of the competitive area in which the function is performed to another
7 commuting area.

8 C. Reorganization:

9 The planned elimination, addition or redistribution of functions or duties in an
10 organization.

11 D. Undue Interruption:

12 Undue interruption means a degree of interruption that would prevent the
13 completion of required work by the employee 90 days after the employee has
14 been placed in a different position. The 90-day standard should be considered
15 within the allowable limits of time and quality, taking into account the pressures
16 of priorities, deadlines, and other demands. However, a work program would
17 generally not be unduly interrupted even if an employee needed more than 90
18 days after the reduction-in-force to perform the optimum quality or quantity of
19 work. The 90-day standard may be expanded if placement is made under 5 C.F.R.
20 Part 351 to a low priority program or to a vacant position.

21 E. Competitive Level:

22 A competitive level consists of all positions in a competitive area which are in the
23 same grade (or occupational level) and classification series, and which are similar

1 enough in duties, qualification requirements, pay schedules, and working
2 conditions so that the Agency may reassign the incumbent of one position to any
3 of the other positions in the level without undue interruption.

4 **Section 3. Freezing of Vacancies**

5 The Agency will normally freeze all vacant positions 60 days prior to the effective date
6 of the RIF. The Agency may exclude certain positions from the freeze when the freeze
7 on these vacant positions would affect the Agency in the effectiveness or efficiency of its
8 operations or would result in additional costs (e.g., overtime, travel or per diem). When
9 the Agency decides to fill a vacant position after the effective date of the RIF, whether
10 previously frozen by virtue of the RIF or in the creation of new vacancies, employees
11 who have been demoted will be offered the vacancy, provided the employee is qualified
12 or has been given a waiver of qualifications for the intended position. Employee
13 entitlement to this special consideration will be determined in accordance with Section 20
14 of this Article.

15 **Section 4. Employee Notification**

16 An individual employee who is adversely affected by a RIF or transfer of function action
17 will be given an advance general notice of at least 30 days prior to specific notice. A
18 specific notice will be issued not less than 60 days prior to the effective date of the action.
19 In addition to the 30 days general notice, employees reassigned to a location outside their
20 commuting area will be given at least 90 days specific notice. In addition to information
21 required by this Article, all notices will contain the information required by 5 C.F.R. Part
22 351. When a reduction in force is caused by circumstances not reasonably foreseeable,
23 the Director of OPM, at the request of the Agency, may approve a notice period of less

1 than 60 days. The shortened notice period must cover at least 30 full days before the
2 effective date of release. Upon requesting the shortened notice period from OPM, the
3 Agency will concurrently notify the Union. Upon the Union's request, the Agency will
4 meet and confer with the Union about the shortened notice period.

5 **Section 5. Employee Information**

6 The Agency will provide complete information needed by employees to fully understand
7 the action and why they are affected. At a minimum, the Agency will:

- 8 A. Inform all employees as fully and as soon as possible of the plans or requirements
9 for the action in accordance with applicable rules and regulations;
- 10 B. Inform all employees of the extent of the affected competitive area, the
11 regulations governing such action and the kinds of assistance provided to affected
12 employees;
- 13 C. Electronically maintain and publicize a list of Agency-wide vacancies and
14 information regarding other Government-wide Federal vacancies, such as
15 USAJobs; and
- 16 D. Conduct a placement program within the Agency to minimize the adverse impact
17 on employees affected by the RIF. The placement program will include
18 counseling for employees on opportunities and alternatives available to affected
19 employees.

20 **Section 6. Personnel Files**

21 The union may review any employee's Official Personnel Folder (OPF) at an employee's
22 request in writing if the employee believes that the information used to place him/her on

1 the retention is inaccurate, incomplete, or not in accordance with law, Government-wide
2 rule or regulation, or the provisions of this Article.

3 **Section 7. Records**

4 The Agency will maintain all lists, records and information pertaining to actions taken
5 under this Article for at least two years in accordance with applicable law and
6 Government-wide rule or regulation.

7 **Section 8. Retention Register**

8 A copy of any retention registers will be given to the union. A copy of the preliminary
9 retention register will be made available to the union at the time the general notices are
10 issued.

11 **Section 9. Employee Use of Agency Facilities**

12 Employees who are identified for transfer of function, separation, or change to a lower
13 grade as a result of RIF under this Article will be entitled to reasonable use of the
14 following facilities and/or services for the purpose of locating suitable employment:

- 15 A. telephone/fax;
- 16 B. photocopy equipment;
- 17 C. interagency mail/E-mail/internet;
- 18 D. personal computer; and
- 19 E. career or EAP counseling provided by the Agency.

20 **Section 10. Employee Use of Duty Time**

21 Employees who are identified for transfer of function, separation, or change to a lower
22 grade as a result of RIF under this Article will be granted a reasonable time while in a
23 duty status without charge to leave for the following:

- 1 A. Preparing, revising and reproducing job resumes and/or job application forms;
- 2 B. Participating in employment interviews; and
- 3 C. Reviewing job bulletins, announcements, etc.

4 **Section 11. Performance Appraisals**

5 Except for employees who are re-rated after a period allowed in 5 C.F.R. Part 432, annual
6 performance appraisals for purposes of retention standing will be frozen 60 days prior to
7 the effective date of the action. The three latest annual appraisals of record received
8 during the four-year period prior to the effective date of the freeze will be used to
9 determine eligibility for additional credit toward an employee's service computation date.
10 Employees who do not have three annual appraisals will be granted performance credit in
11 accordance with 5 C.F.R. 351.504.

12 **Section 12. Release From Competitive Level**

13 When an employee is to be released from his/her competitive level, the "best offer" is
14 made. The offer will be as close to the employee's current grade as possible and in the
15 same commuting area if possible.

16 **Section 13. Employee Response to Notice of Offer**

17 Upon receipt of specific notice notifying the employee that he/she is offered a
18 reassignment or change to lower grade or will be released from his/her competitive level,
19 the employee will have until the end of the specific notice period during which to accept
20 or reject the offer made.

21 **Section 14. Reassignment to a Different Competitive Area**

22 Reassignment of employees outside of their competitive area will be avoided when
23 possible. When the Agency is not able to place an employee within the competitive area

1 and the employee accepts a reassignment requiring a move to another competitive area,
2 the Agency will reimburse the employee for his or her move at the rates authorized in
3 accordance with applicable law and Government-wide rule or regulation.

4 **Section 15. House Hunting**

5 When the Agency assigns an employee to a position as a result of a transfer of function or
6 RIF requiring a move to another geographic area, the employee will be granted a
7 reasonable period of duty time, not to exceed 10 days, to locate housing and make related
8 arrangements at the new work location. If the Agency determines it is appropriate under
9 the circumstances, the Agency may grant the employee additional duty time. The
10 employee will be placed in travel status for such trips and will receive travel and per diem
11 reimbursement in accordance with applicable law, and Government-wide rule or
12 regulation.

13 **Section 16. Time Allowed for Relocation**

14 Employee reassigned to a different commuting area who relocate will be allowed a
15 reasonable period of time, as necessary, to complete the move and report to work at the
16 gaining activity.

17 **Section 17. Displaced Employees**

18 The Agency will provide any employee to be separated by RIF or transfer of function
19 with the appropriate information regarding unemployment benefits available to them.

20 **Section 18. Details**

21 Employees on detail will not be released during a reduction-in-force from the position to
22 which they are detailed but, rather, from the affected employee's permanent position of
23 record.

1 **Section 19. Transfer of Function**

2 A. In accordance with 5 C.F.R. Part 351, Subpart C, when a transfer of function
3 occurs, the Agency will identify the positions of competing employees with the
4 transferring function. The Agency will identify the number of positions needed to
5 perform the transferring function in the gaining competitive area. To determine
6 which employees are identified for transfer, the Agency must establish a retention
7 register that includes the name of each competing employee who performs the
8 function. Competing employees listed on the retention register are identified for
9 transfer in the inverse order of their retention standing.

10 B. The Agency may permit other employees in the competitive area losing the
11 function to volunteer for transfer with the function in place of employees
12 identified by the Agency for transfer. If the total number of employees who
13 volunteer for transfer exceeds the total number of employees required to perform
14 the function in the competitive area that is gaining the function, the Agency may
15 give preference to the volunteers with the highest retention standing or make
16 selections based upon other appropriate criteria.

17 **Section 20. Repromotion Rights of Affected Employees**

18 For a period of two years, affected employees demoted by an action covered by this
19 Article will be repromoted to vacancies as they occur according to the following criteria:

- 20 A. The Agency determines to fill the vacancy;
- 21 B. The employee has the requisite skills and abilities for the position without undue
22 interruption; and
- 23 C. Another qualified employee does not have a higher retention standing.

1 **Section 21. Reemployment Priority Rights of Affected Employees**

2 Career and career-conditional employees who have received a specific RIF notice and
3 have not declined a valid job offer at no lower a rate than the current grade will be
4 entered on the Department's Reemployment Priority List (RPL) for the commuting area
5 in which the position was located in accordance with 5 C.F.R. 330, Subpart B.

6 Employees will be listed for all positions for which they are qualified and available.

7 Career employees may remain on the list for two years, career-conditional employees for
8 one year, from the date of separation unless removed earlier through placement or
9 declination of an offer.

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Article 15

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CONTRACTING OUT

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Section 1

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Prior to contracting out work performed by bargaining unit employees, the Agency will

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provide notice and, upon request, bargain with the union to the extent required by law

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and in accordance with the mid-term bargaining provisions of this Agreement.

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Section 2

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Employees' privileges and benefits will not be diminished by allowing contractors to

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participate in employee programs. Such privileges include, but are not limited to, health

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screening, health fitness programs, shuttle services and Government-sponsored training.

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Article 16

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TRAINING AND CAREER DEVELOPMENT

6 Management proposes the current contract with the following exceptions:

7 **Section 3. Training**

8 A. (Management proposes that this subsection be deleted in its entirety.)

9 **Section 4. Formal Career Development Programs**

10 A. (Management proposes that the last sentence in subsection A.3. be deleted.)

11 F. (Management proposes that F.1. be deleted in its entirety.)

Article 17

AWARDS

Section 1. Background and Purpose

The Awards Program is an incentive program that provides recognition based on employee achievements that contribute to the Agency's mission of ensuring health care security for the nation's beneficiaries. The Awards Program is intended to link recognition to the accomplishments of the CMS mission, goals and objectives and motivate and reward employees to continually strive for excellence.

Section 2. Policy

- A. The following awards are part of the Agency Awards Program: On-The-Spot (OTS), Time Off (TOA), Special Achievement (SA), Quality Step Increase (QSI), Exceptional Service (ESA), Suggestion/Invention, and other Agency/HHS non-monetary awards.
- B. The Awards Program will be administered in accordance with law and Government-wide rule and regulation, including 5 CFR § 451.
- C. The Awards Program will be administered using objective, mission-related criteria and in a manner that recognizes exemplary performance and contributions to mission accomplishments.
- D. Employees with a rating of record of "Successful" are eligible to receive awards. Employees on a Performance Assistance Plan or a Performance Enhancement Plan are not eligible to receive awards.

1 E. Unless otherwise prohibited by law, Government-wide rule or regulation, or HHS
2 regulations, employees are not limited in the number or types of awards they may
3 receive or the frequency with which they may receive them.

4 **Section 3. Monetary Awards**

5 A. On-the-Spot (OTS) Award – an award designed to promptly recognize employees'
6 noteworthy contributions or accomplishments that are of a nonrecurring nature.

7 OTS Awards are generally given for short-term accomplishments. An OTS
8 Award can range from \$50 up to \$500. An OTS award is a cash award that may
9 be used to recognize individual employees for completion of significant tasks,
10 contributions or achievements. Employee contributions that may be considered
11 for this award are one-time noteworthy achievements that might go unrewarded
12 by other more significant awards. (For example, volunteering for an extra or
13 emergency assignment while maintaining one's own workload, using personal
14 initiative and creativity to solve an unusual problem, or producing a work product
15 of exceptionally high quality under a tight deadline.) The contribution being
16 recognized will usually have been executed during a finite period.

17 B. Time-Off Award (TOA) – grants an employee an excused absence without charge
18 to leave or loss of pay, and can range from four hours up to 40 hours per
19 employee for each contribution. An employee may be granted multiple time-off
20 awards each year not to exceed a total of 80 hours. A TOA grants time off from
21 duty without loss of pay or charge to leave for noteworthy accomplishment or
22 personal effort that contributes to the quality, efficiency or effectiveness of CMS
23 operations. This award is generally given in recognition of significantly diligent

1 and demanding work on a particular project. Time-off awards are generally given
2 for periods of 1/2 day to three days (usually four to 24 hours) per award instance.

3 C. Special Achievement (SA) Award – a lump sum cash payment of more than \$500
4 for recurring or non-recurring exemplary achievements of employees. An SA
5 Award is granted in recognition of a special achievement or accomplishment of
6 unusual dedication, productivity and significance to the organization. The award
7 recognizes the special effort in performing an aspect of a job or special
8 assignment. The award is intended to recognize (1) significant and measurable
9 contributions to important organizational goals, (2) mastery and application of
10 technical skills and/or thorough understanding of organizational goals that exerted
11 a significant positive influence on the accomplishment of program goals or
12 organizational recognition or (3) the efficient and effective handling of
13 particularly difficult assignments, where the results had a positive impact of the
14 accomplishment of organizational goals.

15 D. Performance Awards (QSI and ESA) – Performance awards are in recognition of
16 sustained performance of high quality, significantly above that expected at the
17 “Successful” level of performance.

18 1. Quality Step Increase (QSI) – performance award that provides an
19 increase in an employee's basic rate of pay from one step in his/her
20 position to the next higher step of the grade.

21 2. Exceptional Service Award (ESA) – a lump sum cash performance award.
22 Since employees at the Step 10 of their grade are not eligible for a QSI,
23 managers may reward such employees by use of an ESA.

1 E. Suggestion/Invention Award – provides recognition of an individual employee or
2 group of employees for a suggestion/invention that the Agency determines results
3 in tangible or intangible savings to the Government.

4 1. The Agency will encourage employees to submit suggestions under the
5 Agency’s Suggestion/Invention Program.

6 a. In the event a decision regarding a suggestion/invention is not
7 made within 90 days of submission, the employee may request a
8 written status report.

9 b. The reasons for non-adoption of employees’
10 suggestions/inventions may be sent electronically to the
11 suggestor(s) upon request.

12 c. In the event a non-adopted suggestion/invention is later
13 implemented within two years from the initial decision date, the
14 employee has an additional 30 days from the date of
15 implementation to resubmit the suggestion for reconsideration.

16 2. The Agency will develop and communicate to employees a process for
17 submitting suggestions/inventions. This process will facilitate both
18 automated and non-automated submittals.

19 3. Suggestion/Invention Awards will be administered in accordance with the
20 DHHS Personnel Instruction 451-1 tables.

21 **Section 4. Awards Process**

22 A. The following awards will be awarded by managers: on-the-spot awards, time-off
23 awards, quality step increases, exceptional service awards, special achievement

1 awards up to \$2,000, suggestion/invention awards, and Agency/HHS non-
2 monetary awards. Eighty percent (80%) of the total employee awards budget will
3 be allocated on a per capita basis to management for these awards.

4 B. In addition to managers directly awarding the awards listed above, an employee
5 may nominate another employee for an on-the spot award, time-off award or
6 special achievement awards. Nominations must be submitted to the nominee's
7 immediate manager. In the case of group awards, the nomination must be
8 submitted to the manager with overall responsibility for the project, assignment or
9 initiative. Once a nomination is received, the manager will act on the nomination
10 by approving an award (determining the type of award and dollar amount),
11 denying the nomination or forwarding the nomination to the appropriate Agency
12 Awards Panel for consideration. A manager is not restricted by the nominator's
13 recommended award type or monetary value in deciding upon the nomination.

14 C. Agency Awards Panels

15 Two Agency Awards Panels will be established. One panel will be established
16 for Central Office for employees located in Single Site and Washington D.C. A
17 second panel will be established for the Regional Offices for employees located in
18 the Regional Offices. The purpose of the panels is to provide employee input and
19 involvement and an Agency-wide perspective on the distribution of significant
20 monetary awards (special achievement awards ranging from \$2,001 to \$5,000)
21 and in awarding projects, assignments, or initiatives that require extensive
22 collaboration across organizational lines. Twenty percent (20%) of the total

1 employee awards budget will be allocated on a per capita basis to the panels for
2 these awards. Awards panels will only accept nominations from managers.

3 1. Jurisdiction – The Agency Awards Panels will have jurisdiction over
4 special achievement awards ranging from \$2,001 to \$5,000 and cross-
5 cutting group awards (i.e., group awards that involve employees from
6 more than one Center/Office/Region). Group awards involving multiple
7 regions will be administered by the Regional Agency Awards Panel.
8 Group awards involving multiple Centers/Offices will be administered by
9 the Central Office Agency Awards Panel. Group awards involving both
10 Central Office and Regional Offices will be administered by the Central
11 Office Agency Awards Panel.

12 2. Composition – Each panel will be composed of eight members as follows:
13 six management-appointed representatives and two union-appointed
14 representatives.

15 3. Decision-making – The panels will make decisions by consensus. When
16 consensus cannot be reached, majority rule will govern.

17 **Section 5. Awards Report**

18 The Agency agrees to yearly publish, on the Intranet, a report that contains a listing of all
19 employees receiving awards, the type of award and the award amount.

Article 18

EQUAL EMPLOYMENT OPPORTUNITY

Section 1. Policy

A. The Agency and the union affirm their commitment to the policy of providing equal employment opportunities to all employees and to prohibiting discrimination on the basis of race, color, religion, sex, national origin, disabling condition, or age. No employee shall be subject to retaliation for opposing any practice made unlawful by Title VII of the Civil Rights Act (Title VII) (42 U.S.C. § 2000 *et seq.*), the Age Discrimination in Employment Act (ADEA) (29 U.S.C. § 621 *et seq.*) or for participating in any stage of administrative or judicial proceedings under those statutes. In addition, the parties recognize their commitment to the policy of prohibiting discrimination on the basis of sexual orientation.

B. In accordance with Title 29 of the Code of Federal Regulations, Part 1614, Federal Sector Equal Employment Opportunity (1999) and the Agency's Equal Opportunity policy, the Agency will maintain a continuing affirmative program to promote equal employment opportunity and to identify and eliminate discriminatory practices and policies.

Section 2. Affirmative Employment Plan

A. Establishment and implementation of the Affirmative Employment Program Plan is a fundamental Agency objective. The Agency will continue to provide overall

1 management support and budgetary support to achieve affirmative, equal
2 employment opportunity objectives throughout the Agency.

3 B. The Agency agrees to maintain a work environment that assures employees fair
4 and impartial treatment in all employment actions with a special consideration for
5 the effect and not merely the intent of management decisions.

6 C. Monitoring:

7 1. Annually, the Agency shall provide the union with the Agency's
8 Affirmative Employment Program for Minorities and Women Annual
9 Affirmative Program Accomplishment Report (Equal Employment
10 Opportunity Commission (EEOC) Form 568) and the Agency's
11 Affirmative Action Program for Individuals with Handicaps Plan Update
12 and Report of Accomplishments (EEOC Form 440).

13 2. Any and all EEOC evaluations of the Agency programs will be timely
14 provided to the union.

15 **Section 3. Notice to Employees**

16 The Agency shall make available to employees written information describing the EEO
17 complaint procedure. The names and telephone numbers of EEO counselors will be
18 posted electronically and on Agency bulletin boards and updated as necessary.

19 **Section 4. Counselors**

20 A. The parties agree that a sufficient number of trained EEO counselors are
21 necessary to a properly administered EEO program. Counselors will be given
22 training in accordance with EEOC Management Directive (MD) 110, Chapter 2,

1 and will be available and accessible to employees. However, the union has the
2 right to refuse to represent non-members in EEO complaints.

3 B. The union may submit nominees for EEO counselor positions being filled on a
4 collateral duty basis. The Agency will give consideration to union nominees.
5 Designated union representatives may not be EEO counselors.

6 C. Union officials representing employees in EEO complaints and for whom the
7 complainant has submitted a written designation of representation to the Agency,
8 will have access to copies of the EEO Counselor and Investigative Reports and
9 the personnel records of the complainant, subject to applicable EEOC procedures,
10 law, and Government-wide rules or regulations.

11 **Section 5. Complaints**

12 A. Any employee who wishes to file or has filed a complaint shall be free from
13 coercion, interference, and reprisal and shall be entitled to expeditious processing
14 of the complaint within the time limits prescribed by applicable EEOC regulation.

15 Any employee who seeks to file a complaint shall have the right to select a
16 representative in accordance with applicable EEOC regulations and any other
17 applicable law and regulations.

18 B. An employee has the option of filing a complaint under the negotiated grievance
19 procedure (Article 24) or under the statutory EEO complaint procedure, but not
20 both. Should the employee elect to file a grievance under the negotiated
21 grievance procedure, he/she does not have an automatic right to an arbitration
22 hearing because only the Union can invoke arbitration.

1 C. The Agency will maintain an Alternative Dispute Resolution (ADR) Program for
2 EEO Complaints and will make it available to complainants during the pre-
3 complaint counseling stage and during the formal complaint process. The EEO
4 ADR Program, which has been jointly developed by the parties, will continue
5 during the term of this Agreement. The parties recognize that ADR is a viable
6 alternative which may not be appropriate in every situation.

7 D. The Agency agrees to furnish the union, upon request, the Annual Federal EEO
8 Statistical Report of Discrimination Complaints (EEOC Form 462).

9 **Section 6. Official Time**

10 A. Preparation Time

11 When an employee files a complaint of discrimination under the statutory
12 procedure, he/she and the personal representative (if an employee of the Agency),
13 shall have a reasonable amount of official time, if otherwise on duty, to prepare
14 the complaint and to respond to Agency and EEOC requests for information, in
15 accordance with EEOC regulations (29 C.F.R. Part 1614.605 and Management
16 Directive 110, Chapter 6). Generally, the employee and his/her personal
17 representative (if an Agency employee and otherwise in a duty status) will have
18 up to eight hours of official time, if otherwise on duty, for preparation through the
19 investigation stage of the complaint. Thereafter, if the employee requests an
20 EEOC-conducted hearing, the employee and the personal representative (if an
21 Agency employee and otherwise in duty status) will have up to 24 hours of
22 official time, if otherwise on duty, for preparation through the hearing stage. The
23 employee and his/her personal representative (if an Agency employee and

1 otherwise in a duty status) shall have up to eight hours of official time, if
2 otherwise on duty, to prepare any appeals filed with the EEOC. The complainant
3 and the representative (if an Agency employee and otherwise in a duty status)
4 must request this time in advance from his/her manager.

5 B. Meeting and Hearing Time

6 The complainant and his/her personal representative (if an Agency employee and
7 otherwise in a duty status) shall be on official time when their presence is
8 authorized or required by the Agency or the EEOC during EEO counseling, ADR,
9 the EEO investigation, informal adjustment, or a hearing on his/her complaint.

10 **Section 7. Upward Mobility**

11 Upward mobility objectives will be considered in affirmative action planning and will be
12 consistent with EEO goals and objectives.

13 **Section 8. Reasonable Accommodations for Employees with Disabilities**

14 The Agency will, in accordance with Government-wide law and regulation, provide
15 reasonable accommodations for qualified individuals with disabilities unless such
16 accommodations impose an undue hardship upon the operations of the Agency's
17 programs. In providing reasonable accommodation to employees, the Agency will follow
18 the "CMS PROCEDURES FOR PROVIDING REASONABLE ACCOMMODATIONS
19 TO BARGAINING UNIT EMPLOYEES."

20

1 **CMS PROCEDURES FOR PROVIDING REASONABLE**
2 **ACCOMMODATIONS TO BARGAINING UNIT EMPLOYEES**

3
4 **I. Policy**

5 In accordance with the Rehabilitation Act of 1973 (Rehab Act), the 1992
6 amendments to the Rehab Act (requiring the application of the standards set forth
7 in the Americans with Disabilities Act of 1990 (ADA)), and the Equal
8 Employment Opportunity Commission's Enforcement Guidance, titled
9 "*Reasonable Accommodation and Undue Hardship Under the Americans with*
10 *Disabilities Act*," the Agency is required to provide reasonable accommodation(s)
11 to the known physical or mental limitations of qualified employees with
12 disabilities unless it can be shown that such accommodation(s) would impose an
13 undue hardship. The undue hardship determination must be assessed on a case-by-
14 case basis.

15 **II. Definitions**

16 **A. Disability** – A physical or mental impairment that substantially limits one or more
17 major life activities (i.e., walking, speaking, breathing, seeing, hearing, learning,
18 caring for oneself, performing manual tasks, sitting, standing, lifting, reading,
19 etc.). Whether an impairment substantially limits a major life activity is
20 determined by the nature and severity, duration (how long it is expected to last),
21 and impact (permanent/long term) of the impairment.

22 **B. Qualified Individual with a Disability** – with respect to employment, an
23 individual with a disability who, with or without reasonable accommodation, can
24 perform the essential functions of the position.

25 **C. Essential Functions** – those functions of a job that are so fundamental to the

1 position that the individual cannot do the job without being able to perform them,
2 e.g., the position exists specifically to perform that function, there are a limited
3 number of other employees who could perform the function if it were assigned to
4 them, or the function is specialized and the incumbent is hired based on his/her
5 ability to perform it.

6 **D. Reasonable Accommodation** – A change in the work environment or in the way
7 things are customarily done that would enable a qualified individual with a
8 disability to enjoy equal employment opportunities.

9 **E. Undue Hardship** – A specific accommodation, which would require significant
10 difficulty or expense. Undue hardship determinations are made on a case-by-case
11 basis, considering factors such as the nature and cost of the accommodation
12 needed and the impact of the accommodation on the operations of the Agency.

13 **III. Processing Reasonable Accommodation Requests**

14 **A. Introduction**

15 Consistent with the Rehab Act and the ADA, the process of providing reasonable
16 accommodations to qualified disabled employees must involve an interactive
17 process between the employee and the Agency.

18 **B. Receipt of Request**

19 The first step in the process is the receipt of an employee's request for a
20 reasonable accommodation. In most instances, the request will be made to the
21 employee's first-line manager. Requests may also be made to the Agency's
22 Office of Equal Employment Opportunity and Civil Rights (OEOCR).

23 An employee may initiate a request in writing or orally, e.g., by submitting a

1 memorandum or by requesting an accommodation during a conversation with
2 his/her manager. The individual may use “plain English” and need not use the
3 phrase “reasonable accommodation.” An employee’s family member, health
4 professional or other representative may request a reasonable accommodation on
5 behalf of the employee with the disability. The Agency will confirm with the
6 employee with the disability that (s)he wants a reasonable accommodation.
7 In order to facilitate the processing of non-written reasonable accommodation
8 requests, the employee will complete the attached Request for Reasonable
9 Accommodation Form as soon as possible. However, non-completion of the form
10 will not relieve the Agency of its obligation to appropriately process the request.
11 Similarly, non-submittal of a written reasonable accommodation request will not
12 relieve the Agency of its obligation to appropriately process the request.

13 **C. Interactive Dialogue**

14 Upon receiving a request for an accommodation, the manager must initiate a
15 discussion with the individual regarding the request. In those instances where the
16 disability and/or need for accommodation is not obvious, the manager shall
17 request reasonable medical documentation on behalf of the Agency.

18 **D. Medical Documentation**

19 For those instances where the disability and/or need for an accommodation are not
20 obvious, the manager shall require that the employee provide reasonable medical
21 documentation sufficient to substantiate that the employee has a Rehabilitation
22 Act disability and that the disability necessitates a reasonable accommodation. In
23 doing so, the Agency will provide information to the health professional that

1 describes the nature of the job, the essential functions of the job, the essential
2 functions the employee will be expected to perform, and any other information
3 that is relevant to evaluating the request.

4 The documentation must establish how the requested accommodation will assist
5 the employee in performing the essential functions of his/her position or how the
6 requested accommodation will enable the employee to enjoy the normal benefits
7 and privileges of the workplace.

8 Generally, the following information must be contained within the medical
9 documentation provided by the medical practitioner:

10 A statement regarding: (1) the nature, severity, and duration of the
11 employee's impairment; (2) the activity or activities that the impairment
12 limits; (3) the extent to which the impairment limits the employee's ability
13 to perform the activity or activities; and (4) why the requested reasonable
14 accommodation is needed.

15 The Agency has the right to request relevant supplemental medical information if
16 the information submitted does not explain the nature of the disability, or the need
17 for the reasonable accommodation, or does not otherwise clarify how the
18 requested accommodation will assist the employee to perform the essential
19 functions of the job or to enjoy the benefits and privileges of the workplace.

20 At his/her option, the employee may authorize the Agency to contact the medical
21 practitioner directly to obtain the information needed to process the request more
22 expediently. Such authorization **must** be obtained in writing.

23 The Agency may request that the employee be examined by its own physician

1 only if the individual has provided insufficient documentation from his/her health
2 care or other appropriate professional to substantiate the existence of a disability
3 and a need for reasonable accommodation. The Agency must first explain to the
4 employee that the medical information submitted is insufficient; identify the
5 information that is needed; and allow the employee an opportunity to provide the
6 information before requesting a medical examination. Any medical examination
7 must be limited to determining the existence of a disability and/or the functional
8 limitations that require a reasonable accommodation. Where a medical
9 examination is warranted, the Agency must explain to the employee with a
10 disability that the failure to agree to it could result in a denial of the reasonable
11 accommodation.

12 If the employee fails to submit sufficient documentation and rejects the Agency's
13 offer of an Independent Medical Examination (IME), then the Agency will make
14 a decision based upon the available record as a whole.

15 Any medical documentation received will be maintained in a confidential manner.
16 This means that all medical information, including information about functional
17 limitations and reasonable accommodation needs that the Agency obtains in
18 connection with a request for reasonable accommodation, must be kept in files
19 separate from the employee's Official Personnel File. Also, it means that any
20 Agency employee who obtains or receives such information is strictly bound by
21 these confidentiality requirements. All records will be maintained in accordance
22 with the Privacy Act and the requirements of 29 C.F.R. § 1611.

1 E. Reassignment

2 For those instances where no other reasonable accommodation will permit the
3 individual with a disability to perform the essential functions of his/her current
4 position, the Agency must consider the non-competitive reassignment of the
5 individual to a vacant, funded position that is or will become available within the
6 next 60 business days, including to a lower graded position if no position exists at
7 the employee's current grade level. The employee must be qualified for the
8 position (*i.e.*, satisfy the requisite skill, experience, education, and other job
9 related requirements, and can perform the essential functions with or without
10 reasonable accommodation) and reassignment cannot present an undue hardship
11 for the Agency.

12 **Note: Reassignment is available only to employees. Also, relocation expenses**
13 **will not be paid for reassignment out of the individual's commuting area.**

14 F. Decision

15 Normally, requests will be approved or denied within 30 calendar days from
16 either the receipt of the employee's initial request or the receipt of any required
17 medical documentation.

18 **IV. DENIAL OF REQUEST**

19 For instances where the request is denied, the employee will be notified in writing
20 of the denial and the reason(s) for it. Where a different accommodation was
21 offered in lieu of the one requested, the notice will explain the reason(s) for
22 denying the requested accommodation, and the reason(s) for supporting the
23 chosen accommodation.

1 If an employee is dissatisfied with a decision made regarding a request for a
2 reasonable accommodation, the employee may either:

3 **A. File an EEO Complaint.** The employee must contact OEOCR to obtain the
4 assistance of a counselor within 45 calendar days of his/her receipt of a final
5 decision by the Agency regarding his/her request for reasonable accommodation.
6 Upon being contacted, the counselor will advise the employee regarding the
7 availability of the Agency's Alternative Dispute Resolution Program for EEO
8 complaints.

9 **B. File a grievance.** Employees must use the negotiated procedure outlined in
10 Article 24 of the Master Labor Agreement.

11 **VII. INFORMAL DISPUTE RESOLUTION PROCESS**

12 If an employee wishes reconsideration, (s)he must first ask the manager to
13 reconsider the decision. The manager will respond to the request within five
14 working days. The employee may present additional information in support of
15 his/her request. If the manager does not reverse the decision, the employee may
16 seek reconsideration from the Agency's designated management official. This
17 official must respond to this request within 10 working days.

18 **Note: The time limits set forth in EEOC's regulations for bringing a claim to**
19 **EEOC, MSPB, or union grievance procedures will not be stayed by the**
20 **reconsideration process.**

21 **VIII. DISTRIBUTION**

22 These guidelines shall be posted on the OEOCR web site upon issuance. Initial
23 notification will be made to all employees electronically. Copies will be available

1 in the Agency library, OEOCR and Agency's Personnel offices. All new
2 employees will be advised of the availability of these guidelines as part of their
3 Entrance on Duty orientation.

1 Employees with Disabling Conditions
2 Reasonable Accommodation Request Form

3
4 Name:

5
6 Component:

7
8 Telephone Number:

9
10 Cubicle/Office Location:

11
12 Manager:

13
14 Have you discussed your accommodation needs with your manager? Yes () No ()

15
16 Please provide a brief description of your medical condition:

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24 (Attach additional information as necessary.)

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26 Please specify the requested accommodation(s) and how it relates to your medical
27 condition:

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33 (Attach additional information as necessary.)

34
35 Medical documentation from my medical practitioner(s) has been attached? Yes() No()

36
37
38 Employee's Signature

Date

39
40 By providing the above information, you understand that in order to process your request
41 for a reasonable accommodation due to a disabling condition, your manager may be
42 required to contact other Agency personnel who, in the performance of their official
43 duties, have a need to know the nature of your medical condition in order to assess your
44 accommodation needs. A failure to submit acceptable medical documentation or a refusal
45 to allow Agency personnel to review your medical documentation may result in your
46 request for a reasonable accommodation being denied.

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Article 21

EMPLOYEE PERFORMANCE SYSTEM

Management proposes the current contract with the following exceptions:

Section 2. Policy

The Employee Performance System must be fairly and equitably applied, and performance elements and standards will be reasonably related to the duties set forth in position descriptions.

Section 3. Communications

B. (Management proposes that the last sentence in subsection B.5. be deleted.)

Section 5. Process

B. (Management proposes that this subsection be deleted in its entirety.)

Section 6. Performance Assistance Plan (PAP)

(Management proposes that “and if requested, a Union representative,” be deleted from the first sentence.)

A. The assistance plan will afford the employee a reasonable opportunity of at least 30 calendar days to resolve the identified performance-related problem.

C. (Management proposes that this subsection be deleted in its entirety.)

D. (Management proposes that this subsection be deleted in its entirety.)

F. (Management proposes that the last sentence be deleted.)

1 **Section 7. Performance Enhancement Plan (PEP)**

2 A. (Management proposes that “and if requested, his/her Union representative,” be
3 deleted from the first sentence.)

4 B. (Management proposes that “90 calendar days” be changed to “60 days.”)

5 **Section 8. Performance-Based Actions (under 5 U.S.C. § 4303 and 5 C.F.R. § 432)**

6 A. (Management proposes that “reassignment” be deleted from the second sentence.)

7 B. (Management proposes that “reassigned” be deleted from this subsection.)

8 D. 2. unless proposed by the Head of Agency, has been concurred in by an
9 employee who is in a higher position than the person who proposed the
10 action; and

11 E. In accordance with 5 U.S.C. § 7121, an employee at his/her option may
12 raise matters covered under 5 U.S.C. § 4303 under either the appellate procedures
13 of 5 U.S.C. § 7701 (Merit Systems Protection Board) or the negotiated grievance
14 procedure in Article 24, but not both.

15 1. If the employee wishes to utilize the appellate procedures, he or she has 30
16 days from the effective date of the Agency’s final decision to appeal to the
17 Merit Systems Protection Board.

18 2. If the employee wishes to proceed under the negotiated grievance
19 procedure in Article 24, he or she will have 10 working days from receipt
20 of the Agency’s final decision to file a grievance. For purposes of
21 processing, the Agency’s final decision will be treated as the step 1

1 grievance decision. If the employee wishes to file a grievance, such
2 grievance must be submitted to the designated step 2 official within 10
3 working days of receipt of the final decision.

4 3. An employee shall be deemed to have exercised his/her option to raise a
5 matter either under the applicable appellate procedures or under the
6 negotiated grievance procedure at such time as the employee timely files a
7 notice of appeal under the applicable appellate procedures or the employee
8 timely files a grievance in writing in accordance with Article 24,
9 whichever event occurs first.

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Article 22

WITHIN GRADE INCREASES

Management proposes the current contract with the following exceptions:

Section 3. Procedures for WIGI Determinations

- A. (Management proposes that “SF-7B Extension File” be changed to “Supervisory Working File.”)
- B. Except in rare and unusual circumstances, the WIGI will be granted as soon as the employee is eligible unless the employee was informed, not later than the end of the statutory waiting period for eligibility for a WIGI, that his/her performance is below an acceptable level of competence.
- C. If the WIGI is delayed, the manager will reconsider the employee's level of competence not later than 60 calendar days after the date on which the employee completed the required waiting period.

Article 23

DISCIPLINARY AND ADVERSE ACTIONS

Section 1. Purpose and General Policies

- A. Disciplinary actions are defined as reprimands. Adverse actions are defined as suspensions of any duration, removals, furloughs without pay for 30 days or less, or reductions in pay or grade. (Actions involving suspensions of more than 14 days, removals, furloughs without pay for 30 days or less, and reductions in pay or grade may be appealed to the Merit Systems Protection Board or may be appealed through the negotiated grievance procedure in Article 24.)
- B. Disciplinary and adverse actions will be taken for just and sufficient cause and will be effectuated in accordance with applicable laws, Government-wide rule or regulation and this Article. In case of off duty misconduct, disciplinary or adverse actions will only be taken if there is a nexus between the employee's misconduct and the employee's position. Disciplinary or adverse actions will be initiated timely after the offense is committed or made known to the Agency.
- C. Discussions involving disciplinary or adverse actions will be conducted privately and in such a manner as to avoid embarrassment to the affected employee. The Agency will protect the privacy of the employee against whom a disciplinary or adverse action is taken.
- D. The Agency will make available for review copies of all the material relied upon to support the proposed action concurrent with the proposal notice being delivered to the employee. If requested by the employee or his/her authorized

1 representative, the Agency will furnish copies of such material relied upon prior
2 to the reply. Where the Agency has relied upon witnesses to support the reasons
3 for the proposed action, it will make available any written statements taken. The
4 material relied upon will include all evidence that has been considered in
5 determining the adverse action (including the severity of the proposed action)
6 taken by the Agency.

7 E. In effecting disciplinary or adverse actions, the Agency endorses the concepts of
8 like penalties for like offenses and progressive discipline. However, mere surface
9 consistency is to be avoided, and the Agency should give due regard to the
10 existence of any mitigating/aggravating circumstances, the nature of the position
11 occupied by the employee involved, and any other factors bearing upon the
12 incidents or acts involved. The degree of discipline administered should be
13 proportionate to the offense and on a case-by-case basis.

14 F. Records of disciplinary or adverse actions will be purged from the supervisory
15 working folder in a timely manner. Purged records may not be relied upon or
16 referred to in subsequent actions.

17 G. The Union and the Agency may mutually agree to extensions of any time frames
18 stated within this Article. The Agency will not unreasonably deny a request for
19 extension of the time to respond to proposals. If the employee response is not
20 timely filed and an extension is not granted, the Agency may issue its final
21 decision.

1 H. An employee will be given reasonable time to prepare and present a reply or
2 appeal to a covered action. CMS employees who appear as witnesses at any step
3 in these procedures will be in duty status.

4 **Section 2. Counseling and Warnings**

5 A. Discipline should be preceded by oral warnings or written counseling.

6 B. Warnings and counseling are not in themselves disciplinary or adverse actions;
7 however, such actions may be considered when determining appropriate
8 discipline should the employee engage in future misconduct.

9 C. Warnings and counseling will be conducted privately and in such a manner so as
10 to avoid embarrassment to the employee.

11 D. The employee should be advised that disciplinary or adverse action may result if
12 he/she fails to comply with work or conduct rules.

13 **Section 3. Reprimands and Short-term Suspensions**

14 A. Reprimand

15 1. Definition. A reprimand is a written disciplinary action. A copy of the
16 reprimand will be made a part of an employee's Official Personnel Folder
17 (OPF) for up to two years, but may be removed after one year if the
18 Agency determines that the purpose of discipline has been served.

19 2. Procedures. Once issued, the reprimand constitutes a final Agency
20 decision and may be grieved through the negotiated grievance procedure
21 in Article 24. For purposes of processing, the reprimand will be treated as
22 the step 1 grievance decision. If the employee wishes to file a grievance,

1 such grievance must be submitted to the designated step 2 official within
2 10 working days of receipt of the reprimand.

3 B. Short-term Suspension

4 1. Definition. A short-term suspension is the placing of an employee, for
5 disciplinary reasons, in a temporary status without duties and pay for 14
6 days or less.

7 2. Procedures

8 a. An employee will receive an advanced written notice stating the
9 specific reasons for the proposed action and notice of his or her
10 right to a representative.

11 b. The employee is responsible for bearing any and all costs of
12 representation if the representative is other than the exclusive
13 representative (union). The employee and/or representative has the
14 right to respond to the notice of proposed action orally, in writing,
15 or both.

16 c. A request to make an oral presentation must be made to the
17 designated deciding official within five working days of receipt of
18 the notice of the proposed action. Any written response to the
19 proposed action must be submitted no later than the oral
20 presentation.

21 d. If an employee and/or representative decide to waive the oral
22 presentation and only provide a written response, the written

1 response must be received within 10 working days of receipt of the
2 notice of proposed action.

3 e. The designated deciding official will issue a written decision to the
4 employee, with a copy to the employee's designated
5 representative, if the employee is represented. This decision will
6 be issued within 10 working days of the receipt of the employee's
7 written response or oral presentation, whichever is later. If no
8 written response or oral presentation is made, the written decision
9 will be issued within 10 working days of the expiration of the 10-
10 day period to respond.

11 f. This written decision will constitute the Agency's final decision on
12 the short-term suspension and may be grieved through the
13 negotiated grievance procedure in Article 24. For purposes of
14 processing, the Agency's final decision will be treated as the step 1
15 grievance decision. If the employee wishes to file a grievance,
16 such grievance must be submitted to the designated step 2 official
17 within 10 working days of receipt of the final decision on the
18 short-term suspension.

19 **Section 4. Suspensions of More than 14 Days, Removals, Furloughs Without Pay**
20 **for 30 Days or Less, and Reductions in Pay or Grade**

21
22 A. Procedures

23 1. An employee against whom a suspension of more than 14 days,
24 a removal, furlough without pay for 30 days or less, or reduction in

1 pay or grade is proposed is entitled to a 30-day advance written notice
2 stating the specific reasons for the proposed action and the right to a
3 representative. However, this 30-day notice may be waived if there is
4 reasonable cause to believe the employee has committed a crime for which
5 a sentence of imprisonment may be imposed.

6 2. The employee is responsible for bearing any and all costs of representation
7 if the representative is other than the exclusive representative (union). The
8 employee and/or representative has the right to respond to the notice of
9 proposed action orally, in writing, or both.

10 3. A request to make an oral presentation must be made to the designated
11 deciding official within five working days of receipt of the notice of the
12 proposed action. Any written response to the proposed action must be
13 submitted no later than the oral presentation.

14 4. If an employee and/or representative decide to waive the oral presentation
15 and only provide a written response, the written response must be received
16 within 10 working days of receipt of the notice of the proposed action.

17 5. The designated deciding official will issue a written decision to the
18 employee, with a copy to the employee's designated representative, if the
19 employee is represented. This decision will be issued within 10 working
20 days of the receipt of the employee's written response or oral presentation,
21 whichever is later. If no written response or oral presentation is made, the
22 written decision will be issued within 10 working days of the expiration of
23 the 10-day period to respond.

1 6. This written decision will constitute the Agency’s final decision on the
2 action.

3 B. Right to Appeal Decision

4 1. In accordance with 5 U.S.C. § 7121, an employee at his/her option may
5 raise matters covered under 5 U.S.C. § 7512 (suspensions of more than 14
6 days, removals, furloughs without pay for 30 days or less, or reductions in
7 pay or grade) under either the appellate procedures of 5 U.S.C. § 7701
8 (Merit Systems Protection Board) or the negotiated grievance procedure in
9 Article 24, but not both.

10 2. If the employee wishes to utilize the appellate procedures, he or she has 30
11 days from the effective date of the Agency’s final decision to appeal to the
12 Merit Systems Protection Board.

13 3. If the employee wishes to proceed under the negotiated grievance
14 procedure in Article 24, he or she will have 10 working days from receipt
15 of the Agency’s final decision to file a grievance. For purposes of
16 processing, the Agency’s final decision will be treated as the step 1
17 grievance decision. If the employee wishes to file a grievance, such
18 grievance must be submitted to the designated step 2 official within 10
19 working days of receipt of the final decision.

20 4. An employee shall be deemed to have exercised his/her option to raise a
21 matter either under the applicable appellate procedures or under the
22 negotiated grievance procedure at such time as the employee timely files a
23 notice of appeal under the applicable appellate procedures or the employee

1 timely files a grievance in writing in accordance with Article 24,
2 whichever event occurs first.

3 **Section 4. EEO Options**

4 If an employee's appeal from a disciplinary/adverse action is based, in whole or in part,
5 on allegation of discrimination, the employee may file an EEO complaint in accordance
6 with Article 24, Section 7.

Article 24

GRIEVANCE PROCEDURE

Section 1. Purpose

A. The purpose of this Article is to provide a mutually acceptable method for the prompt settlement of grievance filed by employees or the parties.

B. The parties earnestly desire that these grievances and complaints should be settled in an orderly and prompt manner so that the efficiency of the Agency may be maintained and morale of employees will not be impaired. Every effort will be made by the parties to settle grievances at the lowest possible level of the grievance procedure. Employees and their representatives will be unimpeded and free from restraint, interference, coercion, discrimination or reprisal in seeking adjustment of grievances.

Section 2. Scope

A grievance as defined by 5 U.S.C. § 7103(a)(9) 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 the employee;

or

C. by an employee, the Union or the Agency concerning:

1. the effect or interpretation or a claim of breach of the collective bargaining agreement or

- 1 2. any claimed violation, misinterpretation or misapplication of any law, rule
2 or regulation affecting conditions of employment.
- 3 D. In accordance with 5 U.S.C. § 7121(c), the negotiated grievance procedures
4 contained in this Article do not cover:
- 5 1. any claimed violation relating to prohibited political activities;
6 2. any complaint concerning retirement, life insurance or health insurance;
7 3. any suspension or removal for national security reasons;
8 4. any examination, certification or appointment; or
9 5. the classification of any position which does not result in the reduction in
10 grade or pay of any employee.

11 **Section 3. General Provisions**

- 12 A. This negotiated procedure will be the exclusive procedure available to the union,
13 the Agency and employees for resolving grievances.
- 14 B. An employee processing a grievance under this Article will be limited to a union
15 representative or self-representation. When not representing employees in a
16 grievance, the union will have the right to observe formal discussions (e.g.,
17 settlement meetings) during all steps of the negotiated grievance procedure. In its
18 capacity as an observer, the union agrees to respect confidentiality of all
19 information obtained.
- 20 C. In accordance with 5 U.S.C. § 7121, an employee at his/her option may raise
21 matters covered under 5 U.S.C. § 4303 (unacceptable performance) and 5
22 U.S.C. § 7512 (suspensions of more than 14 days, removals, furloughs without
23 pay for 30 days or less, or reductions in pay or grade) under either the appellate

1 procedures of 5 U.S.C. § 7701 or the negotiated grievance procedure in this
2 Article, but not both. An employee shall be deemed to have exercised his/her
3 option to raise a matter under either the applicable appellate procedures or the
4 negotiated grievance procedure at such time as the employee timely files a notice
5 of appeal under the applicable appellate procedures or the employee timely files a
6 grievance in writing in accordance with this Article, whichever event occurs first.

7 D. An employee affected by a prohibited personnel practice or discrimination may
8 raise the matter under a statutory procedure or the negotiated grievance procedure,
9 but not both. An employee will be deemed to have exercised his/her option at
10 such time as he/she timely files a grievance in writing or initiates an action under
11 the applicable procedure.

12 **Section 4. Question of Grievability/Arbitrability**

13 In the event that either party should declare a grievance non-grievable or non-arbitrable
14 during the grievance procedure, the disputes of grievability or arbitrability will be
15 referred to arbitration as a threshold issue in the related grievance. The party raising the
16 grievability/arbitrability question will provide an adequate explanation of the issue at the
17 earliest time possible during the grievance procedure but no later than the invocation of
18 arbitration. ✓

19 **Section 5. Processing Procedures for Employee Grievances**

20 A. Step 1

21 1. A written grievance must be submitted to the immediate manager within
22 20 working days of the date of the incident/event that gave rise to the
23 grievance or of the date the employee became aware or should have

1 become aware of the occurrence of the incident/event. A grievance
2 concerning a continuing practice or condition may be presented at any
3 time. All grievances will be in writing and be submitted on the CMS
4 Standard Grievance Form by the grievant or his/her designated union
5 representative. The grievance information should include the date filed,
6 the name of the grievant and his/her representative, if any, and signature of
7 grievant or his/her representative, the work location, and sufficient detail
8 to identify the basis of the grievance, including the specific Article and
9 section of the Agreement, and general reference to any practice, law, rule,
10 or regulation alleged to be violated, misinterpreted or misapplied and any
11 alleged facts and the specific relief the employee seeks.

12 2. Upon request, the designated step 1 official will hold a meeting to hear the
13 grievant's or representative's oral presentation. The designated step 1
14 official will, within 10 working days of the oral presentation, issue a
15 written decision to the employee's designated representative, or to the
16 employee if he or she is self-represented. If no oral presentation was
17 requested, the designated step 1 official will issue the written decision
18 within 10 working days of the date the grievance was received by the
19 immediate manager.

20 3. If dissatisfied with the step 1 decision, the grievant/representative will
21 have five working days from the date of receipt of the decision to ask for a
22 review at step 2. The designated step 2 official will be identified in the

1 step 1 decision and will be at least one organizational level higher than the
2 step 1 official.

3 B. Step 2

4 1. Upon request, the designated step 2 official will hold a meeting to hear the
5 grievant's or representative's oral presentation. The designated step 2
6 official will, within 10 working days of the oral presentation, issue a
7 written decision to the employee's designated representative, or to the
8 employee if he or she is self-represented. If no oral presentation was
9 requested, the designated step 2 official will issue the written decision
10 within 10 working days of his or her receipt of the grievance.

11 2. The step 2 decision will constitute the final Agency grievance decision. If
12 the decision is not acceptable to the employee or the union, the union may
13 refer it to arbitration in accordance with Article 25 of this Agreement.

14 C. Failure on the part of the Agency to observe the time limits for any step in the
15 grievance procedure shall have the effect of the grievance being denied at that
16 step, at which point the grievant may appeal to the next step. Failure on the part
17 of the grievant or the Union to observe time limits for any step shall have the
18 effect of the grievance being nullified and not capable of being processed further.

19 **Section 6. Duty Time and Witnesses**

20 An employee will be afforded reasonable duty time to prepare for discussions and to
21 present a grievance under this Article. CMS employees who appear as witnesses at any
22 step in these procedures will be in duty status. ✓

1 **Section 7. EEO Options**

- 2 A. Before filing a grievance which alleges discrimination, the employee will first
3 discuss the allegation with an EEO Counselor. This discussion must be within 45
4 days after the event causing the allegation or after the date the employee became
5 aware of the event. The counselor will have 30 days to resolve the matter
6 informally. If the counselor is unsuccessful, he/she will give the employee a
7 written notice stating his/her right to file either a formal complaint under the
8 statutory EEO procedure or a grievance under this Article. This notice will
9 clearly inform the employee that if he/she elects to file a grievance under the
10 negotiated grievance procedure, he/she does not have an automatic right to an
11 arbitration hearing because only the Union can invoke arbitration. Therefore, the
12 employee will be advised to consult with the Union before making his/her
13 decision to file a grievance.
- 14 B. If the employee elects to file under the negotiated grievance procedure, he/she
15 will proceed under Section 5 of this Article by filing a timely written grievance
16 within 20 working days of the date of the counselor's final report and attaching a
17 copy of the counselor's notification to the grievant. An employee who files a
18 grievance may not thereafter file an EEO complaint on the same matter.
- 19 C. If the employee elects to file a formal complaint under the EEO process, he/she
20 may not thereafter file a grievance on the same matter.

21 **Section 8. Procedures for Union/Management Grievances**

- 22 A. A grievance on behalf of the Union or the Agency will be submitted in writing to
23 the Agency's labor relations officer (or designee) or the union president (or

1 designee), respectively. The grievance must be filed within 20 working days from
2 the date of the incident or event that gave rise to the grievance or within 20
3 working days from the date that the filing party became aware or should have
4 become aware of such incident or event.

5 B. Upon receipt of a union/management grievance, the Agency's labor relations
6 officer (or designee) and the union president (or designee) will, within 10 working
7 days, meet to attempt resolution.

8 C. If, after the meeting, the grievance is unresolved, arbitration must be invoked no
9 later than 20 working days after the date of the meeting to attempt resolution. If
10 the parties do not meet to attempt resolution within 10 working days, the grievant
11 must invoke arbitration no later than 30 days from the date the grievance was
12 filed.

13 D. Any grievability/arbitrability issues must be raised no later than 30 days after the
14 date the grievance was filed.

15 E. Union/management grievances shall not be used to file a grievance on behalf of
16 an individual employee or combine unrelated individual grievances.

Article 25

ARBITRATION

Section 1. General Provisions

A. A grievance processed under Article 24 of this Agreement may be referred to arbitration if it is unresolved. Employee grievances shall be referred no later than 20 working days after receipt of the final Agency grievance decision.

Union/management grievances shall be referred no later than 20 working days after the date of the meeting to attempt resolution or, if the parties do not meet to attempt resolution, no later than 30 days from the date the grievance was filed.

B. Arbitration may only be invoked by the union or Agency. Invocation for arbitration will be filed with the Agency labor relations officer (employee or union grievance) or the union president (management grievance).

Section 2. Selection of Arbitrator

Within five working days from the date of the request for arbitration, the Parties will jointly or separately request the Federal Mediation and Conciliation Service (hereinafter called FMCS) to provide a list of five impartial persons to act as arbitrators from the appropriate geographical area. The Parties will meet within three working days after receipt of such a list. If they cannot mutually agree upon one of the listed arbitrators, then the Agency and the Union will each strike one arbitrators' name from the list of five and will then repeat this procedure. The remaining person will be the duly selected arbitrator.

Section 3. Prehearing Conference

1 By mutual agreement, the Parties may arrange for a prehearing conference, with or
2 without the arbitrator, to consider possible settlement and means of expediting the
3 hearing. For example, this can be done by reducing the issue(s) in writing, stipulating
4 facts, outlining intended offers of proof, authenticating proposed exhibits, exchanging
5 lists of witnesses or waiving the use of a transcript.

6 **Section 4. Arbitration Procedures**

7 A. The arbitrator's fees and all expenses will be shared equally by the Parties.

8 B. The procedures used to conduct the arbitration will be determined by the
9 arbitrator. All Parties will be entitled to call and cross-examine witnesses and will
10 be entitled to a hearing before the arbitrator.

11 C. If either party requests a transcript, that party will bear the entire cost of such
12 transcript and will forward one copy to the arbitrator. If the other party wishes to
13 have a copy of the transcript, the total cost of the transcript will be shared equally
14 between the parties.

15 D. If possible, the arbitration hearing will be held on the Agency's premises during
16 the regular working hours of the basic workweek. All participants in the hearing
17 will be in duty status.

18 E. If the Parties fail to agree on a joint submission of the issue for arbitration, each
19 will submit a separate submission and the arbitrator will determine the issue or
20 issues to be heard.

21 F. Normally, the Parties agree to exchange a complete list of prospective witnesses
22 at least 15 days prior to the hearing. The Parties will attempt to mutually agree on
23 witnesses to testify at the hearing. In the event the Parties cannot agree on

1 appropriate witnesses, the respective list of requested witnesses will be presented
2 to the arbitrator at the hearing. In determining who will appear, the arbitrator will
3 approve only those persons whose testimony will be material to the matter in
4 dispute and not unduly repetitious of other testimony to be offered.

5 G. The Arbitrator will have no authority to add to, subtract from, alter, amend or
6 modify any provision of this Agreement.

7 H. The arbitrator's decision will be final and binding. However, either Party may file
8 an exception to the arbitrator's award in accordance with applicable law and
9 regulations.

10 I. The arbitrator will be requested by the Parties to render his or her decision as
11 quickly as possible, but in any event within 30 days after the close of the
12 proceedings.

13 J. There will be no discovery process prior to the arbitration hearing absent mutual
14 agreement of the parties.

15 **Section 5. Arbitration Sites**

16 Arbitrations will be held at Agency headquarters, in Baltimore, or other site agreed to by
17 the Parties, considering such factors as use of official time, calling of witnesses, travel
18 and per diem costs, and such other related considerations. Travel and per diem will be
19 authorized for approved witnesses.

Article 26

PROMOTIONS, REASSIGNMENTS AND DETAILS

Section 1. Purpose and Policy

A. Promotions, reassignments and details will be carried out in accordance with applicable law, Government-wide rule or regulation and this Article.

B. The purpose of this Article is to enable the Agency to meet the formidable challenges it faces and to respond quickly and effectively to changes in its mission and priorities through the promotion, reassignment and detail of its employees.

C. The provisions of this Article only apply to promotions, reassignments and details for positions determined by the Agency to be within the bargaining unit. Any and all references to "position" in this Article means a bargaining unit position. This Article does not apply to promotions, reassignments or details for non-bargaining unit positions, or bargaining unit positions filled via special hiring authorities (e.g., Schedule A appointments, Co-op Students, Presidential Management Interns), delegated examining (i.e., external recruitment) and/or from other appropriate sources.

Section 2. Application of Merit System Principles

Merit system principles (5 U.S.C. § 2301) will apply to all competitive promotion, reassignment and detail actions taken under this Article.

1 **Section 3. Definitions**

2 For the purpose of this Article, the definitions contained in applicable law, Government-
3 wide rule or regulation, including Title 5 of the Code of Federal Regulations, will be
4 incorporated. In addition:

5 A. The term “promotion” as used in this Article means the change of an employee to
6 a higher grade level within the same job classification system and pay schedule or
7 to a position with a higher rate of basic pay in a different job classification system
8 and pay schedule.

9 B. The term “reassignment” as used in this Article means the change of an employee
10 from one position to another position without promotion or change to lower
11 grade, for which the employee is qualified and meets all legal and regulatory
12 requirements.

13 C. The term “detail” as used in this Article means a temporary assignment of an
14 employee to a different classified position (i.e., a different position description
15 number than the employee’s position of record) or to a different set of
16 unclassified duties for a specific period with the employee returning to his/her
17 classified position of record at the end of the detail. The employee continues to
18 encumber the position from which he/she was detailed.

19 **Section 4. Applicability of Competitive Procedures**

20 A. Promotions

21 Competitive selection procedures will apply to any selection for promotion to
22 positions unless it is specifically excluded by Section 12 (Noncompetitive
23 Actions) of this Article.

1 B. Reassignments

2 Competitive procedures will only apply to the following type of reassignment:
3 any selection to a position at the same or lower grade with more promotion
4 potential than that of any position previously held on a permanent basis in the
5 Competitive Service (except as permitted by Reduction-in-Force regulations
6 contained in 5 C.F.R. § 351).

7 C. Details

8 Competitive procedures will only apply to selections for details of more than 120
9 days to:

- 10 1. a higher graded position; or
- 11 2. a position with higher promotion potential greater than that of the
12 employee's current position of record; or
- 13 3. a position in a series different than that currently occupied by the
14 employee which:
 - 15 a. provides specialized qualifications experience as identified in the
16 OPM Qualifications Handbook in the series/occupation that the
17 employee is being detailed to, which the employee does not
18 already have, and
 - 19 b. is required for subsequent promotion to a higher graded position.

20 D. Formal Training or Career Development Program

21 Competitive procedures will apply to any selection to a formal training or career
22 development program which provides for promotion to a target position.

23

1 E. Transfers/Reinstatements

2 Competitive procedures will apply to any transfer of a Federal employee or
3 reinstatement of a former Federal employee to:

- 4 1. a higher graded position than the candidate's highest grade previously held
5 on a permanent basis, or
- 6 2. a position with more promotion potential than the highest actual grade
7 previously held on a permanent basis.

8 **Section 5. Vacancy Announcements for Competitive Actions**

9 A. Area of Consideration

- 10 1. The area of consideration for positions will be determined by the
11 geographic area and grade level of the position. For positions at the GS-
12 13 level and below, the area of consideration will be Central Office
13 (including Washington D.C.) for Central Office positions or the Regional
14 Office for Regional Office positions. For positions at the GS-14 level and
15 above, the area of consideration will be CMS nationwide.
- 16 2. The selecting official may expand the area of consideration when he or she
17 determines the established area of consideration is not sufficiently broad to
18 ensure the availability of high quality candidates, taking into account the
19 nature and level of positions covered. The selecting official may restrict
20 the area of consideration when he or she determines that the area of
21 consideration will yield a sufficient number of high quality candidates,
22 taking into account the nature and level of positions covered, or when

1 factors such as budget constraints, ceiling controls or hiring freezes
2 prevent the employing office from adding to its staff.

3 B. Information on Vacancy Announcements

4 Vacancy announcements for positions will include the following information:

- 5 1. Announcement number.
- 6 2. Title, series, grade, position number, organizational location, duty station,
7 and shift of the position.
- 8 3. Total number of positions to be filled. (This does not preclude filling less
9 or more identical, additional positions than originally posed on the
10 vacancy announcement.)
- 11 4. A statement regarding known promotion potential, if applicable.
- 12 5. Tour of duty or notation that the position is intermittent, if there is no
13 regular tour of duty.
- 14 6. Opening and closing dates of the announcement.
- 15 7. Area of consideration.
- 16 8. A brief summary of major duties.
- 17 9. Qualification requirements (including any selective placement factors).
- 18 10. KSA's.
- 19 11. Application procedures.
- 20 12. Equal employment opportunity statement.
- 21 13. Where appropriate, a statement that the position is temporary, its expected
22 duration and whether it may become permanent non-competitively.

- 1 14. Where appropriate, a statement that the candidate who is selected will or
- 2 may be required to complete a financial interest statement.
- 3 15. Name and telephone number of the personnel specialist or other individual
- 4 to contact for information relating to an announcement.
- 5 16. The address of appropriate servicing human resources office to which
- 6 applications are to be submitted.
- 7 17. Whether or not relocation expenses will be paid.
- 8 18. Where appropriate, a statement that the candidate who is selected will be
- 9 required to obtain a Government credit card and maintain it in good
- 10 standing.

11 C. Posting of Vacancy Announcements

- 12 1. Vacancy announcements will be made accessible to employees within the
- 13 area of consideration.
- 14 2. Vacancy announcements will be posted for a minimum of 10 workdays.

15 D. Cancellation and Reposting

- 16 1. The Agency may cancel any vacancy announcement at any time.
- 17 2. If a vacancy announcement has been posted and is later amended before
- 18 the closing date, the amendment will include a brief statement of what the
- 19 change is and whether or not previous applicants need to reapply in order
- 20 to be considered.

21 E. Minimum Qualifications

22 Once the vacancy announcement has closed, the Agency will determine if

23 applicants have met minimum qualification requirements. Candidates who meet

1 minimum qualification requirements will have their applications rated and ranked
2 to determine at what level they meet the knowledge, skills and abilities outlined in
3 the vacancy announcement.

4 **Section 6. Knowledge, Skills, and Abilities (KSA's)**

5 A. Definitions

6 A KSA is a job-related knowledge, skill or ability used in assessing candidates'
7 qualifications. A "knowledge" is an understanding of an organized body of
8 information (usually of a factual or procedural nature) relating to a particular
9 subject matter area. A "skill" is a learned power to perform proficient manual,
10 verbal, or mental manipulation of data or things, or to influence the activities of
11 people. It embodies observable and verifiable performance parameters. An
12 "ability" is the power to perform an activity at the present time. An ability is
13 evidenced by the performance of some activity or work and should not be
14 confused with an aptitude which is only a potential for performing an activity.

15 B. Establishing KSA's

16 The Agency will establish job-related KSA's.

17 C. Procedures

- 18 1. KSA's are developed by:
 - 19 a. identifying the major tasks/duties of the position through a job
20 analysis based on information contained in the position
21 description, career ladder plan, qualification standards and/or
22 classification standards; and

- 1 b. identifying the worker characteristics and demonstrated abilities
- 2 (KSA's) needed to perform the job.
- 3 2. For each announced vacancy:
- 4 a. KSA's will be measurable.
- 5 b. KSA's determined to be most important for successful job
- 6 performance will be designated as critical. Those KSA's
- 7 designated as critical will be given more weight in the evaluation
- 8 process than those not identified as critical.
- 9 c. Evaluation criteria will be developed for each KSA. Evaluation
- 10 criteria will be documented and made a part of the merit promotion
- 11 file but will not be posted on the vacancy announcement.

12 **Section 7. Competitive Selection Procedures**

13 A. General Procedures

14 The selecting official is responsible for the selection following the review of

15 minimum qualifications and subsequent evaluation of candidates. The evaluation

16 method used will depend on the number of candidates who meet minimum

17 qualification requirements (i.e., less than 10, or 10 or more).

18 B. Evaluation Methods

19 1. Less Than 10 Minimally-Qualified Candidates

20 a. When there are less than 10 candidates who meet minimum

21 qualification requirements, a human resources official (HRO) or

22 appropriate subject matter expert (SME) will evaluate candidates

1 against the rating guide to ensure they meet at least the average
2 level KSA definition on all posted KSA's.

- 3 b. All candidates who meet at least the average level for all KSA's
4 will be referred alphabetically to the selecting official for
5 consideration.

6 2. Ten or More Minimally-Qualified Candidates

- 7 a. When there are 10 or more applicants who meet minimum
8 qualification requirements, they will be rated and ranked to
9 determine the best qualified candidates to be referred to the
10 selecting official.
- 11 b. This evaluation may be conducted either by (a) a rating panel, (b) a
12 HRO or (c) a SME.
- 13 c. Whichever method is selected, the applicants who have been
14 determined to be minimally qualified and who must compete will
15 be further evaluated based on the rating schedule developed for the
16 position to identify the best qualified promotion candidates.
- 17 d. The panel, HRO or SME will assign point values for each of the
18 following four levels: Superior – 4 points; Above Average - 3
19 points; Average –2 points; Developmental –1 point. The KSA's
20 designated as “critical” will receive double weight in the ranking
21 process and will be regarded as minimally qualifying.
- 22 e. Applicants must score average or better on the critical KSA's to be
23 eligible for certification on the Best Qualified List (BQL).

- 1 f. When a minimally-qualified candidate is evaluated under the rating
2 schedule, his/her total background (experience, education, training,
3 awards, outside activities) is used in identifying the quality level
4 that most closely corresponds to the degree of expertise the
5 applicant has attained for each KSA.
- 6 g. Based on the review of the applicant's background, a numerical
7 score will be assigned for each KSA. The sum of the KSA scores
8 will be the candidate's total score for ranking purposes.

9 C. Procedures for Use of a Rating Panel

10 Should the selecting official elect to use a rating panel to rate and rank 10 or more
11 minimally qualified candidates, the following procedures will apply:

- 12 1. Composition. The rating panel will consist of three members, at least one
13 of whom is considered to be a subject matter expert in, or have an
14 appropriate level of knowledge of, the discipline or occupations category
15 of the position being filled.
- 16 a. Human resources officials may participate as panel members. A
17 human resources official will be available to the panel for technical
18 guidance.
- 19 b. Under most circumstances, the selecting official and any
20 supervisor in the chain of command associated with the position
21 being filled should not be permitted to participate as a member of
22 the rating panel. An employee is not allowed to participate as a

1 panel member if he/she has filed for the vacancy or if one of
2 his/her relatives is to be evaluated.

3 c. Panel members should be selected in accordance with the
4 following criteria:

5 i. For GS-14 and GS-15 vacancies, to the extent practical, the
6 panel should include a member from outside the
7 Center/Office in which the vacancy exists for Central
8 Office positions. Regional Office panels will be convened
9 from within that Regional Office where feasible.

10 ii. For GS-13 and below vacancies, to the extent practical, the
11 panel should include one member from a division other
12 than that in which the vacancy exists.

13 2. Documentation. Notes may be annotated on applications and/or on any
14 worksheets used by the panel. The notes may serve to document the
15 evaluation process and may also be used in providing feedback to
16 employees who were not selected.

17 3. Confidentiality. The deliberations of the panel will be confidential. Any
18 disclosures will be in accordance with provisions of the Privacy Act and
19 other applicable law and Government-wide regulations.

20 D. Multiple Grade Levels or Locations

21 If an announcement pertains to more than one grade level or geographic location,
22 a separate list of eligibles will be developed for each grade level and location.

23

1 E. Establishing the Best Qualified List (BQL)

2 There is no minimum or maximum number of applicants who may be certified as
3 best qualified. Applicants will be certified as best qualified based on a natural
4 break in individual scores.

5 F. Issuing the Best Qualified List (BQL)

6 The servicing human resources organization will issue the BQL and forward it to
7 the selecting official along with the application materials of those applicants
8 certified. The names on the BQL will be listed in alphabetical order, and scores
9 will not be indicated. Any additional lists of candidates not required to be ranked
10 (for example, reinstatement eligibles, lateral transfer or reassignment eligibles,
11 applicants eligible for non-competitive appointment) will also be forwarded with
12 the selection certificate.

13 G. Reusing a Best Qualified List (BQL)

14 Reuse of a BQL is permitted when a vacancy occurs in the same geographical
15 location with the same title, series, grade, and similar evaluation criteria as the
16 vacancy previously posted. The best qualified candidates from the previous
17 announcement may be referred instead of reannouncing the new vacancy.
18 Additional selections may be made within 120 days from the date the initial BQL
19 was issued.

20 H. Selection Procedures

21 The selecting official has the right to select or not select any of the candidates
22 referred. The selecting official has the option to interview or not interview any of
23 the candidates referred.

1 I. Release of Employees

2 When a selection has been made, the Agency will set an effective date and notify
3 the employee. Employees selected for promotion will normally be released not
4 later than the end of the first full pay period after a release date has been officially
5 requested.

6 J. Declinations

7 In the event of a declination, the selecting official may make another selection(s).
8 An applicant who elects to decline a job offer should do so in writing to the
9 servicing human resources office.

10 K. Announcement of Selectees

11 All merit promotion selections will be announced to all Agency employees. This
12 announcement will be available to employees electronically.

13 **Section 8. Application Procedures for Competitive Actions**

14 A. What Must Be Filed

15 To be considered for a posted vacancy announcement, an employee must file the
16 appropriate application materials in accordance with the instructions listed in the
17 vacancy announcement.

18 B. Time Limits

19 Applications must either be received (e.g., hand-delivery, e-mail, facsimile) in the
20 appropriate servicing human resources office by the closing date, or be
21 postmarked on or before the closing date and be received within five working
22 days of the closing date of the announcement.

23

1 C. Employee Absence

2 An employee scheduled to be absent and away from the area of consideration in
3 excess of two weeks for approved leave, detail, training course, official business,
4 compensable injury, or service with the military, public international organization,
5 or with local government will be considered for promotional opportunities within
6 the area of consideration for vacancies which occur during the employee's
7 absence and for which he/she is eligible. Prior to departure, employees must
8 complete an application with a written request for consideration for vacancies
9 posted during their absence and submit it to the appropriate human resources
10 office.

11 **Section 9. Employee Information for Competitive Actions**

12 In regard to specific vacancies for which they have filed, applicants are entitled to the
13 following information:

- 14 A. whether they met minimum qualification requirements;
- 15 B. whether or not they were among the best qualified; and
- 16 C. the name(s) of those selected.

17 **Section 10. Union Review of Competitive Actions**

- 18 A. The union will be permitted to review (i.e., audit) competitive selection actions
19 taken under this Article when it has reason to believe a discrepancy exists or when
20 requested to do so by an employee.
- 21 B. The union will make the request to the Agency's labor relations officer. The
22 union will provide the Agency's labor relations officer with an updated written
23 designation identifying the names of the union representatives who are

1 responsible for conducting reviews. Any changes to the list of designated
2 representatives will be sent to the Agency in writing. The representative
3 designated to conduct the audit will not have been an applicant for the promotion
4 package being audited.

5 C. Employees who believe they were improperly excluded from consideration may
6 request review of the promotion package through the union review process
7 described below.

8 D. If the employee chooses to use the Union procedure, he/she must make a written
9 request to the union within 15 working days after the selection is announced to all
10 employees. A union request under Subsection (A) above must be made within the
11 same time limits.

12 E. The Agency will make the pertinent records from the package available to the
13 union within seven working days of receipt of the written request. The union will
14 treat the information confidentially and review it in the location designated by the
15 Agency and in the presence of a designated management official.

16 F. If during the course of the audit additional information is determined necessary,
17 such information will be secured from the Agency's designated management
18 official.

19 G. Employees who elect to use the grievance procedure rather than the audit
20 procedure must initiate action in accordance with Article 24, Grievance
21 Procedure.

22 **Section 11. Priority Consideration Arising From Competitive Actions**

23 A. Definition

1 For the purpose of this Article, a priority consideration is the genuine
2 consideration for non-competitive selection given to an employee as the result of
3 a previous failure to properly consider the employee for selection because of
4 procedural, regulatory or program violation. Employees will receive one priority
5 consideration for each instance of improper consideration. A priority
6 consideration does not give the employee a right or a guarantee to be selected for
7 any vacancy.

8 B. Processing

- 9 1. Employees will be notified in writing by the authorized management
10 official of entitlement to each priority consideration. Such notice will
11 advise employees that if a vacancy is announced and posted and the
12 employee wishes to exercise their priority consideration, he/she should
13 submit the necessary application to the designated Agency human
14 resources official with a written request that he/she wishes priority
15 consideration for the vacancy.
- 16 2. Priority consideration is to be exercised by the selecting official at the
17 option of the employee for an appropriate vacancy. An appropriate
18 vacancy is one for which the employee is interested, is eligible, and which
19 leads to the same grade level as the vacancy for which proper
20 consideration was not given.
- 21 3. Prior to the evaluation of other applicants, the name(s) of the employee(s)
22 requesting to exercise priority consideration will be referred to the

1 selecting official. The selecting official will make a determination on the
2 request prior to evaluating other applicants.

3 4. The fact that the employee chooses to exercise a priority consideration
4 does not preclude that employee from also filing an application through
5 the regular posting process.

6 C. Union Notification

7 In order to assure compliance with this section, the union will be furnished
8 statistics on priority considerations granted and exercised and the results.
9 Statistics will be kept and provided to the union on a quarterly basis. The union
10 will also be notified in writing of each individual priority consideration
11 completed.

12 **Section 12. Noncompetitive Actions**

13 The following actions may be taken noncompetitively:

14 A. Promotions

- 15 1. Promotion of an employee whose position is reclassified at a higher grade
16 because of additional duties and responsibilities (i.e., accretion).
- 17 2. Promotion of an incumbent or an individual entitled to reemployment
18 rights to a position that is reclassified to a higher grade without significant
19 changes in duties as a result of the application of new OPM classification
20 standards or the correction of a previous classification error.
- 21 3. Promotion of an employee covered by an approved training agreement.

- 1 4. Promotion of an employee within a career ladder provided the employee
2 has met all qualifications and performance requirements established for
3 the career ladder and sufficient work exists at the next higher grade level.
- 4 5. Promotion from an understudy or trainee position when the employee was
5 selected under competitive procedures for the understudy or trainee
6 position, provided the employee has met all qualifications and
7 performance requirements for the target position.
- 8 6. Re-promotion of an employee, up to the highest grade previously held on
9 a permanent basis in the competitive service, provided that the employee
10 meets all qualifications, regulatory, and legal requirements for the series
11 and grade and was not demoted or separated from that grade based on
12 performance or conduct.
- 13 7. Promotion directed by proper authorities (for example, judges, arbitrators,
14 FLRA, or other appropriate authorities).
- 15 8. Temporary promotions or details of an employee to a higher graded
16 position or a position with known promotion potential totaling 120 days or
17 less.
- 18 9. Promotion after being selected through priority consideration procedures
19 outlined in this Article.
- 20 10. Permanent promotion from a temporary promotion when the
21 announcement stated that the temporary promotion may become
22 permanent.

23

1 B. Reassignments

2 Any and all reassignments not listed in Section 4 of this Article, including a
3 reassignment to a position having promotion potential no greater than the
4 potential of a position an employee currently holds or previously held on a
5 permanent basis in the competitive service and did not lose because of
6 performance or conduct reasons. An employee reassigned to a different duty
7 station, which will require relocation, will be given 30 days written advance
8 notification, with a copy to the union. Relocation expenses, if appropriate, will be
9 paid in accordance with applicable law, Government-wide regulations and HHS
10 travel regulations.

11 C. Details

12 Any and all details not listed in Section 4 of this Article, including a detail to a
13 position having promotion potential no greater than the potential of a position an
14 employee currently holds or previously held on a permanent basis in the
15 competitive service and did not lose because of performance or conduct reasons.
16 Details of an employee will be processed in increments of 120 days or less with
17 the ability to extend as necessary. Details of 30 days or less are not required to be
18 documented by the Agency. The Agency will document any detail in excess of
19 30 days in the employee's Official Personnel Folder and will forward a copy of
20 the record to the employee.

21 D. Voluntary Change to a Lower Grade

22 Change to lower grade to a position having promotion potential no greater than
23 the potential of a position an employee currently holds or previously held on a

1 permanent basis in the competitive service and did not lose because of
2 performance or conduct reasons. An employee desiring consideration for a
3 voluntary change to lower grade must submit a written request to the servicing
4 human resources office. Prior to acting on an employee's request for a voluntary
5 change to lower grade, the Agency will assure that the employee has been fully
6 apprised in writing about the effect of such an action.

7 E. Temporary Assignment to Higher Graded Position

8 When employees are temporarily assigned to a higher graded position for a period
9 of more than 30 days but less than 121 days, a temporary promotion will be
10 effected on the first pay period after receipt in the human resources office of the
11 approved Request for Personnel Action (SF-52), provided the employee otherwise
12 meets all qualifications, legal and regulatory requirements. All temporary
13 assignments to higher graded positions for more than 30 days must be
14 documented via an SF-52.

15 F. Other Noncompetitive Actions

- 16 1. Transfer of a Federal employee or reinstatement of a former Federal
17 employee at the same or lower grade, or to a position with the same
18 known promotion potential as the highest graded permanent position held
19 by the employee.
- 20 2. A position change permitted by reduction-in-force regulations.

21 G. Details for Medical Reasons

22 An employee recuperating from serious illness or injury who is temporarily
23 unable to perform the full range of duties of his/her position as certified by the

1 health care provider may voluntarily submit a written request to the manager for
2 temporary assignment to duties commensurate with the employee's temporary
3 work-related restrictions. The certification from the employee's physician will ✓
4 include the nature, severity and duration of the employee's serious illness or
5 injury; the activity or activities that the serious illness or injury limits; the extent
6 to which the serious illness or injury limits the employee's ability to perform the
7 activity or activities; and why the work-related restrictions are needed. The
8 Agency may require that such request be reviewed by a medical officer or other
9 appropriate medical expert for advice and consultation. The Agency will consider
10 such requests, in accordance with applicable law, Government-wide rules or
11 regulations and medical recommendations. To the extent determined appropriate
12 by the Agency, the employee may be temporarily assigned to an appropriate
13 vacancy or duties and responsibilities, commensurate with the employee's
14 illness/injury and qualifications.

15 **Section 13. Career Ladder Procedures**

16 A. Career Ladder Plans

17 If a career ladder is established by the Agency for a particular position, the career
18 ladder plan for the position will outline the criteria which an employee must meet
19 in order to be promoted. A copy of the plan will be given to each employee upon
20 entry into the career ladder. The employee will be provided with a copy of any
21 revisions to the career ladder plan within 30 days of such revision. The employee
22 will also be advised of his or her earliest eligibility date to be considered for
23 promotion under the plan.

1 B. Developmental Assistance Plan (DAP)

- 2 1. At any time a manager and/or employee recognize an employee's need for
3 assistance in meeting the career ladder advancement criteria, the manager
4 and employee will develop a plan designed to assist the employee in
5 meeting the career ladder plan criteria. The developmental assistance plan
6 should include applicable training as well as any other support
7 appropriate.
- 8 2. Employees who are on a Performance Assistance Plan or a Performance
9 Enhancement Plan as outlined in Article 21 must first demonstrate
10 successful performance at their current grade level before a DAP is
11 considered.

12 C. Career Ladder Advancement Assessment

- 13 1. Career ladder promotion determinations will be based on the following
14 criteria: (1) the criteria set forth in the career ladder plan; (2) the
15 applicable qualifications requirements issued by the Office of Personnel
16 Management (OPM); (3) all legal and regulatory requirements, such as
17 time-in-grade; (4) applicable selective placement factors for the position;
18 (5) the employee's performance and conduct are at a satisfactory level;
19 and (6) there is sufficient work available at the next higher grade level.
- 20 2. Promotions in career ladders shall be effective at the beginning of the first
21 full pay period after the employee has met the above criteria.
- 22 3. If an employee is not meeting the criteria for promotion, the employee will
23 be provided with written notice at least 60 days prior to the earliest

1 eligibility date for promotion. The written notice will identify the criteria
2 that the employee is failing to meet.

3 4. If the employee is not meeting the criteria for promotion, the Agency will
4 provide the employee up to an additional 12 months from the earliest
5 eligibility date to meet the promotion requirements. The Agency may
6 promote the employee at such time during the additional 12 months that
7 the employee meets the promotion requirements.

8 5. If the employee fails to meet the requirements for promotion after the
9 additional 12-month period, the Agency may reassign the employee to a
10 non-career ladder position with no promotion potential beyond his/her
11 current grade.

Article 29

FLEXIPLACE

Section 1. Definition

Flexiplace is a telecommuting program which enables an employee to work at an alternative duty station (hereinafter referred to as "ADS") for a period of time, subject to management approval. An ADS may include an employee's residence or other location approved by management. The Agency has three types of flexiplace programs: (1) scheduled flexiplace (SFP); (2) episodic flexiplace (EFP) ; and (3) medical flexiplace (MFP).

Section 2. General Flexiplace Provisions

- A. Flexiplace is designed to promote increased productivity, efficiency and effectiveness and employees' abilities to balance work and family responsibilities.
- B. Employee participation in the Agency's flexiplace programs will be based upon such business-related factors as productivity, efficiency and effectiveness, and impact on performance of the Agency's mission.
- C. Core days are those days of the week for which a flextime non-workday or a flexiplace day is not available. Each organizational head directly below the Agency Head may designate core days for his/her particular organization. The number of core days may not exceed four days per week.
- D. Participation in the program is voluntary, and an employee may withdraw from the program at any time.

1 E. Previous flexiplace arrangements that do not comply with the requirements of this
2 Article will be terminated upon the effective date of this Agreement.

3 **Section 3. Episodic Flexiplace (EFP)**

4 A. EFP is appropriate for work or assignments of specific and limited duration that
5 can be performed at the ADS.

6 B. Employees must submit a separate request for each work assignment for which
7 the employee is requesting to participate in EFP using the Agency's EFP form.

8 **Section 4. Scheduled Flexiplace Eligibility (SFP)**

9 A. Participation in SFP is limited to one day per week.

10 B. In order to be eligible for scheduled flexiplace (SFP), employees must first
11 request, and be approved for, episodic flexiplace (EFP) for a time period
12 sufficient to allow the manager to determine the employee's suitability for a SFP
13 arrangement ("trial period"). At a minimum, this trial period shall be 10 working
14 days on EFP. However, employees who are working scheduled flexiplace on the
15 effective date of this Agreement will not be required to work a trial period prior to
16 becoming eligible for working scheduled flexiplace under this Agreement.

17 C. The following conditions will automatically exclude employees from requesting
18 to participate in SFP or remaining on SFP:

- 19 1. Employees on 9 ½- and 10 ½-hour work schedules are not eligible.
- 20 2. The employee's most recent performance rating of record must be at a
21 minimum rating of "successful."
- 22 3. The employee must not be on a performance assistance plan or
23 performance enhancement plan.

- 1 4. The employee must not be on leave restriction.
- 2 5. The employee must not have been subjected to a disciplinary or adverse
- 3 action within the last two years.
- 4 6. The employee must have a minimum of one year experience with the
- 5 Agency.
- 6 D. In order for an employee to be eligible initially for SFP or remain eligible, the
- 7 Agency must determine that:
 - 8 1. The employee's regular work assignments are routinely portable; i.e., on a
 - 9 recurrent basis, regular assignments can be successfully performed at an
 - 10 ADS. Assignments which are not portable include those assignments
 - 11 which require personal face-to-face internal or external customer contact,
 - 12 internal or external customer service assignments, or assignments which
 - 13 require physical access to the official duty station;
 - 14 2. The employee does not require close supervision, continuous feedback, or
 - 15 face-to-face contact with management or co-workers;
 - 16 3. The employee is not in a position which requires the use of sensitive,
 - 17 Privacy Act or proprietary information that the Agency determines cannot
 - 18 be accessed from the ADS with adequate assurance of protection or non-
 - 19 disclosure. Sensitive, Privacy Act or proprietary information includes, but
 - 20 is not limited to, individually identifiable information such as names,
 - 21 addresses, social security numbers, and health insurance claim number of
 - 22 Agency beneficiaries, medical or other personal Agency beneficiary

1 information, personnel information, and individually identifiable financial
2 information.

3 **Section 5. SFP Request Processing Procedures**

4 A. Before submitting a request to work SFP, the employee and his/her manager will
5 meet to discuss the Agency's SFP and the provisions of this Article, including the
6 eligibility criteria, the terms and conditions for participation and employee
7 responsibilities. At this meeting, the employee and his/her manager will also
8 discuss the requirements contained in the Agency's SFP request form which the
9 employee will finalize and submit for final review and approval. The form will at
10 a minimum require an identification of the specific day requested, proposed
11 assignments, and a certification by the employee to abide by the provisions of this
12 Article. Employees are not eligible to participate in SFP without an approved
13 SFP form.

14 B. Individual employee participation will be decided on a case-by-case basis. If an
15 employee's request to participate in the SFP is denied, the manager will indicate
16 the reasons for disapproval on the SFP form. If an employee's request to
17 participate in the SFP is approved, the manager will sign and date the Agency's
18 SFP form.

19 **Section 6. Employee Responsibilities While on Flexiplace**

20 A. The employee must adhere to the following while on Flexiplace:
21 1. The employee will follow Agency time and attendance and leave policies
22 at the ADS as though he/she were at the official duty station.

- 1 2. The employee will promptly inform the manager whenever problems arise
2 that adversely affect his/her ability to perform work at the ADS.
- 3 3. The employee shall adhere to the Standards of Conduct for Executive
4 Branch employees and any other Agency policies while working at the
5 ADS.
- 6 4. The employee will not engage in any non-governmental activities while in
7 official duty status at the ADS. This includes caring for a child or
8 providing elder care or conducting personal business.
- 9 5. The employee will provide the Agency with the approved ADS address
10 and will not change the ADS location without management approval.
- 11 6. The employee will check in/check out at the beginning/end of the work
12 day with his or her manager while working at the ADS.
- 13 7. The employee will provide a designated work area at the ADS adequate
14 for the performance of his or her official duties.
- 15 8. The employee will maintain a telephone line, at his/her own cost, into the
16 ADS and must furnish his/her manager and internal and external
17 customers with the telephone number (e.g., via automated phonemail
18 message) so that during regular working hours, he/she is fully accessible
19 to the manager, co-workers and customers. This telephone line must be a
20 dedicated line to ensure continuous phone access while at the ADS.
- 21 9. The employee will furnish and maintain all equipment deemed necessary
22 by the manager to perform at the ADS.

- 1 10. The employee will read and sign any Agency required safety checklists.
2 The employee's ADS must have a smoke detector and readily accessible
3 fire extinguisher.
- 4 11. The employee will permit the Agency to inspect the ADS during the
5 employee's regular working hours to ensure proper maintenance of
6 Government-owned property and conformance with safety standards. The
7 employee should be given at least two hours notice by the Agency prior to
8 such inspection.
- 9 12. The employee will assure that if any Government-owned equipment is
10 used at the ADS, it will be used only for authorized purposes.
- 11 13. The employee will follow standard security procedures when removing
12 official records from the official duty station. The employee will assure
13 that records and files are secure in order to protect against unauthorized
14 access or disclosure.
- 15 14. The employee will be liable for damage to any Government-supplied
16 property, including equipment at the ADS, in the same way the employee
17 may be held liable at the official duty station.
- 18 15. The employee is responsible for all operating costs, home maintenance
19 and any other incidental costs (e.g., utilities) associated with the use of the
20 home for business purposes.

1 **Section 7. Suspension and Removal from SFP**

2 A. Employees may be removed from SFP for failure to meet any of the eligibility
3 criteria, to adhere to required responsibilities, or to comply with the other
4 provisions of this Article.

5 B. If an individual employee is removed from SFP, he/she may not request or be
6 considered for SFP for a minimum of one year from the date of his or her
7 removal.

8 C. The Agency may temporarily suspend SFP for individual employees or groups of
9 employees when the Agency determines that operational needs or work
10 requirements require such action for a specified period of time. If the
11 circumstances requiring such action permit, the Agency will provide the
12 employee with advance notice of at least one pay period. The Agency will limit
13 this change to as short a time as necessary to meet operational needs or work
14 requirements.

15 **Section 8. Call Backs from SFP and EFP**

16 Employees on SFP and EFP may be called back from the ADS. Call backs may occur
17 when the Agency determines the employee is required to report to his or her official duty
18 station for training, conferences or meetings, to perform work that management
19 determines cannot otherwise be performed at the ADS or when the operational needs or
20 work requirements of the Agency require the employee to report to his or her official
21 duty station. Employees are required to report to their official duty station as soon as
22 possible after notification, but no later than two hours after notification.

23

1 **Section 9. Medical Flexiplace (MFP)**

2 A. An employee may request to work at an ADS for a specified period of time
3 because of a temporary personal injury or illness of the employee. This program
4 will be known as the Medical Flexiplace Program (MFP).

5 B. An employee may request to perform work at home for a specified period of time
6 if she/he suffers from a temporary personal injury or illness which prevents the
7 employee from commuting to the official duty station or which would make it
8 difficult or impossible for the employee to perform an entire day's work at the
9 official duty station, but which would not preclude the employee from performing
10 her/his official duties at home.

11 C. The employee must submit a written request to her/his manager using the
12 Agency's MFP form.

13 D. Along with the request form, the employee must include administratively
14 acceptable medical certification in support of the request. The certification will,
15 at a minimum, specifically provide:

- 16 1. The specific nature of the illness or injury;
- 17 2. The anticipated beginning and ending dates of the incapacitation;
- 18 3. The specific reason(s) why the employee is incapable of commuting to the
19 official duty station and/or performing her/his duties at the official duty
20 station for an entire day; and
- 21 4. A statement that the employee is capable of performing her/his duties at
22 home, subject to any specific limitations.

- 1 E. Based on the individual circumstances, the Agency may require additional
2 medical certification deemed necessary to support the MFP request.
- 3 F. In determining whether the employee can effectively perform her/his work
4 responsibilities at home, the manager also will consider all of the criteria for SFP.
- 5 G. Individual employee participation will be decided on a case-by-case basis. If an
6 employee's request to participate in the MFP is denied, the manager will provide
7 a written notice to the employee with the reasons for denial. If an employee's
8 request to participate in the MFP is approved, the manager will sign and date the
9 Agency's MFP form.

10 **Section 10. Accountability**

- 11 A. Managers may require employees on EFP, SFP and MFP to submit a written
12 account daily for work performed and time spent (e.g., day card).
- 13 B. The format and required content of the written account will be determined by the
14 manager.

15 **Section 11. Emergency Closing/Late Openings/Early Dismissals**

16 Whenever inclement weather or other emergencies require the office to be closed,
17 employees working at an ADS on any of the Agency's flexiplace programs shall work the
18 full day.

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SCHEDULED FLEXIPLACE REQUEST FORM

Name: _____ CO/RO Component: _____

Address of the employee's alternate duty station (ADS):

Telephone number at the employee's ADS: _____

Specific day requested for participation in SFP (Note: Participation in SFP is limited to one day per week.):

First week:	Monday	Tuesday	Wednesday	Thursday	Friday
Second week:	Monday	Tuesday	Wednesday	Thursday	Friday

Statement of proposed assignments at ADS:

I have read and understand the Article 29 eligibility requirements and employee responsibilities for scheduled flexiplace. I hereby certify that I will abide by all of the provisions of Article 29 while on scheduled flexiplace and that failure to do so may result in my suspension or removal from scheduled flexiplace.

Signature of Employee Date

_____ Approved _____ Disapproved (reasons stated below)

Signature of Management Official Date

EPISODIC FLEXIPLACE WORK ASSIGNMENT REQUEST
(A separate request form must be completed for each assignment)

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Name: _____ CO/RO Component: _____

Address of the employee's alternate duty station (ADS):

Telephone number at the employee's ADS: _____

I am requesting to work at my ADS as indicated below:

Date(s)	Starting Time	Ending Time

Description of Assignment:

I have read and understand the Article 29 eligibility requirements and employee responsibilities for flexiplace. I hereby certify that I will abide by all of the provisions of Article 29 while on flexiplace and that failure to do so may result in disapproval of future requests for episodic or scheduled flexiplace.

 Signature of Employee Date

_____ Approved _____ Disapproved

 Signature of Management Official Date

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Article 30

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OFFICIAL TIME FOR UNION REPRESENTATIVES

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Section 1. Definitions

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For purposes of this Article, "official time" means time granted by the Agency to employees designated in writing to act as union representatives, without charge to leave, in accordance with 5 U.S.C. § 7131.

11

Section 2. General Requirements

12

A. All union representatives are accountable to the Agency and the taxpayers for the expenditure of funds associated with the use of official time in accordance with the provisions of this Article.

15

B. All union representatives are expected to perform the duties of the Agency position to which they are assigned when not on approved official time.

17

C. Credit hours, overtime or compensatory time may not earned by union representatives while on official time.

19

D. Union officers are not eligible for any of the Agency's flexiplace programs (i.e., scheduled, episodic or medical flexiplace). Union stewards are not eligible for the Agency's flexiplace programs while on official time (i.e., while performing union representational duties).

23

E. Union representatives may not be evaluated on or rewarded for activities performed while on official time.

24

1 F. In accordance with 5 U.S.C. § 7131(b), no official time may be expended for any
2 activities performed by employees relating to internal union business (including
3 the solicitation of membership, election of union officials, and collection of dues).

4 **Section 3. Employees Eligible For Official Time**

5 The Agency recognizes 35 designated union representatives as eligible for official time.

6 The union will provide the Agency with a written list of all designated officers and
7 stewards and written updates to the list as they occur. Any union representative not
8 designated in writing by the union in this manner will not be recognized by the Agency as
9 eligible for official time.

10 **Section 4. Amount of Official Time**

11 The union will be provided 9,000 hours for all official time activities in a calendar year.

12 This includes official time authorized pursuant to 5 U.S.C. § 7131(a), (c) and (d). No
13 union representative may use more than 50% of their regular working hours for the
14 calendar year (i.e., 1,040 hours) for official time activities. Official time may be
15 authorized provided sufficient representational activities exist, the amount of time
16 requested is reasonable, and each union representative complies with the official time
17 requesting/approval procedures outlined below.

18 **Section 5. Official Time Requesting, Approval and Recording Procedures**

19 A. All union representatives must report to their Agency workstation at the
20 beginning and end of their regular working schedule.

21 B. Union representatives may not use official time at their Agency workstation.

22 C. A union representative planning to use official time will, in advance of such
23 usage, request and receive approval from his or her manager to be released from

1 duty to perform union representational duties. The union representative may
2 request this approval in person or via an e-mail communication to his or her
3 manager. The request should include the actual or estimated amount of time
4 needed.

5 D. The manager will promptly consider the request and will grant the request unless
6 the manager determines the union representative's presence at his/her work site is
7 necessary to meet Agency work requirements. If the manager determines the
8 union representative's presence is necessary to meet Agency work requirements,
9 the manager will ensure that, within one work day, an alternate time will be
10 permissible for use of the requested official time.

11 E. Once approval has been obtained from his or her manager, the union
12 representative will complete all portions of the Agency official time record,
13 including the representational activity, destination and phone number, and
14 departure time, prior to using official time.

15 F. Once the official time use is concluded, the union representative will complete the
16 portion of the official time record that includes return time and cumulative time
17 used for the representational activity.

18 G. The official time record will be maintained at the employee's workstation and
19 available and readily accessible for review by his or her manager at all times.

20 H. The completed official time record will be signed by the union representative and
21 submitted to the union representative's manager on a monthly basis.

1 **Section 6. Authorized Representational Activities**

2 A. For the purpose of this Article, “representational activities” means those
3 authorized activities undertaken by designated union representatives on behalf of
4 other employees or the Union pursuant to representational rights under the terms
5 of 5 U.S.C. § 7131 and this Agreement. Examples of activities for which official
6 time will be authorized include:

- 7 1. Negotiations, including preparation time;
- 8 2. Attendance at formal discussions between one or more representatives of
9 the Agency and one or more representatives in the unit or their
10 representatives concerning any grievance or any personnel policy or
11 practices or other general condition of employment covered by 5 U.S.C. §
12 7114 (a)(2)(A);
- 13 3. Any statutory appeal proceeding or other forum in which the Union is
14 representing an employee or the Union pursuant to its obligations under
15 relevant contract provisions, regulations, or law;
- 16 4. Grievance meetings and arbitration hearings, including preparation time;
- 17 5. EEO complaint settlements, and administrative and/or court hearings if a
18 complaint is processed under the negotiated grievance procedure;
- 19 6. Adverse action or performance-based action oral reply meetings, if the
20 Union is designated as representative of the employee, including
21 preparation time;

- 1 7. Any meeting for the purpose of presenting reconsideration replies in
2 connection with the denial of within-grade increases, if the Union is
3 designated as representative of the employee;
- 4 8. Attendance at an examination of an employee who reasonably believes he
5 or she may be the subject of a disciplinary or adverse action and the
6 employee has requested representation pursuant to 5 U.S.C.
7 §7114(a)(2)(B) (i.e., "*Weingarten*" meetings);
- 8 9. Conferring with affected employees about matters for which remedial
9 relief is available under the terms of this Agreement;
- 10 10. Preparation of reports, forms and documents required by law or regulation
11 concerning the proper operation and administration of a labor
12 organization;
- 13 11. Effectuating contacts with members of Congress and their staffs;
- 14 12. Attendance at meetings of committees on which union representatives are
15 authorized membership by the Agency or this Agreement;
- 16 13. Maintenance of Union office hours (the Union agrees to rotate Union
17 office hours among representatives);
- 18 14. Attendance at regularly scheduled Union events of which the Agency is
19 notified in advance, such as Union-sponsored training designed primarily
20 to further the interests of the government by improving the labor-
21 management relationship. Notification to the Agency's designated labor
22 relations officer will include a copy of the event's agenda or other
23 literature which allows the Agency to differentiate between legitimate

- 1 official time activities and non-legitimate official time activities (e.g.,
2 internal union business, social events);
- 3 15. Conducting training on labor relations issues for employees not to exceed
4 two hours quarterly (non-cumulative);
- 5 16. Attendance at Agency-recognized activities to which the Union has been
6 invited; and
- 7 17. Travel to any of the activities listed above.

8 **Section 7. Abuse of Official Time**

9 The parties recognize the seriousness of allegations of abuse of official time by union
10 representatives. The Agency will take appropriate action when such abuse occurs.

Centers for Medicare & Medicaid Services Official Time Report

Name of Union Representative _____ Month/Year _____

Check One: _____ Officer _____ Steward

Date	Representational Activity	Destination and Phone Number	Departure Time	Return Time	Cumulative Time Used

*The union representative will, before leaving his/her Agency workstation for representational activities, request and receive approval from his/her manager in person or by e-mail.

*This form will be maintained at the employee's workstation and readily available and accessible for review by his/her manager at all times.

Employee (Union Representative) Signature _____ Date _____

Supervisor Signature _____ Date _____

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Article 31

TIME AND LEAVE

Section 1. General Policies

- A. Employees will be entitled to accrue and use leave in accordance with law, Government-wide rule and regulation and the provisions of this Article.
- B. Employees are expected to apply in advance for approval of all anticipated leave. Leave requests and approval or denial will be made in writing on the Request for Leave or Approved Absences Form (OPM-71). The leave approving official agrees to respond to all leave requests in a timely manner.
- C. When an employee has not received advance approval for leave and does not report to work, the employee must – by the latest allowable arrival time depending on the employee’s official duty station and work schedule – speak directly to his/her leave approving official or leave a phone message with the leave approving official. The leave approving official will approve or deny the leave requested. In the event the employee does not speak directly to or leave a phone message where the employee can be reached with his/her leave approving official by the required time, the absence may be charged as absent without leave (“AWOL”). Where individual circumstances are determined warranted by the manager, the leave approving official may ask employees to speak to them directly or to leave a message which includes where the employee can be reached in the event the leave approving official needs to contact him/her about the leave requested or an immediate or pressing operational work requirement.

1 D All absences will be charged in increments of ¼ hour.

2 **Section 2. Annual Leave**

3 A. Annual leave is provided and used to allow employees an annual vacation of
4 extended leave for rest and recreation and to provide periods of time off for
5 personal and emergency purposes. The use of accrued annual leave is the right of
6 the employee, subject to the right of the Agency to approve the time at which
7 leave may be taken. Employees must apply in advance for approval of all
8 anticipated leave to permit the orderly scheduling of leave and to avoid leave
9 forfeiture.

10 B. Leave requested in advance will be granted except when the manager determines
11 that operational needs or requirements would preclude the granting of the leave
12 for the time requested. Leave may also be granted when it is not requested in
13 advance unless an immediate or pressing operational need or work requirement
14 would preclude the granting of leave for the time requested.

15 C. When “use or lose” leave is requested in writing before the start of the third
16 biweekly pay period prior to the end of the leave year and cannot be approved or
17 used prior to the end of the leave year, the excess annual leave will be restored in
18 accordance with law or Government-wide rule and regulation and carried over
19 into the next leave year.

20 D. The leave approving official should timely request an advance schedule for leave
21 for periods of high annual leave usage. Leave approval/denial should be provided
22 within 10 working days after the request is received by the leave approving
23 official. Scheduling conflicts will be resolved by the leave approving official.

1 **Section 3. Sick Leave**

2 A. The use of sick leave is an employee benefit. In accordance with 5 C.F.R. §
3 630.401, the Agency will grant sick leave to an employee when the employee
4 meets one of the following conditions:

- 5 1. Employee receives medical, dental or optical examination or treatment;
- 6 2. Employee is incapacitated for the performance of duties by physical or
7 mental illness, injury, pregnancy or childbirth;
- 8 3. Employee provides care for a family member who is incapacitated as a
9 result of physical or mental illness; injury; pregnancy; childbirth; or who
10 receives medical, dental, or optical examination or treatment;
- 11 4. Employee makes arrangements necessitated by the death of a family
12 member or attends the funeral of a family member;
- 13 5. Employee would, as determined by the health authorities having
14 jurisdiction or by a health care provider, jeopardize the health of others by
15 his or her presence on the job because of exposure to a communicable
16 disease; or
- 17 6. Employee must be absent from duty for purposes relating to the adoption
18 of a child, including appointments with adoption agencies, social workers,
19 and attorneys; court proceedings; required travel; and any other activities
20 necessary to allow the adoption to proceed.

21 B. Employees may be required to furnish medical certification to substantiate a
22 request for approval of sick leave which exceeds three consecutive workdays or

1 when the leave approving official has reason to believe that the employee is not
2 entitled to sick leave.

3 C. When requested, an employee will provide written medical certification to the
4 Agency, along with the OPM-71 form, in a timely manner, but no later than
5 within 15 days of the request. If the employee fails to provide the required
6 medical documentation within the 15-day time period, the employee's sick leave
7 request may be denied. Extensions of the 15-day time period may be granted
8 where the manager determines the particular situation warrants an extension.
9 Medical certification for sick leave will include all of the requirements contained
10 in 5 C.F.R. § 339 or other relevant requirements as determined necessary by the
11 Agency.

12 D. An employee who expects to be absent more than one day will inform the leave
13 approving official of the expected date of return to duty. In such cases, daily
14 contacts with the leave approving official may not be required. In the case of an
15 extended illness (including use of sick leave for family care and bereavement
16 purposes and family and medical leave under the FMLA), the employee will
17 inform the leave approving official as soon as he/she becomes aware of an
18 expected return to duty date.

19 E. Employees, upon request and with the approval of the leave approving official,
20 may change previously-authorized annual leave, credit hours, or leave without
21 pay to sick leave if the requirements for usage of sick leave are met.

1 **Section 4. Sick Leave for Family Care and Bereavement Purposes**

2 A. In accordance with 5 C.F.R. § 630.401, a full time employee may use up to 40
3 hours of his/her accrued sick leave in a leave year for general family care
4 purposes, including making arrangements for or attending the funeral of the
5 following family members:

- 6 1. Spouse and parents thereof;
- 7 2. Children, including adopted children, and spouses thereof;
- 8 3. Parents, brothers and sisters, and spouses thereof; and
- 9 4. Any individual related by blood or affinity whose close association with
10 the employee is the equivalent of a family relationship.

11 B. In addition to the 40-hour basic entitlement, full-time employees who have a sick
12 leave balance of 80 hours (after use of the 40 hours) may use an additional 64
13 hours of sick leave for general family care purposes, bringing the maximum
14 yearly allowance to 104 hours; or, in the case of a part-time employee, the number
15 of sick leave hours accrued during a leave year. Part-time employees may use
16 sick leave according to the average number of hours worked per week. For
17 example, an employee who works 20 hours a week would be allowed to use 20
18 sick leave hours per year (basic entitlement) and an additional 32 hours of sick
19 leave provided that he/she has a sick leave balance equal to twice the average
20 number of hours in the weekly tour of duty (40 hours.)

21 C. An employee who is caring for a family member with a serious health condition
22 may use a total of up to 12 weeks (480 hours) of sick leave during a leave year,
23 provided the employee maintains a sick leave balance of at least 80 hours.

- 1 1. For part-time employees, the amount of sick leave available to care for a
2 family member with a serious health condition is equal to 12 times the
3 average number of hours in the employee's regularly-scheduled tour of
4 duty. For example, an employee who works 20 hours a week would be
5 allowed to use up to 240 hours of sick leave per leave year for a *seriously*
6 ill family member, provided the employee maintains a minimum sick
7 leave balance at all times of 40 hours (twice the number of hours in the
8 weekly part-time tour of duty).
- 9 2. If, at the time an employee uses sick leave for a family member's serious
10 health condition, the employee has used any portion of the 104 hours of
11 sick leave allowable for general family care purposes during that leave
12 year, that amount must be subtracted from the maximum number of
13 allowable sick leave hours (480). This will determine the total amount of
14 sick leave that may be used during the remainder of the leave year for a
15 family member with a serious health condition.
- 16 3. An employee may not use more than 12 weeks (480 hours) of sick leave
17 each leave year for all family care purposes. Consequently, if an employee
18 previously used 12 weeks of sick leave to care for a family member with a
19 serious health condition, he/she cannot use any additional sick leave under
20 the general family care provisions as noted above.
- 21 D. For a family member's serious health condition, an employee will provide written
22 medical certification to the Agency, along with an OPM-71 leave request form, in
23 a timely manner, but no later than within 15 days of the Agency's request for such

1 documentation. If the employee fails to provide the required medical
2 documentation within the specified time period, the employee will not be entitled
3 to sick leave. Medical certification for this leave will include all of the
4 requirements contained in 5 C.F.R. § 339 or other relevant requirements as
5 determined necessary by the Agency. The Agency may require an employee to
6 provide an additional written statement certifying that the family member requires
7 psychological comfort and/or physical care; the family member would benefit
8 from the employee's care or presence; and the employee is needed to care for the
9 family member for a specified period of time.

10 **Section 5. Sick Leave Restriction**

- 11 A. Managers may place employees on sick leave restriction. When an employee is
12 placed on sick leave restriction, his/her use of sick leave is restricted. In order to
13 place an employee on sick leave restriction, the leave approving official must
14 issue a written set of procedures or arrangements that the employee must adhere
15 to in order to receive approval for future absences. Sick leave restriction may
16 apply to requests for sick leave or any leave requested in lieu of sick leave.
- 17 B. Sick leave restriction is appropriate in the following circumstances: frequent
18 unscheduled absences, tardiness, or an unacceptable pattern of leave usage.
- 19 C. The leave restriction procedures will notify the employee of the reason for the
20 leave restriction, the time period of the restriction, and the specific information
21 that will be required to support future leave requests, such as medical certification
22 or other documentation. It will also include the specific procedures the employee

1 must adhere to when requesting leave, such as to whom the request is made and
2 when the supporting information must be submitted.

3 D. Employees will not be allowed to earn credit hours or participate in flexiplace
4 programs while on leave restriction.

5 **Section 6. Advance Annual/Sick Leave**

6 A. Advance annual leave is leave requested but not yet earned by the employee. It
7 must be requested on an OPM-71 and is subject to approval by the designated
8 management official. An employee may be advanced an amount which is the
9 total annual leave that the employee will accrue up to the end of the leave year.

10 B. Sick leave up to a total of 240 hours may be advanced in cases of serious
11 disability or ailment and when the designated management official determines it
12 is appropriate under the circumstances.

13 C. An employee's request for advanced sick leave must be in writing and must be
14 supported by a medical certificate. Medical certification for advanced sick leave
15 will include all of the requirements contained in 5 C.F.R. § 339 or other relevant
16 requirements as determined necessary by the Agency.

17 D. Advance annual/sick leave may not be granted to a temporary employee beyond
18 the date set for the expiration of his/her temporary appointment or to an employee
19 while on leave restriction. It may not be granted to any employee if there is a
20 likelihood that he/she will retire, be separated or resign from the Agency before
21 the date when he/she will have earned the leave. Upon separation, employees
22 must repay any annual leave advanced and not earned at the time of separation
23 (except for separation due to death or disability retirement).

- 1 E. Employees are not automatically entitled to advanced annual/sick leave.
- 2 F. Denials of requests for advanced annual/sick leave should be conveyed to the
3 employee promptly and contain a specific explanation of the reasons for the
4 denial.
- 5 G. Annual leave or sick leave earned on a current basis should not be used until the
6 amount of annual/sick leave advanced has been repaid.

7 **Section 7. Family and Medical Leave Act**

- 8 A. In accordance with 5 C.F.R. §§ 630.1201-1211, an employee who has completed
9 at least 12 months of Federal service is entitled to a total of 12 weeks of leave
10 without pay (LWOP) during any 12-month period under the Family Medical and
11 Leave Act (FMLA) for one or more of the following reasons:
- 12 1. The birth of a son or daughter of the employee and the care of such son or
13 daughter.
 - 14 2. The placement of a son or daughter with the employee for adoption or
15 foster care.
 - 16 3. The care of a family member of the employee with a serious health
17 condition. Family member is defined as:
 - 18 a. spouse;
 - 19 b. children, including adopted children; and
 - 20 c. parents or those who stand, or stood, *in loco parentis* to an
21 employee, but not parents-in-law.
 - 22 4. A serious health condition of the employee that makes the employee
23 unable to perform the essential functions of his or her position.

1 B. In accordance with 5 C.F.R. § 630.1202, a “serious health condition” is defined as
2 an illness, injury, impairment, or physical or mental condition, which includes,
3 but is not limited to, the following:

4 1. Any period of incapacity or treatment in connection with, or consequent
5 to, inpatient care (i.e., an overnight stay) in a hospital, hospice, or
6 residential medical care facility.

7 2. Continuing treatment by a health care provider that includes (but is not
8 limited to) examinations to determine if there is a serious health condition
9 and evaluations of such conditions if the examinations or evaluations
10 determine that a serious health condition exists.

11 C. Substitution of Paid Leave

12 1. The employee may elect to substitute paid leave in accordance with
13 5 C.F.R. § 1205 for any part of the applicable period. An employee may
14 not retroactively substitute paid leave for unpaid family and medical leave.
15 An employee may continue to use earned compensatory time and credit
16 hours, subject to supervisory approval, in addition to his/her entitlement to
17 leave under the FMLA.

18 2. An employee may request to use leave on an intermittent basis or under a
19 reduced leave schedule. The employee must consult with the manager and
20 make a reasonable effort to schedule intermittent LWOP and/or paid leave
21 so as not to disrupt the operations of the Agency.

22 D. Notice of Leave

- 1 1. Requests for use of family and medical unpaid leave under the FMLA will
2 be made in writing on OPM-71. The employee must check Item 5 of the
3 OPM-71: “I hereby invoke my entitlement to family and medical leave
4 for: Birth/Adoption/Foster care; Serious health condition of spouse, son,
5 daughter, or parent; [or] Serious health condition of self” as appropriate.
- 6 2. When the need for unpaid family and medical leave is foreseeable, the
7 employee will provide 30 calendar days notice of intent to take leave.
8 Otherwise, the employee will provide such notice as is practicable. If the
9 need is foreseeable and the employee fails to give 30 calendar days’ notice
10 with no reasonable excuse for the delay of notification, the Agency may
11 delay the taking of family and medical unpaid leave until at least 30 days
12 after the date the employee provides notice of his or her need for family
13 and medical leave.

14 E. Medical Certification

- 15 1. The written medical certification under FMLA for the employee’s illness
16 shall include:
 - 17 a. The date the serious health condition commenced;
 - 18 b. The probable duration of the serious health condition or specify
19 that the serious health condition is a chronic or continuing
20 condition with an unknown duration and whether the patient is
21 presently incapacitated and the likely duration and frequency of
22 episodes of incapacity;

- 1 c. The appropriate medical facts within the knowledge of the health
2 care provider regarding the serious health condition, including a
3 general statement as to the incapacitation, examination, or
4 treatment that may be required by a health care provider; and
- 5 d. A statement that the employee is unable to perform one or more of
6 the essential functions of his or her position or requires medical
7 treatment for a serious health condition, based on written
8 information provided by the Agency on the essential functions of
9 the employee's position, or , if not provided, discussion with the
10 employee about the essential functions of his/her position.
- 11 2. In the case of medical certification under the FMLA for a family member
12 of the employee, in addition to a. through d. in 1. above, it shall include:
- 13 a. A statement from the health care provider that the spouse, son,
14 daughter, or parent of the employee requires psychological comfort
15 and/or physical care; needs assistance for basic medical, hygienic,
16 nutritional, safety, or transportation needs or in making
17 arrangements to meet such needs; and would benefit from the
18 employee's care or presence; and
- 19 b. A statement from the employee on the care he or she will provide
20 and an estimate of the amount of time needed to care for his or her
21 spouse, son, daughter, or parent.
- 22 3. In the case of medical certification to take FMLA leave on an intermittent
23 basis or leave on a reduced scheduled for either the employee's own

1 illness or a family member's illness, it shall also include the dates (actual
2 or estimates) on which planned medical treatment is expected to be given,
3 the duration of such treatment, and the period of recovery, if any, or
4 specify that the serious health condition is a chronic or continuing
5 condition with an unknown duration and whether the patient is presently
6 incapacitated and the likely duration and frequency of episodes of
7 incapacity.

8 4. If the Agency doubts the validity of the original certification, the Agency
9 may require, at the Agency's expense, that the employee obtain the
10 opinion of a second health care provider designated by the Agency
11 concerning the information certified.

12 5. The definition of "health care provider" will be consistent with the
13 provisions of the FMLA, 5 C.F.R. § 630.1202.

14 6. To remain entitled to family and medical leave, an employee or the
15 employee's spouse, son, daughter, or parent must comply with any
16 requirement from the Agency that he or she submit to examination (not
17 treatment) to obtain a second medical certification from a health care
18 provider other than the individual's health care provider.

19 7. An employee must provide the written medical certification signed by a
20 health care provider, no later than 15 calendar days after the date the
21 Agency requests such medical certification. If it is not practicable under
22 the particular circumstances to provide the requested medical certification
23 no later than 15 calendar days after the date requested by the Agency,

1 despite the employee's diligent, good faith efforts, the employee must
2 provide the medical certification within a reasonable period of time under
3 the circumstances involved, but no later than 30 calendar days after the
4 date the Agency requests such medical certification.

5 8. If the employee fails to provide the requested medical certification, the
6 Agency may:

7 a. Charge the employee as AWOL, or

8 b. Allow the employee to request that the provisional leave be
9 charged as LWOP or charged to the employee's annual and/or sick
10 leave account, as appropriate.

11 F. Medical Recertification

12 While an employee is on family and medical leave, the Agency may require
13 subsequent medical recertification from the health care provider if the
14 circumstances described in the original medical certification are subject to change
15 significantly, if the Agency receives bonafide information that casts doubts upon
16 the continuing validity of the medical certification or for any reason that the
17 Agency determines to be necessary. Such requests for medical recertification will
18 not occur more frequently than every six weeks except as determined necessary
19 by the Agency.

20 G. Protection of Employment and Benefits

21 Upon return from family and medical leave, the employee will be restored to the
22 same position as he/she occupied before the leave or an equivalent position, with

1 equivalent benefits, pay, status, and to the extent possible, other terms and
2 conditions of employment.

3 H. When an employee requests leave under FMLA, the Agency will provide
4 guidance concerning the employee's rights and obligations under the Program.

5 I. An employee who meets the criteria for leave and has complied with the
6 requirements under this section will be granted leave, consistent with all
7 applicable rules governing FMLA.

8 **Section 8. Official Closing Due to Inclement Weather/Emergency Conditions**

9 A. Procedures

10 1. The closing of the Agency sites in the Baltimore metropolitan area will be
11 governed by announcements issued by the Baltimore Federal Executive
12 Board and/or the Administrator, or designee.

13 2. The closing of Agency sites in the Washington D.C. metropolitan area are
14 governed by announcements issued by the Office of Personnel
15 Management (OPM).

16 3. Agency sites in the Regional Offices will be governed by
17 announcements by the local governing Federal Executive Board or the
18 Agency's head of the Regional Office, or designee.

19 4. The Agency will periodically communicate to employees the various
20 "codes" for building closure, as well as any additional information needed
21 regarding late opening, full-day closing, or early dismissal
22 announcements.

1 **Section 9. Adjustment of Work Schedules for Religious Observances**

2 A. In accordance with 5 C.F.R. §§ 550.1001-1002, requests for religious
3 compensatory time (RCT) will be granted unless the manager determines that
4 workload requirements or coverage needs preclude the granting of the leave for
5 the time requested.

6 B. Employees must request approval of RCT for religious observances from the
7 appropriate leave approving official in advance and in writing. All requests will
8 be submitted on an OPM-71 (to include appropriate attachments). Requests must
9 include all of the following information:

- 10 1. The dates(s) and number of hours requested.
- 11 2. In the space provided for remarks, the employee must state, "this leave is
12 because my personal religious belief requires me to refrain from work for
13 a religious observance for (this day) or (portion of the day)."
- 14 3. The proposed dates(s) on which the religious compensatory work will be
15 performed.

16 C. During the months of May and November each year, employees will submit
17 requests for RCT for the six-month periods of October through March and April
18 through September, respectively. Such written requests should be submitted to
19 the appropriate approving manager by the last work day of May and November,
20 respectively.

21 D. When requests for religious time off are submitted after the May or November
22 scheduling periods, the requests will be considered on a first-come, first-served
23 basis.

- 1 E. Only after the manager approves both the employee's request for RCT and his/her
2 religious compensatory work schedule will the employee work RCT. While the
3 employee's request to work at specific times must be considered, authority for
4 scheduling the time to be worked is vested in the manager. The religious
5 compensatory work schedule will be approved at the same time the request for
6 RCT is approved. Where it is not possible to schedule the work concurrent with
7 the approval of the request for RCT, the manager will make the decision to
8 schedule the work as the work is needed, but within the allotted time period
9 specified. It is the employee's responsibility to take advantage of the
10 opportunities offered or to obtain advance approval to work at other times.
- 11 F. All RCT must be worked within the four pay periods in advance of or four pay
12 periods after the religious event.
- 13 G. Employees may be allowed to accumulate RCT in increments of at least ¼ hour
14 per day.
- 15 H. Earned RCT is forfeited unless used for the religious observance on the date
16 designated on OPM-71, except in the following circumstances:
- 17 1. If the employee is precluded by personal illness or an exigency of the
18 public service, as declared by an authorized official, from using earned
19 RCT for the designated day, its use may be deferred.
 - 20 2. If the employee requests RCT for another religious observance, any
21 unused earned RCT must be used for that observance.
- 22

1 **Section 10. Excused Absence (Administrative Leave)**

2 A. Excused absence (otherwise referred to as "administrative leave") is absence from
3 assigned duties without charge to leave or loss of pay.

4 B. Excused absence may be granted for an employee when the Agency determines
5 such grant is in the public interest.

6 C. Employees may be granted up to four hours of excused absence to donate blood to
7 an Agency-sponsored or endorsed blood program. Such leave time will only be
8 for the amount of time necessary to travel to the donation site, donate blood,
9 recuperate at the donation site, if needed, and return to work if the employee's
10 tour of duty is not over. Additional excused absence may be granted to
11 employees who donate blood platelets (e.g., the Hemapheresis Center at Johns
12 Hopkins Hospital, through the American Red Cross Hemapheresis Program, or
13 equivalent Regional Office Programs).

14 D. In accordance with 5 U.S.C. § 6327, upon request, subject to certification by a
15 physician, leave approving officials will approve excused absence for employees
16 who serve as living donors for bone marrow, organ and tissue donation and
17 transplantation. The use of excused absence can cover time off for activities such
18 as donor screening, the actual medical procedure and recovery time. Leave
19 approving officials will approve:

20 1. up to seven work days of absence without charge to leave or loss of pay
21 for each donation by employees participating as living bone marrow
22 donors.

1 2. up to 30 work days of absence without charge to leave or loss of pay for
2 employees participating as living organ or tissue donors.

3 The length of absence from work can vary depending on the medical procedure
4 involved in the donation. Therefore, for longer periods of incapacitation, leave
5 approving officials will approve annual and/or sick leave or LWOP in
6 combination with the maximum amounts of excused absence specified in (1) and
7 (2) above.

8 E. In the event of major disruption in public transportation, employees who normally
9 utilize the disrupted public transportation may, at the discretion of the manager,
10 be granted excused absence.

11 F. As a general rule, where polls are not open at least three hours before an
12 employee's usual arrival time or after an employee's usual departure time, he/she
13 may be excused for enough time to permit him/her to report for work three hours
14 after the polls open or leave work three hours before the polls close, whichever
15 requires less time off.

16 **Section 11. Leave Without Pay (LWOP)**

17 A. The authorization of LWOP is at the discretion of the leave approving official.
18 Requests may be denied if the workload requirements or coverage needs preclude
19 the granting of the leave for the time requested.

20 B. In accordance with Government-wide rule or regulation, LWOP must be granted
21 in the following circumstances:

22 1. A disabled veteran undergoing medical examination or treatment in
23 connection with a service-connected disability.

- 1 2. Military training for a reservist or National Guard member.
- 2 3. An employee who has suffered an incapacitating job-related injury or
- 3 illness and is waiting adjudication of his/her claim for employee
- 4 compensation by the Office of Workers' Compensation Program.
- 5 4. An employee who makes a request under the FMLA and such request
- 6 meets the criteria for FMLA leave.
- 7 C. Before requesting LWOP, employees should consult with their servicing human
- 8 resources office concerning the potential consequences of LWOP on tenure,
- 9 WIGI's, retirement, health benefits, and other benefits.

10 **Section 12. Military Leave**

- 11 A. In accordance with 5 U.S.C. § 6323, full-time employees who are members of the
- 12 National Guard or the Armed Forces Reserves are entitled to 120 hours (15 days x
- 13 8 hours) of regular military leave (ML) in a fiscal year for active duty or inactive
- 14 duty for training.
- 15 B. For part-time employees, ML is pro-rated based on the number of hours in the
- 16 employee's regularly scheduled bi-weekly tour of duty.
- 17 C. Employees who do not use the entire 120 hours can carry any unused ML (not to
- 18 exceed 120 hours) over to the next fiscal year. ML may never exceed 30 days.
- 19 D. In accordance with Public Law 106-554, ML should be credited to a full-time
- 20 employee on the basis of an 8-hour workday. The minimum charge to leave is
- 21 one hour. An employee may be charged ML only for hours that the employee
- 22 would otherwise have worked and received pay, i.e., the employee will not be

1 charged ML for non-duty hours (typically weekends and holidays) that occur
2 within the period of military service.

- 3 E. Employees who request ML for inactive duty training (which generally is two,
4 four, or six hours in length) will be charged only the amount of ML necessary to
5 cover the period of training and necessary travel. Hours in the civilian workday
6 that are not chargeable to ML must be worked or charged to another leave
7 category, as appropriate.

8 **Section 13. Court Leave**

- 9 A. In accordance with 5 U.S.C. § 6322, an employee with a regular scheduled tour of
10 duty is entitled to court leave (CL). CL will be approved if the employee is
11 summoned:

- 12 1. for jury duty;
- 13 2. to court to serve in an unofficial capacity as a witness for, or supply
14 evidence for, State or local government; or
- 15 3. to court to serve in an unofficial capacity as a witness for, or to supply
16 evidence for, a private party when the Federal, D.C., State or local
17 government is either the plaintiff or the defendant.

- 18 B. CL is not to be granted to an employee who appears in court as either a plaintiff
19 or a defendant on his/her own behalf. Employees should present the court order,
20 subpoena, or summons to their leave approving official when they request CL for
21 appearing as a witness or a juror.

1 C. Upon return to duty, the employee must submit written proof of attendance from
2 the court to the leave approving official. The proof of attendance should show the
3 dates (and hours if less than a full day) served.

4 D. No compensation is received for serving on jury duty in a Federal court; however,
5 employees may keep expense money received for mileage, parking or required
6 overnight stay. Monies received for performing jury duty in State or local courts
7 are indicated on the pay voucher or check as either “fees for services rendered” or
8 “expense money.” “Expense money” may be retained by the employee; “fees for
9 services rendered” must be submitted to the Agency's finance office.

10 **Section 14. Time and Leave Procedures under the Integrated Time and Attendance**
11 **System (ITAS)**

12
13 The Integrated Time and Attendance System (ITAS) is a time and attendance/payroll
14 system which will be phased in over time by organizational component in order to
15 replace the existing TAIMS (Time and Attendance Information Management System)
16 time and leave/payroll system. Once ITAS is implemented for a particular organizational
17 component, employees will no longer be required to submit OPM-71 in order to request
18 leave. Employees will be required to follow the on-line ITAS electronic procedures for
19 requesting and seeking approval for leave. However, under certain circumstances,
20 managers may require that an employee submit an OPM-71 (or equivalent request for
21 leave) (e.g., when the employee is out on unscheduled extended leave, when the
22 employee is required to provide medical certification documentation, when the employee
23 is on travel, or when the employee does not have access to ITAS).

Article 35

**COMPUTER SECURITY AND
PERSONAL USE OF AGENCY EQUIPMENT
AND RESOURCES**

Section 1. Background

- A. The Parties recognize that the Agency uses computer systems that contain sensitive information to accomplish its mission and that the Agency has a responsibility to ensure the security and privacy of such sensitive information.
- B. The Parties recognize the need to establish rules governing employees' acceptable use of Agency-owned or leased equipment and resources, including Internet addresses or domain names registered to the Agency.

Section 2. Definitions

- A. Sensitive information is any information, of which the loss, misuse, unauthorized access to or modification thereof, could adversely affect the national interest, or the conduct of Federal programs, or the privacy to which individuals are entitled under the Privacy Act, the Social Security Act and Health Insurance Portability and Accountability Act (HIPPA).
- B. Computer systems are any assembly of computer hardware, software, peripherals or firmware configured to collect, create, communicate, compute, disseminate, process, store and/or control data.
- C. Agency-owned or leased equipment and resources includes, but is not limited to, computer systems (including Internet and E-mail), photocopiers, facsimile machines, telephones or audio-visual equipment.

1 **Section 3. Training**

2 In compliance with the Computer Security act of 1987 (P.L. 100-235), the Agency agrees
3 to provide appropriate training to employees involved in the operation or use of computer
4 systems containing sensitive information to enhance employees' awareness of the threats
5 and vulnerabilities of computer systems and to encourage the use of improved security
6 practices.

7 **Section 4. Privacy Expectations**

8 The Parties recognize that employees have a reasonable expectation of privacy in the
9 workplace. However, employee users of Agency-owned or leased equipment and
10 resources do not have an expectation of privacy while using such equipment or resources
11 at any time, including times of permitted personal usage as set forth in this Article. To
12 the extent that employees desire to protect their privacy, employees should not use
13 Agency-owned or leased equipment and resources.

14 **Section 5. General Internet and E-Mail Provisions**

15 A. Agency Internet and E-mail resources are the property of the Agency. Any use of
16 Agency Internet and E-mail resources is made with the understanding that such
17 use is not secure, private or anonymous.

18 B. Employees using the Agency's Internet and E-mail resources are subject to
19 having activities monitored by system or security personnel without any further
20 specific notice.

21 C. Employees should be aware that when they access the Internet using Internet
22 addresses and domain names registered to the Agency, they may be perceived by

1 others to represent the Agency. Employees shall not use the Internet for any
2 purpose which would reflect negatively on the Agency or its employees.

3 **Section 6. Permitted Usage of Agency Equipment and Resources**

4 A. Agency-owned or leased equipment and resources are for Agency use and not for
5 personal use; however, limited personal use of Agency-owned or leased
6 equipment and resources by employees during non-work hours (i.e., weekends,
7 before and after working hours or during lunch periods) is considered to be a
8 permitted use of Agency-owned or leased equipment and resources when the
9 following conditions are met:

- 10 1. Such use involves minimal additional expense to the Agency;
- 11 2. Such use does not interfere with the mission or operation of the Agency;
- 12 3. Such use does not violate the Standards of Ethical Conduct for Employees
13 of the Executive Branch;
- 14 4. Such use does not overburden any Agency information resources; and
- 15 5. Such use is not otherwise prohibited under this Article.

16 B. Prohibited or inappropriate use of Agency-owned or leased equipment or
17 resources by an employee could result in the loss of use or limitations on the use
18 of such equipment or resources, criminal penalties, financial liability for the cost
19 of inappropriate use or any other action deemed appropriate by the Agency.

20 **Section 7. Prohibited Usage of Agency Equipment and Resources**

21 A. The following uses of Agency-owned or leased equipment or resources, either
22 during working or non-working hours, are strictly prohibited:

- 1 1. Activities which are in violation of law, Government-wide rule or
2 regulation or which are otherwise inappropriate for the workplace;
- 3 2. Activities which would compromise the security of any Government host
4 computer. This includes, but is not limited to, sharing or disclosing log-in
5 identification and passwords;
- 6 3. Fund-raising or partisan political activities, endorsements of any products
7 or services or participation in any lobbying activity; or
- 8 4. All E-mail communications to groups of employees that are subject to
9 approval prior to distribution and have not been approved by the Agency
10 (e.g., retirement announcements, union notices or announcements,
11 charitable solicitations).

12 **Section 8. Employee Responsibilities**

13 Use of Agency-owned or leased equipment and resources to accomplish work-related
14 responsibilities will always have priority over personal use. In order to avoid capacity
15 problems and to reduce the susceptibility of Agency information technology resources to
16 computer viruses and cyber attacks, employees shall comply with the following
17 requirements:

- 18 A. Personal files obtained via the Internet may not be stored on individual PC hard
19 drives or on local area network (LAN) file servers.
- 20 B. Official video and voice files may not be downloaded from the Internet except
21 when they will be used to serve an approved Agency function.
- 22 C. Internet and E-mail etiquette, customs and courtesies shall be followed when
23 using Agency-owned or leased equipment or resources.