

2021

COLLECTIVE BARGAINING AGREEMENT BETWEEN



*Department of Energy Headquarters
and the
National Treasury Employees Union*

NTEU

The National Treasury Employees Union

PREAMBLE

This Collective Bargaining Agreement (Agreement) is entered into to prescribe certain rights and obligations of the Employees of the Department of Energy Headquarters (DOE) represented by the National Treasury Employees Union (NTEU) and to delineate procedures which are designed to meet the special requirements and needs of DOE. The provisions of this Agreement have been negotiated and should be interpreted in a manner consistent with the requirements of an effective and efficient Department. DOE and NTEU are dedicated to partnership efforts designed to assure success for our respective organizations and to maintain a cooperative and constructive working relationship.

5 U.S.C. § 7114(a)(2) provides in part as follows:

An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at –

...

any examination of an Employee in the unit by a representative of the agency in connection with an investigation if –

the Employee reasonably believes that the examination may result in disciplinary action against the Employee; and

the Employee requests the representation.

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Article 1 - Recognition and Coverage

Section 1.01

All professional and nonprofessional Employees of DOE Headquarters employed in the Washington, DC metropolitan area, excluding Employees of the Federal Energy Regulatory Commission and the Office of the Inspector General; Employees of any offices specifically excluded by Executive Order; any Employee engaged in intelligence, counterintelligence, investigative, or security work which directly affects national security; Employees engaged in Federal personnel work in other than a purely clerical capacity; management officials, supervisors, and confidential Employees, as defined in 5 U.S.C. § 7103(a); are Employees occupying positions within the bargaining unit. The above-described bargaining unit is represented for purposes of exclusive recognition by the National Treasury Employees Union. To facilitate efficient labor-management relations, there is a separate chapter which represents Headquarters Employees in Germantown, Maryland, and a separate chapter which represents all other Headquarters Employees (both such NTEU chapters collectively and singularly represent the bargaining unit Employees of DOE Headquarters).

Section 1.02

The terms and conditions of this Agreement apply only to positions within the bargaining unit and to Employees who occupy those positions. When the word "Employee" is used in this Agreement, it is understood that it means an Employee in a bargaining unit position.

Section 1.03

This Agreement is made and entered into by and between the Department of Energy (DOE or Employer) Headquarters, hereinafter referred to as DOE, and National Treasury Employees Union (NTEU), hereinafter referred to as NTEU.

Section 1.04

To the extent that the provisions of DOE internal orders, regulations, policies, guidance, or practices are in specific conflict with this Agreement, the provisions of the Agreement will govern.

Section 1.05

- A. If NTEU becomes certified as the exclusive collective bargaining representative for any Employees or bargaining unit not currently covered by this Agreement, this Agreement shall extend automatically to all Employees covered by that certification on the sixtieth (60th) day following the certification of such unit. However, the dues withholding provisions of this Agreement shall be applicable upon certification of NTEU. Upon coverage of an organization, a management/NTEU team will be formed to resolve issues similar to those covered by the Collective Bargaining Agreement. After the 60-day grace period, Employees may exercise grievance rights to resolve appropriate issues. There will be a 120-day grace period from the date of certification of newly covered organizations prior to formal third-party actions being filed.
- B. During the first 120 days of coverage, management officials will be jointly briefed by Headquarters Labor Relations and NTEU on their labor/management responsibilities. In addition, during the first 120 days of coverage, Employees will be jointly briefed by Headquarters Labor Relations and NTEU on the provisions of the Collective Bargaining Agreement.

Article 2 - Precedence of Laws and Regulations

- A. In the administration of all matters covered by this agreement, officials and Employees are governed by existing and future laws, Government-wide rules or regulations in effect on the date the Agreement becomes

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effective, Government-wide rules and regulations issued after the Agreement is effective which do not conflict with the contract and over which all bargaining responsibilities have been fulfilled, DOE regulations for which a compelling need is established pursuant to 5 U.S.C. § 7117(a)(2), and DOE policy, rules, and regulations which do not conflict with this Agreement and over which all bargaining responsibilities have been fulfilled. For purposes of this Agreement, the term "DOE policy" shall be defined as directives or regulations issued by the Secretary or designee.

- B. The terms and conditions of this Agreement, including any provisions contained in DOE policy, rules, and regulations which do not conflict with the Agreement and over which all bargaining responsibilities have been fulfilled, constitute the personnel policies, practices, and general employment conditions for the bargaining unit. During the life of the Agreement, proposed changes to any personnel policy, practice, or conditions of employment will be negotiated in accordance with Article 13.
- C. This Agreement supersedes all previous Agreements, Memorandum of Understanding/Memorandum of Agreement (MOU/MOAs) and past practices, made at any level of recognition between the Parties, which are in conflict with it, regardless of duration.
- D. DOE and NTEU agree that for the full term of the Agreement the provisions of this Agreement shall remain in full force and effect and unchanged. Provision(s) of this Agreement that become inconsistent with future applicable statutes will be severed, and the parties will comply with the applicable statute, and meet in a timely manner to discuss post-implementation bargaining pursuant to Article 13 of this Agreement.

Article 3 - Employees' Rights

Section 3.01. General

- A. The Parties recognize that Employees have employment rights and responsibilities. Employees have rights as defined in 5 U.S.C. § 7102 and applicable laws, government-wide rules, and regulations.
- B. Each Employee has the right to work in an environment free of prohibited discrimination and retaliation. DOE and NTEU are committed to protecting this right.
- C. Employees recognize their responsibility to promptly comply with all orders and instructions from their supervisors. Employees may refuse, without fear of employer reprisal, to obey an order that would require the Employee to violate a law. Employer reprisal is a prohibited personnel practice, addressed under Article 37 of this Agreement. This right does not negate an Employee's responsibility to follow all lawful directions, nor DOE's right to take appropriate action in instances where an Employee fails to follow such directions.

Section 3.02. NTEU Membership

- A. Each Employee has the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each Employee shall be protected in the exercise of such rights. Except as otherwise provided in law and this Agreement, such right includes:
 - 1. To act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the executive branch of Government, the Congress, or other

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appropriate authorities;

2. To engage in collective bargaining with respect to conditions of employment through representatives chosen by Employees in conformance with the exclusive representation rights of NTEU; and
3. To file an unfair labor practice charge against NTEU for any reason noted in 5 U.S.C. §7116(b).

- B. Nothing in this Agreement shall require an Employee to become a member of NTEU, or to pay money to NTEU except pursuant to a voluntary written authorization by a member for the payment of dues through payroll deduction.

Section 3.03. NTEU Representation

- A. Employees have the right to be represented by an NTEU designated representative for the purpose of presenting grievances, replying to disciplinary/adverse actions issued by the DOE, or in representing the Employee before any third-party neutral or adjudicative agency. This does not apply to supervisor-Employee discussions concerning the Employee's performance. Pursuant to 5 U.S. Code § 7114(a)(2), Employees have the right to have an NTEU representative at:
- B. Any formal discussion between one or more representatives of the agency and one or more Employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment; or
- C. Any examination of an Employee in the unit by a representative of the agency in connection with an investigation if:
1. The Employee reasonably believes that the examination may result in

disciplinary action against the Employee; and

2. The Employee requests representation.

Section 3.04. Role of an NTEU Representative

- A. When the Employee being interviewed is accompanied by a representative furnished by NTEU the role of the representative includes, but is not limited to, the following rights:
1. To clarify the questions;
 2. To clarify the answers;
 3. To assist the Employee in providing favorable or extenuating facts;
 4. To suggest other Employees who have knowledge of relevant facts; and
 5. To advise the Employee.

Section 3.05. Duty Time for Representation

- A. Employees are entitled to a reasonable amount of duty time to confer with NTEU with respect to matters covered by this Agreement. An Employee will request permission from the Employee's manager to leave the office to contact an NTEU representative. The Employee will also provide the Employee's supervisor with general information regarding the nature of the visit for the supervisor to determine what is a reasonable amount of time for the Employee to be away from the Employee's job site, as well as the location of the meeting. The Employee will also give the supervisor a telephone number at which the Employee may be reached while absent in case of an urgent work-related need. Employees will follow the same established

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and uniformly applied office procedure, if any, regarding the use of out of office messages that is required for any other category of absence from the workplace.

- B. An Employee will be granted reasonable duty time, upon proper request to the Employee's supervisor, to prepare responses or replies to proposed disciplinary actions, performance plans, appraisals, and reconsideration of rating.

Section 3.06. Notification of Rights

- A. *Weingarten Rights.* DOE will annually inform Employees, in writing, of their rights to union representation at an examination of an Employee by a representative of DOE in connection with an investigation if the Employee reasonably believes that the examination may result in disciplinary action against the Employee, and the Employee requests the representation.
- B. Prior to any official investigation or inquiry (Weingarten interview) of an Employee by an agency representative (e.g., DOE Headquarters Office of Security) the Employee will be afforded an opportunity to sign a form certifying the Employee was informed of such rights and will receive a copy of said executed form, upon request. (See [Appendix A](#))

Section 3.07. Benefits Counseling

Employees seeking counseling or program information on the federal retirement or insurance programs should contact their servicing Human Resources Shared Service Center to request individual benefits consultative guidance. Contact information can be found via [HCnet | Office of the Chief Human Capital Officer \(hcnet.doe.gov\)](#).

Section 3.08 Resignation

The decision on whether and when to resign from

employment are voluntary matters of free choice for each Employee and may not be coerced. An Employee may withdraw a resignation prior to the effective date, if such withdrawal is submitted in writing, unless DOE has a valid reason under 5 CFR 715.202(b) and explains that reason to the Employee.

Article 4 - Management Rights

- A. Nothing in this agreement shall affect the authority of DOE:
- B. to determine the mission, budget, organization, number of Employees, and internal security practices of DOE Headquarters;
- C. In accordance with applicable laws:
1. to hire, assign, direct, layoff, and retain Employees in DOE Headquarters, or to suspend, remove, reduce in grade or pay, or take other disciplinary actions against such Employees;
 2. to assign work, to make determinations with respect to contracting out, and to determine the personnel by which DOE Headquarters operations shall be conducted;
 - (a) with respect to filling positions, to make selections for appointments from: among properly ranked and certified candidates for promotion; or
 - (b) any other appropriate course; and
 3. to take whatever actions may be necessary to carry out the agency mission during emergencies.

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Article 5 - NTEU Rights

Section 5.01. Right of Union for Representation

- A. NTEU has the sole right and responsibility of designating those individuals who will represent and speak on behalf of NTEU. NTEU will be provided the opportunity to represent Employee(s) at any formal discussion between one or more representatives of DOE and one or more Employees concerning any grievance or any personnel policy or practice or other general condition of employment. Accordingly, NTEU will receive as much advance notice as possible, normally no less than seven (7) calendar days. Notification should include: 1) the subject matter for the meeting, the date, time, and location of the meeting, the meeting forum (e.g. in person, teleconference); 2) the duty location, departmental element, and chapter of Employees affected by the subject matter to be presented, and 3) the agenda and any briefing materials (e.g. brochures, memoranda, PowerPoint presentations) that will be used at the formal discussion if finalized at the time of the notice.
- B. In any formal discussion held pursuant to 5 U.S.C. § 7114, NTEU will be entitled to one (1) representative from each Chapter, if applicable. The designated NTEU representative(s) shall be introduced by management. During the meeting, NTEU representative(s) may ask relevant questions pertaining to the subject matter. In addition, NTEU's representative(s) will be provided time at the end of the meeting to address any issues/concerns regarding the subject of the meeting unless mutually agreed otherwise. During any such formal discussion that includes the presence of non-bargaining unit Employees, DOE has

the right to excuse the non-bargaining unit Employees from the meeting during NTEU's allotted time for addressing any issues/concerns regarding the subject of the meeting.

- C. NTEU representative(s) may request meetings and formal discussions with one or more Employees in the unit. Management shall not unreasonably withhold approval of NTEU's request(s). Requests to meet with Employees pursuant to this section will be made in accordance with Article 7 of this Agreement.

Section 5.02. Right of NTEU to Refuse Representation to Certain Employees

NTEU has the right and responsibility to represent all Employees in the bargaining unit in matters where NTEU is the exclusive representative. However, consistent with applicable statute, regulations and case law, NTEU may refuse to represent certain Employees (e.g., non-Union members) in matters where NTEU is not the exclusive representative, or in matters where NTEU has no contractual duty, such as proposed disciplinary and adverse actions.

Section 5.03. Union Training on Collective Bargaining Agreement

- A. Upon the effective date of the Agreement, NTEU will develop an education program on the Agreement for the Headquarters Employees in both the DOE Germantown and Forrestal facilities. If the education program is offered during duty hours, Employees may attend the education program no more than once in its entirety. Duty time must be requested and approved by the Employee's supervisor in accordance with Article 3.
- B. The education program will be presented in-person as frequently as NTEU deems

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necessary. In the event an Employee is unable to attend an in-person session, the Employee will be permitted to watch a recording of an in-person session or read the Agreement, whichever is the Employee's preference. Duty time must be requested and approved by the Employee's supervisor in accordance with Article 3. In either event, the Employee will be given an opportunity to ask NTEU questions about the Agreement. Employees working at an alternate work site will be allowed to participate in an in-person session by available DOE-provided alternative technologies.

- C. Nothing in this section relieves any party from the duty to inform Employees of their rights pursuant to applicable laws, rules, regulations, and this Agreement.

Section 5.04. Labor Recognition Week

One week of each year, to be designated by the NTEU's National Office, will be recognized as Labor Recognition Week. During that week, Chapters 213 and 228 may use DOE's cafeterias, break rooms and snack bars in Headquarters offices and posts of duty to set up exhibits to publicize the contributions of NTEU and organized labor to society. Meeting rooms shall also be made available. All Employees shall receive one hour of duty time to participate in Labor Recognition Week activities. Local NTEU Chapters will be permitted to use up to 40 cumulative hours of official time to prepare and conduct Labor Recognition Week activities in accordance with provisions of Articles 7 and 8. Each Chapter shall have the right to display a banner during Labor Recognition Week which conforms to regulations and laws, announcing Labor Recognition Week.

Section 5.05. Bargaining Unit Data

Upon NTEU's request, DOE shall provide NTEU with a list of Employees, which will include name, grade, series, duty location, departmental element, and service computation date. Any such request(s) will

not be made more than once a month.

Article 6 - NTEU Representatives

Section 6.01. General

DOE recognizes that NTEU's designated representatives play an important role in promoting a quality workplace, and a safe and friendly work environment. Although serving voluntarily, the rights and responsibilities of NTEU representatives are defined in the language of this Agreement and in Title 5, United States Code, Chapter 71.

Section 6.02. Definition

"Representative" includes only those individuals named by NTEU to any position where the NTEU Representative acts as the spokesperson in the interest of NTEU or Employees within the bargaining unit. This includes stewards, elected officers, and any other individuals designated by NTEU. Representatives acting in such capacities are eligible for adequate periods of Union Time under Article 7 of this Agreement. Use of Union Time for representation purposes may not be used as a reason for a supervisor to lower the performance appraisal of an Employee. Non-Employee NTEU representatives shall not be entitled to Union Time compensated by DOE.

Section 6.03. Union Representatives

- A. NTEU may designate as many as 32 stewards. In designating stewards, NTEU agrees to take into account their organizational and geographical location of each steward, and to strive to minimize travel and other time away from the stewards' official duties. NTEU's designation of Representatives will not unreasonably delay meetings and grievances.
- B. NTEU will provide DOE with a complete, up-to-date list of appointed stewards, the identity of chapter officers and chief stewards, and the office location, telephone

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number, and email address of each. NTEU must notify DOE of any change in stewards as soon as possible prior to the effective date of any change.

- C. DOE will provide NTEU with a complete, up-to-date list of designated points of contact (assigned ER/LR Specialists) for each office that includes the office telephone number, email address, and location. DOE will notify NTEU of any changes to an office's designated point of contact as soon as possible prior to the effective date of any change.
- D. In addition to the above stewards, NTEU may designate other Representatives pursuant to this section. NTEU will provide notification to The Office of Employee & Labor Relations, Policy, & Oversight (ELRPO), Labor Relations Operation Division (LROD) at LROD@hq.doe.gov or successor office when such a designation is made. The notice will contain the name and scope of the designated representative. LROD is responsible for notifying affected managers of the designation and authority of the designated representative.
- E. Non-Employee NTEU representatives entering the facility, work area, or performing representational activities on site are subject to normal visitor procedures.
- F. Normally, meetings with managers or supervisors will be scheduled in advance.

Section 6.04. Mentoring Labor Activities

Newly appointed representatives, who have no prior representative experience, may require a mentoring period in which to become familiar with their duties and the processes of labor-management relations. To further this process, these newly appointed representatives may accompany or be accompanied by the chief steward, Chapter president, another representative, or National NTEU representative to

formal meetings, or in the case of stewards, grievance meetings at all appeal levels, until the new steward has participated in three (3) grievances. Requests for official time under this section will be made in accordance with the provisions of Article 7.

Article 7 – Union Official Time

Section 7.01. Designation of Union Representatives

Unless otherwise provided in this Agreement, only those Employees on the designated Representatives list provided by NTEU in Article 6, Section 6.03 will be authorized to use Union Official Time.

Section 7.02. Exclusions for Use of Union Time

- A. In accordance with 5 U.S.C 7131(b), the use of Union Official Time is prohibited for internal Union business (e.g., solicitation of membership, elections of labor organization officials, and collection of dues).
- B. Non-representational Lobbying or political activities, such as those identified in 18 USC § 1913.

Section 7.03. Union Time for Union Representatives.

- A. Consistent with 5 U.S.C. § 71 and this Agreement, NTEU Representatives will be granted a reasonable amount of Union Official Time for the following activities:
 - 1. **Term Negotiations.** To prepare for and negotiate a collective bargaining agreement, in accordance with 5 U.S.C. 7131(a).
 - 2. **Mid-Term Negotiations.** To prepare for and bargain over issues raised during the life of a term agreement, in accordance with 5 U.S.C. 7131(a).
 - 3. **Dispute Resolution.** To appear in proceedings before the Federal

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- Labor Relations Authority during such time as an Employee would otherwise be in a duty status, in accordance with 5 U.S.C. 7131(c).
4. **General Labor-Management Relations.** To perform miscellaneous representational activities authorized under 5 U.S.C. 7131(d). NTEU Representatives and Employees, as appropriate, will receive reasonable official/duty time to:
- (a) confer with respect to any matter for which remedial relief may be sought pursuant to the terms and conditions of this Agreement;
 - (b) prepare and present grievances;
 - (c) prepare a reply to a notice of proposed disciplinary or adverse action or any other matter for which a statutory appeals procedure exists;
 - (d) testify as witnesses in arbitration proceedings; and
 - (e) travel locally to and from the above-listed activities.
- B. NTEU Stewards or Representatives, as appropriate, will receive as much official time as is necessary to:
- 1. be present at formal discussions or briefings between DOE and one or more Employees concerning grievances, personnel policies or practices, or other general conditions of employment;
 - 2. attend meetings with DOE regarding
- Labor-Management relations business;
- 3. attend grievance meetings, arbitrations, and statutory appeal procedures;
 - 4. attend disciplinary or adverse action meetings;
 - 5. prepare for and attend labor-management committee meetings and/or local, HQ-wide, or Department wide partnership activities;
 - 6. represent an Employee in connection with an investigation if the Employee reasonably believes that the examination may result in disciplinary action and the Employee requests representation;
 - 7. review Management actions and prepare for possible impact and implementation negotiations;
 - 8. participate in Labor-Management negotiations in accordance with the applicable articles of this Agreement, which includes, but is not limited to, proceedings at the Federal Mediation & Conciliation Service (FMCS) and the Federal Service Impasses Panel (FSIP);
 - 9. attend meetings with DOE to discuss or present unfair labor practice charges or unit clarification petitions;
 - 10. participate in Federal Labor Relations Authority (FLRA) investigations or proceedings and in preparation therefore;
 - 11. prepare for and assist in reconsideration reply procedures in

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connection with the denial of within grade increases;

- 12. attend new Employee orientations; and
- 13. travel locally to and from the above-listed activities.

C. As required under section 7131(d) of title 5, United States Code, Employees will be granted official time in any amount DOE and NTEU agree to be reasonable, necessary, and in the public interest.

Section 7.04. Union Official Time for Training

- A. Request for Union Official Time under this section will be sent to ELRPO, Chief of Labor Relations Division for review. Scheduling of approved official time under this section will follow procedures in Section 7.08 below.
- B. NTEU Representatives may be granted Union Time to engage in representational activities before Congress (e.g., attending NTEU's National legislative conference). To that effect, six (6) members may each be granted not more than 60 hours of official time per year to meet with congressional representatives to present views of Employees they represent concerning their terms and conditions of employment.
- C. Each representative designated pursuant to Article 6, NTEU Representation, will receive up to forty (40) hours of Union Time each year to travel and attend NTEU-sponsored training, which may be required to perform their NTEU duties, and is designed to further the interest of the Government by bettering the Labor-Management relationship within the Department of Energy Headquarters bargaining unit.
- D. DOE will provide a bank time of 275 hours for each Chapter, which may be shared between

the two Chapters to travel and attend special and/or sustainment training offered by NTEU National, the Chapters, or a third-party offering course in labor management relations, workers health and safety, labor relations law, alternative dispute resolution, and other specialized areas that are considered under this Agreement.

E. Both NTEU Chapters will be granted twenty-four (24) hours of official time for each steward to train those stewards on the new contract, plus reasonable time for travel, within ninety (90) days of the effective date of this Agreement.

F. DOE will approve Union Time for all NTEU officials who are invited to attend DOE sponsored joint Labor-Management meetings outside the Washington, DC commuting area (e.g., DOE Health and Safety Committee). Travel and per diem for these events will be provided by DOE under Article 34, Section 34.08 of this Agreement.

Section 7.05. New Employee Orientations

- A. An NTEU Representative may address new bargaining unit Employees attending orientation sessions for thirty (30) minutes on official time. During this time, NTEU may speak with new bargaining unit Employees without the presence of non-bargaining unit Employees.
- B. At the discretion of DOE new Employee Orientation may be presented at the Forrestal or Germantown buildings, or virtually. If DOE elects to hold the new Employee orientation at a physical location, DOE will provide the NTEU the option of attending the orientation virtually (i.e., audio and video).
- C. DOE will provide bi-weekly to each chapter president, a listing of all new bargaining unit Employees who entered into service during

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the past three months. The list will include name, organization, telephone number, e-mail address, position title, series and grade.

- D. If no orientation session is held for three (3) consecutive months, an NTEU Representative will be given the opportunity to meet with each new Employee, for not more than twenty minutes.
- E. If a chapter representative is unable to attend a new Employee orientation due to the location/platform selected by DOE, the impacted chapter representative may meet with new Employees assigned to the chapter representative's chapter for not more than thirty (30) minutes without the presences of non-bargaining unit Employees to cover chapter specific issues not covered in the new hire orientation.
- F. NTEU will distribute to each new Employee, at the time of the orientation material on its benefits and services, descriptive material about NTEU, and information concerning their conditions of employment. These materials will contain no adverse or derogatory information about DOE. Any material distributed must conform to the requirements of law and regulations concerning information which may be distributed on Federal property.
- G. DOE will provide a package of NTEU material to each new bargaining unit Employee attending the new hire orientation. If the orientation is held virtually, DOE will provide appropriate and updated links to the NTEU Chapter Websites, a copy of this agreement; and an SF-1187. If the orientation is held in person, paper copies of these documents will be provided.

Section 7.06. Full-time, Virtually Full-time, or Significant Amounts of Official Time.

- A. The Parties recognize that Labor-

Management activities for which official time is allowed may result in one or more NTEU official(s) engaging in full time, virtually full time, or significant amounts of official time on Labor-Management activities on a continuing basis. These representatives will not be subject to the process described in Section 7.08 below.

- B. Official time requests under this Section must be approved in advance by the Employee's leave approving official for extended periods (e.g., specified amounts of official time within months or quarters). Any impediments or exigencies related to the official time request should be mutually discussed between the leave approving official and the requesting NTEU Representative so that any potential dispute may be resolved at the earliest possible time. After discussing the request, the responsible leave approving official must normally approve or deny the request within five (5) workdays of discussion. During the pendency of Management's response, official time may be taken for the purpose of insuring continuity of representation. If the leave approving official proposes a modification to or denies the requested official time, the leave approving official will provide the requesting NTEU Representative with the reason for the proposed modification or denial in writing.
- C. At least five (5) workdays prior to the end of the agreed period of official time referenced above, the NTEU Representative will submit a new official time request. The representative and the supervisor will meet to assess the official time needs compared to DOE's workload assignments during the period just passed, and projected workload needs in the immediate future.
- D. The representative will report his or her use of official time at the end of each pay period.

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- E. Where disputes arise regarding the virtual full time needs of the NTEU official, the representative and his/her leave approving official or supervisor should discuss work assignments or projects, and representational responsibilities in advance as much as possible in order to minimize or avoid conflicts. Consideration should be given to such things as time sensitivity, availability of others to perform the needed tasks, and overall workload.
- F. All unresolved official time disputes are to be reported immediately to the ELRPO, which will seek resolution with the respective chapter president and leave approving official. If after completion of this process a dispute still exists, either party may file a grievance or other appropriate action under law, rule, or regulation.
- G. Should DOE determine that mission needs require modification of previously approved official time DOE will provide written notice of that determination to the impacted NTEU Representative and Chapter President as soon as that determination is made. Thereafter, the parties will meet and discuss the modification. If the issue(s) cannot be resolved, Management will provide a written statement outlining its decision. The Employee may then exercise his or her rights as appropriate. During the pendency of this dispute, the Employee will perform the assigned tasks to ensure continuity of mission accomplishment.
- H. If DOE rescinds previously approved official time under Section 7.07.G above the following procedures will apply:
1. DOE will provide the impacted NTEU Representative with a written description of the work/mission needs that it has determined require the modification of the previously approved official time and the estimated amount of time that DOE believes will be necessary to complete the identified work/mission need (e.g., a week / 40 hours or less, two (2) to three (3) weeks, a month (30 days), or more than a month (30 days) but less than two (2) months, etc.).
 2. If the estimated amount of time described in Section 7.07.H.2 is two (2) work weeks or less any timeframes for Union action under this Agreement (e.g., Union suspense to file a grievance, invoke arbitration, file, request or present an oral reply, etc.) will be tolled until the NTEU official assigned to those cases by NTEU is released to provide representation.
 3. If the estimated amount of time described in Section 7.07.H.2 is more than two (2) workweeks, subject to workload requirements the NTEU Official will normally be provided up to ten (10) hours of official time to transfer their case(s) to an available replacement representative(s) of NTEU's choosing. The replacement representative(s) will normally be provided up to a total of ten (10) hours, as needed, to receive and review the cases. Should the NTEU replacement representative(s) not be releasable or not immediately available (e.g., on leave, travel, workload, etc.) all deadlines/suspense dates for the cases he or she has been designated by NTEU to receive will be tolled for an amount of time equal to the number of days delayed to due to transfer or responsibility described above.
 - I. The tolling of timeframes described in Sections 7.07.H.2 and 7.07.H.3 above will not

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act as a bar to Management's exercise of its rights under 5 U.S.C. § 7016, or any of its rights articulated in the Collective Bargaining Agreement. This tolling of timeframes will not act as a bar to any grievance, appeal or claim by NTEU or an Employee alleging that DOE's actions constitute a violation of law, rule, regulation, or this Agreement.

Section 7.07. Union Time Requests and Reporting Procedures for NTEU Representatives

A. Except as provided under Section 7.07 above, NTEU Representatives will request and be granted official time as follows.

1. Management will provide NTEU with sufficient advance notice of meetings or other activities in which NTEU Representatives are expected or have a right to participate. The parties recognize that there will be some circumstances in which advance notice will be virtually non-existent. In those instances, Representatives may take union official time by sending an email notice that includes the information contained in section 7.08(A)(2)(c) below to the Representative's supervisor, then NTEU official time request will be submitted for approval as soon as practicable.
2. As far in advance as possible of the proposed time use (normally 5 calendar days prior, if practicable), the representative or Employee will inform the immediate supervisor (normally the Employee's leave approving official) of the amount of time requested and the general nature of the purpose for which it is requested.
 - a. NTEU Representatives will use DOE's time keeping system, to make a request

for official time and indicate the general nature of the purpose for the official time (e.g., one of the purposes stated in Section 7.04 of the Article).

b. Employees (other than NTEU Representatives) must request duty time to engage in activities identified in Section 7.04.A. When requesting grants of duty time or Union official time, as appropriate, an Employee must provide the following information to the Employee's supervisor:

- i. The general nature of the purpose for the official time usage (e.g., one of the purposes stated in Section 7.04.A of the Article). However, the affected Employee need not tell the supervisor the nature of the substantive issue to be discussed with the NTEU Representative;
- ii. The location where the time would be used; namely, building, room, office name and telephone number; and
- iii. The proposed date, time, and duration of the request.

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3. DOE acknowledges the importance of a timely response from the supervisor to the Employee as to whether the amount of official time is approved.
 - a. If requests for official time are not approved prior to the event for which official time is needed, Employees and/or NTEU Representatives, as applicable, will take reasonable steps to obtain approval from their second line supervisor.
 - b. If such approval cannot be obtained, the Employee and/or NTEU Representative will notify the responsible party who scheduled/organized the event requiring the need for official time and inform the responsible party that their request for official time is pending approval. The responsible party will make every effort to delay the event until the Employee and/or NTEU Representative can receive approval and attend the event.
 - c. In no case should an Employee and/or NTEU Representative leave their assigned duties/workplace until approval has been granted. As an exception to this rule, those NTEU Representatives on official time under Section 7.07 above, may deviate from their previously approved official time duties to perform the representational functions on behalf of the NTEU Representative who could not obtain approval for official time. In such cases, the NTEU Representative will update their time and attendance to reflect the appropriate category of Union Official Time, if applicable.
4. If the supervisor does not agree that the amount of time requested is appropriate, he or she will discuss the matter with the Employee or representative and attempt to reach agreement. In considering requests by NTEU Representatives and affected Employees for use of official or duty time, supervisors will first review the work situation of the office to ascertain if the representative/Employee can be excused for all or part of the requested period. If the work situation is such that the time usage cannot be allowed at the time specified in the request, the representative/Employee will be informed of the reason and of the next available time when the work situation will permit usage of the requested time. This information will be in writing, if a written response is requested by the representative/Employee.
5. If agreement cannot be reached, the representative or Employee may use the amount of time the supervisor is willing to grant for the stated purpose. All unresolved denials of official time are to be reported immediately by the official denying the time to the (ELRPO, Chief of Labor Relations), which will seek

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resolution with the respective Chapter President.

a. When disputes arise as outlined above, the ELRPO and NTEU will meet to attempt resolution. If a mutually satisfactory resolution is not reached, the dispute may be referred to Arbitration, as described in Article 12.

b. Any timelines associated with a matter that gave rise to the official time dispute will be held in abeyance until the official time dispute is resolved through arbitration.

B. When the time is to be used, a representative or Employee, who has been granted official time under the terms of this Article, is encouraged to remind the immediate supervisor that he or she is leaving the work area to use the approved time.

C. Upon completion of the approved time usage, the representative or Employee will inform the supervisor of the total amount of official time used, if it is less than time already requested. Any additional time in excess of what was previously approved, will require an additional request/approval.

D. Rescission of a previously approved official time request will be considered a denial of the request.

Section 7.08. Considerations for Applying Union Official Time

A. Prior to an NTEU Representative entering a work area or performing representational activities, the representative must notify the immediate supervisor in charge of the work

area. If the supervisor is unable to accommodate the visit at the time, the supervisor will notify the Representative and propose an alternate schedule. The Representative will provide the supervisor with the name of the Employee, the general purpose of the visit, and how long the Employee is expected to be away from duty. The Employee must obtain agreement of the supervisor or designee prior to meeting with an NTEU Representative.

B. Subject to workload requirements, NTEU Representatives' work schedules may be altered to ensure that representational functions are conducted while the Representative is in a duty status. In the event the DOE denies a Representatives request to alter the Representative's work schedule, DOE agrees to meet at a mutually agreeable date, time, and location where neither DOE representatives nor NTEU Representatives are in a duty status (including weekends and Federal Holidays).

C. Union Official Time may be approved outside regular work schedules if incidental to representational functions and cannot be avoided through other administrative means. If Union Official Time is approved outside a Union representatives' regular work schedule, NTEU Representative will earn premium or differential pay, overtime, or compensatory time (to include travel compensatory time) for their performance of Union representational duties in accordance with applicable laws, rules, and regulations.

Article 8 - NTEU Use of Space and Equipment

Section 8.01 Office Space for NTEU Use

A. DOE agrees to provide NTEU Room C-075 within Germantown Building for Union Chapter 228 and Room BF-109 within the Forrestal Building for Union Chapter 213 to conduct official business. The existing

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furniture and equipment will remain in the rooms along with a secretarial desk and chair and one four-drawer locking file cabinet.

- B. DOE shall provide NTEU with private office space in the existing satellite buildings subject to availability. Upon NTEU's request, and subject to availability, DOE shall provide NTEU with private office space for representational purposes in each satellite building with at least 100 Employees. DOE will ensure that the aforementioned described private office space is equipped with a telephone. DOE shall provide notice to, and bargain as appropriate with NTEU in the event there is a change in office space needs at the satellite buildings that would impact Union office space under this provision.
- C. All Union office space is subject to audit requirements and other internal security requirements as any other Department space. When needed, DOE will provide as much notice as reasonably possible, but no less than one workday prior to entry. Employer officials will not be unreasonably denied entry to the space upon proper notice and will be accompanied by a Union representative.

Section 8.02. Office Furnishings and Employer Equipment

- A. DOE shall provide all Union offices, as identified in Section 8.1., with telephone service, including but not limited to, services such as voicemail. DOE shall provide access to Internet resources to Union office computers. NTEU may request access to any blocked or filtered sites through the procedures established by the Office of the Chief Information Officer.
- B. NTEU Chapter offices will be provided a computer, telephone, and related communication equipment, including but not limited to, monitors, and associated

peripherals consistent with DOE's standard workstation provided by the Office of the Chief Information Officer's Common Operating Environment (DOECO). DOE shall also provide NTEU chapter offices a multifunction copier (i.e., print, fax, scan, copy).

- C. If a larger amount of copies are required than can be accommodated on the multifunction copier provided to NTEU, NTEU may use the DOE Copy Center in Forrestal or Germantown facilities, if available.
- D. The workstation and equipment will be refreshed in a manner consistent with the DOECO refresh cycle or when the equipment is broken. Whenever hardware and/or software upgrades are made by DOE, DOE will also upgrade the equipment provided to both Union chapters.
- E. As new technology becomes available, equipment/software/programs used by administrative office-level officials will be made available to NTEU in a timeframe consistent with availability with program administrative offices.
- F. DOE shall allow Union Officials to use government provided mobile devices issued by their Program Office for Union representational activities, in addition to their DOE duties. If the Program/Office determines that it needs to discontinue the above-described mobile devices it must provide NTEU with notice and opportunity to bargain as required by law, rule, regulation, and this Negotiated Agreement.
- G. DOE shall not remove/discontinue the existing Union-owned television monitor, cable connections, or DVD player.
- H. DOE shall provide locks on office doors or lockable filing cabinets for NTEU offices. Upon request and subject to availability,

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NTEU stewards may be provided an office door lock or lockable filing cabinet in their assigned workspace.

Section 8.03. Changes to Office Space and Equipment

In the event of changes to the availability of office space, furnishings, or equipment, which are outside of the Department's control, DOE shall provide notice to, and bargain the impact and implementation of those changes as required by law, rule, regulation, and this Negotiated Agreement.

Section 8.04. Non-NTEU Office Rooms for NTEU Use

- A. DOE will provide NTEU with access to available confidential offices or conference rooms for use in connection with its representational duties during normal operational hours of the building. Subject to safety and security requirements, NTEU will be permitted to use available auditoriums and conference rooms to conduct non-work hour meetings and administrative/Union meetings.
- B. Union Representatives will be responsible for scheduling and cancelling space as needed and adhering to standard scheduling and cancellation protocols. Requests for the use of these facilities must be made as far in advance as possible and will include the time, date, and number of people expected to attend. NTEU will be responsible for assuring that conference rooms or auditoriums are left in generally the same condition as it was discovered upon the completion of the meetings.

Section 8.05. Official Receipt of Labor-Relations Materials

- A. The official method of exchanging materials between DOE and NTEU is through email. The Parties may exchange materials using alternative methods when email is not

available or impracticable (e.g., network outage, file size limitations). All timelines associated with a delivery/receipt of labor-relations materials are counted by full work and/or calendar days, as applicable. If any timeline in this Agreement does not identify work and/or calendar days, the timeline will be measured in workdays.

- B. Any email associated with a deadline will be considered timely if the email is delivered by 11:59p.m. (EST/EDT) on the date of the deadline. In the event the recipient's mailbox has an out-of-office notice, the out-of-office notice must contain an alternative point of contact to receive the email. The sender must forward the email to the alternative point of contact. It is incumbent on the sender and the alternative point of contact to discuss extending any timelines to account for the original receiver's out of office time. Nothing in this section will be interpreted to grant union official time outside of normal duties hours, except as provided in Article 7.
- C. In the event that either party hand-delivers a document, delivery must be made to a person with a signed receipt of service. The document will not be deposited in an unoccupied office.
- D. When either party sends a FAX, the party sending the FAX will contact the recipient by telephone prior to sending the FAX.
- E. When sending materials using the United States Postal Service or similar commercial services, all mailings must be delivered using certified mail, or equivalent, which provides a delivery confirmation. All materials will be submitted timely if postmarked on or before the date of the deadline.

Section 8.06. Ballot Boxes

DOE will provide NTEU with a reasonable amount of

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space to conduct ballot box elections pursuant to its bylaws.

Section 8.07. Building Security

Non-DOE NTEU representatives visiting DOE's premises will comply with appropriate DOE security regulations, protocols and the conditions of Article 7, Section 7.09 for entering workspaces.

Section 8.08. Email

- A. NTEU will have access to the electronic mail system for representational purposes. All Union users will comply with system usage requirements, to include cybersecurity training requirements, machine audits for units using Departmental systems, which DOE establishes.
- B. DOE agrees to furnish Union Chapter 213 with one (1) email address to use for representational communications. DOE agrees to furnish Union Chapter 228 with one (1) email address to use for representational communications. Non-DOE individuals will not receive internal DOE email addresses.
- C. DOE understands that communications between Union chapter representatives, Union National, and Employees are confidential and may include personal/sensitive information. Unauthorized Employer access to such communications is prohibited.

Section 8.09. Interoffice Mail

- A. Union representatives may use DOE's internal mail distribution system to transmit information to specifically named individual Employees at no cost to NTEU. Printed informational materials must be bundled for delivery by organizational code and be properly identified as official Union communications. All such materials must not contain language disparaging the

Department.

- B. For each bundle of materials sent to a specific mail stop, a mailing sheet that provides the name of each Employee and room number must be attached.

Section 8.10. NTEU Electronic Content

- A. DOE will maintain a clearly titled and appropriately positioned link from its DOE's Powerpedia, or successor website to NTEU Chapters 213 and 228 websites, upon request of the Chapters. DOE will provide a point of contact for NTEU Representatives to submit updates to the Powerpeida site. The Chapters will be responsible for all content presented at their respective web sites. Union is bound by DOE's rules that govern use of these resources in regard to appropriate content. NTEU chapters may provide a link to the National Union website from each Chapter's website.
- B. DOE will print enough copies of this Agreement to provide one paper copy to all future bargaining unit Employees and 100 paper copies to NTEU. DOE will provide appropriate access to this Agreement in a manner that complies with the Rehabilitation Act, 29 U.S.C. § 701, et seq. In addition, this Agreement will be posted on the Office of Chief Human Capital Officer Internet website.
- C. DOE agrees to maintain electronic copies of all DOE personnel policies on the Office of the Chief Human Capital Officer's HCnet and Departmental Orders and Directives on the DOE Directives website, or successor. Upon request, DOE will provide NTEU with an electronic copy of any DOE policy, order and/or directive or a link to the location of such documents.

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Section 8.11. Bulletin Boards

- A. NTEU may continue to use all bulletin board currently being used. In the Forrestal building, NTEU will be provided with keys to half of the locked bulletin boards.
- B. NTEU may have exclusive use of bulletin boards which it purchases for installation in DOE's work areas. DOE determines the placement of the bulletin boards provided the location is a common area that is accessible and common to all bargaining unit Employees working in the area. DOE will provide for installation of such bulletin boards.
- C. NTEU is responsible for the content of all Union materials posted or distributed. Concerns over the content of any posted or distributed material may be raised with the respective Chapter President informally or through the negotiated grievance procedure. Union postings will be maintained in an orderly condition. Posted material shall not be related to partisan political matters.
- D. In accordance with the Parties' commitment to conduct themselves professionally, NTEU agrees not to post and/or distribute Union materials that malign or negatively refer to specific managers or individuals.
- E. If allowed by the lessor, there shall be a large bulletin board or other device in each of the satellite office locations where informational bulletins shall be posted. For those satellite offices without existing bulletin boards for NTEU's exclusive use, NTEU may post information on half of these bulletin boards, if the bulletin boards are allowed by the lessor.
- F. Where bulletin boards are not allowed or feasible under the circumstances, a Chapter President may request DOE allow alternative methods for posting information that

achieves the same intent as subsections 8.12 (A)-(D). Such requests will not be unreasonably denied.

Section 8.12. Distribution of NTEU Materials and Other Communication

- A. Union representatives and Employees performing any function under this section must be in a non-duty status.
- B. Official publications of Union material, which may include newsletters, fliers, or other notices, may be distributed on DOE's premises in both work and non-work areas to Employees before, during, and/or after scheduled work hours.
- C. A Union representative may visit cafeterias and other non-work areas located on DOE's premises to discuss internal Union business with individual Employees or small groups of Employees.
- D. DOE will ensure that Union has an opportunity to participate in the annual health fair it holds each year in conjunction with the health benefits open season.

Article 9 - Dues Withholding

Section 9.01 - General

Employees who occupy bargaining unit eligible positions are entitled to have their dues withheld through payroll deduction at no cost to NTEU. Dues withholding is voluntary on the part of the individual Employee. NTEU is responsible for informing the Employee of the voluntary nature of dues withholding and the conditions governing an Employee-revocation of dues withholding. In implementing the dues deduction program, DOE and NTEU will be governed by the provisions of 5 U.S.C. § 7115 and this Article.

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Section 9.02. Supply of Forms

Standard Form (SF)-1187 will be available through NTEU or online for use by an eligible member of NTEU who wishes to authorize the deduction of his/her dues. The SF-1188 will also be available through NTEU and online for Employees who wish to revoke the allotment as described in Section 9.11. Employees may print out either of these forms for their own use at no cost to the Employee or NTEU.

Section 9.03. Requesting Dues Withholding

In order to initiate dues withholding, an Employee must complete and sign an SF-1187. Employees must submit the completed and signed SF-1187 forms to an NTEU Chapter President, Steward, or other designated representative. NTEU will forward the SF-1187 via email to the Labor Relations Operations Division (LROD). LROD will confirm that the Employee is within the bargaining unit covered by NTEU and will forward the approved dues allotment form to Payroll for processing. Generally, dues will be withheld beginning no later than two pay periods following receipt of SF-1187 at Payroll.

Section 9.04. Dues Schedule

Figure 1 (these are not packaged field codes)

Field Name	Begin Position	Field Length	Date Type
SSN	1	9	Numeric
Chapter	10	3	Numeric
First Name	13	10	Alpha
Last Name	23	13	Alpha
Filler	36	2	Alpha (Spaces)
Amount (Total)	38	4	* Zone Decimal
WAEID	42	3	Alpha
Code	45	1	Alpha
Filler	46	14	Alpha (Spaces)
Grade	60	2	Numeric
Step	62	2	Numeric
Pay Plan	64	2	Alpha
Nat'l AMT. D/W	66	4	* Zone Decimal
Chapter AMT. D/W	70	4	* Zone Decimal
Bi-Weekly Base Pay	74	6	* Zone Decimal

NTEU certifies that the applicable dues schedule will be provided to each member prior to membership enrollment. Dues schedules may be changed pursuant to Section 9.07 below. The Agency will apply the appropriate dues schedule to Employees who authorize deduction of dues.

Section 9.05. Union Members Not in Good Standing

If NTEU suspends or expels a Union member, or if an Employee otherwise ceases to be a member in good standing, the NTEU National President will notify LROD via email of that determination within seven (7) calendar days. LROD will subsequently notify Payroll to cease dues deduction effective the next pay period for that Employee and copy NTEU.

Section 9.06. Dues Withholding Fees and Accounts

DOE will remit by Electronic Funds Transfer (EFT) the amount of dues withheld to a single account provided by NTEU (per Chapter). Each EFT will be accompanied by a remittance report that provides at least the following information (Figure 1):

<u>Code</u>	<u>Description</u>
D	Continuing
E	Insufficient Pay
F	New Allotment
G	Revocation
H	Separation (other than retirement)
I	Pay Adjustments (plus amounts only)
J	Movement Out of Recognition Area
K	Seasonal to Non-Duty Status
L	Temporary Promotion/Reassignment to NBU
M	Reactivate NTEU Dues After Temporary Promotion/Reassignment
N	Seasonal Continues in Non-duty Status
R	Retirement
T	Transfer from One NTEU Chapter to Another NTEU Chapter, Within the Same Agency
X	Deceased

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Section 9.07. Change in Amount of Dues

When the amount of regular dues changes, the NTEU Treasurer will notify LROD via email of that change. LROD will acknowledge and forward by email to Payroll for inclusion in future allotments and NTEU will be copied. Generally, this should take effect within four pay periods of notification to Payroll.

Section 9.08. Automatic Termination of Dues Withholding

All allotments of Union dues withholding will be automatically terminated in the following events:

- A. **Loss of Exclusive Recognition.** All deductions of Union dues provided for in this Article will automatically terminate in the event of loss of exclusive recognition.
- B. **Temporary assignment to a non-bargaining unit position.** If the Employee is on a temporary assignment to a non-bargaining unit position, DOE will notify Payroll to cease the allotment of NTEU dues deduction and inform NTEU. Employees who are temporarily assigned to a non-bargaining unit position will have the withholding reinstated once they return to the bargaining unit.
- C. **Separation or transfer.** Any individual allotment for dues withholding shall automatically terminate upon the separation of the Employee from DOE or transfer of the Employee to a position not designated in the bargaining unit. A final deduction will be made for the last pay period in which the Employee is in the bargaining unit.

Section 9.09. Chapter Transfers

In the event the transfer of an Employee results in a change in the Employee's NTEU chapter affiliation, DOE will note the change and adjust dues withholding as appropriate.

Section 9.10. Correction of Errors

- A. DOE agrees that the total error in the amount of dues withheld from the Employee will be adjusted as soon as practicable after DOE has discovered the error or has received written notification from NTEU of the error.
- B. When an underpayment to an Employee results in an overpayment to NTEU, DOE will refund the payment to the Employee in accordance with Section 9.12 of this Article. In the event DOE determines that NTEU received an overpayment under this section, DOE will forward to NTEU a bill for overpayment pursuant to Section 9.12 of this Article.
- C. When DOE fails to commence dues withholding in a timely manner, or otherwise fails to remit dues owed, DOE will pay the full amount to NTEU and recoup the funds from the Employee's salary through an adjustment subject to the Employee's right to seek a waiver of overpayment. When an adjustment is made to an Employee's salary to recoup dues withholding, the Employee will be issued written notification of DOE's intent to offset in accordance with 5 C.F.R. 550 Subpart K.
- D. If an Employee has been improperly separated and is ordered reinstated by an appropriate authority to a bargaining unit position, DOE will comply with applicable law, rule, and regulation when making deductions from the backpay award.

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Section 9.11. Procedure to Cease Dues Withholding

- A. **Within the First Year.** Revocation notices for Employees who have had dues allotments in effect for less than one (1) year must be submitted to LROD on or before the one (1) year anniversary date of their dues allotment. Revocations may only be effected by submission of a completed SF- 1188. The SF-1188 will become effective the first full pay period after the Employee's anniversary date. The Employee's anniversary date is defined as the first day of the pay period in which dues withholding first takes place.
- B. **After the First Year.** For Employees who have had dues allotments in effect for more than one (1) year, revocation notices must be submitted to LROD between August 1 and August 15 of each year. Revocations may only be effected by submission of a completed SF-1188. For any revocation notices submitted properly after the first year, the revocation will become effective on the first day of the pay period following the Employee's annual anniversary date (as defined in section 9.11.A above).
- C. Subject to the procedures above, an Employee may cease dues withholding by submitting to LROD via email a completed and signed SF-1188.
- D. Upon receipt of an SF-1188, ELRD will provide NTEU with a copy of the SF-1188. Only LROD can send an SF-1188 to Payroll to effect this action. Payroll will be advised that it cannot take any dues revocation action without concurrence from LROD.

Section 9.12. Overpayment to NTEU

- A. Upon determination by DOE that dues withholding for an Employee was not timely terminated and resulted in an overpayment to NTEU, DOE will process an adjustment to

reimburse the Employee.

- B. Each pay period, DOE will forward a bill for dues overpayment, with an accompanying document prescribed by the Debt Collection Act of 1982, to the Administrative Controller, National Treasury Employees Union, 1750 H Street NW, Washington, DC 20006.
1. This bill will identify amounts which were reimbursed to Employees as a result of dues withholding and the pay periods in which the overpayments were made to NTEU. The bill will request repayment of the overpayments which were made to NTEU.
 2. The document accompanying the bill will include a statement that debts due to the government for more than 30 days are subject to interest, penalties and administrative charges, to the extent required by regulations and law.
 3. The bill sent to NTEU will request payment be made payable to "U.S. Department of Energy" and will specify that the payment, and a copy of the bill, be mailed to an address designated on the bill for the U.S. Department of Energy.
 4. The right of NTEU to request a waiver of overpayment in accordance with 5 U.S.C. § 5584 and applicable federal regulation, or to dispute the amount of overpayment, will also be contained in the accompanying document
 5. A copy of the bill and accompanying document will be forwarded to LROD.
- C. Upon receipt of the amount due from NTEU,

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the accounts receivable for the applicable pay period will be closed. If a waiver or partial waiver of overpayment is requested timely by NTEU, DOE will suspend collection of the amount in question pending adjudication by DOE in accordance with 5 U.S.C. § 5584 and applicable federal regulation. DOE will notify the local NTEU chapter of the determination.

Section 9.13. Waiver of Overpayment by NTEU

- A. To be considered timely, a request for waiver of overpayment must be submitted to the Department's Office of Headquarters Accounting Operations by NTEU within 30 calendar days from the date NTEU became aware of the dues overpayment.
- B. If the bill for dues overpayment is received more than 10 days after the date of the bill, NTEU may request an extension of the waiver deadline date for a period of time equal to the number of days between the time the bill was received and the date of the bill, less 10 days.

Section 9.14. Denials of Requests for Waiver by NTEU

Denial by DOE of NTEU requests for waiver of overpayment in Section 9.12 above, will be subject to the grievance procedure in Article 11.

Section 9.15 - Notification of SF-1187 Processing

DOE shall provide each local chapter with a confirmation from the payroll office when an SF-1187 has been processed.

Section 9.16 - Employee Notifications

Any time DOE automatically terminates an Employee's dues withholding pursuant to Section 9.08 of this Article, LROD will notify the Employee and NTEU.

Article 10 - Polygraph

Section 10.01. Overview of Polygraph

DOE Employees may be subject to a polygraph examination as required by 10 CFR §709.3. Both DOE and Employees will abide by the applicable regulations contained in 10 CFR Part 709.

Section 10.02. Employee Rights and Notice

- A. In accordance with 10 C.F.R. § 709.13, an Employee may refuse to take a polygraph examination or terminate an ongoing polygraph examination at any time during the examination. If the Employee terminates an examination prior to the completion of the examination, DOE may treat that termination as a refusal to complete the counterintelligence evaluation, in accordance with 10 C.F.R. §§709.13-14.
- B. Pursuant to 10 C.F.R. §709.21, DOE must notify the Employee required to take a polygraph examination in writing of the date, time, and place of the polygraph examination, the provisions for a medical waiver, and the Employee's right to obtain and consult with legal counsel or to secure another representative, such as NTEU, prior to the examination. The Employee must receive the notification at least ten (10) days, excluding weekend days and holidays, before the time of the examination except when good cause is shown, or when the Employee waives the advance notice provision.
- C. Pursuant to 10 C.F.R. §709.22, an Employee has the right to obtain and consult legal counsel or another representative, such as NTEU; however, the counsel or representative may not be present in the room during the polygraph examination. Interpreters and signers may be present in the examination room during the polygraph examination.
- D. In the event a covered Employee refuses to

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take a polygraph examination, DOE may not record the fact of that refusal in the Employee's personnel file, pursuant to 10 C.F.R. §709.14.

- E. Each Polygraph Examiner will display one form of identification prior to the polygraph examination.
- F. All phases of the examination will be explained to the examinee, i.e., pre-test, in-test, and post-test phases. The pre-test will include a review of all test questions.
- G. Employees will not be tested while they are experiencing an illness that would preclude testing, if the Employee notifies the DOE Polygraph Test Center in advance, at the number provided in the notification letter, of any illness, pain or discomfort, or any other condition that may affect his or her participation in the polygraph examination, DOE will work with Employee to reschedule the examination.

Section 10.03. NTEU Notification

- A. At the request of NTEU Chapter 213, 228, or NTEU National, DOE will provide the total number of covered Employees, including each designated position, title, job series, and grade, who are subject to polygraph testing as determined by the requirements of 10 C.F.R. §709.
- B. The Employee must receive notification of polygraph examination selection from DOE at least ten (10) days, excluding weekend days and holidays, before the time of the examination except when good cause is shown. DOE will not discourage any DOE HQ Employees, who are subject to polygraph examination, from notifying NTEU Chapter 213 or 228 of the Employee's notification of a scheduled polygraph examination.

Section 10.04. Polygraph Administration

- A. Polygraphs will be administered in accordance with the standards set forth in 10 C.F.R. §709.31. DOE agrees to adhere to polygraph examinations approved and developed by the National Center for Credibility Assessment (NCCA), previously known as Department of Defense Polygraph Institute (DODPI).
- B. A polygraph examiner may administer no more than five polygraph examinations in any twenty-four-hour period. This does not include those instances in which a covered person voluntarily terminates an examination prior to the actual testing phase.
- C. The polygraph examiner must be certified to conduct polygraph examinations under this part by the DOE Psychophysiological Detection of Deception/Polygraph Program Quality Control Official.
- D. To be certified under paragraph (C) of this section, and 10 C.F.R. §709.31, an examiner must have the following minimum qualifications:
 - 1. The examiner must be an experienced CI or criminal investigator with extensive additional training in using computerized instrumentation in Psychophysiological Detection of Deception and in psychology, physiology, interviewing, and interrogation.
 - 2. The examiner must have a favorably adjudicated single-scope background investigation, complete a CI-scope polygraph examination, and must hold a "Q" access authorization, which is necessary for access to Secret Restricted Data and

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- Top-Secret National Security Information. In addition, he or she must have been granted SCI access approval.
3. The examiner must receive basic Forensic Psychophysiological Detection of Deception training from the DODPI.

Section 10.05. Refusing Polygraph Examination.

If an Employee in a covered position under 10 C.F.R. §709.3 refuses or terminates a polygraph examination, DOE must deny that Employee access to classified information and materials protected under 10 C.F.R. §709.3(b) and (c) and may take other actions consistent with the denial of access, such as reassignment or realignment of duties, or any other action consistent with the denial of access and applicable personnel regulations. Nothing in this Section prevents an Employee from resigning from their position for personal reasons.

Section 10.06. Follow-up Interviews

If, in accordance with 10 C.F.R. §709.15(b), DOE engages in any follow up interview with the Employee after the polygraph examination is concluded, Employee has right to consult with counsel or other representative, such as NTEU, during an interview, pursuant to 10 C.F.R. §709.22.

Section 10.07. Records of Polygraph Examinations

- A. DOE owns all CI evaluation records, including polygraph examination records and reports and other evaluation documentation.
- B. DOE maintains all CI evaluation records, including polygraph examination records and other pertinent documentation acquired in conjunction with a counterintelligence evaluation, in a system of records established under the Privacy Act of 1974 (5 U.S.C. §552a).

- C. DOE must afford the full privacy protection provided by law to information regarding a covered person's refusal to participate in a CI evaluation to include a polygraph examination and the completion of other pertinent documentation.
- D. With the exception of the polygraph report, all other polygraph examination records are destroyed ninety days after the CI evaluation is completed, provided that a favorable recommendation has been made to grant or continue the access to the position. If a recommendation is made to deny or revoke access to the information or involvement in the activities that justified conducting the CI evaluation, then all of the polygraph examination records are retained until the final resolution of any request for reconsideration by the covered person or the completion of any ongoing investigation.

Section 10.08. Mitigating Results

- A. Pursuant to 10 C.F.R. §709.25, DOE may not take an adverse personnel action against an Employee or make an adverse access recommendation solely on a polygraph examination result of "significant response" or "no opinion"; or use a polygraph examination that reflects "significant response" or "no opinion" as a substitute for any other required investigation.
- B. If an Employee's polygraph test results are not conclusive, then the Employee will be given the opportunity to take a subsequent polygraph examination until there is a final determination. Employees who retest may request a different examiner and will need to notify DOE prior to the subsequent examination date.

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Article 11 - Grievances

Section 11.01. Definition

- A. The Parties agree that the term "grievance" is defined in 5 U.S.C. § 7103(a)(9) as any complaint:
1. By an Employee concerning any matter relating to the employment of the Employee;
 2. By NTEU concerning any matter relating to the employment of any Employee; or
 3. By any Employee, labor organization, or agency concerning:
 - a. The effect or interpretation, or claim of a breach, of a collective bargaining agreement, or
 - b. Any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation, including DOE policies and directives, affecting conditions of employment.
- B. The term Party for purposes of this Article can be a representative of DOE, NTEU, the grievant or the potential grievant. The term Parties for purposes of this Article means a representative of DOE, and NTEU and the grievant or the potential grievant.

Section 11.02. Non-grievable Matters

DOE and NTEU agree the following actions may not be grieved:

- A. Any claimed violation of 5 U.S.C. Chapter 73, Subchapter III, (relating to prohibited political activities);
- B. Retirement, life insurance, or health insurance;
- C. A suspension or removal under 5 U.S.C. § 7532;
- D. Any examination, certification, or appointment;
- E. The classification of any position which does not result in the reduction in grade or pay of an Employee;
- F. Matters specifically excluded by other Articles of this Agreement;
- G. Matters over which an Employee has filed a written complaint of discrimination through the formal EEO complaint process.
- H. Non-selection for promotion from a group of properly ranked and certified candidates consistent with 5 CFR § 335.103, except where an Employee alleges that a prohibited personnel practice under 5 USC § 2302 or 29 CFR § 1614 has occurred;
- I. Matters already filed with the Merit Systems Protection Board (MSPB) as an adverse action which are, therefore, statutorily precluded from duplicate filing under this procedure.
- J. Notices of proposed disciplinary or adverse action (Employees maintain their right to respond to such notices of proposed disciplinary or adverse action, orally or in writing, as outlined in Articles 43 and 44 of this Agreement and may grieve final decisions); Counseling and/or warnings, written or verbal.
- K. Any matter previously or simultaneously raised before or adjudicated by the Office of Special Counsel (OSC), Occupational Safety and Health Administration (OSHA), and the Department of Labor (DOL);

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- L. Separation of an Employee on a probationary period, except as permitted by law or government wide regulation;
- M. Personnel actions resulting from reduction in force (RIF), which result in the Employee being separated, downgraded, or furloughed for more than 30 days or which allege violations of 5 U.S.C. 2302(b)(1);
- N. A grievance where the sole allegation is the non-adoption of a suggestion by DOE;
- O. The decision to establish a recruitment bonus, relocation bonus, retention allowance, or voluntary separation incentive pay (buyout);
- P. A decision to include or exclude an Employee's position on or from the eligibility lists for Voluntary Separation Incentive Payment (VSIP) and/or Voluntary Early Retirement Authority (VERA) for purposes other than described in Articles 13, 22, 48;
- Q. OPM designation of a critical position pay under Title 5 U.S.C. § 5377;
- R. DOE's decision to transfer functions from one program office, branch, and/or division to another for which all obligations under Article 13 of this Agreement have been met.

Section 11.03. Exclusivity

The procedures contained herein are the only grievance procedures available to Bargaining Unit Employees for the processing and disposition of grievances described by Section 11.01 of this article.

Section 11.04. Parties

Grievances under the terms of this article may be initiated by the Employee, either singly or jointly; by NTEU on behalf of an Employee; by NTEU on its own behalf; or by DOE on its own behalf. As used in this Article, the term grievant refers to the aggrieved Party,

whether an Employee, NTEU, or DOE.

Section 11.05. Representatives

- A. Subject to NTEU's discretion, grieving Employees have the right to be accompanied, represented, and advised by NTEU throughout the grievance process.
- B. Union stewards who file grievances concerning a matter of personal concern have the option to be represented by another steward appointed by the Chapter President or represent themselves subject to the right of NTEU to be present as described in subsection 11.05(C) below.
- C. Where an Employee has initiated a grievance and does not elect to be represented by NTEU, NTEU will have a right to be present at all discussions between DOE and the Employee about the grievance and receive the grievance, DOE's response, and any other documents related to processing the grievance.
- D. In their consideration of the grievance, management officials may confer with any non-bargaining unit Employee they feel might be helpful in resolving or deciding the grievance. When a management official desires to confer with a bargaining unit Employee, such a meeting will be governed by Article 5. In addition, the management official(s) must provide the following to the NTEU Chapter President in the notice described in Article 5:
 - 1. name of the bargaining unit Employee;
 - 2. the Employee's office;
 - 3. the general subject intended to be discussed with the bargaining unit Employee; and

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4. the proposed meeting date, time, and location.

Section 11.06. Consolidation of Similar Grievances

In the event that two or more grieving Employees have filed a grievance involving a similar fact pattern, a similar issue, and the same deciding official, upon agreement by NTEU, the grievances shall be consolidated and processed as one ("Consolidated Grievance"). A Consolidated Grievance will be processed pursuant to Section 11.07 below, except the grieving party will name one person to serve as the grievant and attach to the grievance a list of all other grievants subject to the grievance. The outcome of a Consolidated Grievance will apply to all parties listed.

Section 11.07. Contents of Grievance

- A. Each grievance must be reduced to writing, signed and submitted via email to the DOE Labor Relations Operations Division (LROD) (if NTEU or an Employee is grieving) or to NTEU (if DOE is grieving).
- B. Each grievance must contain an explanation of the complaint, the date of the alleged violation; the specific personal relief or remedy sought by the Employee or institutional relief sought by NTEU or Employer, and the name and contact information for the designated NTEU representative.
- C. The explanation of the complaint must contain assertions of how issuances of a notice, letter, performance rating, and/or performance plan violate this Agreement, law, rule, regulation, and/or DOE policies/directives and cannot be based on a mere assertion that such items were issued.

Section 11.08. Grievance Procedures.

A. General.

1. Grievances related to Disciplinary Actions, Adverse Actions, Performance Based Actions, and denials of Telework Agreements are covered in Section 11.13 below.
2. A grievance must be initiated within 15 calendar days of the particular act or occurrence precipitating the grievance or within 15 calendar days after the aggrieved became aware of the particular act or occurrence precipitating the grievance.
3. All grievance meetings identified in this Article will be held at a location and format (e.g., teleconference, videoconference) that is mutually agreeable to the Parties. If the Parties cannot mutually agree to a location, the location will be the official duty station of the grievant.
4. The time limits delineated in this article may be extended by mutual agreement of the Parties, except as described in Section 11.12 below. Any extension of a deadline(s) must be memorialized in writing. Agreement via email satisfies the written requirement.
5. Any step of these procedures may be waived by written mutual agreement of the parties.

B. Grievances filed by Employees

1. Step One

The grievance is submitted to LROD within the prescribed timeframe. LROD will designate the step-one deciding official and

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inform the Employee and NTEU representative. The step-one deciding official will consider the matter and will meet with the Employee and NTEU within ten (10) workdays of receipt of the grievance to discuss the grievance. The step one deciding official will give the grievant and NTEU a written decision regarding the grievance within ten (10) workdays after the meeting or within fifteen (15) workdays of receipt of the grievance if no meeting was held. If the grievant is not satisfied with the Step-One decision or DOE fails to provide a written decision within time limits prescribed above, the grievant or NTEU may submit the grievance to Step Two within fifteen (15) workdays as prescribed below.

2. Step Two

Appeals of the Step-1 decision must be submitted in writing to LROD within fifteen (15) workdays of NTEU's receipt of the Step-One decision or the date that the Step-One decision was due if no decision was issued. The Step-2 deciding official will consider the matter and review all information contained in the Step 1 and Step 2 grievance submittals and the Step-1 decision. The Step-Two deciding official will meet with the grievant and NTEU within five (5) workdays of receipt of the Step-2 grievance. The Step-Two deciding official will give the grievant and NTEU a written decision regarding the grievance within ten (10) workdays after the meeting or within fifteen (15) workdays of receipt of the grievance if no meeting was held. If the grievant is not satisfied with the decision or DOE fails to provide a written decision within time limits prescribed above, the grievant or NTEU may submit the grievance to Step-Three within fifteen (15) workdays as prescribe below.

3. Step Three

Appeals of the Step-Two decision must be

submitted in writing to LROD within fifteen (15) workdays of NTEU's receipt of the Step-Two decision or the date that the Step-Two decision was due if no decision was issued. The Step-Three deciding official will consider the matter and review all information contained in the Step 1, Step 2, and Step 3 grievance submittals and the Step-One and Step-Two decisions. The Step-Three deciding official will meet with the grievant and NTEU within five (5) workdays of receipt of the Step-Three grievance. The Step-Three deciding official will give the grievant and NTEU a written decision regarding the grievance within ten (10) workdays after the meeting or within fifteen (15) workdays of receipt of the grievance if no meeting was held. If the grievant is not satisfied with the decision or DOE fails to provide a written decision within time limits prescribed above, the grievance may be moved to arbitration pursuant to the procedures in Article 12 of this Agreement.

C. Grievances filed by NTEU or DOE.

Grievances filed by NTEU or DOE on its own behalf are submitted to LROD, if filed by NTEU, or the NTEU National President, or designee if filed by DOE as prescribed by Section 11.07.A of this Article. The receiving party will consider the matter and will meet with grieving party to discuss the grievance within fifteen (15) calendar days of its receipt of the grievance. The receiving party will give the grieving party a written decision regarding the grievance within thirty (30) calendar days of the meeting or within thirty (30) calendar days of its receipt of the grievance if no meeting is held. If the grieving party is not satisfied with the decision or no decision was issued in the timeframes prescribed above, the grieving party may move the grievance to Arbitration consistent with the provisions of Article 12.

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Section 11.09. Modifications to Grievance

- A. Any portion of a grievance may be deleted at any time by the grievant.
- B. New issues and appropriate remedies not directly related to the original issue or grievance may not be raised by either Party unless the Parties mutually agree. However, if any new information is presented in the course of processing the grievance that would not have reasonably been known to the grievant and/or NTEU at the time the grievance was filed at step-1 or appealed at step-2, such information may be included in the grievance provided that it is directly related to the original issue or grievance.

Section 11.10. Settlement

The Parties may mutually agree to settle the grievance at any time. If the Parties reach a settlement, that settlement must be reduced to writing, contain the terms of the grievance, state that the grievance is now closed, and be signed by DOE, where applicable NTEU, and the Employee.

Section 11.11. Grievability/Arbitrability

- A. Where threshold issues of timeliness and/or grievability is raised by any party during the processing of a grievance, the threshold issue(s) shall be amended to the grievance and discussed as the grievance is processed.
- B. Procedural arbitrability issues, such as timeliness and failure to adequately state a claim, must be raised by last grievance response. However, if the issue is whether the matter is substantively arbitrable, that matter may be raised at any time and the grievance will be amended to include the issue.

Section 11.12. Information Requests

DOE has the obligation to produce all relevant

information during the grievance process in accordance with 5 U.S.C. 7114. Responses will be handled promptly, professionally, and in the spirit of partnership. Where an information request related to a particular grievance has been filed, the time requirements for that particular grievance will be held in abeyance pending receipt of a response to the request.

Section 11.13. Disciplinary/Adverse/Performance Based Actions or Telework Agreements

- A. Grievied suspensions of three (3) days or more will be stayed throughout the grievance procedure (including arbitration) except where the Agency can articulate an issue of Agency security or other adverse impact on the mission/efficiency of the Service.
- B. Adverse/Performance-Based Actions where the final decision is to remove an Employee from service may be submitted straight to arbitration pursuant to Article 12.
- C. The following actions may be submitted directly to Step 3 of the Negotiated Grievance Procedures.
 - 1. Denial of telework- the grievance will be sent to LROD within 15 workdays following denial of the telework agreement.
 - 2. Disciplinary actions resulting in suspensions of 14 days or less- the grievance will be sent to LROD within 15 workdays following the receipt of the final decision.
 - 3. Adverse or Performance-based Actions where the final decision is less than removal - the grievance will be sent to LROD within 30 workdays following receipt of the final decision.

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Article 12 - Arbitration

Section 12.01. Applicability

Any grievance processed under the terms of Article 11 which is otherwise appealable to arbitration, may be appealed to binding arbitration by either DOE or NTEU. Except as otherwise provided in Article 11, Section 11.09, or in disciplinary/adverse action cases, only arguments raised prior to Step 3 of the grievance procedure may be raised at arbitration.

Section 12.02. Invocation

- A. Notice of Intent. Within fifteen (15) calendar days following the date of the Step 3 grievance decision, or within fifteen (15) calendar days following the date that the Step 3 grievance decision was due if no decision was provided, the party seeking to invoke arbitration will provide a notice of intent to arbitrate the case via email to LROD, if NTEU is invoking arbitration, or the applicable NTEU Chapter(s), if DOE is invoking arbitration.
- B. Invocation. Within fifteen (15) calendar days following the notice of the intent to arbitrate, the party seeking to invoke arbitration will provide the other party with a notice invoking arbitration via email to LROD, if NTEU is invoking arbitration, or the applicable NTEU Chapter(s), if DOE is invoking arbitration.

Section 12.03. Arbitrator Selection

- A. Within 30 days of effective date of the CBA parties will meet to establish an arbitration panel.
- B. To establish the initial arbitration panel, DOE will notify FMCS and request a panel of twenty (20) arbitrators. Following the contact each party will add four (4) names to by privately sending those names to FMCS and asking them to be included in the list of

twenty (20). The parties will flip a coin to determine the order of striking, then strike alternately until four (4) members remain on list. The four (4) members will constitute the arbitration panel.

- C. When an arbitrator on the initial panel declines to continue serving on the panel or is unable to schedule a hearing in accordance with Section 12.05 below in two successive cases, the arbitrator will be removed from the panel and the parties will meet within 30 calendar days to fill the vacancy using the procedures in section 12.03.B above. In such cases the request for a list will be for five (5) arbitrators per vacancy, and each party may submit one (1) name per vacancy.
- D. In the event an arbitrator is removed from the panel, any cases pending assignment to that arbitrator will be assigned to the next arbitrator on the panel.

Section 12.04. Arbitrability

The arbitrator has the authority to make all grievability and arbitrability decisions. Upon mutual agreement of the parties, such threshold issues may be submitted to the arbitrator by briefs and decided prior to a hearing on the merits to the underlying grievance. Absent mutual agreement, arbitrability and/or grievability issues will be presented first at the hearing. Following the presentation of the threshold issue, either party may submit a motion requesting the arbitrator to provide a bench decision consistent with Section 12.09 below on the threshold issue before moving to the presentation of the merits of the underlying grievance. If no bench decision is rendered the arbitrator's opinion and award will address the arbitrability of the case first. If the arbitrator finds the grievance is not grievable/arbitrable, then no decision will be provided on the merits.

Section 12.05. Scheduling

- A. Within thirty (30) calendar days of

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invocation, DOE will notify the selected arbitrator of his/her selection and request his/her earliest availability to preside over the arbitration. The Parties will work together to decide on a mutually agreeable date for the hearing. If the parties cannot mutually agree to a hearing date, the arbitrator will set a hearing date generally no sooner than 90 days and no later than 120 days. If the arbitrator cannot schedule the hearing within the general timeline, the parties will meet to discuss whether they can mutually agree to date outside of the timeline or elect to move to the next arbitrator on the panel.

- B. When a date for the arbitration hearing has been agreed to by the arbitrator and both Parties, or set by the arbitrator if no mutual agreement was reached, postponement of the hearing date will be by mutual agreement of the Parties, in writing. If a delay is agreed to by the Parties, the Party requesting the delay will be responsible for communicating with the arbitrator and requesting a new hearing date. If a hearing is postponed or canceled at such a late date that a cancellation fee is charged by the arbitrator, the Party requesting the postponement or cancellation shall pay the cancellation fee. If the Parties do not mutually agree to postpone a hearing, the Party requesting the postponement may submit a request to continue the hearing directly to the arbitrator with service to the other Party. The Arbitrator will grant/deny the request and the Parties will be responsible for attending/rescheduling the hearing pursuant to the Arbitrator's decision.

Section 12.06. Pre-Hearing Procedures

- A. No later than fourteen (14) calendar days after the establishment of a hearing date, both Parties shall meet to clarify the issue(s) and explore possible resolution of the case.

- B. No later than twenty-one (21) days prior to the first scheduled hearing date, the Parties will meet to discuss the issue(s) to be arbitrated, exhibits, witnesses, and facts. Any agreement on these items will be put into writing and signed by both Parties.
- C. If the Parties fail to agree on the issue(s) to be arbitrated, then each shall make a separate statement of the issue(s) with a copy furnished to the other Party.
- D. At least seven (7) calendar days prior to the hearing date the Parties will exchange a final list of proposed witnesses.
- E. DOE Employees participating in the hearing as a grievant or as a witness will be excused from duty, if otherwise in a duty status, to participate in the hearing. An Employee participating in a hearing as a representative of the grievant may be excused from duty for such participation in accordance with the provisions of Article 7.

Section 12.07. Hearing

- A. DOE will make all physical arrangements for the hearing, including obtaining a suitable hearing room on or near as possible to the invoking chapters' work location (i.e., Germantown or Forrestal), or by mutual agreement. Hearings will be held in person but may be held virtually by mutual agreement.
- B. The conduct of the arbitration hearing will be determined solely by the arbitrator, who will have full authority to determine the appropriateness of requested witnesses, proposed exhibits, and will have sole authority to limit testimony of witnesses or the introduction of documents based on issues of relevance, redundancy, or competence.
- C. Transcripts will be made of any arbitration

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hearing. DOE will be responsible for scheduling and coordinating the presence of a stenographer at the hearing. The parties will equally pay the costs of the service and one (1) copy for the arbitrator.

Section 12.08. Arbitration Awards and Record

The arbitrator's authority is limited to the issue(s) of the grievance and the requested remedy. The arbitrator has no authority to alter, in any way, the terms of this agreement. The arbitrator may rely on notes taken at the hearing, any exhibits entered into the record, the transcript, and post-hearing briefs in order to reach a final and binding decision. Upon mutual agreement of the parties, the arbitrator may issue a bench decision at the end of the hearing. If he or she does so, it must be followed within fourteen (14) calendar days of the close of record by a written decision. If no bench decision is issued, a written decision should be provided within thirty (30) calendar days of the close of record, or receipt of the transcript. All written decisions should include a finding of facts, and an opinion containing the reasoning and basis for the decision. The preferred method for receiving the opinion and award is an electronic PDF via email.

Section 12.09. Expenses

Unless otherwise provided by law, any fees and expenses of the arbitrator, hearing, transcript, and/or FMCS fees necessary to replace an arbitrator on the panel will be shared equally by the parties. Each party will be responsible for cost associated with their own expert witnesses.

Section 12.10. Exceptions to Award

Either Party may file an exception to an arbitrator's award with the Federal Labor Relations Authority or the appropriate Court of Appeals within 30 calendar days of the award's issuance. The arbitrator's decision will be implemented as soon as practicable but no later than 30 calendar days after receipt unless either Party is filing exceptions. If either Party does not understand the arbitrator's decision, that Party will

request clarification of the decision from the arbitrator.

Article 13 – Mid-contract Negotiations

Section 13.01. Rights and Obligations of the Parties

- A. All matters covered by this Agreement will not be subject to change during the term of the Agreement, absent mutual consent of the Parties, or in accordance with the provisions in Article 2.
- B. Where DOE wishes to implement a change to the conditions of employment of bargaining unit Employees, even if a protected management right, DOE has a duty to notify NTEU and the Parties have a mutual duty to bargain in good faith to the extent required by law.
- C. Where DOE determines a change to conditions of employment does not invoke a bargaining obligation, DOE will provide a courtesy notice to the appropriate Chapter President(s) which identifies the change(s) and provides DOE's position regarding the exclusion to the duty to bargain.
- D. Unless otherwise provided for by law (e.g., emergencies pursuant to 5 U.S.C. § 7106(a)(2)(D)) or this Agreement (e.g., Section 13.01.E below), DOE will not implement any proposed changes to conditions of employment until the Parties have fulfilled their bargaining obligation under this Agreement, to include third-party proceedings in Section 13.04 below.
- E. In the event that the scope of bargaining currently available to the Parties is expanded due to changes in the law or higher agency regulations, either Party may reopen this agreement by submitting proposals addressing these areas. Such negotiations shall be strictly limited to those areas that the scope of bargaining has specifically

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broadened.

Section 13.02. Mid-Contract Negotiation Procedures

- A. The procedures contained in this Section shall constitute the ground rules for all mid-contract negotiations under this Article, unless the Parties mutually agree to do otherwise. The Parties acknowledge that where a provision requires an action be “in writing” or similar, submissions by email satisfy the requirement.
- B. At least fourteen (14) calendar days prior to the proposed implementation date of changes to Employees’ conditions of employment, DOE will provide written notice of the proposed change(s) to NTEU. Where DOE’s change affects only one NTEU Chapter, it will notify the applicable Chapter President in writing. Where such changes are Headquarters-wide, or impact both NTEU Chapters, DOE will notify both NTEU Chapter Presidents in writing. This notice will include sufficient information for NTEU to understand the need for and impact of the requested change.
- C. Upon receipt of the notice, NTEU will have seven (7) calendar days to advise DOE, in writing, of NTEU’s request to negotiate and/or request a briefing on the proposed change.
- D. No later than seven (7) calendar days of the briefing, or fourteen (14) calendar days of the notice if no briefing was scheduled, NTEU may submit its initial information request pursuant to 5 U.S.C. § 7114(b)(4).
- E. Within ten (10) calendar days of the briefing or DOE’s response to the initial information request, whichever is later, or fourteen (14) calendar days of the notice if no briefing was held and no information request was submitted, NTEU will submit a list of NTEU’s bargaining team members and proposals to DOE in writing. If NTEU’s proposals are not provided to DOE within the applicable timeline identified in this section, and no requests for and extension has been approved, then the request to negotiate will be deemed waived and closed, and DOE may proceed with implementation.
- F. Within seven (7) calendar days after receiving NTEU’s proposals, the Parties’ chief negotiators will meet by phone to mutually agree on dates, times, and locations for negotiations.
- G. The Parties will make a good faith effort to reach an agreement. When it is determined by either party, on any issue, that an agreement cannot be reached, the issue may be set aside, except this will not preclude either party from asking questions about the other party’s proposals and receiving answers. After all issues on which agreement can be reached have been agreed to, the Parties will attempt once more to resolve any remaining items that were set aside. Nothing in this subsection is intended to waive the statutory good faith bargaining obligation of either party. If at the conclusion of bargaining the Parties have not reached an agreement, either party may request applicable third-party assistance pursuant to section 13.04 below.
- H. All agreements reached will be reduced to writing and signed by the Parties’ chief negotiators. All partial agreements are considered tentative until a full and complete agreement is reached.
- I. All negotiated agreements are subject to review by the head of the Agency (or his/her designee) pursuant to 5 U.S.C. §7114(c). DOE will be responsible for providing NTEU’s chief negotiator with a copy of the approval/disapproval by the Agency Head.

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Section 13.03 Bargaining Teams

- A. In addition to NTEU staff, NTEU will be authorized the same number of bargaining representatives on Union Time as DOE has representatives participating in the negotiations.
- B. Either Party may have a subject matter expert (SME) present as necessary who can provide information necessary for the successful completion of bargaining. The SME will not count toward the bargaining team's representatives.

Section 13.04. Third-Party Assistance

- A. At the conclusion of scheduled bargaining either party may request mediation services from the Federal Mediation and Conciliation Service (FMCS). The party seeking assistance from FMCS will be responsible for contacting FMCS.
- B. Either party may request that FMCS release the bargaining dispute to the Federal Service Impasses Panel (FSIP) after bargaining with mediation assistance has been conducted in good faith. The FMCS mediator shall ensure that the Parties have fully negotiated over every contested issue before an impasse may be declared. The utilization of mediation and the involvement of the FSIP does not, in any respect, preclude the Parties from engaging in direct negotiations at any time to attempt to resolve the disputes at issue.
- C. The Parties will make a good faith effort to resolve negotiability disputes during negotiations, prior to NTEU filing a petition for review under 5 CFR Part 2424. Absent a request for, or DOE providing written declarations of non-negotiability, the Parties may set aside issues of negotiability and continue to bargain the remaining issues consistent with Section 13.02(F) above. Absent mutual agreement, no part of the

issues will be severed from the entire agreement and implemented or moved to the FSIP prior to the resolution of any outstanding negotiability petitions. Where proposals/provisions are found to be negotiable, the Parties will meet as soon as practicable to commence bargaining.

Article 14 – Labor-Management Committees

Section 14.01. General

- A. The parties will establish Labor-Management Relations Committees (LMRCs) in accordance with the provisions of this Article. They will give consideration to areas of pre-decisional input; the prevention and resolution of misunderstandings and national grievances; working conditions, personnel policies and practices; the promotion of good Employee supervisor relationships; the strengthening of morale; etc.
- B. All LMRCs and/or subcommittees are solely for the purpose of exchanging views and information and shall be deemed a supplement to negotiations as defined by the Civil Service Reform Act, not a substitute to negotiations or the grievance procedure. However, the parties recognize that issues unresolved in these meetings potentially can be addressed in grievances, mid-term bargaining and other traditional representational forums.
- C. Minutes for all meetings covered by this Article will be created and provided to all Employees attending the meeting for review and comment. Any comments submitted will be appended to the original minutes. Upon request, copies of meeting minutes will be provided to NTEU Chapter Presidents, unless such minutes were provided because the Chapter President(s) attended the meeting.
- D. If any of the labor-management groups established under this Article are given

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decision making authority, the written agreement establishing the labor-management group will ensure that such decisions are reached by mutual agreement or a majority vote if mutual agreement cannot be reached.

Section 14.02. DOE-HQ and NTEU LMRC

- A. A DOE-HQ and NTEU Labor-Management Relations Committee (LMRC) will meet at least once per quarter. Additional meetings may be held, by mutual consent, at such other times as deemed necessary.
- B. The purpose of the LMRC is to meet, formulate, and recommend suggested changes in existing practices and to engage in pre-decisional discussions for changes in such practices that relate to conditions of employment for Employees that are assigned to DOE-HQ.
- C. Ten (10) calendar days prior to the scheduled date of the meeting, the parties will exchange agenda items. Matters not on the agenda can be discussed by mutual consent.
- D. NTEU will be permitted to have up to four (4) NTEU Representatives on the LMRC. In addition to the four (4) NTEU Representatives, NTEU staff may also attend and participate in the LMF.
- E. At the request of either party, Subject Matter Experts (SMEs) who have specialized knowledge and/or experience in the topics being discussed will be permitted to attend and participate in the LMRC.
- F. NTEU Representatives and/or bargaining unit Employees serving as SMEs will be provided Union Official Time and/or duty time and travel and per diem, as applicable, pursuant to Articles 7 and 34 of this Agreement.

Section 14.03. Subcommittees

- A. By mutual agreement of the parties, or when a particular subject matter (e.g., Safety and Health) is raised at two (2) or more LMFs in a six (6) month period, the Parties will establish a subcommittee to address the particular subject matter.
- B. The establishment of subcommittees will be memorialized in a written charter pursuant to Article 13 of this Agreement. At a minimum, the charter will include the following information:
 - 1. Purpose and scope of the subcommittee;
 - 2. Composition of the subcommittee;
 - 3. Frequency/Schedule of meetings; and
 - 4. Provisions that ensure parity between bargaining unit Employees and non-bargaining unit Employees.
- C. At a minimum, or unless otherwise agreed to in the written agreement set forth in Section 14.04 above, NTEU will be allowed a number of representatives equal to the number of non-bargaining unit Employees that will serve on a subcommittee, but no less than two (2) representatives.
- D. At the request of either party, Subject Matter Experts (SMEs) who have specialized knowledge and/or experience in the topics being discussed will be permitted to attend and participate in subcommittee meetings.
- E. To preserve the ongoing partnership currently in place, the following current subcommittees will continue to meet in accordance with current practices and will meet as soon as practicable to memorialize

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its establishment pursuant to Section 14.04.B above.

1. Health, Safety, and Disability Committee
2. Parking Committee
3. Germantown Cafeteria Committee
4. Forrestal Cafeteria Committee
5. Germantown Grounds Committee

Section 14.04. National LMRC

- A. The Parties agree that a National LMRC is a meeting of non-bargaining unit members from areas outside of DOE-HQ and bargaining unit members/representatives from NTEU and other bargaining units.
- B. If through direction (e.g., Executive Order) and/or at DOE's discretion, a National LMRC is established and such issues presented impact or are related to conditions of employment at DOE-HQ, NTEU will be invited to participate in the National LMRC. At a minimum, each NTEU Chapter President representing DOE Employees will be invited to attend a National LMRC and additional NTEU representatives will be allowed to ensure parity with the number of participants from other union locals/chapters.
- C. Unless otherwise agreed by the parties, the establishment of NTEU representatives participating in a National LMRC will be memorialized in a mid-term agreement pursuant to Article 13 of this Agreement.
- D. Union Official Time, travel expenses, and per diem will be provided to NTEU Representatives pursuant to Articles 7 and 34 of this Agreement.

Article 15 - Position Classification

Section 15.01

Employees are encouraged to make any comments or recommendations to their immediate supervisors, or other appropriate management officials, regarding the accuracy of their position descriptions. DOE agrees to review the presentation and advise the Employee of the results of its review. DOE agrees that position descriptions for each new position will accurately reflect, to the extent feasible, the major duties of the Employee filling that position. Position descriptions will be amended when the major duties change. The servicing personnel operations branches are available to advise Employees and their immediate supervisors as to the proper format and content of bargaining unit position descriptions.

Section 15.02

NTEU will be notified immediately after an Employer's decision to reorganize any part of the bargaining unit has been made. Such notice will identify significant changes in the duties and responsibilities of Employees occupying positions to be affected by the reorganization. DOE will also inform NTEU when changes in position classification standards result in classification changes.

Section 15.03

Employees assigned to positions will be provided a position description.

Section 15.04

All classification errors will be corrected as soon as possible.

Section 15.05

NTEU will be provided a copy of the DOE Headquarters classification maintenance review schedule and updates as they occur.

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Article 16 - Acceptable Level of Competence

Section 16.02

Section 16.01

- A. Between 75 and 60 calendar days prior to the date that an Employee is eligible to receive a within-grade increase, the Employee's supervisor will review the Employee's performance. If the supervisor concludes that the Employee's performance has not been at an acceptable level of competence, the supervisor will provide the Employee with a written notice at least sixty (60) calendar days prior to the end of the waiting period which indicates:
1. Those aspects of the Employee's performance in which the Employee is deficient and the extent of such deficiencies;
 2. Specific instances supporting the deficiencies;
 3. A statement of what the Employee needs to do to improve performance to an acceptable level of competence, and the type of guidance and review the supervisor will provide;
 4. That the Employee's within-grade increase may be denied unless sustained improvement to an acceptable level of competence is shown within sixty (60) calendar days. If DOE fails to give this sixty (60) calendar days' advance notice, and the within-grade increase is denied, DOE will make a determination as to the Employee's acceptable level of competence not later than 60 calendar days after the date the written notice is given to the Employee.

- A. If at the end of the waiting period the Employee's performance is at an acceptable level of competence, the within-grade increase will be granted, and the notice will not be used as the basis for subsequent personnel action. If an Employee's performance is not at an acceptable level of competence, DOE will notify the Employee in writing that the within-grade increase will be denied. The notice will include a statement of the following:
1. The Employee's performance has been determined not to be at an acceptable level of competence;
 2. A comparison of the Employee's performance during the 60-day notice period against the performance standards, including specific instances supporting the Employee's actual performance;
 3. The Employee's right to have the decision reconsidered, to whom the request should be made, and the timelimit in which the Employee may make such a request;
 4. That if the supervisor determines that the Employee is performing at an acceptable level of competence, the within-grade increase can be approved at any time; and
 5. That in any event, a new determination will be made no later than 52 weeks after the date of the original determination.

Section 16.03

When an Employee chooses to make an oral presentation in connection with a request for reconsideration, a written summary will be made of

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the oral presentation and a copy provided to the Employee.

Section 16.04

When an Employee is denied a within-grade increase by the reconsideration official, the letter transmitting that official's decision shall include a statement which informs the Employee about the right to file a grievance. The fifteen (15) workday time limit on filing a grievance starts to run when the Employee receives the notice of negative determination from the reconsideration official. If a grievance is not filed within that period, the Employee cannot grieve the denial until and unless a new negative determination is made by the reconsideration official 52 weeks later. The denial letter will also contain a statement at the top of the first page in capital letters: "A COPY OF THIS LETTER MAY, AT YOUR OPTION, BE FURNISHED TO NTEU CHAPTER [213] and [228]."

Article 17 - Performance Management Program

Section 17.01. General

- A. DOE's Employee Performance Management and Recognition Program Order, the Employee Performance Management and Recognition Program Desk Reference (Desk Reference) and applicable policy memorandums establish the requirements and responsibilities for Employee performance, including appraisal, recognition and awards for Employees. The Performance Management Program integrates the processes used to:
1. Communicate and clarify organizational goals to Employees;
 2. Identify individual Employee responsibility and, where applicable, individual accountability for accomplishing organizational goals; and
 3. Use appropriate measures of

performance as the basis for appraising, recognizing and rewarding accomplishments.

- B. If at any time during the appraisal period an Employee's performance begins to decline in any critical element, and the supervisor reasonably knows or should know of such declining performance, the supervisor will bring the performance issue to the attention of the Employee as soon as practicable. The supervisor will notify the Employee of such performance deficiencies in writing. Upon request, an Employee may meet with the supervisor within a reasonable time to discuss the performance deficiencies and how the Employee can improve. It is understood, that if an Employee does not take appropriate actions to improve performance, the Employee may be subject to the provision in 17.07 below.

Section 17.02. Rating Cycle

In accordance with DOE's Employee Performance Management and Recognition Program Order, the performance appraisal rating cycle is 12 months, beginning on October 1 and ending on September 30. Performance will be assessed solely on accomplishments during the rating period and not on the basis of any prior rating period. The rating official may request accomplishments from the Employee to evaluate performance. Employees who wish to submit write-ups of their accomplishments for consideration in the evaluation of their mid-term reviews or final appraisals may do so at any time but should submit them before the end of the rating cycle. Only Employees who have completed a minimum performance period of 90 calendar days will be evaluated at the end of the appraisal period. The performance plan will be issued annually, normally within 30 - 45 days of the beginning of the appraisal period.

Section 17.03. Critical Elements

- A. The performance plan must only contain

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Critical Elements that are specific, measurable, achievable, relevant to the work performed, linked to organizational mission and goals, and are time-bound; Critical Elements may include dates or milestones for specific deliverables or projects.

- B. Elements and task/expectations are developed by Rating Officials with input from Employees.
- C. Critical Elements are defined at the Meets Expectations level.
- D. An Employee will be given a reasonable amount of duty time, up to two (2) hours, to prepare for the discussion and preparation of the Critical Elements, and to present written comments concerning his/her performance plan to the Rating Official. Such requests must be made in accordance with Article 3.
- E. If the Employee does not wish to participate in the development of his/her performance plan, the Rating Official will discuss the Critical Elements with the Employee to ensure he/she has a clear understanding of what is expected during the appraisal period.
- F. Critical job elements and standards will be consistent with the requirements of the Employee's position. In the event that specific duties and/or responsibilities reflected in the critical job elements and standards were not actually assigned during the appraisal period, DOE may mark a critical job element as Not Ratable (NR).

Section 17.04. Performance Ratings

- A. Employees will be rated on their Critical Elements in accordance with DOE's Employee Performance Management and Recognition Program Order.
- B. Elements and task/expectations are developed by rating officials with input from

Employees according to the process set out below.

- C. The Rating Official shall discuss the Employee's performance plan and the expectations of the Rating Official for successful completion, normally within 30 days of the beginning of the rating period. An Employee will be given a reasonable amount of duty time, up to two (2) hours, to prepare for the discussion on the new standards and elements, and to present written comments concerning his/her Performance Appraisal Plan to the rating official. In the event that an Employee assists in developing his or her performance plan, the Employee shall be given a reasonable amount of duty time to do so. Employees should review their performance plans prior to the discussion about the performance plans with their Rating Officials.
- D. Each Employee is entitled to a meeting with the rating official for presentation and discussion of the annual performance appraisal. The Employee will be provided a copy of the annual performance appraisal through the ePerformance system and will be given five (5) working days to electronically sign the document. If the Employee declines to sign the document the Employee must notify his/her rating official. Declining to sign the document does not invalidate the appraisal or rating. During this time, the Employee may also add written comments in the e-performance system in the designated section within five (5) workdays. Such Employee comments shall become a part of the appraisal record. Management will not reply or comment on any such Employee comments.
- E. In the application of standards to individual Employees, DOE agrees to take into account factors such as availability of resources, lack of required training, duty time spent performing other work, such as when on a

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detail, or frequent, or authorized interruptions of normal work duties.

- F. Performance shall be monitored throughout the performance period subject to the minimum requirements for performance monitoring and feedback described in the following sections.
- G. Feedback is not limited to formal periodic reviews and is encouraged throughout the rating year.
- H. Prior to a final rating, input may be provided to the rating official from all other Management officials who have assigned work to the Employee during the review period. Generally, such input should be reduced to writing by the other Management officials and provided to the Rating Official; however, in the circumstance that the input is not provided in writing the Rating Official should document (in writing) what information was provided and who the Management official was that provided the information. Further, any input provided should be reduced to writing and submitted by the reporting Management official. The rating shall be based on all work assigned by all Management officials during the review period, and which is covered by the Employee's elements and standards. The Employee shall be provided a copy of any written input or feedback. Any input considered by the rating official in determining the Employee's rating shall be shared with the Employee in ePerformance. The Employee will have an opportunity to respond during the timeframe for submitting written comments in Section 17.04.D above. While the performance appraisal meetings will normally be between the rating official and the Employee, other parties may attend the performance appraisal meeting in order to provide input regarding Employee performance if the Employee and the rating official have agreed in advance.

- I. Absent exigent circumstances, final ratings are to be provided to Employees within forty-five (45) calendar days of the end of the rating period.
- J. The Employee is expected to electronically sign the performance appraisal upon issuance by the rating official. The Employee's electronic signature on the appraisal indicates only that the rating has been discussed with the Employee, and the Employee has reviewed the appraisal, not an Employee's agreement with the performance appraisal.
- K. Employees who are Union representatives performing representational functions will be appraised based solely upon their performance in their position of record. Employees who are Union representatives will not have the time spent performing representational duties reflect favorably or unfavorably on their performance appraisals. To be evaluated at the end of the performance cycle, Union representatives must have 90 days of measurable results achieved in order to receive a performance rating. If the minimum period cannot be met, NTEU representative will receive a "Not Ratable" rating and will not be eligible for performance awards for that rating period.

Section 17.05. Performance Meetings

- A. The Rating Official must discuss the Employee's performance plan and the expectations of the Rating Official for successful completion normally within 30-45 calendar days of the beginning of the rating period.
- B. Employees will receive at least one (1) progress review during the annual performance appraisal year, which will normally occur at the midpoint of the rating period. Employees will be requested to

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electronically sign in ePerformance indicating that a progress review has occurred. Progress reviews are not grievable. In the event it is necessary to rate the Employee for less than the full appraisal period, the Employee will receive a progress review at the mid-point of the rating period.

- C. Each Employee is entitled to a meeting with the Rating Official for presentation and discussion of the annual performance appraisal. The Employee may add written comments on the electronic performance appraisal and return it to the Rating Official. Such Employee comments on the designated section of the appraisal shall become a part of the appraisal record. Management will not reply or comment on any such Employee comments.
- D. Employees, Rating Officials and Reviewing Officials must electronically sign the performance plan at the various stages. The Employee's electronic signature is an acknowledgement that the stage of the performance plan occurred and shall not be construed as agreement with the contents.
- E. Performance discussions are not formal discussions giving rise to the right to Union representation. Therefore, the Employee does not have the right to NTEU representation at a performance meeting, except as provided in section 17.07.B below.
- F. Discussions may be initiated by the supervisor or Employee and may be held one-on-one or in a work group. Employees are encouraged to seek feedback from their supervisor about their performance throughout the performance appraisal period.
- G. DOE and NTEU encourage managers and their Employees to engage in regular discussions concerning application of the performance management system.

Performance discussions between the supervisor and the Employee will be aimed at improving the work process or product and developing the Employee. As appropriate, the discussion will provide the opportunity to assess accomplishments and progress and identify and resolve problems.

- H. Any discussion under this section will occur within a reasonable period of time.

Section 17.06. Departure Ratings/Advisory Ratings /Not Ratable

- A. Employees will be assigned advisory ratings, departure ratings and will have Critical Elements identified as Not Ratable. Consistent with DOE's Employee Performance Management and Recognition Program Order:
 - 1. If the Rating Official permanently departs his or her position, a departure appraisal should be prepared for all Employees reporting to that Rating Official that have met the minimum appraisal period for their position. The new Rating Official will then consider the departure appraisal as appropriate in preparing a rating of record when the Employee's appraisal period ends;
 - 2. If the Rating Official permanently departs his or her position during the last ninety (90) days of the Employee's rating period, the departure appraisal becomes the rating of record; and
 - 3. If the Rating Official temporarily departs for a position during the last ninety (90) days of the Employee's appraisal period, that Rating Official will be responsible for preparing the rating of record.

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Section 17.07. Opportunity to Demonstrate Acceptable Performance

- A. For the purpose of this Agreement, an Opportunity to Demonstrate Acceptable Performance ("Opportunity") is analogous to Performance Improvement Plans (PIP), Performance Demonstration Period (PDP), or a similar opportunity as prescribed to 5 C.F.R. § 432.104. Where any other provisions of this Agreement references PIP, PDP, PAP, such references will be considered an Opportunity under this Section.
- B. If, at any time, an Employee's performance on any Critical Element is failing to meet expectations (FME), the supervisor must schedule a face-to-face meeting or video conference, or where necessary a telephonic meeting, with the Employee to issue an Opportunity plan so that the Employee is provided the opportunity to demonstrate performance at the Meets Expectations level.
- C. An Employee may request a union representative be present when meeting with a supervisor issuing an Opportunity plan. However, the request for a union representative must not unreasonably delay the scheduling of the meeting. The NTEU representative may assist by asking clarifying procedural questions related to the Opportunity plan but will not disrupt the issuance of the Opportunity Plan. Subject to operational needs, the Employee will be permitted to meet with an NTEU representative following the meeting or as soon as practicable. In the event an NTEU representative is not available to attend the meeting, the applicable NTEU Chapter President will receive a copy of the Opportunity plan.
- D. Opportunity plans will be issued in accordance with DOE's Employee Performance Management and Recognition Program Order. The Employee will receive specific

written guidance regarding performance improvement as required by the DOE Performance Order. The Opportunity plan must provide a meaningful and reasonable opportunity for an Employee to improve his or her work performance. Generally, DOE will provide no less than forty-five (45) calendar days to demonstrate performance improvement, except when DOE determines that a longer period is necessary to provide sufficient time to evaluate an Employee's performance, or a longer period if directed by government-wide rule or regulation after the effective date of this Agreement.

- E. At a minimum, the Opportunity plan will provide the following information:
 - 1. the length of the Opportunity period;
 - 2. the critical element(s) which are at the Fails to Meet level;
 - 3. specific performance needed to demonstrate performance at the Meets Expectation level, linked to the element for which performance was determined to be at FME; and
 - 4. the frequency of meetings (normally weekly) to discuss performance progress during the Opportunity period.
- F. If DOE determines that an Employee's performance is such that an FME level rating is appropriate during the last ninety (90) days before the end of the rating period, DOE will notify the Employee of that determination. DOE should provide that notice as soon as practicable after the determination is made, but normally not later than seven (7) calendar days after making that determination. The notice will be provided to the Employee in writing and will, at a minimum, provide the reasons for the

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determination and a description of the next step in the process (e.g., issuance of an Opportunity plan).

- G. If an Employee is approved for more than one workday of annual leave during the Opportunity period, the Opportunity period may be extended for an equal amount of time. Opportunity periods will be extended for any pre-approved leave scheduled prior to the issuance of the Opportunity plan. However, the supervisor and Employee will meet to discuss whether such pre-approved leave can be rescheduled at a later time. An Employee needing extended sick leave or medical accommodation may have their Opportunity period extended for an equal amount of time that the Employee was absent.
- H. Successful completion of an Opportunity plan indicates that the Employee has met expectations. If the Employee's most recent performance appraisal indicates an evaluation level of below Meets Expectations, it will be revised to at least the Meets Expectations level.
- I. The provisions in this Article shall not preclude DOE from taking an action for unacceptable performance under 5 U.S.C. Chapter 75 if the Employee fails to meet standards following the end of the Opportunity period.

Section 17.08. Modifications to Performance Plans

Employees will be advised through the ePerformance system of any change in the Employee's elements and standards due to a change in duties or to reassignment of the Employee to a new position or change in the identity of the Employee's rating official. The Employee will be provided an opportunity to discuss and clarify these changes and the resulting expectations with the rating official.

Section 17.09. Changes to DOE Performance Management Program

DOE shall provide notice to, and bargain pursuant to Article 13 in the event there is a change to its Employee Performance Management and Recognition Program.

Article 18 - Career Ladder Promotion

- A. A career ladder is a series of positions of increasing difficulty in the same line of work within a single occupational series through which an Employee may progress from the entry level to the full performance level. The full performance level is the highest grade level to which an Employee may be promoted non-competitively within a career ladder. While promotions within career ladders are neither automatic nor mandatory, career advancement is the intent and expectation in the career ladder system.
- B. An Employee is eligible for a career ladder promotion when all of the following conditions have been met and in accordance with applicable law, rule, and regulation, including 5 C.F.R. § 335.104:
 - 1. The Employee encumbers a career ladder position;
 - 2. The Employee has demonstrated the ability to perform the next higher grade level duties;
 - 3. The Employee has completed a minimum of 52 weeks in the current grade;
 - 4. The Employee's current rating of record is at the Meets Expectations level or a similar level of performance under any negotiated successor performance system; in addition, no Employee may receive a career ladder promotion who has a

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- rating of record below satisfactory on a critical element that is also critical to performance at the next higher grade of the career ladder;
5. There is sufficient work at the higher grade level position; and
6. Sufficient funds are available.
- C. The parties agree that eligibility under section B.2 above does not require that an Employee perform work at the next higher grade level. Employees may meet the eligibility requirement by demonstrating proficiency in their current work assignments at the level of Meets Expectations or higher.
- D. Generally, when a position is advertised as a career ladder position, DOE has determined that there is sufficient work and funding available to ensure career ladder promotions are available for Employees who fill those positions and meet the eligibility requirements. If DOE identifies any workload and/or funding shortages that may impact issuances of Career Ladder Promotions, DOE will provide NTEU with notice of such shortages as soon as they become known.
- E. An Employee in a career ladder position may request to meet with the Employee's supervisor no sooner than ninety (90) days prior to the date that the Employee will reach the 52-week eligibility requirement to discuss the Employee's performance and whether they meet the eligibility requirement identified in section B.2 and B.4 above. If the supervisor determines that the Employee does not meet the eligibility requirements of B.2 and/or B.4, the supervisor will provide the Employee with guidance on how the Employee may improve to meet the qualifications for promotion to the next higher grade.
- F. In the event that a supervisor determines that an Employee will not be granted a career ladder promotion, the supervisor will meet with the Employee to discuss which eligibility requirement were not met. Upon request, the supervisor shall reduce the decision to not grant the career ladder promotion to writing.
- G. Normally, a supervisor will certify that an Employee does or does not meet the eligibility requirements for career ladder promotion no later than one pay period prior to the completion of the Employee's 52-week period. In the event that an administrative error prevents an otherwise qualified Employee from receiving a career ladder promotion, DOE will back date the effective date of the career ladder promotion to the earliest date available following full eligibility.

Article 19 - Merit Promotion

Section 19.01. General

The Parties agree that all promotions to bargaining unit positions, and all other personnel actions set forth in section 19.03 below, will be made using merit system principles and from among properly ranked and certified candidates or from other appropriate sources without regard to race, color, sex, national origin, marital status, age, religion, sexual orientation, labor organization affiliation or non-affiliation, or non-disqualifying disability.

Section 19.02. Merit Promotion Process

- A. When a promotion opportunity for bargaining unit Employees exists, and DOE reasonably determines that it can receive at least two potential best qualified candidates from a modified area of consideration, DOE agrees to announce the position using the Accelerated Merit Promotion Process ("AMP process") consistent with DOE Policy Memorandum ("PM") # 89, dated April 28, 2021.

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- B. A potential best qualified candidate, as defined by PM 89, is an Employee that exceeds the minimum qualifications of the position, including selective factors, if appropriate (e.g., certifications, language requirements), demonstrated proficiency in most of the requirements of the position to be filled, and would only require limited training or orientation to perform the position effectively.
- C. The parties agree that the term modified area of consideration used in this Article means Employees within a Departmental Element, or smaller, assigned to DOE Headquarters.
- D. All other promotion opportunities, or vacancies for full time remote work, will be posted using USA Jobs, or its successor, consistent with traditional Merit Promotion procedures contained in DOE PM #90 and this Article.

Section 19.03. Inclusions

This Article applies to the following personnel actions:

- A. Permanent promotions, except for those listed in Section 19.03;
- B. Temporary promotions in excess of 120 calendar days and term promotions;
- C. Reinstatement to positions of higher grade or one having greater-known promotion potential than the last non-temporary position held except when the Employee is being reinstated from the reemployment priority list;
- D. Transfer to a higher graded position or to a position with greater-known potential than the position currently held;
- E. Reassignment or demotion to positions with known promotion potential greater than the Employee's current position (except as

required by reduction in force regulations);

- F. Selection for training required to prepare an Employee for promotion (i.e., when eligibility for promotion depends on whether the Employee has completed training);
- G. Selection for career ladder target positions; and
- H. Details of more than 120 consecutive calendar days to higher graded positions or positions with known promotion potential.

Section 19.04. Exclusions

This Article does not apply to the following non-competitive personnel actions and special appointing authorities:

- A. Re-promotion to the same or a lower grade than one from which an Employee previously held;
- B. Position change required by reduction in force regulations;
- C. Selection of a candidate from the reemployment priority list even to a position at higher grade than the one held in the competitive service;
- D. Promotion resulting from the upgrading of a position without significant change in duties and responsibilities due to issuance of a new classification standard or the correction of a classification error;
- E. Career promotion when, at an earlier stage, the Employee was selected from an OPM register or was selected under competitive promotion procedures for a position intended to prepare the Employee for a full performance level position at a higher grade level. The opportunity for further promotion must be made a matter of record and the existence of career ladders must be

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documented;

using the AMP process.

- F. Career promotion resulting from an Employee's position being reclassified at a higher grade because of additional duties and responsibilities;
- G. Position change from one position having known promotion potential to another position having no higher potential;
- H. Temporary promotion of 120 days or less;
- I. Detail of 120 days or less even if to a higher graded position or a position with greater-known promotion potential;
- J. Selection from an established Direct Hiring Authority, Schedule A appointing authority, Pathways appointing authority, 30 percent Compensable hiring authority, delegated examining authority, open-continuous, or other excepted service hiring authority;
- K. Conversion to permanent promotion or reassignment from a temporary promotion or detail if the detail or temporary promotion was made initially according to competitive procedures and the vacancy announcement stated it may lead to a permanent promotion or reassignment;
- L. Career ladder promotion following noncompetitive conversion of a Pathways Participant in accordance with Federal regulations; and
- M. Promotion of a candidate not given proper consideration in a previous competitive promotion action, and therefore entitled to priority consideration.

- B. DOE will provide the NTEU Chapter President and Executive Vice President a weekly listing of new announcements, an electric copy of each announcement or a working link to the announcement.
- C. DOE vacancies will be open for the amount of time necessary to attract a diverse pool of highly qualified candidates, normally seven (7) to fourteen (14) calendar days under traditional merit promotion procedures, or three (3) calendar days under the AMP process.
- D. DOE will ensure that vacancy announcements adhere to OPM/USAJOBS directives and will at a minimum contain:
 - 1. announcement number;
 - 2. opening and closing dates (if open, the announcement will so indicate);
 - 3. position title, series, grade, including bargaining unit status;
 - 4. organization location and duty station;
 - 5. known noncompetitive promotion potential;
 - 6. area of consideration;
 - 7. principal duties and responsibilities, including the amount of travel;
 - 8. qualification standards, specialized experience, and any selective placement factors;

Section 19.05. Announcements

- A. Announcements will be listed on "USAJobs", or its successor online platform as determined by OPM or DOE electronic talent acquisition system if posting the vacancy

- 9. evaluation methods and ranking factors;
- 10. procedures for applying;

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11. statement of equal employment opportunity; and
12. number of positions expected to be filled, or a statement may be added to the effect that more than one selection may be made from that selection certificate.

- E. DOE will notify NTEU if a vacancy announcement is canceled and/or re-advertised. Upon request, the reason for the cancellation and/or re-advertisement and a list of all applicants, if accessible by DOE, will be provided to the applicable NTEU Chapter President based on the vacancy location.
- F. In event that "USA Jobs" is unavailable due to service maintenance, upgrade, etc., the open period will be extended for the same amount of time as the duration of the outage and will close on the next weekday, if applicable, any special instructions or changes to the application process, if any, and provide a point of contact for applicants to contact with questions or concerns.

Section 19.06. Employee Applications.

- A. Any candidate who wishes to be considered for an announced vacancy will submit an application using the on-line recruitment system. Only candidates who register for the on-line recruitment system will be notified electronically of new announcements of similar positions. No automatic consideration will be granted. A separate application for each vacancy announcement must be submitted via USA Jobs on or before the announcement's closing date. Applications must be submitted by 11:59 p.m. Eastern Time on the closing date. The on-line system will be used to notify candidates of the status of the application via e-mail at various stages of the process, i.e., after initial receipt of the application and after the on-line assessment

of the Employee's application, etc.

- B. Each applicant must have an individual on-line account. In the event that an absent Employee does not have access to the internet e.g., military service in a remote location or medically incapacitated and notifies the Shared Service Center identified on the vacancy announcement prior to the closing date, DOE shall make accommodations to allow the Employee to apply by alternate means.
- C. DOE will consider Employee requests for time to apply and interview for DOE vacancies during the workday.

Section 19.07. Rating and Ranking.

- A. An Employee's eligibility for an advertised position will be accomplished through an on-line self-certification process that will require an applicant to respond to the OPM approved assessment. The servicing Shared Service Center will screen an applicant's experience against the appropriate OPM Qualification Standards and specialized experience statement. The Shared Service Center may initiate a screening of Employee applications by an appropriately qualified subject matter expert (SME) to provide recommendations regarding applicants' experience for unique or technically complicated positions where the servicing HR specialist may require subject matter expertise in order to determine the Best Qualified candidates.
- B. If the Shared Service Center's screening of an applicant's experience is or may be reviewed by an SME. The SME will be selected at the discretion of DOE and must meet the following criteria:
1. SMEs may not be in the supervisory chain of the position for which candidates are being evaluated.

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- 2. SMEs should be bona fide experts in the same or very similar positions with a thorough knowledge of the job's requirements.
- 3. SMEs must be at the same grade level or above the grade level of the position being reviewed.
- C. SMEs are entrusted with assuring that there is adherence to the Merit System Principles and that they avoid committing Prohibited Personnel Practices.
- D. SMEs must be careful not to repeat any discussions that take place during the evaluation process, or reveal to anyone any personal information, individual qualifications, rankings or number of candidates who were certified for inclusion on the certificate.
- E. SMEs are to only discuss the details of the hiring action with the HRBP or HR Shared Service Center (SSC) personnel. SMEs must not discuss their evaluations with anyone else, including anyone in the supervisory chain within the hiring organization.
- C. DOE's designated selecting official, in reaching a decision to select one of the candidates, will objectively review the merits of each candidate. Selections will be made in accordance with Merit Promotion Principles stated in 5 USC 2302.
- D. After a selection has been made for a bargaining unit position, all applicants will be notified of their specific status via USA Jobs. Upon request, Employees may contact the Shared Service Center to receive their individual ranking and the applicable Hiring Manager to receive the name of the selectee.
- E. An Employee identified by DOE as ineligible for a vacancy may request and be provided by the Shared Service Center a description of the qualification(s) and/or specialized experience of the position for which the Employee applied and was found to be ineligible.
- F. An Employee identified by DOE as ineligible for a vacancy may request and the Hiring Manager will provide the Employee with information on what action(s) (e.g., courses of study, experience) that the Employee needs to complete in order to meet any qualification requirement identified in Section 19.08.E above. Upon request of the Employee, the Employee's supervisor will consider approving the addition of the action(s) identified in Section 19.08E to the Employee's Individual Development Plan (IDP).

Section 19.08. Selection

- A. After DOE has completed the rating and ranking process, DOE shall refer the Employees identified as "Best Qualified" (BQ). Those Employees will be put on the best qualified list in alphabetical order and shall be forwarded to DOE's designated selecting official for selection consideration.
- B. The selecting official will endeavor to make a selection as soon as practicable. Selection certificates automatically expire 120 calendar days after issuance. NTEU will be provided notification of the expiration of a selection certificate and the reason for non-selection.

Section 19.09. Effective Date.

- A. Normally, an Employee who has been selected for a promotion will have the promotion become effective no later than one complete pay period following the selection or the date the position is vacated if the selection was made in advance of the position being available. Normally, positions will not be canceled or re-advertised after an

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Employee has received a final job offer, absent some factor beyond DOE's control, e.g., a Congressional budget decision. Upon request, the factor and any supporting documentation will be shared with NTEU.

- B. Employees may be entitled to retroactive pay in connection with improper personnel actions (e.g., pay setting errors) in accordance with applicable laws and government-wide regulations.

Section 19.10. Exclusive Remedy.

If, as the result of a grievance being filed under this Agreement, either the parties agree or an arbitrator decides that an Employee was not awarded proper consideration in a previous competitive action, then corrective action will be taken in accordance with the following principles:

- A. If the Employee was erroneously omitted from the best qualified list, the Employee will receive a one-time priority consideration for the next appropriate vacancy for which the Employee is qualified and applies.
- B. An appropriate vacancy is one at the same grade level, in the same area of consideration, and which has comparable promotion opportunities as the position for which the Employee received improper consideration.
- C. In identifying Employee(s) with priority consideration, the Shared Service Center will submit the Employees' information to the selecting official for consideration before the selecting official reviews the selection certificate.

Section 19.11. Other Considerations

- A. An Employee's accumulation or balance of annual or sick leave may not be considered by a promotion panel or selecting official as the basis of selection or non-selection.

- B. When a security clearance is necessary as a condition of employment for a particular vacancy, prior to a tentative job offer, an Employee's security clearance will not be a factor in determining the Employee's eligibility for promotion, unless there is good reason to believe that the clearance will not be granted or there would be too great a delay in processing the clearance.

Section 19.12. Records Management.

- A. DOE will maintain promotion and selection files for two (2) years in accordance with 5 C.F.R § 335.103(b)(5).
- B. Upon request, DOE will provide NTEU with a copy of the merit promotion case file, to include but not limited to the selection certificates, the signed and dated selection/non-selection information for the position, the name(s) of any SMEs, if applicable, and a copy of the OPM competencies and Self-Assessment Questionnaire used in a vacancy and a copy of the announcement.

Article 20 - Details and Temporary Promotions

Section 20.01. Details-General

- A. For the purposes of this Article, a detail is a temporary assignment of an Employee to perform a set of duties different from those in Employee's position of record for a specified time period. A detail may be at an equal, higher, or lower grade level than the Employee's position of record. Upon completion of the detail, the Employee returns to his/her position of record.
- B. An Employee who is on a detail is considered to be permanently occupying his/her regular position and is not required to meet the qualifications of the temporary position with the exception of

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any education, certificate or license requirements required by the position. Upon completion of the detail, the Employee will return to the Employee's position of record.

- C. Employees who are detailed will be given as much notice as possible, including any changes in performance expectations pursuant to Article 17: Performance Management Program, training requirements, awards criteria, pay levels, length of the detail, reporting structure as well as a copy of any documentation relevant to the detail. If a detail is extended beyond its original length, such an extension will be documented by DOE.
- D. Prior to the Employee returning to his/her position of record, the Employee's detailed supervisor will provide the Employee, upon request, with a written record identifying the general nature of the detailed position and any such specialized knowledge, skills, and/or abilities gained in the detailed position.

Section 20.02. Details Longer than 30 Calendar Days

Details lasting more than 30 calendar days will be documented on a Standard Form 52, Request for a Personnel Action (SF-52). If a detail was expected to last 30 calendar days or less, but was extended beyond 30 calendar days, the detail will be documented on an SF-52 and the effective date will be retroactive to the start of the detail.

Section 20.03. Details Longer than 120 Calendar Days

When selecting Employees for details longer than 120 calendar days, DOE will consider factors such as experience, job performance, personal attributes, education and other relevant job qualifications, the Employee's disciplinary/adverse action record in the 12 months prior to the reassignment request,

and organizational need.

Section 20.04. Details to Higher Graded Positions

- A. DOE retains the right to select the best qualified Employee to detail to higher graded duties without competition for no longer than 120 calendar days.
- B. When DOE details an Employee to a higher graded position, or a position with known promotion potential, the following will apply:
 - 1. DOE will not detail an Employee to a higher graded position for periods of 30 consecutive calendar days or less solely for the purpose of avoiding a temporary promotion.
 - 2. If the Employee is detailed to a higher graded position for 31 consecutive calendar days and meets the qualifications and time-in-grade requirements, DOE will effect a temporary promotion.
 - 3. For temporary details to a higher graded position, or position with known promotion potential, of more than 120 consecutive calendar days, the procedures within Article 19: Merit Promotion will be used.
- C. At no time may an Employee noncompetitively serve in any details to higher-graded positions, or to positions with known promotion potential, with or without promotion, or in any combination thereof, for more than 120 calendar days during any twelve (12) month period.

Section 20.05. Employee Requests for Details

- A. Employees may request to be detailed at any time. DOE may consider such requests but is under no obligation to grant such a request.

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- B. When an Employee can demonstrate a significant hardship exists which would be relieved by a detail to a vacant position for which he/she is qualified and management chooses to fill, the Employee will be detailed unless DOE presents a legitimate business reason to preclude the detail (e.g., budgetary constraints, a less than fully satisfactory performance appraisal, or substantial workload disruption). The current and future positions must be in the same series and grade, and the Employee must meet any specialized experience required for the position.

Section 20.06. Non-competitive Temporary Promotions

A non-competitive temporary promotion, as defined in 5 C.F.R. § 335.103(c)(3)(iii), is the temporary assignment of an Employee to a position at a higher-grade position for a specified period of time not to exceed 120 days with the Employee returning to his/her permanent position of record at the end of the non-competitive temporary promotion. To receive a non-competitive temporary promotion, an Employee must meet OPM qualifications as well as any specialized experience required for the temporary position.

Section 20.07. Competitive Temporary Promotions

- A. Temporary promotions for more than 120 calendar days are subject to competitive merit system principle procedures and may not exceed more than five (5) years. At the end of the temporary promotion, an Employee is entitled to return to his/her former position or one similar in grade and pay.

- B. DOE must give advanced written notice of the conditions of the temporary promotion to include:

1. The time limit of the promotion;

2. The reason for the limit;
3. The requirement for competition for promotion beyond 120 calendar days, where applicable; and
4. That an Employee may be returned at any time to the position from which temporarily promoted, or to a different position of equivalent grade and pay.

- C. When a temporary promotion expires, DOE will to the extent possible, return the Employee to the same position that the Employee occupied before the temporary promotion. Consistent with 5 C.F.R. 531.221, DOE may apply the maximum payable rate rule when setting the Employees pay at the end of the temporary promotion.

- D. If a temporary promotion is made permanent immediately after the temporary promotion ends, DOE may not return the Employee to the lower grade, unless such action would result in the Employee receiving a higher rate of pay. Instead, it must convert the Employee's temporary promotion to a permanent promotion without a change in pay.

Article 21 - Reassignments

Section 21.01. Notice

The parties recognize the importance of having a stable and consistent work environment. To that extent, an Employee who will be reassigned at management's discretion will be given as much notice as possible, but typically no less than one pay period.

Section 21.02. Involuntary Reassignment

The parties recognize that it is in the best

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interest of DOE and its Employees that reassignments generally occur on a voluntary basis. However, DOE maintains the right to involuntarily reassign Employees in accordance with applicable law, rule, and/or regulation. When the involuntary reassignment of an Employee(s) constitutes a more than *de minimis* change to the working conditions of Employees, DOE will provide advanced notice to NTEU and the opportunity to bargain the impact and implementation of the involuntary reassignment. In the event of any Employee hardships related to an involuntary assignment, the parties will address those hardships in any bargaining under this section.

Section 21.03. Voluntary Reassignment

- A. Employees may request to be reassigned. DOE may consider such requests but is under no obligation to grant such a request.
- B. Management considerations for voluntary reassignments include the following factors: experience, job performance, personal attributes, education, other relevant job qualifications, the Employee's disciplinary/adverse action record in the 12 months prior to the reassignment request, and organizational needs.

Section 21.04. Request for Voluntary Reassignment due to Hardship

- A. The following procedures are established so that Employees experiencing hardships may be provided consideration for reassignment to available vacancies at other work locations in an expedited manner and with greater priority than any other reassignment requests under this Article.
- B. The subsection only applies when the

circumstances leading to the hardship occurred after the Employee accepted employment at the current work location.

- C. Qualified hardships include when an Employee (or immediate Family member) experiences a medical condition that is serious in nature.
- D. Prior to requesting a hardship reassignment, Employees should seek to develop alternatives if applicable (e.g., securing assistance from the Employee Assistance Program, local and state social services, other counseling services). Alternatives to reassignment for accommodating hardships include Voluntary Reassignments, Position Exchanges, and applying to vacancy announcements for positions of equivalent grade.
- E. Employees seeking a hardship reassignment must provide verifiable documentation concerning the circumstances (including medical documentation if applicable) that give rise to the hardship, along with his/her resume/application and most recent performance appraisal. The Employee must indicate the specific bargaining unit position and Program Office to which he/she seeks a reassignment.
- F. All hardship requests will be filed with LROD. Employees will notify LROD in the event they wish to withdraw their requests. DOE shall review the request to determine whether the Employee has a hardship under Section 21.04.C and provide the Employee a written response explaining its determination within 45 calendar days of receiving the request or supplemental information, if requested from the Employee, whichever occurs later. The written response will

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indicate whether the request has been granted, and if denied, the reasons for the denial. Extensions may be granted if mutually agreed upon.

- G. If the hardship request is approved, DOE will make reasonable efforts to identify an appropriate vacancy for which the Employee is qualified.
- H. Employees who seek hardship reassignment are not prohibited from seeking Reasonable Accommodations under the Rehabilitation Act.

Section 21.05. Position Exchanges

Upon request, an Employee may exchange positions with another Employee who agrees to the exchange so long as they occupy interchangeable positions (same series, grade, actual duties, and any specialized experience required for the position) and management does not present a legitimate business reason to preclude the reassignment (e.g., a less than fully satisfactory performance appraisal or substantial workload disruption).

Section 21.06. Re-establishing a Position

DOE agrees that where an Employee has been reassigned due to the abolition of the Employee's position, the Employee, upon request, will be given priority consideration for that position (same location, if possible) should DOE reestablish that position within one year. When a position will be reestablished, the affected Employee will be given reasonable advance notice.

Section 21.07. Reassignment Resulting in Relocation

Any reassignment initiated by DOE that results in the relocation of an Employee's work location will also be subject to the relocation provisions in Article 48.

Article 22 - Reduction in Force

Section 22.01. General

- A. A Reduction in Force (RIF) is the release of a competing Employee from his/her competitive level by furlough for more than thirty (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 or restoration rights or reclassification of an Employee's position due to erosion of duties when such action will take effect after an agency has formally announced a RIF in the Employee's competitive area and when the RIF will take effect within one hundred and eighty (180) days. The need to apply RIF procedures does not suspend DOE's authority and responsibility to take other legitimate Employee actions, such as reassignment, change of duty station, or demotion for unacceptable performance. Such actions may be taken before, during, or after a RIF, but appropriate procedures must be followed.
- B. The Parties recognize that a RIF is highly disruptive to managers and Employees alike and they are committed to working in good faith collaboration to aggressively mitigate the need for or the severity of a RIF. Any RIF will be carried out in accordance with 5 U.S.C. §§ 3501-3503, 5 C.F.R. Part 351, this Article, and current DOE policy, rules, and regulations as defined in Article 2 of this Agreement.

Section 22.02. Notice to NTEU.

DOE agrees to notify NTEU of any RIF as far in advance as possible and before the notification of affected Employees. Notification will include the reason for the RIF, the proposed effective date, the particular competitive area initially affected, initial

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competitive level definitions, the final retention register, the list of abolished positions, and the OPM authorization for the RIF, if obtained. DOE will continue to provide information to NTEU throughout the RIF process as it is developed and revised.

Section 22.03. Briefing.

When a RIF has been approved by the Secretary, but prior to the RIF being announced to Employees, DOE will provide NTEU a briefing on conducting the RIF.

Section 22.04. Bargaining

- A. In the event DOE finds it necessary to exercise its authority to conduct a RIF, NTEU will be provided advance notice and the opportunity to bargain in accordance with the procedures contained in Article 13: Midcontract Negotiations.
- B. Nothing in this Agreement shall be construed to limit NTEU's right to bargain over any and all negotiable issues relating to a RIF that are not expressly addressed in this Article.

Section 22.05. Union Time.

As provided under Article 7, NTEU representatives will receive a reasonable amount of Union time to participate in any meetings, briefings or negotiations with DOE which may result due to an anticipated RIF.

Section 22.06. Mitigation Strategies

- A. DOE will use all practicable options and measures to minimize the adverse impact of any RIF. Such measures may include, but not be limited to: the use of attrition or Voluntary Early Retirement Authority (VERA) and/or Voluntary Separation Incentive Pay (VSIP), aggressive placement assistance throughout Headquarters and in other agencies (reassignments and in-service placement options), freezes on outside hiring and promotion actions, elimination of surplus positions, retraining, phased retirement, and

significant cost cutting, reduced discretionary spending (e.g., travel, performance awards and furloughs), and voluntary reduction in work hours. Whenever feasible, vacancies will not be filled from outside the affected organization if Employees facing separation are qualified and available for the vacancies.

- B. DOE will provide NTEU and Employees who are issued certificates of expected separation, or specific RIF notices, with information concerning the full array of entitlements and benefits that accrue to Employees under law, regulation, and this Article, including information on retirement options, severance pay, appeal rights, priority selection and repromotion, etc.

Section 22.07. Review of Records

- A. DOE will advise Employees in a competitive area in which a RIF is anticipated that they should avail themselves of the opportunity to review their Official Personnel Folder (eOPF) to ensure the accuracy and completeness of the information contained therein. A reasonable amount of duty time will be provided for this purpose. DOE will ensure that the Employees have the opportunity to review their retention data before assignment rights are determined and specific notices are issued. DOE will provide at least 30 days' notice of the deadline for receipt of additional information.
- B. Employees may also have a reasonable amount of duty time to review documents related to their RIF action. Employees who have been issued a specific RIF notice, and their designated representative, are entitled to review any completed records used by DOE in a RIF action that has been, or will be taken, against the Employee including:
 - 1. The complete retention register information with the released Employee's name and other relevant

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retention information (including the names of all other Employees listed on that register, their individual service computation dates and their adjusted service computation dates) so that the Employee may consider how DOE constructed the competitive level, and how DOE determined the relative retention standing of the competing Employees; and

2. The complete retention register for other positions that could affect the composition of the Employee's competitive level, and/or the determination of the Employee's assignment rights (e.g., registers to which the released Employee may have potential assignment rights under Sec. 351.701(b) and (c) of the RIF regulations).

Section 22.08 Retention Register

- A. DOE will provide NTEU with an electronic copy of the retention register used in determining assignment rights prior to the issuance of specific RIF notices. DOE will provide NTEU with updated information concerning the RIF (such as additional positions affected, revised effective dates), and should they be employed, the results of any trial run, i.e., mock-RIF, conducted prior to the first round, as soon as such information is available.
- B. Subsequent to providing NTEU with a copy, yet before issuance of specific notices, DOE shall make the retention register available for visual inspection by Employees in a competitive area in which a RIF has been announced.
- C. Upon request, DOE shall provide NTEU with timely data that show the numbers of Employees who are issued certificates of

expected separation and specific RIF notices.

Section 22.09 Retention Standing.

When two or more Employees are tied in retention standing, i.e., two Employees in the same subgroup have the same service computation date, and one or more but not all tied Employees must be released from the competitive level, DOE shall break the tie on the basis of:

- A. length of DOE service, and if a tie remains;
- B. time in grade, and if a tie remains;
- C. time within the organizational element, and if a tie remains;
- D. by lottery.

Section 22.10. Assignment Involving Displacement

- A. When an Employee has been selected for release from his/her competitive level pursuant to 5 C.F.R. § 531.701, DOE will make every effort to assign the Employee, with his/her consent, to a position for which he/she is qualified.
- B. An available position should be in the competitive service; require no reduction, or the least possible reduction, in representative pay rate; and should have the same type of work schedule. Nonetheless, the available position must be within same competitive area and within 3 grades of the current position or within 5 grades if preference eligible.
- C. An Employee will be given (at least) five (5) calendar days in which to accept or reject an assignment (a reasonable) offer (in lieu of separation) made pursuant to this section.

Section 22.11. Notice to the Affected Employees.

Employees identified as being affected by a RIF shall

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be provided written notice at least sixty (60) calendar days before the effective date of a RIF action. When circumstances not reasonably foreseeable necessitate that DOE request approval from OPM to shorten the notice period, DOE will advise NTEU. In no case shall a notice be issued less than 30 full calendar days prior to the proposed effective date.

Section 22.12. Career Assistance

- A. DOE will provide surplus, downgraded, and displaced Employees the full range of career transition assistance services mandated by OPM's Career Transition Assistance Plan regulations and applicable Departmental policies on RIF.
- B. DOE shall provide Employees who are downgraded in a RIF with the full range of priority consideration provided under applicable Departmental directives.
- C. DOE shall provide Employees with specific notices of separation and former Headquarters Employees who were separated through RIF procedures the full measure of priority reemployment services afforded by OPM's regulations and applicable Departmental directives.
- D. DOE will provide Employees with information on how to apply for jobs using the Interagency Career Transition Assistance Plan (ICTAP).
- E. DOE will provide Employees with a full range of outplacement assistance and services. These services may include, but are not limited to:
 - 1. assistance in resume preparation and vacancy announcement searches;
 - 2. training on interviewing skills and/or transitioning to the private sector;

- 3. Employee Assistance Program (EAP) counseling services and private referrals; and

- 4. individual retirement counseling.

- F. Under the Department's Career Transition Assistance Plan, surplus and displaced Employees are allowed a minimum of 40 hours of duty time or administrative leave, as applicable, to use the facilities and services provided, and to conduct job interviews. Each Employee separated through RIF procedures will have access to available and established transition services for 90 days after separation where such services are made available to bargaining unit Employees and such access will not result in additional cost to DOE.
- G. Employees affected by a RIF shall have the opportunity to confer the servicing shared service center representative, to discuss the action and the information related to the Employee's RIF action.

Section 22.13. Grade and Pay Retention.

An Employee who is downgraded as a result of a RIF action and who is otherwise eligible will receive grade and pay retention benefits in accordance with 5 U.S.C. §§ 5362 and 5363, and applicable regulations.

Section 22.14. RIF Report

- A. DOE will provide NTEU with a report on each RIF as soon as practicable following the effective date of a RIF with the following information (electronically, if available):
 - 1. Name, series and grade of Employees reassigned;
 - 2. Name, series and grade of Employees downgraded;
 - 3. Name, series and grade of

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Employees separated;

4. A list of all vacancies filled during a RIF;

- B. Six months after a RIF, upon request, DOE will provide NTEU with a report containing the numbers of Employees rehired and their job series.

Section 22.15 Appeals.

This agreement does not affect the entitlement of Employees to file appeals contesting RIF actions to the Merit Systems Protection Board.

Article 23 - Training and Development

Section 23.01

Training and development of Employees is a matter of significant importance to fulfilling the mission of the Department. Appropriate training and career development of Employees, as determined by DOE and as funds permit, will continue to be provided insofar as they foster effective and efficient operations. Employees are encouraged to discuss any training they feel is appropriate with their immediate supervisors. The DOE Headquarters Training Office training officials are available to advise Employees and their supervisors regarding available training courses.

Section 23.02

DOE Headquarters training officials can assist Employees with regard to how to access all available Government and non- Government training opportunities (for example, educational programs provided by the Office of Personnel Management, the Department of Agriculture, and distance learning opportunities). A link to DOE training opportunities will be distributed at least quarterly throughout DOE Headquarters. Employees are encouraged to review training opportunities, including those on the Online Learning Center ("OLC") and apply for the training opportunities they feel will aid in their self-

development.

Section 23.03

Employee requests to attend training courses at DOE Headquarters facilities during duty hours will be considered. Training requests must be initiated, approved, and authorized in accordance with DOE's training policy and/or procedures and any applicable training agreement (e.g., a supervisor approves the training, a designated official authorizes the training request, and the Employee ensures completion of the training).

Section 23.04

Employees who have obtained necessary approval from DOE for training courses outside DOE Headquarters facilities will be reimbursed for authorized expenses.

Section 23.05

Employees who take preparatory courses which are approved by their supervisors for job-related professional certification or licensing will be reimbursed for any authorized related expenses.

Section 23.06

When training is required for promotion, selection for the training must be made in accordance with merit-based selection processes, as required by federal statute and regulation.

Section 23.07

- A. Opportunities for participation in training courses will be equitably distributed among eligible Employees. Generally, when DOE is unable to accommodate all applicants for available training courses approved or established by DOE and financed in whole or in part by DOE, available slots will be prioritized according to mandatory technical qualification requirements, followed by the individual development plans (IDPs), which

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are established as a part of the annual individual skills needs assessments. Exceptions to this rule will be discussed with NTEU (these may include, but are not limited to, such training as that required under Performance Improvement Plans or to accommodate a qualified handicapped Employee, or as part of rotational internship programs or needed training in new and developing technologies).

- B. Each Employee will receive a copy of the written annual skills needs assessments performed by his/ her supervisor, during their performance appraisal discussion.
- C. Applications not accommodated will be given priority consideration if/when the same course is repeated.

Section 23.08

Employees who are, under applicable law or regulation, required to attend continuing education courses in order to maintain certification or license to practice shall be reimbursed for the cost of such courses and travel if:

- A. The courses are directly related to the performance by the Employees of their official government duties; and
- B. The courses meet the other specifications enumerated in the Government Employees Training Act.

Section 23.09

DOE will distribute schedules and detailed descriptions of upcoming training opportunities to all Employees by DOECAS and the On-line Learning Center (OLC). DOE agrees to provide for job-related training and career development programs which make mentoring and developmental details or training assignments available to Headquarters Employees.

Section 23.10

DOE will make training officials and relevant information resources accessible during normal working hours to Employees in the Germantown facility as well as in the Forrestal Building.

Section 23.11

DOE will provide DOE-sponsored training in both the Germantown facility as well as the Forrestal Building.

Article 24 - Overtime and Compensatory Time

Section 24.01

A. Overtime:

- 1. Overtime is defined in 5 CFR § 550.111 and DOE O 322.1C - Pay and Leave Administration and Hours of Duty (January 19, 2011).
- 2. Overtime for Fair Labor Standards Act (FLSA) *exempt* Employees must be authorized and approved in advance in writing.
- 3. Overtime for Fair Labor Standards Act (FLSA) *non- exempt* Employees will be ordered and permitted only when essential work cannot be accomplished during an Employee's normal working hours.

B. Compensatory Time:

- 1. Employees who are *exempt* from the Fair Labor Standards Act (FLSA) may earn compensatory time off in lieu of overtime pay under 5 CFR § 550.113 and are subject to the Office of Personnel Management's (OPM) compensatory time off regulations at 5 CFR § 550.114, DOE O 322.1C - Pay and Leave Administration and Hours of Duty (January 19, 2011).

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2. Employees who are *non-exempt* from the Fair Labor Standards Act (FLSA) may earn compensatory time off in lieu of overtime pay under 5 CFR § 551.501 and are subject to the Office of Personnel Management's (OPM) compensatory time off regulations 5 CFR § 55.0114 and DOE O 322.1C- Pay and Leave Administration and Hours of Duty (January 19, 2011).

Section 24.02

- A. Extended or regular overtime assignments are not appropriate to permanently correct staffing imbalances.
- B. When DOE determines that overtime or compensatory time is needed to perform work that meets the current definition established by the Office of Federal Procurement Policy (OFPP) as constituting either inherently governmental duties (i.e., a function that is so intimately related to the public interest as to require performance by federal government Employees) or "critical functions" (i.e., a function that is necessary to the agency to perform well and maintain control of its mission and operations and that are typically critical functions which constitute recurring and long term duties) which is normally performed by a bargaining unit Employee, DOE shall ensure that the overtime or compensatory time work is first offered to the bargaining unit Employee assigned those duties.
- C. Upon request, DOE will release an Employee from an overtime assignment if a qualified replacement is available and willing to work. Upon request, DOE will consider documented health conditions and extreme hardships when assigning overtime. Furthermore, the parties agree that overtime assignments should not normally be required if the Employee shows that the overtime assignment will impair his or her health or

would cause an extreme hardship. If DOE denies an Employee's request under this provision, DOE will provide the requesting Employee with a written statement that contains the reasons why DOE has denied the Employee's request.

Section 24.03

- A. When DOE requires Employees to work overtime assignments, DOE will provide as much advance notice to the affected Employees as possible.
- B. DOE is responsible for determining which Employees will work overtime assignments. However, if Management determines that the overtime assignment could be performed just as well by one or more Employees, the Employee from that group who wishes to do the work and who has the most Federal service will be given the assignment. These provisions will not apply when overtime assignments are frequent. In that case, the assignments will be rotated among the interested Employees in the group, or if no one is interested, among all the Employees in the group.

Section 24.04

- A. While DOE reserves the right to provide Employees notice that no overtime work may be performed by either exempt or non-exempt Employees, nothing in this Article precludes or impairs Fair Labor Standards Act (FLSA) exempt Employees from filing a claim for "induced" overtime or FLSA nonexempt Employees from filing a claim for "suffered or permitted" overtime.
- B. Example: If a nonexempt Employee performed work for the benefit of the DOE and the supervisor knew or had reason to believe that the work was being performed and the supervisor had an opportunity to prevent the work from being performed, the

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work may be considered “suffered or permitted” and be compensable.

- C. Nothing in this section precludes or impairs an Employee from filing a claim for “induced” overtime.

Section 24.05

Compensatory time for travel outside an Employee’s normal duty hours is covered in Article 34.02 of this Agreement.

Section 24.06

- A. DOE shall ensure that all overtime worked will be reported in fifteen (15) minute increments.
- B. Under the FLSA, a nonexempt Employee must be compensated for every minute of work performed during his/her regularly scheduled administrative workweek, including regularly scheduled overtime.
- C. When irregular or occasional overtime work is performed in other than the full fifteen (15) minutes, any overtime worked for seven (7) minutes or less will be rounded down, and any overtime worked for more than seven (7) minutes will be rounded up.

Section 24.07

- A. Employees shall earn compensatory time in accordance with applicable rules and regulations.
- B. Compensatory time may be earned and used in quarter hour increments.
- C. DOE will post a link to the C.F.R. or other regulations cited in or related to *DOE O 322.1C - Pay and Leave Administration and Hours of Duty* (January 19, 2011) on the same page as the *DOE O 322.1C* on the DOE website.

- D. Compensatory time off will be approved for *exempt* and *non-exempt* Employees in lieu of payment for irregular or occasional overtime worked when requested and permitted under applicable laws and regulations to the maximum extent possible.

- E. Compensatory time shall be taken before annual leave is scheduled, unless “use or lose” annual leave is available.

- F. Accrued compensatory time is to be used within 26 pay periods from the date earned to avoid payment of overtime at the end of the 26th pay period following the date earned.

- G. Accrued compensatory time will be paid at the Employee’s rate of pay at the time the compensatory time was earned.

- H. All compensatory time earned but not used within the 26 pay periods after it is earned will be converted and the Bargaining Unit Employee shall receive payment for that unused compensatory time off at Employee’s rate of pay at the time it was earned irrespective of their FLSA status (i.e., *exempt* and *non-exempt*).

- I. Employees are limited to carrying over 80 hours of compensatory time from one pay-period to another, except when an exigency is declared by DOE.

Section 24.08

Employees may elect either to be paid for irregular overtime worked or to be granted compensatory time off in lieu of overtime pay, unless they must be paid under FLSA. When the Employee’s annual and compensatory time leave balance would create a leave scheduling problem, the Employee will be paid for the overtime and not given a choice to elect compensatory time.

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Section 24.09

Compensatory time earned will be equal to the time spent in overtime work on an hour-for-hour basis. Compensatory time must be used before annual leave. Employees and supervisors will make every effort to ensure that accrued compensatory time is used within 26 pay periods of date earned. However, compensatory time earned, requested and not granted within 26 pay periods of the pay period in which overtime was worked shall be paid as overtime.

Section 24.10

- A. When a grievance has been filed involving this Article, the Parties agree that, upon written request, relevant records of overtime assignments will be provided to a grievant and/or his/her Union representative.
- B. Upon request DOE shall provide NTEU with records of overtime and compensatory time worked by bargaining unit Employees for any specified period of time. In the event NTEU makes such a request DOE shall provide NTEU with the requested information within a reasonable amount of time. NTEU's request under this provision shall be made pursuant to 5 USC § 7114(b)(4) and shall toll all grievance/appeal timeframes as described in Article 11.

Article 25 - Hours of Work and Work Schedules

Section 25.01. General

- A. All provisions of this Article shall be administered by the parties consistent with the provisions of 5 USC § 6120, *et seq.*, and all other applicable laws, rules, and regulations.
- B. In addition to a "regular" five-day per week, eight-hour per day schedule, there are two categories of Alternate Work Schedules (AWS) available to bargaining unit

Employees: compressed work schedules (CWS) and flexible work schedules (FWS).

- C. The availability of AWS described in this Article will be consistent with the work requirements of DOE.
- D. Decisions on Employee requests will be made by the Employee's immediate supervisor. Denials will be provided in writing to the requesting Employee and will identify the rationale for the decision. NTEU will be provided a copy of any denials upon request.
- E. Individual supervisors may require Employees to sign in and sign out or otherwise document their start and stop time each day, including a daily direct entry, in the supervisors' absence.
- F. AWS, as described in this Article, are tours of duty available to all eligible bargaining unit Employees who are stationed in the Washington, DC area, which includes Germantown, MD.
- G. Eligible Employees working Telework may work any CWS or FWS provided in this Article.
- H. Employees will normally be allowed to continue their AWS while on temporary assignment. However, prior to embarking on duty elsewhere (e.g., travel status, jury duty, court leave or training, etc.), an Employee and the leave approving official should discuss hours of work during the temporary duty assignment. Based on this discussion, the leave approving official will make a determination regarding whether the Employee should remain on their current AWS or modify that AWS for the duration of the temporary duty and advise the Employee of that determination in writing. DOE will ensure that Employees are compensated for all hours worked in accordance with law, rule, and regulation. Accordingly, Employees will not be expected to work hours beyond the

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approved schedule unless overtime or compensatory time is approved.

Section 25.02. AWS Program Options

A. Compressed Work Schedules (CWS)

1. Compressed Work Schedules (CWS)
– CWS are fixed work schedules with a fixed day off and fixed start and stop times (i.e., CWS may not have different fixed starting and ending times on different days) but enable BU Employees to complete the basic eighty (80) hour biweekly work requirement in less than ten (10) workdays.
2. Five/Four-Nine (5/4-9) – This compressed work schedule tour has a fixed schedule within a pay period of nine (9) workdays which includes eight (8) workdays of nine (9) hours each, one (1) workday of eight (8) hours and one (1) non-workday within each bi-weekly pay period.
3. Four/Ten (4/10) Work Schedule – This plan is a fixed schedule that includes four (4) 10-hour days and one (1) non-workday within a five-day work week.
4. Overtime Hours for CWS: Overtime hours used with respect to compressed schedule programs under 5 USC §§ 6127 and 6128, means any hours in excess of those specified hours which constitute the compressed schedule.
5. Employees on a fixed CWS schedule may not “glide” or earn credit hours.

B. Flexible Work Schedule (FWS) –

1. Gliding Schedule:

- a. This FWS is also referred to as a sliding or sliding/gliding schedule which consists of five 8-hour workdays, plus a daily lunch approximately half-way through the tour, 40 hours each week and 80 hours bi-weekly, with the core hours of 9:00 a.m. to 3:00 p.m.
- b. Employees must start by the beginning of the established core hours (or be charged for the absence) and depart by the end of the established flexible hours following the core hours.
- c. During the regularly scheduled work week, as long as not otherwise directed, a participant of the program may, on a daily basis, vary his or her arrival to work without prior supervisory approval and without charge to leave as long as:
 - i. The Employee reports within a window of no more than one (1) hour before and one (1) hour after his or her scheduled reporting time, and
 - ii. The Employee correspondingly adjusts his or her scheduled time of departure from work that day.

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- d. This one-hour window may be expanded on an as-needed basis with the approval of the supervisor.
 - e. Overtime Hours used for FWS: overtime hours used with respect to flexible schedule programs under 5 USC § 6122 through § 6126 means all hours in excess of 8 hours in a day or 40 hours in a week which are officially ordered in advance.
 - f. Employees must work 8 or more hours between 6 a.m. and 6 p.m., and Employees are not eligible for night pay for voluntarily working flexible hours between 6 p.m. and 6 a.m., including while earning credit hours.
 - g. Credit hours may be authorized for this schedule.
2. Credit Hours
- a. Credit hours may be earned by an Employee working FWS in the following manner:
 - i. Credit hours worked must be requested and approved in advance.
 - ii. Credit hours will be earned and taken in quarter-hour increments.
 - iii. Credit hours may be worked only by Employees on FWS

after a supervisor has determined that there is a need for an Employee's services, upon request of the Employee, and approval by the supervisor when there is work to be done.

- iv. Credit hours worked will not entitle Employees to overtime or night differential. If the Employee declines to work credit hours, he or she can be required to work and shall be compensated with either overtime and or compensatory time, if applicable.

- v. Supervisors may agree to schedule the accrual and use of credit hours on a long-term basis, e.g., quarterly or longer.

- vi. An Employer may deny use of previously earned credit hours if such absence would interfere with work requirements.

- vii. An Employee is entitled to his or her basic rate of pay for credit hours.

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- viii. With prior supervisory approval, an Employee may earn a maximum of two (2) credit hours per normal workday and up to twelve (12) credit hours on a non-workday during any bi-weekly pay period. A maximum of 24 credit hours may be accrued and carried over from one bi-weekly pay period to another bi-weekly pay period.
- ix. With prior supervisory approval, credit hours may be worked non-contiguously to the Employee's regular work schedule and may be worked at an alternate worksite. For example, an Employee may work at the regular work site between 7:30 a.m. and 4:00 p.m. (which includes 8 hours of work plus a lunch period), and return home and work 2 credit hours between 8:00 p.m. and 10:00 p.m. Any commuting time is off-duty time.
- x. Subject to law,
- regulations, and the terms and conditions of this Agreement, credit hours either alone or in combination with annual, sick, or compensatory leave, or leave without pay, may be used for a full day of absence.
- xi. Credit hours may not be earned while traveling. Employees on travel status are entitled to compensatory time for travel pursuant to applicable regulations.
- xii. Credit hours may not be used until earned, including during the same pay period in which they are earned. Credit hours that are not used within 26 pay periods of the pay period in which they are earned will be forfeited.
- b. Employees may use credit hours in conjunction with a Gliding Schedule on a recurring basis to establish a regularly scheduled day off during subsequent pay periods, in accordance with 25.02 B. 2. (a)(5) above.
- c. All Employee work schedule

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options described above require that work not commence earlier than 6:00 a.m. or end later than 6:00 p.m. on the quarter hour.

Section 25.03. Requirements

- A. An Employee's work schedule request, including a request for specific starting or stopping times and/or regular days off, will be approved unless the request would interfere with work requirements, such as office coverage, participation in collaborative projects, or cost efficiencies. However, it is possible that based on considerations such as workload requirements, only a particular number of Employees may have the same day off. DOE will attempt to accommodate an Employee's choice of regular days off and will consider Employee needs, and/or Employee hardship when deciding whether to accommodate an Employee's choice of regular day off. If an Employee's requested work schedule or regular day off cannot be approved, the process in Section 25.04C will be used to determine what schedule or days off an Employee will have.
- B. Participation in the AWS program is predicated on an Employee's performance on any critical element being at or above the equivalent of Meets Expectations, Fully Successful, or Level 3. The Employee must not have received any written disciplinary/adverse action in the last 6 months.
- C. Employer decisions regarding alternative work schedules may be grieved or otherwise appealed as allowed by law.
- D. Employees occasionally may be ordered to report for duty on their regularly scheduled day off by DOE. In such circumstances and upon request, the leave approving official will provide an Employee with the workload

rationale for the decision in writing. In accordance with Article 24, Employees may elect to be compensated at appropriate overtime rates of pay for actual hours worked or by the accrual and use of equivalent amounts of compensatory time off; or the Employee may switch his or her AWS day off.

- E. No Employee will be forced to participate in an AWS program. If an Employee declines to do so, he or she will continue to work his or her existing tour of duty.
- F. DOE may temporarily suspend the operation of the alternative work schedule program in all or any part of the Headquarters bargaining unit when workload emergencies require it. Such workload emergencies shall be specific and documented.

Section 25.04. Procedures for Establishing a Work Schedule

- A. To establish a work schedule, each covered Employee is responsible for submitting to his/her first-line supervisor a written request for a bi-weekly eighty (80) hour work schedule corresponding to a standard pay period. Any workday within this schedule must commence no earlier than 6:00 a.m. and end no later than 6:00 p.m.
- B. This schedule, referred to as the work schedule, will provide, by pay period, for a total of eighty (80) work hours, plus daily lunch breaks, through any combination of workdays within the limits described above. An Employee's approved work schedule must be compatible with his or her duties.
- C. After receiving an Employee's written submission of proposed work schedule(s), the first-line supervisor will grant the Employee's first or second choice as long as workload and/or cost efficiency permits. Normally, within ten (10) workdays of their

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receipt of an Employee's work schedule request, the supervisor will provide the Employee with a copy of the approved work schedule that will become the Employee's established work schedule. In instances where an Employee's first choice schedule cannot be approved, DOE seniority Entry-On-Duty date (EOD) will be the determinative factor in breaking ties among qualified Employees, with further ties being broken by time in the work unit.

- D. DOE will work with Employees to arrive at a mutually agreeable schedule. If the Employee's first or second preference cannot be granted, the supervisor will notify the Employee in writing as to the reasons for the denial. Thereafter, the Employee may resubmit his or her preference for a schedule as described in paragraph C above.
- E. It is of mutual benefit to Employees and DOE to maintain a stable work environment; thus, an Employee's established work schedule will remain in effect unless modified in accordance with procedures set forth in this Article. An Employee may, with prior supervisory approval and consistent with this Article, make a temporary change in his or her schedule within a specific pay period without modification of the established work schedule provided that the requirement for eighty (80) work hours per pay period is still met.

Section 25.05. Changes in Work Schedules

- A. Permanent Changes to Established Work Schedules
 - 1. An Employee may request a permanent change in his/her established work schedule in writing by submitting the request at least two full pay periods before the pay period in which the changes would be effective.

- 2. Where multiple Employees request the same work schedule and where DOE does not identify any specific workload or cost efficiency requirements, staffing needs and/or expertise, the Employee with the earliest DOE Entry-On-Duty date will be given his or her first choice. Less senior Employees will be given the next available identified preferred schedule or day off.
- 3. Where multiple Employees request the same work schedule and where DOE has identified specific workload or cost efficiency requirements, staffing needs or expertise, DOE will provide a written description of the workload requirements, staffing needs, and/or expertise to a requesting Employee or NTEU. In circumstances where DOE has identified specific workload requirements, staffing needs, and/or expertise and DOE's decision results in an Employee being required to change his or her AWS or regular days off the Employee with the earliest DOE Entry-On-Duty date will be given his or her first choice. Less senior Employees will be given the next available identified preferred schedule or day off.
- 4. Schedule changes will be approved or disapproved consistent with this Article.
- 5. The supervisor must notify the Employee in writing of his/her decision no later than the Friday before the beginning of the pay period in which the requested change would be effective if approved.

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6. Changes approved by the supervisor will become effective on the first day of the next pay period, as specified in the Employee's request and approved by the supervisor.

7. Employees may request no more than four (4) permanent changes each calendar year.

B. Temporary Changes to Established Work Schedules

1. Employees may request temporary changes in work schedule (i.e., change of scheduled day off, tour of duty, etc.) from their supervisor.

2. Normally such requests will be made at least one (1) day in advance.

3. The supervisor will consider, and normally approve, such requests, so long as workload and cost efficiencies permit.

4. The supervisor will provide written confirmation (i.e., email) of any denial of a request for a temporary change to an established schedule.

C. Impact of Voluntary Changes on Other Employees

Voluntary changes to work schedules will not be permitted if such changes would require other Employees in the work unit to change their schedules involuntarily.

Section 25.06. Lunch Schedules

A. Lunch Schedule – Employees will take an unpaid 30-minute lunch break, normally between 11:00 a.m. and 2:00 p.m., or at other times with supervisory approval.

B. With supervisory concurrence, Employees on

an FWS may extend or vary their lunch period and compensate for this time accordingly.

C. With supervisory concurrence, Employees not on an FWS schedule may extend their lunch hour by taking leave or compensatory time.

Article 26 - Holidays

Section 26.01

When DOE requires the services of Employees on an established holiday, DOE will provide as much advance notice to the affected Employees as possible.

Section 26.02

DOE is responsible for determining which Employees will work on holidays. However, if management determines that the holiday work could be performed just as well by one or more Employees, the Employee from that group who wishes to do the work and who has the most Federal service will be given the assignment. If no Employee in that group wants to do the work, the Employee with the least Federal service will be given the assignment. These provisions will not apply when holiday work is frequent. In that case, the assignments will be rotated among the interested Employees in the group or, if no one is interested, among all Employees in the group.

Article 27 - Absence and Leave

Section 27.01. General

A. The provisions of this Article apply to all Employees regardless of marital status.

B. Leave will be administered in accordance with DOE Order 322.1.C, except where that Order conflicts with this Agreement. Where there is such a conflict the terms of this Agreement shall control. Leave will be earned in one-hour increments and used in fifteen-minute increments.

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- C. Leave will be scheduled in such a manner so as to balance the needs of the Employee and the accomplishment of work. Leave is to be granted whenever possible.
 - D. Employees will be notified annually of proper procedures for requesting leave.
 - E. Employees are encouraged to schedule leave in advance when financial commitments are involved.
 - F. Whenever language in this Article indicates that management will grant or Employees will take or use administrative leave, leave without pay (LWOP), or advanced sick or annual leave it is understood that these are types of absences or leave categories which are subject to workload, staffing requirements, and managerial approval. Absent specific statutory or regulatory requirements, management retains the right to approve absences and Employees' use of these types of leave consistent with the accomplishment of work and the Agency's mission.
 - G. For purposes of this Article (except with regard to leave pursuant to the Family and Medical Leave Act (FMLA)), family member as used in this Article means an individual with any of the following relationships to the Employee:
 - 1. Spouse, and parents thereof;
 - 2. Sons and daughters, and spouses thereof;
 - 3. Parents, and spouses thereof;
 - 4. Brothers and sisters, and spouses thereof;
 - 5. Grandparents and grandchildren, and spouses thereof;
- 6. Domestic partner and parents thereof, including domestic partners of any individual in paragraphs (2) through (5) of the definition found in 5 CFR § 630.201; and
 - 7. Any individual related by blood or affinity whose close association with the Employee is the equivalent of a family relationship

Section 27.02. Annual Leave

- A. Requests may be made in amounts of leave accrued plus leave to be earned during the leave year as reflected in an Employee's biweekly statements of earnings and leave (SEL).
- B. Employees should advise their leave approving official of leave they plan to take as soon as they decide they wish to take it.
- C. An Employee's use of annual leave is always at the Employee's discretion, when approved by the leave approving official. Annual leave scheduling will be worked out between the Employee and the leave approving official. Employees will submit annual leave requests as far in advance as possible using the approved written procedures in their office.
- D. A leave approving official will decide whether or not to approve Employee requests for leave as soon as possible, and a decision will be made no later than ten (10) workdays following receipt of the request. If the leave request cannot be decided promptly, the leave approving official, and the Employee will meet within the ten (10) day period to discuss the best way to resolve the leave request decision. It is understood that a leave approving official may direct Employees with documented time and attendance problems to use other specific means to report their absence.

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- E. Employees may not be denied annual leave for reasons other than those concerning the Employee's and/or the office's work situation. Once approved, Employee's leave requests will not be rescinded but for a significant unanticipated change in the Employee's and/or the office's work situation. DOE will provide specific written reason(s) for rescinding or denying leave. Leave approving officials will make every effort to adjust the Employee's and/or the office's work situation to permit Employees to be granted annual leave as requested and to use scheduled annual leave once approved.
- F. Employees may appeal leave rescission under this Section in writing to the Step 2 Official under Article 11, who must meet with Employee within three (3) workdays. Employees appealing under this provision are entitled to Union representation.
- G. An Employee may request, and have approved, a change in selection of annual leave time provided that another Employee's choice is not affected.
- H. Employees may change previously authorized annual leave to sick leave when sick leave is appropriate. Employees may also change annual leave to leave without pay with the approval of the leave approving official. Employees may request to retroactively convert leave without pay or sick leave to annual leave.
- I. Employees will not be forced to take annual leave.
- J. An Employee seeking unscheduled annual leave will ensure that the leave approving official is notified within the first hour of the Employee's tour of duty, or as soon thereafter as possible in unusual circumstances. The Employee should attempt to contact the leave approving official directly and inform him or her of the anticipated extent of the absence. Voice mail and/or email are appropriate means of notification under this Section. Employees shall be provided the appropriate phone number and email to use in the leave procedures discussed in Section 27.01.D above. It is understood that a leave approving official may direct Employees who have been put on leave restriction to use other specific means to report their absence. If the absence extends beyond the anticipated period, the leave approving official will be notified promptly.
- K. Disapproval of leave or leave restriction letter is not a disciplinary action.
- L. Conflicts in annual leave requests made by Employees, which would otherwise be approved, shall be at first attempted to be resolved among the Employees. If there is no resolution of conflicts in the granting of annual leave, requests will be resolved by the leave approving official based on the following criteria:
1. Extraordinary or emergency reasons
 2. Situations where leave would otherwise be lost;
 3. Date of submittal of leave request;
 4. Financial commitments; or
 5. Seniority defined as DOE Entry on Duty (EOD) date.
- M. An Employee's previously approved leave normally shall not be disapproved under the terms of this Section (i.e., a subsequent request by another Employee for leave). Once a decision has been made the leave approving official must advise the involved Employee of the basis for the decision and provide that decision in writing to the

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involved Employee(s).

- N. DOE shall provide bargaining unit Employees the date set by OPM (i.e., before the start of the third bi-weekly pay period prior to the end of the leave year) to schedule "use or lose" leave. DOE shall ensure that bargaining unit Employees are provided a minimum of five (5) workdays after such notice to submit their requests for "use or lose" leave. DOE shall make every reasonable effort to grant the Employee's request for "use or lose" annual leave consistent with workload and staffing needs.
- O. In accordance with 5 USC § 6304 (d) and (e), and 5 CFR § 630.305-311 if an Employee is unable to take scheduled previously requested and approved annual leave pursuant to Section 27.02. M above due to the exigency of public business, or for the other reasons referred to in 5 USC § 6304(d)(1), the annual leave will be restored. This will be done in accordance with 5 § CFR 630.306. DOE will provide the impacted Employee with written confirmation that the annual leave will be restored. In addition, the Employee will be informed of the timeframe for using the restored leave. If not used during this time, the restored annual leave will be forfeited. DOE will provide information regarding the ability of Employees to restore any leave lost due to the end of the year "use or lose" policy on an annual basis.
- B. When practical, sick leave requests for non-emergency medical reasons, (e.g., dental or optical examinations, operations, or treatments) should be submitted as far in advance as possible to the appropriate leave approving official. Such requests shall be approved as quickly as possible after receipt of the request or two (2) workdays prior to the requested leave, whichever occurs first. Requests for sick leave under this Section where rescheduling will adversely impact the Employee's health shall be approved. Other requests shall be approved unless the Employee's absence would create a workload problem, in which event the Employee would be given advance notice by the leave approving official as time permits so that other appointments can be made.
- C. An Employee seeking unscheduled sick leave will ensure that the leave approving official is notified within the first hour of the Employee's tour of duty, or as soon thereafter as possible in unusual circumstances. The Employee should attempt to contact the leave approving official directly and inform him or her of the anticipated extent of the absence. Voice mail and/or email are an appropriate means of notification under this Section. Employees shall be provided the appropriate phone number and email to use in the leave procedures discussed in Section 27.01.D above. It is understood that a leave approving official may direct Employees who have been put on a leave restriction to use other specific means to report their absence. If the absence extends beyond the anticipated period, the leave approving official will be notified promptly.
- D. Except for the provisions under Section 27.03 E Employees will not be required to furnish a medical certificate to substantiate a request to be granted sick leave for periods of three (3) consecutive workdays or less unless DOE

Section 27.03 - Sick Leave

- A. An Employee shall earn leave in accordance with applicable statutes and regulations. The use of sick leave is an Employee benefit to be used by the Employee in accordance with the specific procedures of this article for absences required by illness, injury, medical appointments, certain circumstances involving contagious diseases, or bereavement, in accordance with Section 27.08 below.

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has given written notice that the Employee must furnish a medical certificate or other administratively accepted evidence for all absences from work which the Employee desires to charge to sick leave.

E. In the absence of a leave restriction, if DOE suspects that an Employee has requested sick leave of three (3) consecutive days or less contrary to statute or regulation DOE may request that the Employee provide a medical certificate or other evidence in support of their claim. In response to such a request the Employee may:

1. provide the requested information directly to the leave approving official; or
2. provide the requested information using the procedure described in Section 27.03F below; or
3. decline to provide the requested information.

F. If an Employee declines to provide the requested information DOE must either approve the requested leave or provide the Employee with a written notice that the leave has been denied and the reason for that denial. Thereafter, an Employee may either:

1. Decide to submit additional medical documentation as described above;
2. Request that the requested sick leave be considered as unscheduled annual leave subject to the determination process described in Section 27.02 above; or
3. Grieve the denial of sick leave

G. For absences of more than three (3) workdays, Employees may, as deemed

appropriate by DOE, be required to furnish either a medical certificate, other administratively acceptable evidence, or self-certification as to the reasons for their absence.

1. In the event DOE advises an Employee that he or she must provide a medical certificate, or other administratively acceptable evidence/information DOE shall limit the type and amount of medical information requested to only that needed to make a decision. For example, a supervisor might need to know that an Employee has a disabling condition that may require accommodation and that the accommodation is medically warranted but would not necessarily need to know the full clinical diagnosis of that medical condition.

2. Employees will have a reasonable period of time, but not more than fifteen (15) days to furnish any requested medical certificate, other administratively acceptable evidence, or self-certification as set out paragraph E above.

3. If an Employee does not wish to share specific medical information in support of their request with the leave approving official, the Employee has the option to execute a release of information to be provided along with a sealed copy of any existing supporting information (not to be opened by the leave approving official) in order for a separate determination of incapacitation to be reviewed by a health provider designated by DOE.

4. Thereafter, the Employee shall submit any additional document-

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tation or information he or she wishes to be considered in the same manner as described above.

H. DOE, the leave approving official, and the health care provider designated by DOE will exercise the utmost respect for the Employee's need for privacy and shall keep medical and other information confidential as required by law, rule, and regulation.

I. An Employee suspected of abuse of sick leave based on a pattern of usage, will be counseled and the reason(s) for the absence(s) will be considered before any determination is made that abuse has occurred. DOE shall advise an Employee of their right to have a Union representative present prior to any inquiry of suspected abuse of sick leave as described herein. The Employee may also be placed on leave restriction. The leave restriction letter will state the period of time it will be in effect but such time will not exceed six (6) months in duration. Leave restriction letters may be extended in writing if DOE believes that the pattern of leave abuse has continued. If a leave restriction letter is extended it will be reissued in the same manner as described above. A leave restriction is not a disciplinary action and will not be placed in the Employee's Official Personnel Folder (OPF).

J. Employees may visit health units for brief periods of illness. Except in emergencies, they must notify their leave approving official in advance. Normally, sporadic visits of one hour or less are excused without charge to leave. Visits to health units for occupational injuries will not be chargeable to leave. Employees will not be required to furnish a doctor's certificate on a continuing basis if the Employee suffers from a chronic condition which does not necessarily require medical treatment, although absence from work may be necessary and the Employee has furnished medical certification of the

chronic condition. Such certification shall be submitted in accordance with Section 27.03 F.3 above. Thereafter an Employee's use of leave related to the chronic condition shall be deemed covered by the initial or any follow up doctor's certificate, unless DOE has reasonable cause to suspect that the leave used by the Employee should not be covered by the doctor's certificate. In such an event, DOE shall follow the procedures set forth in Section 27.03 above.

K. In rare instances, an approved absence which would otherwise be chargeable to sick leave may be chargeable to leave without pay at the option of the Employee and with the approval of DOE.

L. A request by an Employee for advanced sick leave will be approved when all of the following conditions are met:

1. The requesting Employee is eligible to earn sick leave;
2. The leave is required for a serious disability, ailment, or treatment;
3. Continued employment is expected upon the Employee's return;
4. The Employee has provided acceptable medical documentation to support the need for advanced sick leave; and
5. The Employee is not on leave restriction.

M. A leave approving official, after having received a request for advanced sick leave, will respond in writing indicating the decision and the basis for the decision if the request is denied.

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Section 27.04. Leave Without Pay

- A. DOE agrees to approve leaves of absence for any Employee elected to a position of national officer of the National Treasury Employees Union for the purpose of serving full time in the elective position. Such leaves of absence will be concurrent with the term of office of the elected official and will automatically be renewed by DOE upon notification in writing from the elected official that the Employee has been reelected and wishes to continue in a leave of absence status.
- B. DOE agrees to approve a leave of absence for one Employee for the purpose of serving in a full-time appointive position for the National Treasury Employees Union. The term of the leave of absence will be no more than two (2) years. Any affected Employee will have his/her leave of absence renewed for one additional two (2) year period upon request.
- C. Any Employee with five (5) years of consecutive service with DOE is entitled to a one (1) year leave of absence to engage in a full-time, job-related study. A program of study will be found to be job-related if it will significantly assist the Employee to do the Employee's current job, or to achieve and perform another job to which the Employee can reasonably aspire. It is understood that such requests, shall be granted in accordance with the following:
 - 1. The Employee's absence will not create a severe workload problem; and
 - 2. If there are more eligible applicants than such leaves of absence, the Employee with the greatest length of service will be chosen.
- D. If feasible, an Employee returning from an extended leave of absence will be returned to the position held at the time that the leave

of absence began. If the Employee returning from an extended leave of absence cannot be placed in the position held at the time the leave of absence began, then every effort will be made to place the Employee in a like position. If the returning Employee cannot be placed in the original position held at the time the leave of absence began, or in a like position, every effort will be made to place the Employee in a like position somewhere in the first-tier organization.

Section 27.05. Administrative Leave

- A. Administrative leave (Excused Absence) is the approved absence from duty without loss of pay and without charge to leave.
- B. When voting polls are not open at least three (3) hours either before or after an Employee's regular hours of work, the Employee will, upon written request, be granted an amount of administrative time by the leave approving official which will permit the Employee to report to work up to three (3) hours after the polls open or leave work up to three (3) hours before the polls close, whichever requires the lesser amount of time.
- C. Early dismissals and closing caused by hazardous weather conditions or other emergency situations will be communicated in accordance with current OPM Guidelines. If the decision to excuse Employees is made during normal working hours, Employees will be notified as soon as possible. Absences of up to one (1) day may be excused even if the office remains open, if prohibition or restriction of traffic by public authority during work hours would require a one-way commute or if a breakdown in public transportation that could not be foreseen would preclude an Employee from reporting within four (4) hours of the start of the workday despite a diligent effort.

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D. When an emergency condition forces the closure of a DOE facility and Employees who work there are granted administrative leave as a result of the closure, an Employee of the facility who is working off-site and who is prevented from accomplishing work because of that same emergency condition will be provided the same amount of administrative leave granted to Employees who were working in the closed facility.

E. An Employee who donates blood may receive a maximum of four (4) hours of administrative leave for the purpose of blood donation. Additional time may be granted if justified.

F. In accordance with OPM Guidelines, an Employee returning from active duty with the reserves or National Guard, may take 5 days (forty (40)) hours of excused absence before reporting for duty.

G. An Employee who returns from official travel from a location that the Centers for Disease Control (CDC) or Department of State has issued a travel advisory due to a contagious disease may be authorized up to three (3) days (twenty-four (24) hours) of excused absence if they are not able to telework.

H. When the Department is relocating an Employee, including a temporary or permanent change of station move or detail outside the local commuting area, or to move a new hire to an initial duty station, current and newly hired Employees may be excused up to three (3) work days (24 duty hours) when they are unavoidably detained while awaiting or arranging the transportation of household goods or for other activities necessary for the move, including getting settled in a new location. This situation is also referred to as "transient leave."

I. An Employee may be excused up to ten (10) calendar days (80 consecutive duty hours) for

a house-hunting trip, including travel time.

J. An Employee may take up to four (4) hours of excused absence each leave year for health screenings.

Section 27.06. Leave for Maternity/Paternity Reasons

A. Family Friendly leave policies guaranteed by federal law are discussed under Section 27.08 of this article.

B. Paid Parental Leave will be provided in accordance with applicable laws, rules, and regulations. Additional leave for maternity/paternity reasons may be a combination of as many as three separate kinds of leave: sick leave, annual leave, and leave without pay (LWOP). Lengths of additional absence for maternity/ paternity reasons will be determined by the Employee, the Employee's physician, and the leave approving official based on the reasonable needs of each to the maximum extent provided by law, rule and regulation.

C. In the event of a pregnancy of the Employee, or his or her spouse, or his or her domestic partner, upon request, Employees will be granted appropriate leave in accordance with applicable, law, rule, regulation or this Agreement. Absent an emergency situation, Employees must coordinate all such leave with the appropriate leave approving official. Upon request by the Employee, DOE will consider, to the extent allowable by law, granting a leave of absence of six (6) months or more after each childbirth. DOE recognizes that not all deliveries occur as planned, accordingly DOE will consider granting additional leave as needed in response to unexpected medical situations arising both before and after delivery.

D. Employees may request to be absent on a full or part time basis using any combination of

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annual leave, sick leave, or LWOP to provide care for the newborn child, the mother during any incapacitation related to pregnancy or delivery, and/or any minor children as provided by law, rule and regulation. A request to utilize leave under this provision should be made in advance whenever possible.

- E. An Employee may use a combination of annual leave, sick leave or LWOP for the time required in the adoption of a child.
- F. If, after consulting a physician, a pregnant Employee requests a temporary modification of work duties or a temporary reassignment for medical reasons, every reasonable effort will be made to accommodate this request.

Section 27.07. Religious Holiday

- A. Normally, an Employee will be granted annual leave or LWOP for a workday which occurs on a religious holiday. Employees should give as much advance notice as is reasonable.
- B. An Employee whose personal religious beliefs require the abstention from work during certain periods of time may elect to engage in compensatory time for time lost for meeting those religious requirements.
- C. To the extent that such modifications in work schedules do not interfere with the efficient accomplishment of the Department's mission, DOE shall in each instance afford the Employee the opportunity to work compensatory overtime and shall in each instance grant compensatory time off to an Employee requesting such time off for religious observances when the Employee's personal religious beliefs require that the Employee abstain from work during certain periods of the workday or workweek.

- D. For the purpose stated in paragraph C of this section, the Employee may work such compensatory overtime before or after the grant of compensatory time off. A grant of advanced compensatory time off should be repaid by the appropriate amount of compensatory overtime work within twenty-six (26) pay periods. Overtime worked during this period will be counted against the compensatory time off until it has been made up before the Employee can be paid for the overtime or accumulate more compensatory time. Compensatory overtime shall be credited to an Employee on an hour- to-hour basis. Appropriate records will be kept of compensatory overtime worked and used.

Section 27.08. Family Friendly Leave Provisions

Nothing in the Agreement shall negate any federal Employee entitlements under any family friendly leave provisions guaranteed by public law, regulation, and DOE Order. Requests for leave entitlements pursuant to these provisions may, at the leave approving official's discretion, require submittal of medical documentation in accordance with the procedures outlined in Sections 27.03.E and 27.03F for the type of leave being requested. DOE agrees to post all regulations related to Family Friendly leave provisions on the Office of Human Capital Program's website.

- A. The Family Friendly Leave provisions include:
 - 1. The Family and Medical Leave Act of 1993. (FMLA) (See 5 USC § 6381 *et seq.*; 5 CFR § 630.1201, *et seq.*)
- Employees are entitled to a total of 12 administrative workweeks of unpaid leave during any 12-month period for (a) the birth of a son or daughter and care of the newborn; (b) placement of a son or daughter with the Employee for adoption or foster care; (c) the care of a spouse, son, daughter or parent with a

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serious health condition; and (d) a serious health condition of the Employee that makes the Employee unable to perform the duties of his or her position. Upon return from such leave, the Employee must be returned to the same position or to an equivalent position with equivalent benefits, pay, status and other terms and conditions of employment.

2. Family Friendly Leave (See 5 CFR § 630.401)

Employees may use up to 104 hours (13 days) of sick leave each year to care for a family member, or to arrange for or attend the funeral of a family member, if their sick leave balance is sufficient, and up to 480 hours to care for family members with serious medical conditions. Full-time Employees may use 40 hours (5 days) of sick leave for these purposes without regard to their current sick leave balance. Additional hours may be used if the Employee retains a balance of at least 80 hours of sick leave in his or her leave account. The Employee may use as much sick leave as is available to him/her for purposes related to the adoption of a child, or for the Employee's own medical treatment or incapacitation due to illness, injury, pregnancy or childbirth.

3. Leave for Bone-Marrow or Organ Donation

Employees are entitled to use 7 days of paid leave each calendar year (in addition to annual or sick leave) to serve as a bone-marrow donor or up to 30 days to serve as an organ donor.

4. Federal Leave Sharing

Employees may donate up to one half of their annual leave to other Federal Employees who have medical emergencies. The regulations at 5 CFR § 630.901 et seq. contain specific limitations on such donations.

Section 27.09. Military Leave (See 5 USC § 6323)

A. A full-time Employee working a 40-hour workweek will accrue 120 hours (15 days at 8 hours a day) of military leave in a fiscal year, or the equivalent of three (3) 40-hour workweeks. Military leave under § 6323(a) will be prorated for part-time Employees and for Employees on uncommon tours of duty based proportionally on the number of hours in the Employee's regularly scheduled bi-weekly pay period.

B. Any Employee who is a member of the National Guard or other reserve component of the Armed Forces shall be entitled to military leave for each day of active duty, active-duty training, and inactive duty training in such organizations for up to a maximum of fifteen (15) calendar days in any fiscal year (FY). To the extent that an Employee does not use the fifteen (15) calendar days of military leave in a FY, the remaining calendar days of military leave accumulates for use in the succeeding FY until it totals fifteen (15) days at the beginning of a fiscal year. An Employee can carry over a maximum of fifteen (15) days into the next FY. This leave need not be taken on consecutive days. Approval of the military leave provided in the foregoing shall be based on the presentation of the orders directing the Employee to active duty and a copy of the certification of completion of such duty.

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- C. Inactive Duty Training is authorized training performed by members of a Reserve component not on active duty and performed in connection with the prescribed activities of the Reserve component. Such inactive duty training includes regularly scheduled unit training periods, additional training periods, and equivalent training. For further information, see Department of Defense Instruction Number 1215.6, March 14, 1997.
- D. Pursuant to 5 USC § 6323(b) Employees are provided twenty-two (22) workdays per calendar year for emergency duty as ordered by the President, the Secretary of Defense, or a State Governor. This leave is provided for Employees who perform military duties in support of civil authorities in the protection of life and property or who perform full-time military service as a result of a call or order to active duty in support of a contingency operation as defined in Section 101(a)(13) of Title 10, United States Code.
- E. The term “contingency operations” means a military operation that:
1. Is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or
 2. Results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12305, or 12406 of title 10, United States Code, chapter 15 of title 10, United States Code, or any other provision of law during a war or during a national emergency declared by the President or Congress.
- F. Military leave should be credited to a full-time Employee on the basis of an 8-hour workday. The minimum charge is one (1) hour.
- G. An Employee may be charged military leave only for hours that the Employee would have otherwise work and received pay.
- H. Employees who request military leave for inactive duty training (which generally is 2, 4, or 6 hours in length) will be charged for only the amount of military leave necessary to cover the period of training and necessary travel.
- I. Members of the Reserves and/or National Guard will not be charged military leave for weekends and holidays that occur with the period of military service.
- J. An Employee’s civilian pay remains the same for periods of military leave under 5 USC § 6323(a), including any premium pay (except Sunday premium pay) an Employee would have received if not on military leave.
- K. For military leave under 5 USC § 6323(b) and (c), an Employee’s civilian pay is reduced by the amount of military pay for the days of military leave. However, an Employee may choose to not take military leave and instead take annual leave, compensatory time off for travel, or sick leave, if appropriate, in order to retain both civilian and military pay.
- Section 27.10. FMLA for Military Exigencies & Care of a Service Member (See Fed. Reg. Vol. 76, No. 190 Final Rule, re: 5 CFR 630.1204-1209)**
- Eligible BU Employees who are family members of a covered military member may take FMLA for qualifying military exigencies to the maximum extent allowed by law.

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Section 27.11. Court Leave

- A. An Employee is entitled to court leave to the extent necessary:
1. To serve jury duty, or
 2. To participate in judicial proceedings in a nonofficial capacity as a witness when one of the parties is the United States, the District of Columbia, or a state or local government.
- B. Employees who are excused by a court so that two (2) or more work hours remain in their regular workday must return to duty (including flexiplace) or request leave, unless returning to duty creates a hardship.

Section 27.12. Set Aside Accounts for Donated Leave

To the extent required by the Regulations, DOE shall ensure set-aside accounts are established for Employees who are using donated leave. The leave in the set-aside accounts will be transferred to the Employee's regular leave accounts when the medical emergency ends, or the Employee exhausts all donated leave.

Article 28 - Employee Benefits

Section 28.01. Employee Assistance

Employees seeking advice regarding benefits should contact the Shared Service Center (SSC) which will advise them as to available benefits under such programs as retirement, health and life insurance, and injury compensation.

Section 28.02. OPM-sponsored Retirement Planning Seminar

DOE agrees that Employees who are eligible to retire within 2 years shall be given an opportunity to voluntarily participate in one OPM-sponsored retirement planning seminar. Requests to attend the

OPM-sponsored retirement planning seminar will be scheduled subject to mission requirements.

Section 28.03. Retirement Benefits Information After Separation

Upon request to the SSC, each Employee who separates voluntarily or involuntarily (except by retirement) will be promptly informed by DOE as to the Employee's rights to file for any type of retirement benefits to which the Employee may be entitled.

Section 28.04. Waiver of Overpayment

- A. When an Employee receives an overpayment of pay and allowances, other than travel and transportation expenses allowances and relocation expenses, the Employee may request a waiver of the obligation to repay such overpayment by submitting a request to the Office of the Chief Financial Officer. In order to obtain a waiver of overpayment, the Employee must establish each of the following conditions:
1. The amount of the over payment is not more than \$1500;
 2. There is no reason to believe that the overpayment is the result of misrepresentation, fraud, fault, or a lack of good faith on the part of the Employee or any other person having an interest in obtaining a waiver of the claim;
 3. The payment is not the subject of an exception by the Comptroller General in the account of the accountable officer;
 4. The waiver, if made, would be in accordance with Comptroller General standards;
 5. If collection would be against equity and good conscience and not in the

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best interest of the United States (e.g., financial hardship, detrimental reliance);

6. If the application was made within 3 years of discovery of the erroneous payment; and
7. The waiver could be consistent with governing decisions of the Comptroller General.

- B. Where, through an administrative error, an Employee receives an overpayment in the amount which would normally go unnoticed or undetected, such Employee will be permitted to repay the excess pursuant to 5 U.S.C. § 5514. These payments will be made in installments of at least ten dollars (unless a lesser amount will complete reimbursement), payment in full can be made while the Employee is still on the Department's active roles. The amount deducted for any period will not exceed 15% of the Employee's disposable pay unless requested by written consent of the Employee. The size and frequency of installment payments should bear a reasonable relation to the size of the debt and the Employee's ability to pay. If possible, installment payments should be sufficient size and frequency to liquidate the debt in three (3) years or less.

Section 28.05. Light Duty Assignment

Employees temporarily physically unable to do their regularly assigned tasks will be given light duty assignments if available and where modifications to their current positions are insufficient to meet the Employee's medical requirements. This provision is not intended to replace or conflict with established reasonable accommodation procedures or worker's compensation procedures.

Article 29 - Employee Awards

Section 29.01. General

- A. NTEU and DOE acknowledge the importance of timely recognition of Employees for high quality contributions to the Department and its mission. Recognition and encouragement by DOE are an important incentive that increases Employee job satisfaction and contributes to the overall quality of work performance.
- B. Awards may include but are not limited to the following: performance awards, quality step increases (QSIs), time off awards, on-the-spot awards, and special act awards to individuals or groups, if they meet the criteria for such an award.

Section 29.02. Award Distribution

DOE retains its right to exercise discretion to issue or to not issue Employee awards. It is recognized by the Parties that there are no entitlements to awards and that awards will be distributed in accordance with DOE's Employee Performance Management and Recognition Program Order, this Article, and applicable laws, rules, and regulations. Awards will be granted in a consistent and objective manner without discrimination, and in accordance with applicable laws, rules, and regulations. Performance-based awards will be paid to Employees as soon as possible after the end of the official rating year.

Section 29.03. Rating-Based Performance Award

- A. Performance-Based Cash Awards.
1. If DOE has determined that it will establish an overall awards budget for all Employees, DOE will provide NTEU with the elements of the awards equation as soon as it is known. Information will include the total salary base, the percentage of

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- salaries allocated to the awards pool, and will be provided for each first tier. NTEU will be provided additional information and details in a briefing, if requested. DOE will notify NTEU of any changes in budget administration that affect the awards pools immediately after the decision about the change is finalized.
2. Employees in the Performance Management System whose annual summary rating-of-record is "Meets Expectations" (ME) or higher are eligible for a Performance-Based Cash Award unless the Employee has been rated at "Fails to Meet Expectations" (FME) or below on any critical element. All Employees rated at ME or above will be eligible for a Performance-Based Cash Award. Performance-based cash awards will be processed as soon as practicable after the end of the official rating year.
 3. In the event that DOE determines to change awards allocation in DOE O 331.1D for the award pool, it shall give NTEU notice, and an opportunity to bargain to the extent permitted by law.
 4. DOE shall distribute Performance-Based Awards in accordance with this Article. Management determines which type of award to offer according to eligibility. The preference of the Employee will be taken into account; however, the final determination will be made by DOE. The Employee will be notified of the final determination.
 5. Employees with a rating of ME or higher may request to receive either
 - a cash award or time off award.
 6. New hires, transferees, part-time Employees, and Employees who are reassigned or detailed after the start of the rating year may receive a pro-rata award calculated from the date of appointment until the end of the rating period.
 7. Awards will be determined based on the overall summary rating and the applicable share value, multiplied by Employee's salary, as defined by DOE Order 331.1D, as follows:
 - a. SE – 5 shares
 - b. EE – 4 shares
 - c. ME – 3 shares when the majority of elements are rated at ME and at least 1 at EE or the elements are equally divided between EE and ME; or
 - d. ME – 1 or 2 shares if all or a majority of elements are rated ME.
 8. Awards will be pro-rated in accordance with DOE O 331.1D, which states that pro-ration is determined by dividing the total hours in a pay status by 2080 hours and multiplying the result times the pro-rated share value.
- B. Quality Step Increases (QSI)
1. QSIs are faster than normal within-grade increases used to reward Employees at all General Schedule grade levels who display high quality performance and are permanent increases in pay.

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2. QSI's are granted at management's discretion, in lieu of a cash or time off award, to reward a sustained performance of Outstanding or equivalent rating (i.e., Significantly Exceeds Expectations (SE)) as defined in 5 CFR § 430.208(d), and to motivate Employees toward increased productivity.
 3. The following applies to the granting of a QSI:
 - a. QSI's may be granted only to Employees:
 - i. who have permanent or indefinite appointments;
 - ii. whose current rate of pay is less than the maximum for their grade;
 - iii. whose current rating of record is Outstanding or equivalent or equivalent (i.e., SE) as defined in 5 CFR § 430.208(d); and
 - iv. who are expected to continue to serve in their current position, or in a similar position at the same grade, at the same level of performance, for the foreseeable future.
 - v. who are at full performance level
 4. Only one QSI may be granted to an Employee during any 52-calendar week period.
- C. Time Off Awards (TOA) - TOAs are administered as follows:
1. An Employee may request to be given a TOA in lieu of a QSI or cash award for performance based on the summary ratings as follows:
 - a. Each Employee whose summary performance rating is SE shall be eligible for a TOA of 50 hours.
 - b. Each Employee whose summary performance rating is Exceeds Expectations shall be eligible for a TOA of 40 hours.
 - c. Each Employee whose summary performance rating is Meets Expectations shall be eligible for a Time-Off Award of:
 - i. 30 hours when the majority of critical job elements are rated at ME and at least one critical job element is rated at EE, or the elements are equally rated between EE and ME;

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- ii. 20 hours when all or a majority of critical job elements are rated ME; or
- d. An Employee may not receive more than eighty (80) hours of time-off within one fiscal year. Scheduling of time-off awards will be subject to supervisory approval.
- e. Time-Off Awards must be used within fifty-two (52) weeks of the date that the award is effective (i.e., the date of the SF-50 effecting the award, normally the first day of the first pay period following final approval of the award). It may not be transferred if an Employee transfers to another Federal agency, nor is the award payable in a lump sum if the Employee leaves Federal service.

The SAS award consists of cash and/or time-off in recognition of a special act or service performed in the public interest in connection with or related to official employment and clearly exceeds the recognition afforded through the issuance of a performance award. Employees may receive an SAS award in recognition of a special act or service that has also been considered in their performance appraisal, so long as the overall combined value of the award does not exceed the value to the organization of the contribution recognized as shown in appendix C of this Agreement.

- 2. On the Spot Award – Immediate recognition for a significant deed or accomplishment performed with exceptional quality under difficult and unusual circumstances. Employees seeking information regarding incentive awards should contact the SSC, which will advise them as to available awards for which they may be nominated.

- D. An Employee may not receive more than one of the following for the same performance:
 - 1. A performance-based cash award;
 - 2. A Quality Step Increase (QSI); or
 - 3. A time-off award (TOA).

- B. Issuance of a Special Act or On-the Spot Award for any work activity shall not prevent DOE from proper recognition of that work in the Employee's performance evaluation if that work activity is related to or included in the Employee's elements and standards in accordance with Section 29.05.A(1) and (2) above.

Section 29.04. Non-Rating Based Performance Awards

- A. In addition to those performance-based awards listed in Section 29.02, Employees may be nominated for the following awards:
 - 1. Special Act or Service (SAS) Award –

Section 29.05. Separation

- A. Once a decision is made to pay performance awards in an organization, DOE bargaining unit Employees, who separate from DOE after the last day of the performance cycle, but prior to payout of performance awards will receive performance awards paid by the

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rating organization provided that the former Employee:

- B. Was a Federal Employee of DOE as of the last day of the performance cycle; and,
- C. Received an annual rating of record that qualifies for a performance award for that performance cycle.

Section 29.06. Reports

Upon request, DOE will provide NTEU an annual report of all awards issued to bargaining unit Employees. DOE will provide NTEU with information normally, within 10 days of the request, unless the parties mutually agree to an extension. This list will contain the Employee identification number, title, series, and grade of the recipient, the amount of the award, and the type of the award (e.g., performance, QSI, Special Act). Upon request, the list of Employees who receive Special Act awards will be issued to NTEU no more than quarterly.

Article 30 - Equal Employment Opportunity

Section 30.01

It is the policy of DOE and NTEU to support an affirmative and positive Equal Employment Opportunity (EEO) program. Discrimination on the basis of race, color, religion, national origin, lawful political affiliation, sex, marital status, sexual orientation, age, or nonrestrictive physical handicap will not be tolerated in personnel practices and employment conditions; and it is agreed that these basic principles shall be accomplished by Section 30.03 through 30.04 of this Article.

Section 30.02

Employees seeking appropriate assistance from an EEO Counselor are limited to an EEO Counselor in their building unless there is no EEO Counselor in their building, or there is a conflict of interest (e.g., the EEO Counselor may be affected by the outcome or a charge or complaint). In those cases, the

Employee shall coordinate the request for another counselor with the EEO Officer.

Section 30.03

NTEU will be provided annually available sanitized EEO reports.

Section 30.04

- A. DOE agrees to continue the DOE Headquarters EEO Advisory Committee, which shall meet at least on a quarterly basis.
- B. NTEU may appoint up to four (4) representatives from Forrestal and up to four (4) representatives from Germantown to serve as members of the Committee. The appointment of these individuals will not affect the status of other Employees currently serving on the Committee from identical organizational components.

Section 30.05

It will be the function of the EEO Advisory Committee to advise DOE on the continuing development and implementation of the Headquarters EEO program, including, but not limited to affirmative action, upward mobility, recruitment efforts, and the nature and timely processing of complaints on hand. While the EEO Advisory Committee shall not be a forum for complaints, grievances, or appeals, it may raise questions or concerns for DOE's consideration and response. Statistical and other information which is not otherwise prohibited from disclosure by law and regulations, and which is developed by DOE in connection with existing and planned affirmative action or EEO efforts, shall be made available to the Committee upon request.

Article 31 - Personnel Records

Section 31.01

DOE will continue to maintain systems of records containing personal information about Employees in

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accordance with the requirements of the Privacy Act of 1974.

Section 31.02

An Employee may access his or her Official Personnel Folder (OPF) through the electronic OPF system (e-OPF system). The e-OPF system is a secure web-based application that is accessible from remote locations. Employees shall have access to their e-OPF from their workstations at any time.

Section 31.03

- A. An Employee shall be notified each time a document is added to his/her OPF in accordance with Office of Personnel Management (OPM) practice. An Employee may print a copy of a document from his/her OPF. The e-OPF system automatically maintains an electronic record of any access to an OPF, and Employees shall have the ability to retrieve this "electronic record," upon request.
- B. In the event that an Employee's e-OPF is disclosed without proper authorization, DOE shall notify the impacted Employee of the unauthorized disclosure as soon as possible. When DOE notifies the Employee of the unauthorized disclosure, DOE shall provide the Employee with the contact information, including the telephone phone number and e-mail address, of his/her NTEU chapter president. Furthermore, DOE will notify the Employee of the action that it intends to take on behalf of the Employee as a result of such an unauthorized disclosure.

Section 31.04

Each time that an Employee finds a discrepancy in their OPF, he/she may bring it to the attention of the Human Capital Management Office (HCMO) for investigation and correction. The Employee may provide available documentation to support the discrepancy claim. Corrections to discrepancies may

have to be coordinated with other federal agencies. In the event that DOE disagrees with the Employee's contention that the OPF is incorrect, the Employee shall be notified of such disagreement in writing. When DOE notifies the Employee of its disagreement with the Employee's contention, DOE shall provide the Employee with the contact information, including the telephone phone number and e-mail address, of his/her NTEU chapter president. The Employee shall be entitled to raise any of the foregoing matters as a grievance pursuant to Article 11 of this Agreement.

Section 31.05

DOE will take all necessary precautions to prevent a security breach of Employees' personnel data. Where it is found that DOE is negligent for a security breach, DOE will take all necessary steps to ensure that any situation that results in the breach is resolved. Should an Employee's personnel data become compromised, due to DOE's negligence, DOE shall take all reasonable steps to assist the Employee in the resolution of errors or actions resulting from such a compromise, which will, when appropriate, include but not be limited to reimbursement to the Employee of reasonable expenses related to credit record monitoring for a minimum of one (1) year following discovery of the breach.

Section 31.06

Upon request, an Employee will be provided assistance from the HQ human resources staff concerning any information contained in his/her e-OPF.

Section 31.07

Records maintained by an Employee's supervisor, which are exempt from the disclosure requirements of the Privacy Act, may not be used in arbitration proceedings without providing advance notification of at least two (2) weeks and a copy of such records to NTEU.

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Article 32 - Health and Safety

Section 32.01. General

- A. To the extent of its ability and authority, DOE will provide and maintain a safe and healthy work environment, including minimizing safety hazards, in accordance with applicable, laws, rules and regulations.
- B. Employees have the responsibility under 29 C.F.R. § 1960.10 to comply with the standards, rules, regulations, and orders issued by DOE related to occupational health and safety. Employees have the right to report unsafe and unhealthy working conditions to appropriate officials. Employees will not be retaliated against for reporting such conditions.
- C. DOE acknowledges the existence of Employee rights under 29 C.F.R. § 1960, including the right to be free from reprisal and retaliation when Employees decline to perform their assigned tasks because of a reasonable belief that, under the circumstances, the task(s) pose an imminent risk of death or serious bodily harm, coupled with a reasonable belief that there is insufficient time to seek effective redress through normal hazard reporting and abatement procedures, as established by DOE.
- D. DOE will, upon request, provide Union with access to those Government-wide and DOE regulations, standards, directives, and procedures governing the safe conduct and performance of Employee duties and the maintenance of a safe work area.
- E. DOE will provide NTEU with notice and opportunity to bargain the impact and implementation of changes to DOE regulations, standards, and directives which may affect the health and/or safety of NTEU Bargaining Unit Employees.

- F. DOE will endeavor to post notices of potential hazards or inconveniences, (e.g., equipment malfunction, elevator outages, on-going construction and restroom closure or plumbing interruptions) within a reasonable amount of time after discovering the issue.

Section 32.02. Safety Inspections

- A. Each building occupied by Employees will have an annual health and safety inspection as required under 29 C.F.R. § 1960. Such inspections will be directed by a safety office of DOE, or designee. A designated representative of Union will be afforded the opportunity to participate in the inspection on Union time.
- B. Upon request, NTEU will be provided a copy of applicable health and safety reports made to appropriate authorities within a reasonable amount of time. Applicable reports are defined as any report that contains information regarding working conditions that impact Union Employees. (e.g., reports of asbestos in office buildings where Union's Employees work on a daily basis or might visit as part of their routine work assignments).

Section 32.03. Emergency Situations Including Evacuations and Shelter-in-Place

- A. Union and Employees will be notified annually in writing of proper emergency evacuation and shelter in place procedures. In imminent danger situations, impacted Bargaining Unit Employees will be notified by means of the general emergency alarm or other appropriate means and will be informed of whether to evacuate or shelter-in-place.
- B. DOE will provide timely notification to the applicable NTEU Chapter President of a credible threat (e.g., bomb threat, suspicious

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packages, active shooter, hazardous material exposure). Such notification should be made to the Chapter President or his or her designee when DOE notifies its first-line managers.

C. In the event an actionable threat occurs, DOE shall provide NTEU with a briefing within a reasonable period of time following the credible threat but no later than fifteen (15) days after the event, unless an internal security concern exists, or a federal criminal investigation is ongoing. In the event of a credible threat, NTEU may request a briefing. Such briefing will normally include:

1. Whether the Agency has notified any authorities;
2. Who those authorities were;
3. The actions DOE took in response to the threat;
4. If, when, and how DOE advised Bargaining Unit Employees of the threat;
5. Whether or not DOE evacuated the building;
6. If DOE dismissed the Bargaining Unit Employees from work after the evacuation;
7. Any other pertinent information.

D. Upon request, DOE shall provide NTEU with copies of any after action reports related to any fire, drill, evacuation, emergency response, and shelter-in-place event to the extent permitted by law or regulation.

Section 32.04. Hazardous Materials

A. DOE will inform the appropriate Union Chapter(s) and Employees in the impacted work area(s) in writing when chemicals,

pesticides, or other hazardous materials or processes potentially harmful to an Employee's health are to be used and/or stored in the impacted Employees' work areas.

B. Such notice will be given as soon as DOE becomes aware of or upon discovery of the intent to use and/or store such chemicals. In no case may the notice be given later than one (1) business day before the chemicals are to be used and/or brought into the affected work area. Within a reasonable period of time after the identification of potentially unsafe conditions, but not later than one (1) business day DOE will notify NTEU Chapter President(s) for the area impacted by unsafe or potentially unsafe condition;

C. Within two (2) business days, DOE will:

1. provide additional information such as the Safety Data Sheets (SDS) for said chemicals, upon request. The SDS or information regarding the hazard may be posted on DOE's website; and
2. Upon request, NTEU Chapter President(s) and the appropriate Management official shall meet and NTEU shall be briefed on DOE's planned response to the unsafe or potentially unsafe conditions (e.g., designation of safe areas, notice to Employees, dismissal).

Section 32.05. OSHA Violations

When DOE is notified of a violation by the Occupational Safety and Health Administration (OSHA) or otherwise becomes aware of a more than de minimis violation, as defined by OSHA standards, it will inform the impacted Union Chapter and Employees.

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Section 32.06. Reasonable Accommodation

- A. Employees may request reasonable accommodation in accordance with federal law and Agency procedures. DOE shall timely process all requests for reasonable accommodation in accordance with this Agreement, law, rule, and regulation. Reasonable accommodation may include, but is not limited to that provided under law, regulations, and Equal Employment Opportunity Commission (EEOC) guidance.
- B. Employees recuperating from illness or injury, unrelated to an illness or injury covered by the Office of Workers' Compensation, who are temporarily unable to perform the full range of official duties may submit to their supervisor a written request for a temporary assignment (not to exceed 30 days initially, additional time to be considered as appropriate) to duties commensurate with the limitations caused by the illness or injury.
- C. Such requests will be accompanied by a statement from a competent medical authority which will assist in establishing the duty limits for the Employee. Upon receipt of the Employee's written request with the accompanying statement, DOE agrees to make a reasonable effort to assign duties to the Employee in accordance with applicable rules and regulations, medical recommendations, and the needs of the office and other workers.
- D. DOE will respond to an Employee's request for a temporary assignment within 7 calendar days of receipt of the request. If additional time is necessary to respond to the request, the reasons for the delay and the approximate timeframe for the response will be provided to the Employee in writing. If the request is denied, the reason(s) for the denial will be provided to the Employee in writing.

Section 32.07. Worker's Compensation

When Employees are injured in the performance of their duties, DOE shall inform the Employees of the procedures for filing a claim for benefits under the Federal Employees Compensation Act. Information will be provided about the type of benefits available, including specific references to the option to file a claim for disability compensation if they are disabled from work and will be assisted in obtaining appropriate benefits by a servicing Shared Service Center Employee.

Section 32.08. Services and Equipment

- A. DOE shall provide appropriate emergency medical services for Bargaining Unit Employees. Occupational exposures will be addressed by the Office of Industrial Hygiene and Safety, or its successor organization.
- B. DOE shall continue its existing practice of allowing Bargaining Unit Employees who receive allergy shots to bring their serum and materials into the Health Unit, when opened and staffed, and have the nurses in the unit administer the injections, in accordance with physician prescriptions.
- C. DOE will continue to provide emergency health services on site (in both Forrestal and Germantown) which are sufficient to care for a Bargaining Unit Employee until proper outside medical authorities can reach the Bargaining Unit Employee.
- D. Subject to availability of funds, DOE shall offer government sponsored flu vaccinations at no cost to Bargaining Unit Employees.
- E. DOE shall continue to provide adequate numbers of automated external defibrillators (A.E.D.'s) throughout Headquarters, including DOE satellite offices. The placement of A.E.D.'s is subject to the determination of the Office of Industrial Hygiene and Safety or successor

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organization.

- F. DOE will keep available office First Aid Kits that will be accessible at all hours (i.e., not locked away in a place that they cannot easily be retrieved when needed). Employees will be informed of the location of their office's first aid kit annually and when relocated.

Section 32.09. Nursing Mothers

As provided under the Patient Protection and Affordable Care Act, DOE shall provide Employees with: (1) a reasonable break time to express breast milk, for one (1) year after the child's birth, each time such Employee has need to express milk and (2) a place, other than a bathroom, that is shielded from view and free from intrusion from co-workers and the public, which may be used by the Employee to express milk.

Section 32.10. Training and Blood Drives

- A. HQ facilities with a DOE security force has an internal emergency number for reporting emergencies. Where this number exists, Employees should call the internal emergency number.
- B. Subject to availability of funds, DOE will offer training in First Aid, Cardiopulmonary Resuscitation (CPR) techniques and use of automated external defibrillators (AEDs). Such training will be provided on duty time. Notification of First Aid, CPR and AED classes will be announced via DOE CAST and schedules will be posted on the DOE intranet.
- C. If feasible DOE agrees to support on site blood donation events for NTEU Bargaining Unit Employees.
- D. NTEU may organize a blood drive for its Employees.
- E. Subject to availability of funds, DOE agrees to offer lunch-time seminars on stress

management and other wellness information at no cost to Employees.

- F. DOE shall provide training on emergency procedures to any NTEU bargaining unit volunteers who are corporate emergency response team.

Section 32.11 Employee Health Benefits

At a minimum, DOE agrees to maintain and make available to Bargaining Unit Employees, health benefit information on its website. After receiving notice from OPM but prior to the Federal Health Benefits open season, DOE will provide a notice to Employees that includes a link to the health benefits information website.

Article 33 - Employee Assistance Program

Section 33.01

DOE agrees to continue its Employee assistance program (EAP) as required and allowed by applicable law, regulation, or Executive Order. Information concerning available EAP programs will be available electronically to Employees on the DOE web site. A specific link to such EAP information shall be posted on the DOE Human Capital Office homepage. DOE will continue to provide EAP services in both the Germantown and Forrestal locations. An Employee may request counseling with an individual with whom he/she believes counseling will be effective.

Section 33.02

DOE will take action to encourage an Employee to enroll in an available EAP program if it is reasonably apparent that the Employee is experiencing difficulties in their work environment. It is understood that Employees undergoing a prescribed program of treatments will be granted sick leave or leave without pay for this purpose on the same basis as any other illness when absence from work is necessary. If an Employee is participating in the program, the responsible supervisor must take this fact into consideration before taking any formal corrective

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measures for poor performance.

Section 33.03

DOE will continue to afford reasonable accommodation to Employees who are qualified disabled Employees before any action for continuing performance problems relating to their disabling conditions is taken.

Article 34 - Travel

Section 34.01. General

- A. The Parties mutually agree to follow the policies and procedures defined in the Federal Travel Regulation (FTR): 41 CFR §§ 300-304 and all applicable laws, executive orders, government-wide rules, regulations and Department policy. Consistent with Article 2, the Department may change policy during the term of this Agreement. The FTR may be found at gsa.gov/FTR and DOE travel policies are available for Employee review on the DOE Directives' website.
- B. In accordance with 26 U.S.C. § 6402(d) (collection of debts owed to federal agencies), 31 U.S.C. § 3720A (reduction of tax refund by amount of the debts), and other applicable laws, travel reimbursements may be subject to garnishment to satisfy delinquent federal and/or state debts under the Department of Treasury Offset Program and Debt Management Services. DOE agrees to include information on the Department of Treasury Offset Program during the Travel Card Application Process.

Section 34.02. Use of Travel Card

- A. In accordance with the Travel and Transportation Reform Act of 1998, Employees will use a government-issued travel card for travel unless the Employees have an exemption pursuant to the FTR Part 301-51. The basis for the issuance of a card,

including the credit worthiness of an Employee, will be consistent with OMB Circular A-123 Appendix B.

- B. Employees are required to complete travel card training through the GSA website before issuance of a travel card. Consistent with OMB Circular A-123 Appendix B, DOE will provide Employees travel card training on DOE policies to include the mandatory and appropriate use of the travel card. DOE will provide Employees with a point of contact who can provide information on the use of the travel card.
- C. Employees are required to use the travel credit card for all expenses except when it is impractical (*e.g.*, vendor does not accept credit cards) or imposes unreasonable burdens or costs (*e.g.*, fees are charged for using the card).
- D. In instances where Employees do not have a government travel card, use of the Centrally Billed Account will be identified in the Travel Authorization (TA) for applicable travel expenses. The use of this account will be approved as part of the normal TA process. For all other travel expenses, DOE will allow an Employee to use their personal credit card or provide the Employee with a cash advance commensurate with the number of approved travel days.
- E. Employees who are using a travel card may also receive a cash advance for authorized travel through a bank or automated teller machine. The cash advance is not to exceed the total trip cost. The total trip cost excludes cost of airfare/hotel when the travel card is used to pay those expenses. DOE will pay bank fees assessed for cash advances.
- F. DOE will consider individual exemptions to use of the credit card on a case-by-case basis (*e.g.*, Employee is subject to garnishment

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under Treasury Offset Program). Employees will submit a request with an explanation of the reason for the exemption to the Office of Management (MA) via the Head of the bargaining unit Employee's organization. DOE will issue exemptions to Employees when appropriate. If the exemption is granted, DOE will provide the bargaining unit Employee a method for payment of travel expenses, e.g., advance the bargaining unit Employee the necessary funds to cover travel expenses.

Section 34.03. Scheduling Travel

- A. When practicable, DOE will schedule and arrange for travel of Employees to occur within the Employees' regularly scheduled work hours. However, if circumstances require the Employee to travel on a non-workday, the Employee may request to travel during duty hours on the preceding regular workday prior to the work event. If Management agrees to this request, subsistence reimbursement and lodging may be allowed to start with the departure time but will be limited to what is payable if departure was made on the non-workday. Employees who are required to travel during non-duty hours may obtain, upon request, the written reasons why such travel was required at those hours. Consistent with 5 C.F.R. § 551.422, a bargaining unit Employee who is covered by FLSA and is on official travel away from his or her official duty station will be compensated for time in travel status outside his or her regular tour of duty, if the time spent traveling requires the bargaining unit Employee to: (1) work during travel (e.g., drive vehicle, either privately or Government-owned as part of a work assignment); or (2) travel as a passenger on a one-day assignment away from the official duty station; or (3) travel as a passenger on an overnight assignment away from the official duty station during hours on non-work days that correspond to the bargaining

unit Employee's regular working hours.

- B. When travel results from an event which cannot be scheduled or controlled administratively, such travel may be considered hours of employment for pay purposes pursuant to appropriate provisions of Title 5 of the Fair Labor Standards Act (FLSA).
- C. A bargaining unit Employee who is assigned to training or duty away from the bargaining unit Employee's regularly assigned post of duty, and who elects to return home during non-workdays, will be reimbursed for travel not to exceed the amount reimbursable for the per diem at the temporary duty location, had the bargaining unit Employee had remained away from home.
- D. Disputes arising under this subsection may be addressed through the use of the grievance procedure provided in Article 11 of this Agreement.

Section 34.04 – Travel Comp Time

- A. As stated in 5 C.F.R. § 550.1401, *et seq.*, and subject to the conditions specified in 5 CFR Part 550, Subpart N, an Employee is entitled to earn, compensatory time off for time in a travel status away from the bargaining unit Employee's official duty station when the travel time is not otherwise compensable in increments of 1/4th of an hour (15 minutes).
- B. "Official Duty Station" in regard to travel means a 50-road mile radius surrounding a bargaining unit Employee's regular work site that is the same as the area designated by the employing agency for the purpose of determining whether travel time is compensable for the purpose of determining overtime pay, consistent with the regulations in 5 C.F.R. §§ 550.112(j) and 551.422(d).
- C. "Usual Waiting Time" shall be defined in

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accordance with 5 CFR § 550.1404. For purposes of this agreement “usual waiting time” shall normally be two (2) hours for a domestic flight and three (3) hours for an overseas flight. DOE’s determination of what constitutes “usual waiting time” in a particular instance shall take into account any unique circumstances identified by the traveler and be applied in a consistent, fair and equitable manner.

- D. Normally within five (5) workdays upon returning from any officially authorized travel but no later than end of the next pay period following return, the Employee shall submit the applicable Compensatory Time for Travel Worksheet to their leave approving official and submit the request in the official DOE timekeeping system. Where the bargaining unit Employee is on leave or travel immediately following their return travel this time shall be extended by the number of days the bargaining unit Employee is on leave or travel. A bargaining unit Employee’s documentation for compensatory time earned shall normally be reviewed and approved or denied by the authorizing travel official within ten (10) workdays of receipt. Authorized compensatory time will normally be credited within the pay period approved.
- E. The authorizing travel official will notify the Employee as to the approval or denial of the request, and if denied, a reason for the denial.
- F. In accordance with 5 C.F.R. § 550.1406, an Employee’s request to use compensatory time for travel already credited will be approved using the same standard as set in Article 27, Section 27.02. It is the Employee’s responsibility to apply for use of compensatory time off in a timely manner to avoid forfeiture of the credited time before the 26th pay period expiration date. Requests for exceptions to the forfeiture rule due to an

exigency will be processed in accordance with 5 C.F.R. § 550.1407(2)(e).

- G. The denial of a request to use accrued compensatory time off may be grieved under Article 11 of this Agreement.

Section 34.05 – Fees and Coverage

- A. DOE will reimburse Employees in accordance with FTR. In the event that DOE fails to reimburse an Employee for allowable expenses within the FTR requirements of 30 calendar days, and this failure results in late payment charges, DOE will reimburse the Employee for any late payment fees using the prevailing Prompt Payment Act Interest Rate.
- B. Employees will be reimbursed for authorized fees in connection with changing official travel arrangements caused by the needs of DOE, or due to a natural disaster or significant personal emergency such as a family or medical emergency as approved by the approving official. DOE agrees that such approval will not be unreasonably withheld.
- C. Upon receiving notification from the credit card company of an Employee failing to reimburse the credit card company, DOE will notify the Employee and discuss any issues associated with payment. If an Employee: 1) has failed to reimburse the credit card company for sixty days or more; or 2) inappropriately uses the credit card, the Employee will take appropriate steps to settle all outstanding obligations and/or may be subject to disciplinary action in accordance with the applicable DOE Administering Discipline Workforce Order 333.1.
- D. In the event that an Employee’s personally identifiable information is compromised or potentially compromised related to the use of the travel card, DOE will immediately inform the impacted or potentially impacted

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Employee(s) and will meet with NTEU to discuss any efforts to mitigate the impact on affected Employees.

Section 34.06 Reimbursements

- A. DOE agrees to reimburse Employees when in travel status for per diem and mileage expenses incurred by them in the discharge of their official duties to the maximum extent allowable by law and regulation.
- B. Reimbursement on an actual subsistence expense basis will be authorized when actual and necessary subsistence expenses of official travel are unusually high due to the following special or unusual circumstances pursuant to the Federal Travel Regulations codified at 41 C.F.R. § 301-8.2:
 - C. Lodging and/or meals are procured at a prearranged place such as a hotel where a meeting, conference or training session is held;
 - D. Costs have escalated because of special events (e.g., missile launching periods, sporting events, conventions, natural or manmade disasters); lodging and meal expenses within prescribed allowances cannot be obtained nearby; and costs to commute to/from the nearby location consume most or all of the savings achieved from occupying less expensive lodging;
 - E. The TDY location is subject to a Presidentially Declared Disaster and your agency has issued a blanket actual expense authorization for the location (see § 301-70.201);
 - F. Because of mission requirements; or
 - G. Any other reason approved within your agency.
 - H. Reimbursement on an actual subsistence expense basis should be requested and

authorized in advance. Absent a significant change in the circumstances identified in 34.06.B(a)-(e) above, pre-travel authorization for actual subsistence expenses will not be revoked.

- I. Consistent with law and GSA regulations Employees may retain promotional items, including frequent flyer miles earned on official travel, so long as such items are obtained under the same conditions as those offered to the general public at no additional cost to the government.

Section 34.07- Travel for Unions Events

When DOE has determined that an employer-sponsored event will be held outside of the NCR and NTEU has been invited to attend or has a right to attend under this Agreement, DOE will provide travel and per diem for union officials traveling on Union official time. Additionally, this includes those events identified in Article 7, Section 7.04.

Article 35 - Wage Surveys

Section 35.01

If DOE Headquarters is requested to participate in a wage survey which could affect bargaining unit positions, NTEU will be notified and invited to participate as appropriate.

Section 35.02

NTEU will be provided copies of the results of any wage survey affecting bargaining unit positions as soon as possible.

Section 35.03

NTEU will be provided full information on wage surveys for all Wage Grade Employees, including data which results in discrepancies in wage rates for Employees in a particular area.

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Article 36 - Contracting Out

Section 36.01

DOE agrees to comply with whatever laws and binding regulations are applicable at the time a decision is made to contract out.

Section 36.02

Immediately after a decision is made to let a contract which has potential adverse impact on the bargaining unit, NTEU will be provided a summary of the contract and the request for proposals (RFP), as well as information indicating the number of Employees and/or staff years (hours) required under the contract. No decision to contract out will be effected until NTEU has been notified and given an opportunity to negotiate concerning its impact and implementation.

Section 36.03

- A. Unless contrary to law or regulation, DOE shall include in its open market bid request for RFP the requirement that Employees adversely affected by the contracting out shall be given the right of first refusal with respect to positions the contractor has open within ninety (90) days of the award as a result of entering into the contract.
- B. No later than ten (10) workdays after the contract is awarded, DOE shall furnish the contractor with a current list of adversely affected Employees.

Section 36.04

Employees will be formally advised of their eligibility for registration in the Priority Placement Program at the time they are identified as adversely affected and will be entitled to the placement considerations accorded by the Department's policies and this agreement.

Section 36.05

DOE agrees to eliminate or minimize any potential adverse impact by:

- A. Coordinating with OPM to ensure that adversely affected Employees have access to Government-wide placement programs, including the OPM-operated Displaced Employee Program and the Interagency Placement Assistance Program; and
- B. Coordinating with the U.S. Department of Labor on publicizing private sector job opportunities.

Section 36.06

DOE will keep NTEU fully informed of any study or planned study to contract out any function of its headquarters.

Article 37 - Prohibited Personnel Practices

Section 37.01. Definitions.

- A. For the purpose of this Article and in accordance with 5 U.S.C. § 2302, "prohibited personnel practice" means any action described in Section 37.02.
- B. For the purpose of this Article, "personnel action" means a(n):
 - 1. Appointment;
 - 2. Promotion;
 - 3. Adverse action, disciplinary action or other corrective action;
 - 4. Detail, transfer or reassignment;
 - 5. Reinstatement;
 - 6. Restoration;

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| <p>7. Reemployment;</p> <p>8. Performance evaluation under Chapter 43 of Title 5 of the United States Code;</p> <p>9. Decision concerning pay, benefits, or awards, or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other action described in this Subsection;</p> <p>10. Decision to order psychiatric testing or examination; and</p> <p>11. Any other significant change in duties or responsibilities or working conditions.</p> | <p>political affiliation, as prohibited under any law, rule, or regulation;</p> <p>C. Solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of:</p> <ol style="list-style-type: none"> 1. An evaluation of the work performance, ability, aptitude or general qualifications of such individual; or 2. An evaluation of the character, loyalty, or suitability of such individual; |
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Section 37.02. General.

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| <p>A. In accordance with 5 U.S.C. § 2302, DOE shall not:</p> <p>B. Discriminate for or against any Employee or applicant for employment:</p> <ol style="list-style-type: none"> 1. On the basis of race, color, religion, sex, or national origin, as prohibited under Section 717 of the Civil Rights Act of 1964; 2. On the basis of age, as prohibited under Sections 12 and 15 of the Age Discrimination in Employment Act of 1967; 3. On the basis of sex, as prohibited under Section 6(d) of the Fair Labor Standards Act of 1938; On the basis of handicapping condition as prohibited under Section 501 of the Rehabilitation Act of 1973; or 4. On the basis of marital status or | <p>D. Coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any Employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity;</p> <p>E. Deceive or willfully obstruct any person with respect to such person's right to compete for employment;</p> <p>F. Influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment;</p> <p>G. Grant any preference or advantage not authorized by law, rule or regulation to any Employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment;</p> <p>H. Appoint, employ, promote, advance, or</p> |
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advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in Title 5 of the United States Code) of such Employee if such position is in the agency in which such Employee is serving as a public official (as defined in Title 5 of the United States Code) or over which such Employee exercises jurisdiction or control as such an official;

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| <p>I. Take or fail to take or threaten to take or fail to take a personnel action with respect to any Employee or applicant for employment as reprisal for:</p> <p>1. A disclosure of information by an Employee or applicant which the Employee or applicant reasonably believes evidences:</p> <p style="margin-left: 40px;">a. violation of any law, rule, or regulation; or</p> <p style="margin-left: 40px;">b. Gross mismanagement, a gross waste of funds, an abuse of authority, or substantial and specific danger to public health or safety, if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs; or</p> <p>2. A disclosure to the Special Counsel of the Merit Systems Protection Board, or to the Inspector General of an agency or another Employee designated by the head of the agency to receive such disclosures, of information which the Employee or applicant reasonably believes evidences:</p> | <p style="margin-left: 40px;">a. A violation of any law, rule, or regulation; or</p> <p style="margin-left: 40px;">b. Gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;</p> <p>J. Take or fail to take or threaten to take or fail to take any personnel action against any Employee or applicant for employment as a reprisal for the exercise of any appeal right complaint or grievance right granted by any law, rule, or regulation; testifying for or otherwise lawfully assisting any individual in the exercise of any right of this subsection; cooperating with or disclosing information to the Inspector General of an agency, or the Special Counsel, in accordance with applicable provisions of law; or refusing to obey an order that would require the individual to violate a law;</p> <p>K. Discriminate for or against an Employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the Employee or applicant or the performance of others; except that nothing in this Subsection shall prohibit an agency from taking into account in determining suitability or fitness any conviction of the Employee or applicant for any crime under the laws of any State, of the District of Columbia, or of the United States;</p> <p>L. Knowingly take, recommend or approve any personnel action if the failure to take such action would violate veterans' preference requirement; or</p> <p>M. Take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning the</p> |
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merit system principles contained in 5 U.S.C. § 2301.

Section 37.03. Information to Congress

In accordance with 5 U.S.C. § 2302, nothing in Section 37.02 above shall be construed to authorize the withholding of information from the Congress or the taking of any personnel action against an Employee who discloses information to the Congress.

Section 37.04. Equal Employment Opportunity

- A. In accordance with 5 U.S.C. § 2302, nothing in Section 37.02 above shall be construed to extinguish or lessen any effort to achieve equal employment opportunity through affirmative action or any right or remedy available to any Employee or applicant for employment in the Civil Service under:
- B. Section 717 of the Civil Rights Act of 1964 prohibiting discrimination on the basis of race, color, religion, sex, or national origin;
- C. Sections 12 and 15 of the Age Discrimination in Employment Act of 1967, prohibiting discrimination on the basis of age;
- D. Under Section 6(d) of the Fair Labor Standards Act of 1938, prohibiting discrimination on the basis of sex;
- E. Section 501 of the Rehabilitation Act of 1973, prohibiting discrimination on the basis of handicapping condition; or
- F. The provisions of any law, rule, or regulation prohibiting discrimination on the basis of marital status or political affiliation.

Section 37.05. Selection of Forum

- A. In accordance with 5 U.S.C. § 7121, an Employee aggrieved under Subsection 37.02.A., above, may raise the matter under a

statutory procedure or the grievance and arbitration procedures provided in this Agreement, but not under both.

- B. An Employee shall be deemed to have exercised his option under this Section at such time as the Employee timely initiates an action under the applicable statutory procedure or timely files a written grievance under the provisions of this Agreement, whichever event occurs first.
- C. Selection of the grievance and arbitration procedures contained in this Agreement in no manner prejudices the right of an aggrieved Employee to request the Merit Systems Protection Board to review the final decision pursuant to Section 7702 of Title 5 of the United States Code in the case of any personnel actions that could have been appealed to the Board, or, where applicable, to request the Equal Employment Opportunity Commission to review a final decision in any other matter involving a complaint of discrimination of the type prohibited by any law administered by the Equal Employment Opportunity Commission.

Section 37.06. Exclusivity of Redress

Except as provided in Section 37.05 above, any Employee aggrieved under the provisions of this Article shall file her/his complaint under the grievance and arbitration provisions contained in this Agreement.

Article 38 - Drug Testing

Section 38.01. General

DOE will implement the Federal Substance Abuse Testing Program in accordance with the Department's Federal Substance Abuse Testing Order 343.1, Executive Order (EO) 12564, and the Substance Abuse and Mental Health Services Administration (SAMHSA) Mandatory Guidelines for Federal Workplace Drug Testing Programs, Pub L.

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100-71, Sec. 503, codified at 5 U.S.C. § 7301, 49 C.F.R. Part 40.

Section 38.02. Employee Rights

- A. Employees are entitled to and will be informed of the right to Union representation at every stage of the drug testing procedure, with the exception of direct observation of specimen collection.
- B. DOE's designation of a position as a Testing Designated Position (TDP) is not itself grievable and not arbitrable, in accordance with DOE's Federal Substance Abuse Testing Order; however, any Employee may assert, through the procedures outlined in Article 11, that their duties do not involve performance of the sensitive tasks ascribed to the position. The filing of such a grievance does not stay implementation of the DOE Drug Testing Process.
- C. The direction to submit a specimen sample may be grieved in accordance with the procedures outlined in Article 11. The filing of such a grievance does not stay collection or other implementation of the DOE Drug Testing Process.
- D. Under no circumstances will any Employee be subjected to substance abuse testing as a punitive measure.
- E. Employees will receive a reasonable amount of duty time, pursuant to Article 7 of the CBA, to read any notice concerning the DOE Substance Abuse Testing Plan and to consult with an NTEU steward. Prior to signing any documents acknowledging substance abuse, the Employee will be permitted a reasonable amount of duty time to seek advice from an appropriate source.
- F. An Employee who is the subject of a drug test is entitled to:

- 1. The results of the drug test; and
 - 2. Upon request, the results of any relevant HHS certification review or revocation proceedings of Laboratories or Instrumented Initial Test Facility (IITF) that tested the Employee's sample.
- G. DOE will ensure all communications relating to this program, whether written or verbal, protect Employee rights to privacy and confidentiality as set forth in the Privacy Act of 1974, the Treatment Act as Amended, and any other applicable law, rule or regulation.
 - H. In accordance with DOE's Federal Substance Abuse Testing Order, Employees may seek assistance or be referred to DOE's Employee Assistance Program (EAP). Generally, EAP services for substance abuse consists of referral and follow-up services.

Section 38.03. Employee Assistance Program

- A. DOE will maintain information regarding available drug treatment and other Employee assistance services available to DOE Employees on its website.
- B. The EAP will continue to provide referrals, upon request, to community treatment facilities and other local resources. To the extent possible, EAP will consider factors such as an Employee's level of care, insurance coverage, and geographic location when providing referrals.
- C. Each Employee who voluntarily attends and/or visits DOE's EAP for counseling can go during regular duty hours and notify his/her supervisor in advance. Employees who are referred by EAP for counseling and/or treatment will be granted a reasonable amount of appropriate leave for participation in such counseling and/or treatment sessions.

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- D. NTEU shall be provided a point of contact for the DOE HQ EAP program manager.

Section 38.04. Treatment

- A. Any Employee who is determined to have engaged in illegal drug use, based upon direct observation, evidence obtained from a criminal conviction, a verified positive substance abuse test or the Employee's voluntary admission will be referred to EAP who can refer the Employee to a voluntary drug treatment program at the Employee's discretion.
- B. While participating in a formal drug treatment program for illegal drug use, an Employee may be exempted from the random drug TDP Pool (TDPP) for the duration of the counseling, formal drug treatment program, or for thirty (30) calendar days, whichever is longer.
- C. Any Employee who signs a document acknowledging drug use, or has a confirmed positive substance abuse test, and who enters a formal substance abuse treatment program, and thereafter refrains from illegal drug use, may request the disciplinary/adverse action, be held in abeyance. That abeyance will only apply to a first offense and last during the Employee's participation in the drug treatment program and will continue thereafter so long as the Employee continues to abstain from illegal drug use as defined below in paragraph 38.03E. This provision will not preclude the Agency from implementing any decision such as a disciplinary/adverse action based on any other unrelated misconduct, or on performance, or for misconduct which may have led to the drug test.
- D. An Employee will be subject to follow-up testing for a minimum of 12 months following the completion of a formal treatment program as determined by EAP in

consultation with the treatment program. Thereafter, if the Employee refrains from illegal drug use during that twelve (12) month period, DOE may rescind the disciplinary/adverse action that was being held in abeyance in accordance with 38.03D above. DOE will not unreasonably delay or deny an Employee's request under this provision.

- E. Any Employee who is determined to have used illegal drugs, as described in Section 38.03.A, above, and who occupies a "sensitive position," as that term is defined at Section 7(c) of Executive Order 12564, loses their security access, and is restricted from performance of "sensitive" duties. The Employee may be reassigned into a non-sensitive position until such time that the Employee regains security access. The Employee may then be returned to those duties at such time as DOE determines that returning the Employee to his/her previous duties will not adversely affect the public health and safety or the national security.
- F. Reasonable efforts will be made to continue the employment of an Employee who is removed from sensitive duties while he or she is undergoing a formal substance abuse treatment program pursuant to this Section. DOE will make reasonable efforts to place the Employee in an alternative position for which they are qualified until the Employee successfully completes a certified substance abuse treatment program. If this cannot be done at the Employee's regular duty station, consideration will be given to a temporary reassignment or other temporary duty assignments. If it is determined that the Employee cannot return to the Employee's sensitive duties (i.e., final adjudication resulting in loss of a security clearance), DOE may consider retaining the Employee in the non-sensitive position, if available to be filled permanently, or may process the Employee for removal pursuant to applicable DOE

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Orders and Article 44 of this Agreement.

Section 38.05. Random Testing

Employees will be provided with written notification when requested to appear for random substance abuse specimen collection. Generally, the Employee will be notified no sooner than two hours of the scheduled test. In addition to the information specified in the DOE's Federal Substance Abuse Testing Order, the Notice of Test will provide a notice that informs Employees:

- A. That they may, but are not required to, bring documentation regarding the use of prescribed medication with them for verification at the testing site (the testing will not be delayed or rescheduled in order to obtain such documentation);
- B. Substance abuse testing is covered by article 38 of the CBA; and
- C. That the Employee is entitled to request NTEU representation at all stages of the procedure, but the availability of an NTEU representative will not delay testing.

Section 38.06. Reasonable Suspicion Testing

- A. In accordance with DOE's Federal Substance Abuse Testing Order, when a supervisor or designee proposes that an Employee submit a specimen sample for testing based upon a suspicion of illegal drug use, the supervisor must prepare a report for the Head of the Departmental Element, or designee. The report must contain the evidence supporting the "reasonable suspicion" criteria as outlined in the Order has been met, including dates and times of reported or suspected illegal drug use, sources of information used to verify information, and/or circumstances which the supervisor/manager believes warrant reasonable suspicion testing. If such information is not readily available, the supervisor will annotate in the report.

- B. If the Employee is required to submit a specimen for analysis, a copy of the written report as described in Section 38.06.A, will accompany the Employee's Notification of Test.
- C. If an Employee is required to provide a specimen for testing based on a reasonable suspicion of illegal drug use and does not accept the stated basis for suspicion as "reasonable," the Employee is required to provide his/her specimen and, thereafter, may grieve this issue in accordance with the procedures outlined in Article 11.
- D. Employees shall be provided with written notification when requested to appear for reasonable suspicion specimen collection in accordance with DOE's Federal Substance Abuse Testing Order and Section 38.05 above.

Section 38.07. Testing Current DOE Employees as an Applicant

- A. Notification that the position is subject to drug testing will be placed on the vacancy announcement.
- B. Any Employee applicant who has been tentatively selected for a TDP vacancy, pending the outcome of specimen testing, will receive a Notice of the scheduling of the collection of their specimen for analysis in accordance with DOE's Federal Substance Abuse Testing Order and Section 38.05 above.
- C. An Employee shall be provided with written notification when requested to appear for Employee applicant specimen collection.
- D. An Employee who has been tentatively selected for a TDP vacancy may decide that he/she does not wish to submit to a specimen test and withdraw his/her name from consideration. No records will be kept in

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the Employee's electronic Official Personnel File (eOPF) indicating the withdrawal from the position.

- E. A tentative job offer of a TDP designated position will not be revoked due to failure of a drug test until final adjudication of the test result(s) (i.e., MRO review).

Section 38.08. Incident/Occurrence Testing

Employees shall be provided with written notification when requested to appear for incident/occurrence specimen collection with DOE's Federal Substance Abuse Testing Order and Section 38.05 above.

Section 38.09. Specimen Collection

- A. Specimen collection, laboratory certification, laboratory analysis, and actions of the Medical Review Officer (MRO) will be in accordance with E.O.12564, SAMHSA Mandatory Guidelines and DOE Order 343.1.
- B. Employees shall provide their specimen in individual privacy unless there is reason to believe that a particular Employee may alter or substitute the specimen to be provided. The Employee shall provide his/her specimen in the privacy of a rest room stall or otherwise partitioned area that allows for privacy.

Section 38.10. Laboratory Analysis

- A. Per the SAMSHA Guidelines, only HHS-Certified Laboratories will be used to test specimens collected as part of the DOE Substance Abuse Testing Plan, and specimen techniques within DOE's direct control which are employed in testing these specimens will conform to HHS Guidelines.
- B. An Employee may obtain a second or retesting under this section at another facility/lab. Such second or retesting shall be paid for by the Employee.

Section 38.11. Medical Review Officer

- A. In accordance with E.O.12564, SAMHSA Mandatory Guidelines and DOE Order 343.1 the Medical Review Officer (MRO):
 - 1. Shall comply with the guidelines for Federal drug testing programs promulgated by the Department of Health and Human Services;
 - 2. Receive and review drug test results for the purpose of determining illegal substance use;
 - 3. Assure that an individual who has been tested positive has been afforded an opportunity to explain or provide additional information related to the test result;
 - 4. Issue appropriate written notices of determinations based on drug test results, consistent with confidentiality requirements. No result will be considered a verified positive result prior to the issuance of the written notice.
- B. If the MRO requests that the Employee meet in person after being notified of a confirmed positive test, travel to and from the MRO shall be on duty time (with no loss to leave) and where appropriate travel and per diem shall be authorized for the Employee and their representative.
- C. If the MRO determines after the meeting that there is no justification for the positive result, the MRO shall notify the Employee in writing thereof. An additional copy of this letter will be provided to the Employee for submission to NTEU if the Employee so desires.

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Section 38.12. Substance Abuse Acknowledgement Document

- A. Each Employee, who receives Notice from the MRO of a positive test for illegal drug use, will be allowed up to two workdays to determine whether or not he or she wishes to sign a Drug Use Acknowledgement Form.
- B. DOE shall release information concerning Employee drug tests in accordance with the Privacy Act.
- C. The Drug Use Acknowledgement Document will not be placed in the Employee's official personnel file (OPF).

Section 38.13. Disciplinary/Adverse Action

Any Employee subject to disciplinary or adverse action under this Article will be afforded the rights as outlined in Articles 43 and 44 of this Agreement.

Section 38.14. Information Provided to NTEU

Upon request, NTEU will be provided the number of NTEU bargaining unit Employees subject to random drug testing and any changes in positions subject to random drug testing.

Section 38.15. Modifications

To the extent required by the Federal Service Labor Management Relations Statute, if DOE proposes to modify or revise its Federal Substance Abuse Testing Program, NTEU will receive notice and the opportunity to bargain pursuant to Article 13 of this Agreement.

Article 39 - Outside Employment

Section 39.01 General

- A. Outside employment consists of any form of non-Federal employment or business relationship involving the provision of personal services by the Employee. It

includes but is not limited to personal services as an officer, director, trustee, general partner, agent, attorney, consultant, contractor, advisor, teacher, or Employee, such as an Employee engaged in retail sales. This can include positions that are NOT compensated. It does NOT include participating in the activities of a nonprofit, charitable, religious, public service, or civic organization, unless such activities involve the provision of professional services OR are for compensation. Professional services include acting as an attorney, accountant, or in another capacity that has a fiduciary duty.

- B. DOE agrees to provide information on outside employment approval requirements as part of the new Employee orientation and through periodic notices.
- C. If it is discovered or determined that an Employees failed to request prior approval before engaging in outside employment, the Employee will have the opportunity to apply pursuant to Section 39.02 below.

Section 39.02. Approval for Outside Employment

- A. Before engaging in any outside employment, whether or not for compensation, an Employee, other than a special Government Employee, must obtain written approval of his/her immediate supervisor and the Ethics Counselor, as follows:
 - 1. Employees will contact an Ethics Counselor to discuss any potential conflicts with outside employment and obtain an Outside Employment application.
 - 2. The Employee must complete an Outside Employment application form and submit the form to his/her front-line supervisor for approval.
 - 3. The front-line supervisor will review

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the application and:

- a. If approved, forward the application to the Office of Standards of Conduct for secondary approval within ten (10) calendar days; or
 - b. If disapproved by the front-line supervisor, identify the reasons for the disapproval on the application and return the application to the Employee within ten (10) calendar days.
4. The Ethics Counselor will normally provide a decision and opinion on the application within ten (10) calendar days. However, if the Ethics Counselor determines he/she needs additional information, the Ethics Counselor will notify the Employee within ten (10) calendar days to discuss the outside employment position. In either case, the Ethics Counselor will issue a decision and opinion within twenty-one (21) calendar days of receipt of the application. When the outside employment raises legal issues that preclude the Ethics Counselor from reaching a decision within twenty-one (21) calendar days, the Ethics Counselor will, at a minimum, provide the Employee and front-line supervisor with status updates on the application once every thirty (30) calendar days.

- B. Approval shall be granted unless there is a determination that the outside employment is expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635, Standards of Ethical Conduct for Employees of the Executive Branch.

Section 39.03. Grievance

If an Employee wishes to dispute the disapproval of a request to engage in outside employment, the Employee may file a grievance pursuant to the procedures in Article 11. The parties recognize that the decision or procedures used to disapprove a request for outside employment, or any related personnel action(s) is the subject of the grievance, however the opinion of the ethics counselor cannot be grieved.

Section 39.04. Standards of Ethical Conduct

- A. Employees must adhere to all statutes and regulations governing participation in outside activities, including those contained in the "Standards of Ethical Conduct for Employees of the Executive Branch," Title 5, Code of Federal Regulations, Part 2635. Employees may engage in outside employment or other outside activity compatible with the full and proper discharge of the duties and responsibilities of their Government employment. Incompatible activities include, but are not limited to:
- B. Acceptance of a fee, compensation, gift, payment or expense, or any other thing of monetary value in circumstances in which acceptance may result in, or create the appearance of, a conflict of interest;
- C. Outside employment which tends to impair the Employee's mental or physical capacity to perform assigned Government duties and responsibilities in an acceptable manner; and
- D. Outside work or activity that takes the Employee's time or attention during the Employee's official work hours.

Section 39.05. Supplemental Approval

- A. Once an Employee has been approved for outside employment, the Employee need not

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reapply unless there is a substantial change in the Employee's position or duties with either DOE or the outside employer. If the Employee has not changed positions or duties, he or she need not reapply for approval simply because the approving official has changed.

- B. When DOE determines that upon subsequent review or upon a change in circumstances, that any approved outside employment is inconsistent with the criteria for approval, the Employee will be directed to reapply pursuant to Section 39.02.A above.

Article 40 - Temporary Employees

Section 40.01

In accordance with 5 CFR § 890.102, certain temporary employees who are not serving in appointments limited to one year or less and who have a reasonable expectation of working more than six months have the right to enroll in Government life insurance and health insurance programs.

Section 40.02

Temporary Employees terminated due to lack of work before the designated expiration date of their appointment, should one exist, will be given two weeks advanced notice, if possible.

Section 40.03

Temporary Employees terminated for reasons other than lack of work will receive two weeks advanced notice, if possible. This notice will include the reasons for the termination. The immediate supervisor will meet with the Employee and the area steward to discuss the issue, if requested. The meeting will take place during the notice period.

Article 41 - Part-Time Employees

DOE will consider Employee requests to work part-

time. Where a request is rejected, the reasons for such will be explained in writing upon request.

Article 42 - Probationary Employees

Section 42.01. General

- A. A probationary period is defined in 5 CFR § 315.801. Pursuant to 5 CFR § 315.802, the probationary period required under 5 CFR § 315.801 is one (1) year and may not be extended, except as provided by regulation. Procedures regarding conditions arising before appointment are covered by 5 CFR § 315.805.
- B. Probationary periods will be served in accordance with applicable laws, regulations, and the authority under which Employees are appointed.
- C. During the probationary period, the Employee's conduct and performance in the actual duties of the position will be observed, and the Employee may be separated from DOE in accordance with this Article and applicable regulations.
- D. DOE will advise Employees serving a probationary period of performance standards and standards of conduct at the beginning of the probationary period.

Section 42.02. Performance Review

- A. DOE will meet with a probationary Employee approximately every six months during the probationary period to discuss the Employee's performance and expectations. A written summary of the discussion will include as appropriate:
1. Observations by the supervisor or other individual designated by DOE on the Employee's conduct and/or performance.

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2. Guidance in regard to performance or conduct related problems. When it appears that the Employee's performance or conduct may be lacking, the supervisor or other individual designated by DOE will take the following actions as necessary:

- a. Explain what is required of the Employee in the position;
- b. Identify ways or means for the Employee to improve his/her performance or conduct.

3. A determination as to whether the Employee is suited for continued employment with DOE.

B. Upon request, an Employee will receive counseling by the supervisor or individual designated by DOE. The counseling session will include those areas in which the Employee has indicated he/she would like further guidance on assigned work.

C. An Employee will be advised of the Employee's performance prior to the end of the eleventh month of the probationary period. No earlier than 60 calendar days but no later than 30 calendar days prior to the end of the probationary period, the supervisor or the individual designated by DOE will submit a signed statement certifying either that Employee's performance and conduct have been found satisfactory or that they have been found unsatisfactory. Such certification does not guarantee continued employment throughout the probationary period. Further, nothing precludes DOE from taking appropriate action, including removal, prior to or later than this time.

D. In determining whether the Employee is suited for continued employment, the

management official responsible for conducting the evaluation and making the determination may seek input from any supervisor or management official with or for whom the Employee performed work during the probationary period.

Section 42.03. Termination Notices

A. When DOE determines that a probationary appointment is to be terminated for unsatisfactory performance or conduct, it will terminate the Employee's services by notifying the Employee in writing, providing the reason for the termination, and the effective date of the action.

1. The information in the termination notice will, at a minimum, consist of DOE's conclusions as to the inadequacies of the Employee's performance or conduct.

2. The notice of termination will be provided to the Employee prior to the expiration of the probationary period and will advise the Employee of his/her statutory appeal rights in accordance with 5 CFR § 315.806.

3. The notice will contain the name, telephone number, and email of the Employee's NTEU Chapter President.

B. If an Employee voluntarily resigns before receiving a notice of termination, the Employee's Official Personnel Folder and SF-50 will only reflect the Employee's voluntary resignation.

Section 42.04. Termination Appeals

A. An Employee serving on a competitive service appointment who is separated during the probationary period based on

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deficiencies in performance or conduct occurring after entering on duty, in accordance with law and regulation, may only appeal the separation to the Merit Systems Protection Board (MSPB) on the following grounds:

1. When the Employee believes the separation was based on partisan political reasons or marital status; or
2. When the Employee believes the separation was based on discrimination because of race, color, religion, sex, or national origin, or because of age, provided that at the time of the alleged discriminatory action the Employee was at least 40 years of age, or disabling condition, only if such allegation is combined with an otherwise appealable matter based on subsection 1.

B. An Employee serving on a competitive service appointment, who is separated during the probationary period, based in whole or in part on conduct occurring prior to employment, in accordance with law and regulation, may only appeal the separation to the MSPB on the following grounds:

1. When the Employee believes the separation was based on partisan political reasons or marital status;
2. When the Employee believes DOE did not follow proper procedures for separating the Employee as set forth in applicable laws and regulations; or
3. When the Employee believes the separation was based on discrimination because of race, color, religion, sex, or national origin, or because of age, provided that at the time of the alleged

discriminatory action the Employee was at least 40 years of age, or disabling condition, only if such allegation is combined with an otherwise appealable matter based on subsections 1 or 2.

C. For a termination of a probationary Employee pursuant to Section 42.04.B above, the Employee is entitled to a written notice stating the reasons, specifically and in detail, for the proposed action. The Employee is entitled to a reasonable time for filing a written answer to the notice of proposed adverse action and for furnishing affidavits in support of his/her answer. If the Employee answers, DOE will consider the answer in reaching its decision. Upon the probationary Employee's request, DOE will provide the Employee and NTEU with copies or access to any documents or files that provide the basis for the proposed termination. After considering the affected Employee's answer, the Employee is entitled to be notified of DOE's decision at the earliest practicable date. The decision will be delivered to the Employee at or before the time the action will be made effective. The notice will be in writing, inform the Employee of the reasons for the action, inform the Employee of his/her right to appeal to the Merit Systems Protection Board (MSPB), and inform him/her of the time limit within which the appeal must be submitted. A sanitized copy of the notice will be provided to NTEU on or before delivery to the Employee.

D. Appeals to the MSPB must be filed no later than 30 days after the separation has been effective, or as otherwise allowed by applicable MSPB regulations.

E. Where an Employee separated during the probationary period believes that the separation is based solely on discrimination

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because of race, color, religion, sex, or national origin, or because of age, provided that at the time of the alleged discriminatory action the Employee was at least forty (40) years of age, reprisal for Equal Employment Opportunity activity, or disabling condition, the Employee may pursue an appeal to the Equal Employment Opportunity Commission pursuant to procedures and time frames established by the Commission and its regulations.

- F. The separation of an Employee during the probationary period is not subject to the grievance or arbitration procedures established elsewhere in this Agreement unless permitted by law, rule or regulation.
- G. Nothing in this Agreement diminishes the right of an Employee serving a probationary period from pursuing other appeal avenues with the assistance of NTEU such as appeals filed with the Office of the Special Counsel or to the Federal Labor Relations Authority.

Article 43 - Disciplinary Actions

Section 43.01. General

Disciplinary Actions are defined as a letter of reprimand or suspensions of fourteen (14) days or less for reasons not covered under 5 U.S.C. § 7532 (suspension and removals for national security). DOE shall determine when the need arises for disciplinary actions. Disciplinary actions will be taken in accordance with applicable laws, rules, regulations, and current DOE policy, rules, and regulations as defined in Article 2, Section 2.01 of this Agreement. Disciplinary actions will be taken for such cause as to promote the efficiency of the service.

Section 43.02. Union Representation

- A. NTEU shall be given the opportunity to be present at any examination of an Employee in the unit by a representative of DOE in connection with an investigation if the

Employee reasonably believes that the examination may result in disciplinary action against him/herself and the Employee requests NTEU representation.

- B. DOE will notify Employees of their rights of representation as set out in Article 3, Section 3.06 of this Agreement.
- C. The Agency will, after a bargaining unit Employee has designated NTEU as his/her representative in a proposed disciplinary action, simultaneously serve a copy of the final decision letter on the Employee and NTEU. The preferred method of simultaneous service will be in person. If the designated representative is not present with the Employee at the time of service, simultaneous service may be accomplished by e-mail, facsimile, or U.S. mail postmarked the same day as service of the decision on the Employee.

Section 43.03. Penalty Determination

- A. The Parties agree that the primary purpose of discipline is to correct and improve Employee behavior rather than to punish.
- B. In order to determine the appropriate penalty for an Employee such as a disciplinary or adverse action, the Deciding Official will give due consideration to the relevance of any mitigating and/or aggravating circumstances, and will consider the "Douglas Factors" contained in *Douglas v. Veterans Administration*, 5 MSPR 280 (1981) and listed in Appendix B.
- C. The specific penalty for an instance of misconduct will be tailored to the facts and circumstances of the situation. The Parties do recognize that some offenses may be cause for severe action, including removal, irrespective of whether previous disciplinary actions have been taken against the offending Employee.

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Section 43.04. Non-Disciplinary Actions.

Letters of warning/counseling and oral warnings will provide the reason(s) for its issuance. Non-disciplinary letters of warning/counseling for misconduct will not be placed in the Employee's Official Personnel Folder. In the event that a hardcopy of the issuance is maintained by the Employee's immediate supervisor the hardcopy will be destroyed one year following the date of issuance or sooner, if appropriate.

Section 43.05. Procedures for Effecting Disciplinary Actions

A. Letters of Reprimand. A reprimand is a formal written letter of censure for misconduct. A letter of reprimand will state the reason(s) for its issuance and inform the Employee of the right to grieve under the contractual grievance procedures. A letter of reprimand may remain in an Employee's electronic Official Personnel Folder (eOPF) for up to three years but may be removed by DOE anytime within the three-year period. After a period of one year, the Employee may request to have the letter removed. The supervisor will grant such request provided there has been no further disciplinary action and provide email confirmation to the Employee. Once a letter of reprimand is removed from the eOPF, the misconduct identified in the letter of reprimand may not be used as an aggravating factor in any future discipline, except to establish knowledge.

B. Suspensions of Fourteen (14) Days or Less for a disciplinary reason not covered under 5 U.S.C. § 7532 (suspension and removals for national security):

1. The Employee will be given fifteen (15) calendar days advance written notice stating the specific reason(s)

for the proposed suspension. With the notice, the Employee will be provided, to the extent such information exists and is related to the action, a copy of the materials the Proposing Official relied upon in proposing the suspension. In addition, in the event the Proposing Official reviewed video or audio surveillance recordings in proposing the action, such recordings will be made available for review by the Employee.

2. DOE will designate a Deciding Official who is in a position equal to or higher than the Proposing Official and who has the authority to make a final decision on the proposed adverse action. The Deciding Official may extend the reply period if he/she determines that good cause exists for an extension based on extenuating circumstances.
3. The Employee will be given fourteen (14) calendar days, not to include recognized government holidays and days in which the government is closed, such as snow days or closures due to agency-wide funding lapses associated with continuing resolutions from receipt of the notice of suspension and/or receipt of the supporting material, whichever is greater, to respond orally and/or in writing and to furnish affidavits and other documentary evidence in support of their response to the proposed suspension. The Employee will have the right to be represented by NTEU, or by an attorney or other representative of his own choosing in connection with the oral and/or written reply. Extensions of the reply period may be made by mutual

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agreement of the parties. All extensions granted will be confirmed in writing or electronic mail. Upon request, extensions will be granted until DOE has provided information normally maintained by DOE in the regular course of business and which is reasonably available and necessary for full and proper discussion requested pursuant to 5 U.S.C. 7114(b)(4) by the Employee or NTEU as a result of the proposed disciplinary action. NTEU will endeavor to submit information requests under this section as soon as practicable after receipt of the proposed adverse action.

a. Oral Replies:

- i. Normally, oral replies will be in person. By mutual agreement, oral replies may be provided by telephone or other technological means (including video teleconferencing).
- ii. Oral replies will generally be heard at or near the Employee's duty location.
- iii. In the event management elects to hold the oral reply at a location outside the Employee's duty location, DOE will be responsible for all travel and per diem

costs, as well as time for the Employee and his or her Union representative to travel to and from the oral reply location.

- iv. To the maximum extent possible, NTEU will make a reasonable effort to designate a representative at or near the Employee's work location to participate in oral replies.

- v. In the event the Employee chooses anyone other than an NTEU representative, NTEU will be invited to the oral reply merely to observe.

- b. Written Replies: Written replies must be received by the Deciding Official prior to the end of the fourteen (14) calendar day reply period as described in Section 43.05.B(3) above.

4. After receipt of the written and/or oral reply, the Deciding Official will issue a final decision. In the event no written or oral reply is provided, the earliest the decision will be issued will be after the fifteen (15) calendar day notice period expires. The final decision will advise the Employee of the specific reason(s) for the

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- decision and notify the Employee that if he/she is not satisfied with the decision, NTEU may file a grievance of the final decision pursuant to Article 11 of this Agreement.
5. In cases where a suspension is proposed for reasons of off-duty misconduct, the Agency's written notification provided for above will also contain a statement describing the nexus between the off-duty misconduct and the efficiency of the service.
- remediation process will be used in any way by either party.
- C. If DOE considers alternative remediation in lieu of disciplinary action, the deciding official will provide the Employee and the NTEU Representative, with a final decision on the proposed disciplinary action and the alternative remediation letter identified in section 43.06.D below. The alternative remediation letter will identify a period of no less than 10 days that the Employee must accept the alternative remediation in lieu of disciplinary action. If the Employee declines to accept the alternative remediation letter within the specified timeframe, the action identified in the final decision will be implemented consistent with the timeline provided in the final decision. The Employee may grieve the final decision action pursuant to section 43.09 below.

Section 43.06. Alternative Remedial Action

- A. In cases where suspensions without pay for periods of fourteen (14) days or less are proposed (for purposes other than an emergency suspension related to an adverse action) and it is the first instance of a proposed action for misconduct by the Employee, the Employee may request alternative remediation. The Employee and the deciding official may agree that alternative remediation in lieu of suspension (or part of it) is appropriate. Generally, such discussions will occur after the presentation of the Employee's oral reply, if one was requested. If no oral reply meeting is requested, the parties will schedule a meeting to discuss alternative remediation prior to the date that the written response is due.
- B. Employees will not be required to admit misconduct until a complete agreement is executed by the parties. If agreement is reached, alternative remediation will be implemented as described in subsection C, below. If no agreement is reached, no inference of misconduct can be drawn from the request for an alternative remediation meeting. Further, no part of the discussions, deliberations, offers or recommendations generated at any step of the alternative
- D. All such alternative remediations shall be set forth in a letter that contains the following:
1. An accurate and full description of the Employee's misconduct;
 2. The Employee's admission of having engaged in the misconduct;
 3. The Employee's promise to correct the inappropriate behavior;
 4. Descriptions of the specific suspension that would have been called for and the specific alternative remediation;
 5. Acknowledgment that the letter will be retained by DOE for a specified period to support possible future remediation based on new acts of misconduct committed by the Employee during that period;
 6. The specific remedial action that will

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be imposed if the Employee fails to comply with the terms of the alternative remediation letter (remedial action may be less than that originally proposed);

7. A waiver of the Employee's appeal and/or dispute resolution rights;
8. A statement that the agreement was voluntarily entered into by the Employee, NTEU and DOE; and
9. Signatures of the Employee and the deciding official.

- E. Actions taken based on DOE's allegation of non-compliance with an alternative remediation letter may be grieved under the negotiated grievance procedure.

Section 43.07. Suspension Period

Upon Employee request and if consistent with operational needs:

- A. Suspensions taken under this Article may be served on consecutive days following the commencement of the suspension;
- B. Effective dates for suspension of ten (10) to fourteen (14) days may be set so that the suspension is served across two adjoining pay periods, and the suspension does not cover more than five (5) regular duty days in either pay period;
- C. Employees on compressed work schedules may work 8-hour days until the suspension has been served;
- D. Effective dates for suspension of ten (10) to fourteen (14) days will be set so that the suspension is served across two adjoining pay periods; and/or
- E. Employees on compressed work schedules

will work 8-hour days during the pay period(s) the suspension is being served.

Section 43.08. Waiver

Nothing in this Article waives NTEU's right to make any argument, including EEO related defenses, in challenging a disciplinary action.

Section 43.09. Grievance

If the Employee is not satisfied with the final decision, NTEU may grieve the decision consistent with Article 11 of this Agreement.

Article 44 - Adverse Actions

Section 44.01. General

- A. DOE shall determine when the need arises for adverse actions. Adverse actions will be taken in accordance with applicable laws, rules, regulations, and current DOE policy, rules, and regulations as defined in Article 2, Section 2.01 of this Agreement. Adverse actions will be taken for such cause as to promote the efficiency of the service. The procedures of this Article do not apply to Employees serving a probationary period unless the Employee has completed one year of current continuous service as defined under 5 C.F.R. § 752.402 and is not otherwise excluded from these procedures by federal law, rule, or regulation.
- B. Adverse action penalties will be imposed to correct behavior and to demonstrate and support DOE's standards of conduct for Employees. In deciding what action may be appropriate, the Deciding Official will give due consideration to the relevance of any mitigating and/or aggravating circumstances, and will consider the "Douglas Factors" contained in *Douglas v. Veterans Administration*, 5 MSPR 280 (1981) and listed in Appendix B.

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Section 44.02. Adverse Actions Defined

For the purpose of this Agreement, adverse actions are defined as suspensions of more than 14 days (including indefinite suspensions), reductions-in-grade or pay, removals, and furlough of thirty (30) calendar days or less, unless excluded by law or government-wide regulation.

Section 44.03. Adverse Action Procedures

- A. An Employee against whom an adverse action is proposed will be given thirty (30) calendar days advance written notice stating the specific reason(s) for the proposed action and informs the Employee of the right to be represented by an NTEU representative, an attorney of the Employee's choosing, or other representative. With the notice, the Employee will be provided, to the extent such information exists and is related to the action, a copy of the materials the proposing official relied upon in proposing the adverse action. In addition, in the event the Proposing Official reviewed video or audio surveillance recordings in proposing the action, such recordings will be made available for review by the Employee. If there is reasonable cause to believe that the Employee has committed a crime for which a sentence of imprisonment may be imposed, the proposed action may be effected less than 30 calendar days, but not less than seven (7) calendar days from the receipt of the advance written notice.
- B. DOE will designate a Deciding Official who is in a position equal to or higher than the Proposing Official and who has the authority to make a final decision on the proposed adverse action. The Deciding Official may extend the reply period if he/she determines that good cause exists for an extension based on extenuating circumstances.
- C. The Employee will be given fourteen (14) calendar days, not to include recognized

government holidays and days in which the government is closed, such as snow days or closures due to agency-wide funding lapses associated with continuing resolutions from receipt of the notice and/or receipt of the supporting material, whichever is greater, to respond orally and/or in writing and to furnish affidavits and other documentary evidence in support of their response to the proposed action. The Employee will have the right to be represented by NTEU, or by an attorney or other representative of his/her own choosing in connection with the oral and/or written reply. Extensions of the reply period may be made by mutual agreement of the parties. All extensions granted will be confirmed in writing or electronic mail. Upon request, extensions will be granted until DOE has provided information normally maintained by DOE in the regular course of business and which is reasonably available and necessary for full and proper discussion requested pursuant to 5 U.S.C. 7114(b)(4) by the Employee or NTEU as a result of the proposed adverse action. NTEU will endeavor to submit information requests under this section as soon as practicable after receipt of the proposed adverse action.

1. Oral Replies.

- a. Normally, oral replies will be in person. By mutual agreement, oral replies may be provided by telephone or other technological means (including video teleconferencing).
- b. Oral replies will generally be heard at or near the Employee's duty location.
- c. In the event management elects to hold the oral reply at a location outside the Employee's duty location,

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DOE will be responsible for all travel and per diem costs, as well as time for the Employee and his/her NTEU representative to travel to and from the oral reply location.

- d. To the maximum extent possible, NTEU will make a reasonable effort to designate a representative at or near the Employee's work location to participate in oral replies.
- e. In the event the Employee chooses anyone other than an NTEU representative, NTEU will be invited to the oral reply merely to observe.

D. Written Replies. Written replies must be received by the Deciding Official prior to the end of the fourteen (14) calendar day reply period as described in Section 44.03.C above.

- 1. After receipt of the written and/or oral reply, the Deciding Official will issue a final decision. The final decision will advise the Employee of the specific reasons(s) for the decision and notify the Employee that if he/she is not satisfied with the decision, the Employee and/or NTEU representative, if applicable, may appeal the final decision. In cases where the final decision is less than removal, the Employee may grieve the final decision pursuant to Article 11, Section 17. In cases of removals, the final decision may be submitted to Arbitration pursuant to Article 12. In any case, the Employee may elect to appeal the action through the grievance/arbitration procedures or

the Merit Systems Protection Board (MSPB), but not both.

- a. An Employee who elects to appeal an action to the MSPB may be represented by NTEU, an attorney, or another representative of his/her choosing.
- b. In cases where an action is proposed for reasons of off-duty misconduct, the Agency's written notification provided for above will also contain a statement describing the nexus between the off-duty misconduct and the efficiency of the service.

Section 44.04. Union Representation

- A. NTEU shall be given the opportunity to be present at any examination of an Employee in the unit by a representative of DOE in connection with an investigation if the Employee reasonably believes that the examination may result in adverse action against him/herself and the Employee requests NTEU representation.
- B. DOE will notify Employees of their rights of representation as set out in Article 3, Section 3.06 of this Agreement.
- C. The Agency will, after a bargaining unit Employee has designated NTEU as his/her representative in a proposed adverse action, simultaneously serve a copy of the final decision letter on the Employee and NTEU. The preferred method of simultaneous service will be in person. If the designated representative is not present with the Employee at the time of service, simultaneous service may be accomplished by e-mail, facsimile, or U.S. mail postmarked

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the same day as service of the decision on the Employee.

Section 44.05. Adverse Action Records

- A. DOE will provide the respective NTEU Chapter President and Executive Vice Presidents of Chapters 213 and 228 with sanitized copies of any proposal notices that are issued pursuant to this Article, when the Employee receives such letter.
- B. DOE will also provide the respective NTEU Chapter President and Executive Vice Presidents of Chapters 213 and 228 with sanitized copies of any decision letters, when the Employee receives such letter, even in those circumstances where NTEU has not previously been designated as the Employee representative in the matter.

Section 44.06. Suspensions

Upon Employee request and if consistent with operational needs:

- A. Effective dates for suspensions under this Article will be set so that the suspension is served across multiple adjoining pay periods; and/or
- B. Employees on compressed work schedules will work 8-hour days during the pay period(s) the suspension is being served.

Article 45 - Performance-Based Actions

Section 45.01. General

- A. The actions covered by the provisions of this Article are a reduction in grade or removal for unacceptable performance, for Employees serving in bargaining unit positions at the time the action was initiated. Nothing in the Article prevents DOE from taking performance-based actions under Chapter 75 procedures pursuant to Articles

43 and 44 of the Agreement.

- B. DOE shall determine when the need arises for performance-based actions, i.e., the Employee's performance is at an unacceptable level (Fails to Meet Expectations, or equivalent) in a core critical element. Performance-based actions will be taken in accordance with applicable laws, rules, regulations, and current DOE policy, rules, and regulations as defined in Article 2, Section 2.01 of this Agreement. In any action taken in connection with unacceptable performance, the supervisor will provide guidance and assistance to help improve the Employee's performance.
- C. If an Employee has performed acceptably for 1-year from the beginning of an opportunity to demonstrate acceptable performance (in the critical element(s) for which the Employee was afforded an opportunity to demonstrate acceptable performance), and the Employee's performance again becomes unacceptable, DOE will afford the Employee an additional opportunity to demonstrate acceptable performance before determining whether to propose a reduction in grade or removal under this part. However, an additional opportunity to demonstrate acceptable performance is not required within the 1-year period identified above.
- D. A proposed action may be based on instances of unacceptable performance which occur within a 1-year period ending on the date of the notice of proposed action.

Section 45.02. Notice of Performance Deficiency

- A. Employees are to be notified as soon as possible of any performance deficiencies. Any time during the performance appraisal cycle that an Employee's performance is determined to be unacceptable in one or more critical elements, the Employee will be notified and provided with an Opportunity to

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Demonstrate Acceptable Performance where the provisions in Article 17 will be followed.

- B. Where sufficient improvement to meet the Meets Expectations level has not been demonstrated during the Opportunity period identified in Article 17, Section 17.07, the length may be extended for a reasonable period of time, or DOE will consider lateral reassignment of an Employee before it acts to reduce in grade or remove an Employee for unacceptable performance. If management determines that either option is not feasible, the Agency will initiate reduction in grade, or removal action, as appropriate.

Section 45.03. Performance-Based Action Procedures

- A. An Employee whose reduction in grade or removal is proposed under this Article will be provided with at least thirty (30) days' advanced notice. Such notice be extended for an additional thirty (30) days at DOE's sole discretion, or longer pursuant to 5 CFR § 432.105(a)(4)(i)(B). With the notice, the Employee will be provided, to the extent such information exists and is related to the action, a copy of the materials the proposing official relied upon in proposing the performance-based action.
- B. The advance written notice will identify:
1. Specific instance(s) of unacceptable performance by the Employee on which the proposed action is based;
 2. The performance standard(s) of the Employee's position involved in each instance of unacceptable performance;
 3. That the Employee shall receive a reasonable amount of official time to

review the material relied upon to support the proposed action.

4. to respond orally and/or in writing and to furnish affidavits and other documentary evidence in support of their response to the proposed action;
5. That the Employee has the right to be represented by NTEU or an attorney or other representative of her/his own choosing; and
6. That the Agency will provide a written decision with the specific reasons for the decision at the earliest practicable date.

- C. The Employee will be given fourteen (14) calendar days, not to include recognized government holidays and days in which the government is closed, such as snow days or closures due to agency-wide funding lapses associated with continuing resolutions from receipt of the notice and/or receipt of the supporting material, whichever is greater, to respond orally and/or in writing and to furnish affidavits and other documentary evidence in support of their response to the proposed action. The Employee will have the right to be represented by NTEU, or by an attorney or other representative of his/her own choosing in connection with the oral and/or written reply. Extensions of the reply period may be made by mutual agreement of the parties. All extensions granted will be confirmed in writing or electronic mail. Upon request, extensions will be granted until DOE has provided information normally maintained by DOE in the regular course of business and which is reasonably available and necessary for full and proper discussion requested pursuant to 5 U.S.C. § 7114(b)(4) by the Employee or NTEU as a result of the proposed action. NTEU will endeavor to submit information requests under this

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section as soon as practicable after receipt of the proposed action.

of the fourteen (14) calendar day reply period as described in Section 45.03.D above.

1. Oral Replies.

- a. Normally, oral replies will be in person. By mutual agreement, oral replies may be provided by telephone or other technological means (including video teleconferencing).
- b. Oral replies will generally be heard at or near the Employee's duty location.
- c. In the event management elects to hold the oral reply at a location outside the Employee's duty location, DOE will be responsible for all travel and per diem costs, as well as time for the Employee and his/her NTEU representative to travel to and from the oral reply location.
- d. To the maximum extent possible, NTEU will make a reasonable effort to designate a representative at or near the Employee's work location to participate in oral replies.
- e. In the event the Employee chooses anyone other than an NTEU representative, NTEU will be invited to the oral reply merely to observe.

- D. After receipt of the written/oral reply or the expiration of the written/oral reply period, whichever is applicable, the Deciding Official will issue a final decision. The decision to retain, reduce in grade, or remove an Employee will be made within thirty (30) days after the date of expiration of the notice period. Employee performance which was not specifically identified in the proposed action will not be relied on to reach a final decision
- E. After receipt of the written and/or oral reply, the Deciding Official will issue a final decision. The final decision will advise the Employee of the specific reasons(s) for the decision and notify the Employee that if he/she is not satisfied with the decision, the Employee and/or NTEU representative, if applicable, may appeal the final decision.

Section 45.04. Formal Discussions

Once a determination has been made to proceed with actions indicated in Subsection 45.03.A of this Article, NTEU will be provided with advance notice and will be given the opportunity to attend any formal discussions conducted with the affected bargaining unit Employee concerning that action.

Section 45.05. Appeals

In cases where the final decision is less than removal, the Employee may grieve the final decision pursuant to Article 11, Section 13 of this Agreement. In cases of removals, the final decision may be submitted to Arbitration pursuant to Article 12. In any case, the Employee may elect to appeal the action through the grievance/arbitration procedures or the Merit Systems Protection Board (MSPB), but not both. An Employee who elects to appeal an action to the MSPB may be represented by NTEU, an attorney, or another representative of his/her choosing.

2. Written Replies.

Written replies must be received by the Deciding Official prior to the end

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Section 45.06. Time limits

Any of the time limits set forth in this Article may be extended or waived by mutual agreement of the parties. Reasonable extensions of time will be granted by the Agency on a case-by-case basis, upon good cause shown.

Section 45.07. Reduction in Grade following Promotion

If an Employee is promoted and subsequently within a year is demoted for inability to perform at a higher level, DOE agrees to make reasonable efforts to return the Employee to the same or similar position held prior to the promotion as soon as is practicable.

Section 45.08. Records

- A. If because of performance improvement by the Employee during the notice period, the Employee is not reduced in grade or removed and the Employee's performance continues to be acceptable for one (1) year from the date of the advance written notice provided under Section 45.02 of this Article, any entry or other notation of the unacceptable performance for which the action was proposed under this Article shall be removed from any Agency record relating to the Employee.
- B. The Chapter President for the appropriate local NTEU chapter will receive sanitized copies of any advance notice letters that are issued to bargaining unit Employees pursuant to Section 45.03.B of this Article when an Employee receives such letter. The NTEU will also receive any decision letters, when an Employee receives such letter, where it has not previously been designated as the Employee representative in the matter.

Article 46 - Smoking

A. Definitions

- 1. Smoking. The activity involving lighted cigar, cigarette, pipe, or tobacco products.
- 2. Designated Smoking Areas. An area which is identified by a sign reading, "Designated Smoking Area" and includes the international smoking symbol, where personnel may smoke cigarettes only.

B. General requirements:

- 1. Smoking is prohibited in DOE-occupied facilities and office space in the Washington, DC metropolitan area, which includes Washington, DC, Northern Virginia and Suburban Maryland. Smoking is also prohibited within government-owned or leased vehicles.
- 2. Smoking is prohibited within 25 feet from any doorway or air intake for any DOE Facility in the Washington, DC metropolitan area.
- 3. Smoking is permitted within personal vehicles as long as the vehicles are not parked within the building structure (including garages and loading docks) and are not parked within 25 feet from a doorway, handicapped parking spot, or air intake.
- 4. Smoking is permitted in the following "designated smoking areas:"
 - a. the south side of the Forrestal South Building, and

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- b. the south side of the Germantown "C" wing entrance.

- 5. DOE HQ will maintain smoking shelters in the designated Germantown and Forrestal Smoking Areas.

C. Smoking Cessation Programs.

- 1. Where an Employee's Federal Employees Health Benefits (FEHB) Program does not provide access to smoking cessation programs DOE will make smoking cessation programs available to Employees who wish to stop smoking at no cost to the Employee and no additional cost to Employer.
- 2. DOE's EAP office shall maintain a list of approved smoking cessation programs and will provide the contact information regarding those programs to Bargaining Unit Employees.
- 3. Appropriate leave will be granted for Employee participation in such programs in accordance with Article 27.
- 4. Smoking Cessation Programs are covered under the Federal Employees Health Benefits (FEHB) Program.

- D. If complaints are registered concerning smoking locations, the parties will meet to attempt to resolve the complaints.

- E. Working conditions and conditions of employment for Employees who choose to smoke will remain the same as those for Employees who choose not to smoke.

Article 47 - Telework

Section 47.01. General

- A. Telework is a work arrangement that permits an Employee to work at home or at another approved work site away from his or her traditional work site. The Parties are committed to allowing telework as long as it does not adversely affect DOE's mission.
- B. Participants may be permitted to telework full days or a portion of a day.
- C. Unless specifically changed by the terms of this Article, all other terms and conditions of employment as outlined elsewhere will remain the same for Employees participating in the DOE's telework program.

Section 47.02. Eligibility

- A. Employee participation is voluntary and subject to management approval, unless otherwise mandated by law, rule, or regulation (e.g., activation of COOP). An Employee's request for telework will be reasonably considered and consistent with mission requirements.
- B. To be considered for a telework arrangement, an Employee must meet the following criteria:
- C. The supervisor has had time to assess initial performance;
- D. Performance has not dropped below Meets Expectations or equivalent; and
- E. Has suitable work to do on telework (work suitable for telework depends on job content rather than job title, type of appointment, or work schedule).
- F. At the supervisor's discretion, Employees may not be eligible for telework if subject to any of the following criteria:

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G. Performance falls below Meets Expectations. An Employee's performance falls below Meets Expectations for the purposes of this Article when:

1. Given a performance demonstration period or opportunity to improve his/her performance as defined in government-wide regulations; or
2. Notified in writing that his/her performance is unsatisfactory, and failure to improve such performance could result in administrative action such as reassignment or other actions up to and including removal from the federal service.

H. Received or receives a formal disciplinary/adverse action within the last six (6) months that would impact the integrity of the telework program.

I. The Employee is currently under leave restriction procedures.

J. The Employee fails to complete all telework training as required by law, rule, or regulation.

K. The Employee violates his/her telework agreement within the last six (6) months.

L. Employees may participate in telework for medical reasons, or to care for a family member with a serious health condition, as that term is defined in the Family and Medical Leave Act. In addition to meeting the above conditions, DOE may require that medical documentation be provided in accordance with the procedures specified in Article 27, Section 27.03. Telework granted as a reasonable accommodation is governed by reasonable accommodation procedures and not this Article.

Section 47.03. Employee Telework Plan

A. An Employee requesting a telework arrangement will develop a plan to submit to his or her supervisor that includes such information as the type of work to be done at the telework site, the days to be worked at the telework site, etc. If the supervisor identifies any issues with the plan that would cause the telework request to be denied, the Employee and the supervisor will meet within ten (10) calendar days to work together and develop adjustments to the plan that will mitigate the identified issues. The Employee's plan will be approved if he/she has sufficient work to do at the alternate site, and it does not conflict with a mission necessity or training (e.g., scheduling or skillset needed on site).

B. DOE will approve or deny the Employee's request within fourteen (14) calendar days of a completed submission. Once approved, the Employee and the supervisor will enter into a telework agreement that incorporates the Employee's work plan, organizational and/or team responsibilities and use of designated communication tools. If denied, the supervisor will enter the justification on the Employees telework agreement form. The timeline for filing a grievance under Article 11 will begin to run from receipt of the denial.

C. Any time an Employee believes he or she needs to permanently or temporarily return to work in the office, the Employee will normally provide management with 30 calendar days' notice of the needed change, except in emergency situations.

D. A permanent significant change in the terms of the telework agreement requires a new telework agreement setting forth such changes or termination of the existing telework agreement. Permanent changes include Employee requested changes to the approved telework agreement and/or a

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significant change in duties being performed that impact position eligibility. Absent exigent circumstances, such as an unforeseen change in eligibility due to a position, an Employee's existing telework agreement will not be impacted pending the approval of the new telework agreement. If approved, the Employee will be exempt from taking the required telework training again.

- E. Requests by the participating Employee to change a scheduled telework day(s) in a particular week or biweekly pay period must be submitted in advance, prior to the effective date of the change, in writing, and approved by the supervisor.
- F. For business related reasons, management may amend, alter, adjust, change, remove, or suspend an individual Employee's or group of Employees' participation in the telework program. When such actions are necessary for the efficiency of operations, management will provide as much notice as possible of the action and the projected duration. When normal operations resume, Employees will be able to resume their previously approved telework agreement.
- G. DOE decisions regarding telework may be grieved in accordance with Article 11.

Section 47.04. Telework Responsibilities

- A. Telework home work sites require workspace (a room or a portion of a room which is adequate for the performance of official duties) with adequate light, basic telephone service, power, adequate environmental conditions, internet, smoke alarms, and adequate security. DOE will not pay for any of these requirements.
- B. The Employee will be available at the assigned alternate site unless on pre-approved leave or lunch, or if he/she has given the manager prior notice and has

received permission to modify the workday. The supervisor and the Employee will work out appropriate protocols to ensure Employee availability in accordance with the telework agreement.

- C. DOE is not responsible for paying any extra costs the Employee may incur for working at home (e.g., adding an additional telephone line).
- D. If available for teleworking, DOE may provide the equipment for the Employee to telework. However, if equipment is not available, the Employee will be expected to provide necessary equipment through his/her own means if they choose to telework. If DOE issues equipment and more than one Employee requests for equipment, DOE will consider the Employees need for the equipment to determine which Employee will be issued equipment. If DOE issues required equipment to telework, DOE retains ownership and control of any and all hardware, software, telecommunications equipment and data placed in the alternative work site by the government. This equipment shall be used for official business only.
- E. Employees on approved regular and/or situational telework agreements who are issued laptops may be expected to take them to their telework site under the terms of their individual telework agreements.
- F. Employees will comply with all required security measures and disclosure provisions so that at no time are security or Privacy Act requirements compromised.
- G. Employees will comply with applicable government regulations governing information management and electronic security procedures for safeguarding data and data bases.

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- H. To ensure that Information Systems and sensitive information procedures are in place at the alternate work sites, DOE may inspect the Employee's work site with 24-hour notice to the Employee. The notice will include the date and approximate time of arrival, the number of management officials coming to the site, the estimated duration of the inspection, the right to have an NTEU Representative present during the inspection, and other appropriate information. If an Employee requests that an NTEU Representative be present, the NTEU Representative and DOE will work together to schedule the inspection. The NTEU Representative has the discretion to attend the inspection physically or virtually/telephonically.

Section 47.05. Agency Directed Return to Work

- A. Participating Employee(s) must be available to work at the traditional worksite, normally with a one-workday advance notice, when management makes a determination that the Employee's presence is required. The Employee may request to telework on an alternate workday during the same workweek, in cases where he/she is required to report to the traditional worksite on a regularly scheduled telework day.
- B. When a participating Employee is required to return to the traditional worksite on a temporary basis with less than one workday advanced notice, the Employee must report within a reasonable amount of time. Time required to report to the official worksite, including traveling distance and mode of transportation factors, will be taken into consideration in evaluating what is reasonable.
- C. In the event an Employee is removed from telework for cause, the Employee will be expected to return to the traditional worksite on a permanent basis within a reasonable

period of time.

Section 47.06. Conflicts

- A. Conflicts in days worked at the telework site will also be resolved through seniority. However, seniority does not allow a new telework agreement to negate an existing agreement (e.g., a senior Employee may not bump a junior Employee who is on an existing agreement).
- B. For the purpose of this Article, Seniority will be determined by:
1. The total time an Employee has served in his or her office/work unit;
 2. In the event it is necessary to resolve ties after (1), the total time an Employee has served in DOE, regardless of position, will be used.
 3. In the event it is necessary to resolve ties after (2), the total time in Federal government service (i.e., SCD) will be used.
 4. In the event it is necessary to resolve ties after (3), they will be resolved by coin flip.
- C. Total time for less than full-time employment will be credited for seniority purposes based on the Employee's part time hours.

Section 47.07 Teleworking During Weather and Safety-Related Conditions

- A. A "weather or other safety-related condition" is one which is general rather than personal in scope and impact. It may be caused by developments such as terror alerts, heavy snow or severe icing conditions, floods, earthquakes, hurricanes or other natural disasters, air pollution, massive power failure, major fires or serious interruptions to public transportation caused

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by incidents such as strikes of local transit Employees or mass demonstrations that create safety-related conditions consistent with 5 CFR Part 630, Subpart P.

- B. For the purpose of this Section, Telework-ready Employees are Employees with an approved telework agreement (regular or situational) who have the necessary equipment (e.g., laptop, PIV card reader, RSA token) and necessary work files (paper or electronic) at their telework site (or transportable to the telework site) to perform required duties at the telework site at the time of an office closure or at other times as discussed below.
- C. Whenever it becomes necessary to close an office because of a weather or other safety-related condition, reasonable efforts will be made to inform all Employees. Such notice will be made as soon as practicable. All weather-related operation statuses for the National Capital Region are initiated, announced, and maintained by the Office of Personnel Management.
- D. When a closure of a facility is announced, managers may authorize Employees who are not in their facilities to travel on administrative time (duty time) to their facilities to obtain necessary work equipment or files to be able to telework. If the Employee is unable to perform work at a telework site because of failure to make necessary preparations for reasonably anticipated conditions, the Employee is not eligible for weather and safety leave, and the Employee must request other appropriate paid leave, paid time off, or leave without pay.
- E. When an Employee is Telework-ready and a weather or other safety-related condition forces the closure of his/her facility, the Employee is expected to perform work at his/her approved telework site for his/her

entire workday. If the Employee is not Telework-ready for all or part of the tour of duty when a weather or safety-related condition forces the closure of his/her facility, the Employee may be granted an equivalent amount of weather and safety leave.

- F. When a teleworking Employee experiences a weather or other safety-related condition that prevents him/her from safely working at his/her telework site, the Employee must contact his/her supervisor as soon as practicable. The Employee will be granted weather and safety leave and may be required to provide reasonably available documentation to support his/her claim for weather and safety leave.
- G. In the event an office has an early departure, Employees who have a telework agreement and who are working in the office are required to take their equipment and work files to their telework site to finish their workday. Employees required to travel to their approved telework site during regular duty hours will be granted weather and safety leave for the time required to travel to the telework site, excluding the time that an Employee would normally be scheduled for his/her unpaid lunch break, if applicable and if normally scheduled during the time of the travel.
- H. Employees who are required to work unscheduled telework due to closure or dismissal under this Section will not have their previous scheduled telework days changed or cancelled.
- I. Employees on a telework Agreement may cancel preapproved leave or paid time off and be granted the same amount of weather and safety leave as other Employees if: (1) the intended purpose of the leave or paid time off is disrupted by the same weather or other safety-related condition forcing the

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office closure (e.g., flight cancelled, doctor's office closed); and (2) the Employees are not Telework-ready. Telework-ready Employees may cancel preapproved leave or paid time off and be expected to telework.

- J. When a young child or other person requiring the presence of a caregiver is present in the home, any time spent providing care to that person would not be considered hours of work. The Employee would be expected to account for work and non-work hours during his/her tour of duty and take the appropriate leave (paid or unpaid) or other paid time off to account for the time spent away from normal work-related duties. DOE should not grant the Employee weather and safety leave for the non-work time. Upon supervisory approval, the Employee may account for hours of work missed by working additional hours outside of his/her normal tour of duty in accordance with Article 25.

Section 47.08. Reporting

Upon request, NTEU will receive information on telework that may include the following information:

- A. Employee name
- B. Employee's telework Site
- C. Date request was submitted
- D. Date of approval/disapproval
- E. Decision: Approved or Denied
- F. Number of telework days requested
- G. Number of telework days approved
- H. Date telework commenced

Section 47.09 Office/Workspace Sharing ("Hoteling")

- A. For the purpose of this section, a singular

working element means a group of Employees consisting of a first-line supervisor and the supervisor's permanently assigned bargaining unit Employees.

- B. Employees whose work schedules (e.g., AWS, FWS) and/or telework agreement results in being out of the office for fifty percent (50%) or more may be subject to office/workspace sharing ("Hoteling"). With the exception of singular working elements provided in Section 47.09.C below, absent a government-wide rule or regulation, DOE order or Headquarters wide policy which do not conflict with the contract and over which all bargaining responsibilities have been fulfilled, prior to any organization implementing a Hoteling arrangement that impacts bargaining unit Employees, the organization's department head, or designee, will provide the appropriate Chapter President with notice and the opportunity to bargain a Hoteling Agreement applicable to the respective organization. Such bargaining will be pursuant to Article 13 of this Agreement. The Hoteling Agreement may change the fifty percent (50%) threshold indicated above but may not supersede any other provision of this Agreement. Unless otherwise expressly agreed to by the parties negotiating the Hoteling Agreement, the term of the Hoteling Agreement will run concurrently with this Agreement.

- C. Absent DOE policy and/or an agreement pursuant to Section 47.09.B above, Employees within a singular working element level, may voluntarily agree to a hoteling arrangement in their respective telework agreements. If any Employee subject to the hoteling arrangement (including Employees detailed outside of singular working element) disagrees with the hoteling arrangement, the hoteling arrangement will be subject to the bargaining requirement in Section 47.09.B.

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Article 48 - Reorganization/Relocation Notification Procedures

Section 48.01. General

DOE and NTEU agree that a stable and healthful office environment which contributes to Employee productivity and job satisfaction is an important organizational objective. When DOE determines that it is necessary to reorganize or to physically relocate Employees, it will provide advanced notification to NTEU and follow the procedures set forth below. A notification from ELRD will be provided to NTEU if more than a *de minimis* change is needed.

Section 48.02. Definitions

For the purpose of this Article:

- A. Relocation means a physical move of Employee(s) in a work unit from one worksite (e.g., office, suite of offices, building) to another.
- B. Temporary relocations of less than thirty (30) days duration for office refurbishing (e.g., painting and carpeting) will not be subject to this notification procedure. Temporary relocations under this section will not require DOE to provide the data pursuant to Section 48.03.B below. However, for temporary relocations lasting longer than 30 calendar days, DOE will provide NTEU with a list of affected bargaining unit Employees. In the event that the relocation has a more than a *de minimis* impact as defined by the Statute, DOE will provide NTEU formal notice pursuant to Article 13.
- C. If permanent seating or office layout arrangements are changed due to the office refurbishing, formal notification will be made.
- D. Reorganization means an organizational change affecting the working conditions of bargaining unit Employees, including transfer

of function involving the elimination, addition, realignment, or redistribution of functions, bargaining unit Employees, or responsibilities among or within DOE. This definition does not include reorganizations only involving non-bargaining unit Employees or simple changes in position titles.

- E. "Advanced Notice" means written notification submitted as soon as DOE has approved a plan to reorganize or physically relocate Employees.
- F. Notice means written notification, submitted as much in advance of the proposed implementation date as possible but absent exigent circumstances, no less than three (3) work weeks prior to a proposed implementation date.
- G. Crosswalk means a document or table showing the relationship between the existing structure to the new structure (i.e., mapping old to new).

Section 48.03. Disclosure of Plans

- A. Where DOE plans to reorganize, as defined in Section 48.02.B above, DOE will give Advanced Notice to NTEU and provide, as appropriate, the following information:
 - 1. Reason(s) for the reorganization;
 - 2. A crosswalk with the names, position titles and grades of all affected bargaining unit Employees;
 - 3. Approved mission and function statements for the existing and the proposed organizations;
 - 4. Organizational charts for the existing and the proposed organizations;
 - 5. A list of officially classified position

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- descriptions, if any, with copies of each position description listed;
6. A List of positions for which classification action is pending;
7. A list of known vacancies in the new organization;
8. A proposed implementation schedule;
9. Any proposed written Employee notices;
10. The projected adverse impact, if any, and any relevant documentation.
- B. Where DOE wishes to relocate Employees, DOE will give Advanced Notice to the appropriate Union Chapter(s) and provide, as appropriate, the following information. The notification procedures in this section do not apply to voluntary relocations.
1. The reason for the relocation;
2. A list with the names and grades of all affected bargaining unit Employees;
3. A list of names, job titles, and DOE of all contractors occupying workspace in existing and/ or proposed sites seating charts;
4. Information concerning anticipated changes in provision for NTEU office space, parking facilities, lunch facilities, security provisions;
5. Floor plans and seating chart(s), drawn to scale, for both the existing and proposed organizational locations;
6. Health and safety testing and results, if any;
7. The projected adverse impact, if any, and any relevant documentation;
8. A proposed implementation schedule; and
9. Any proposed written Employee notices.
- C. After receipt of the initial notice and the information described in Section 48.03.A and 48.03.B, NTEU may, as soon as possible, but no later than seven (7) calendar days after receipt, request to meet with DOE during the three weeks' notice period for a detailed briefing and to discuss the proposed change and the information supplied with the notification, or to comment or otherwise make suggestions concerning the implementation plan.
- D. Union concerns raised at the meeting regarding adverse impact resulting from the proposed change will be discussed and, if resolved will be reduced to a memorandum of agreement. If the issues are not resolved, all pending issues will be subject to formal negotiations.
- E. Absent exigent unforeseen circumstances preventing NTEU from requesting a briefing and/or meeting (i.e., OPM weather closure, government shutdown, etc.), the Agency will not entertain meeting requests submitted after seven (7) calendar days from the initial relocation notice. NTEU requests under 5 U.S.C. § 7114(b)(4) for additional information will be honored as required by the Statute.
- Section 48.04. Formal Bargaining**
- A. If the meeting described in Section 48.03 above does not result in a written agreement, or if no meeting is held, formal negotiations will be held pursuant to Article 13.
- B. Notwithstanding the timelines identified in Article 13, for relocations which involve large numbers of Employees (e.g., more than 100 Employees) or relocations which involve significant geographical movement (e.g., from Germantown to Forrestal or Forrestal

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to Germantown), NTEU will be allowed a seven (7) calendar day extension of the normal time frame identified in Article 13, Section 13.02.C, upon written request to LROD within ten (10) days of the initial notice.

- C. In all other cases or where NTEU is making a further request for extension of time, NTEU will provide LROD notice in accordance with Article 13, Section 13.02.C.
- D. If prior to final implementation, DOE concludes that minor modification of the original plan is necessary and Employee assignments will change as a result, DOE will notify and discuss these changes with NTEU. Minor adjustments to the original plan will not constitute a separate proposal requiring new Advanced Notice under Section 48.03 above. Any such proposed modifications shall be processed at the current stage of bargaining, if any, in accordance with this Article.

Section 48.05. Office Space Allocation

- A. When allocating office space in conjunction with a relocation, or subsequent to a reorganization involving a physical move, Employees will be given a choice in office selection from among the offices available in conjunction with the relocation, unless by operation of the selection criteria below fewer than two (2) offices are available from which to choose. That choice will be consistent with work demands that necessitate those functions be adjacent to one another, office sharing, or in specific locations (e.g., sharing equipment or customer service). Moves will not be made only to accommodate individual promotions or additions to an organizational unit. The order in which Employees will be offered a selection is as follows:

1. Full-time employment status

2. Grade
3. Time-in-grade
4. DOE seniority
5. Service computation date
6. Flip of a coin
7. Part-time employment status in the same sequence as above.

- B. Federal Employees will get priority for space over contractors.

Article 49 - Parking Management

Section 49.01. Policy

To ensure that Employer-controlled Headquarters parking facilities are operated in a manner responsive to the needs of the Department, and for the maximum benefit to the Employees, assignment of DOE-controlled parking spaces will be in compliance with the national energy conservation policies and the Government-wide parking policies issued by the General Services Administration (GSA) Federal Property Management Regulations (FPMR) Temporary Regulation D-69, Supplement II (Title 41, Code of Federal Regulations, Part 101-120, Federal Employee parking, 49, FR4469 (1984). Parking fees will be assessed to recover the cost of operating a parking facility.

Section 49.02. Union Parking

- A. The Parties agree that Union Chapter 213 will be issued two (2) reserved and three (3) at-large permits in the Forrestal parking facility. Parking passes will be paid by NTEU.
- B. Chapter 228 will be issued two at large permits for the Forrestal parking facility. The Parties agree Chapter 228 will be issued temporary passes whenever the Chapter has

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labor management business in the Forrestal building. Chapter 228 understands that prior telephone notice will expedite the issuance of a temporary permit.

Article 50 - Headquarters Transit Subsidy Program

- A. In recognition of DOE's role in conserving energy and of Headquarters and NTEU's roles as positive supporters of energy- saving measures such as public transportation, the parties agree to the following measures to promote Employee use of the Subsidy for Energy Employees' Transit (SEET) Program.
- B. DOE will participate in the transportation subsidy program to the maximum extent permitted by law so long as such participation does not adversely impact the availability of funds for Employees' salaries, promotions, or awards. Such transportation benefits may include, but are not limited to, authorized mass transit, bicycle, parking, and/or car or van pool benefits.
- C. In the event that DOE claims the unavailability of funds to pay transportation benefits or foresees adverse impact on funds for Employees' salaries, promotions, or awards at any level of the organization, DOE will provide NTEU with documentation to support the claim and both parties shall reserve the right to reopen negotiations with respect to this claim.
- D. DOE shall maintain a website on the DOE Human Capital intranet webpage with information about available transportation benefits and how to apply and receive the transportation benefits. DOE shall provide transportation benefits information, including the address of the aforementioned transportation benefits webpage, to new Employees during the Employee orientation. DOE shall provide updates about transportation benefits to all Employees via DOE Cast emails and the updates shall be

posted on the aforementioned transportation benefit website.

- E. In the event an Employee is unable to receive the transportation benefits at his/her official duty station, DOE shall provide Employees with a reasonable amount of duty time to travel to an alternate site designated by the SEET Program to receive the transportation benefits.
- F. DOE agrees to establish a specific parking area in Germantown, in which to accommodate vans used for SEET participating van pools.

Article 51 - Duration and Termination

Section 51.01- Full and Complete Agreement

This is the full and complete Agreement between the parties concerning the matters addressed herein.

Section 51.02 – Mid Term Agreements

- A. Mid-Term Agreements – This Agreement shall govern in the event that MOUs or practices established pursuant to MOUs are inconsistent with this Agreement.
- B. Past Practices - The terms of this Agreement supersede any past practices concerning matters covered by this Agreement.

Section 51.03 - Effective Date and Renewal

- A. The Agreement will remain in full force and effect for four (4) years with a mid-term reopener. The reopener will occur after two (2) years, at which time each party may elect to reopen two (2) Articles. The parties will negotiate ground rules prior to commencing bargaining per 51.03.D.
- B. Thereafter, this Agreement will automatically be renewed for one (1) year

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unless either party gives written notice to the other that it intends to renegotiate, amend, modify or terminate the Agreement.

- C. Written notice of a party's intent to renegotiate, amend, modify or terminate this Agreement must be served by the requesting party upon the other no earlier than 105 calendar days and no later than 30 calendar days prior to the initial expiration date or the anniversary date of any subsequent extensions.
- D. The parties shall begin ground rules negotiations within forty-five (45) calendar days after service of notice to the other party under this Section. The parties agree to exchange proposals subsequent to the completion of the negotiations of the ground rules.

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Glossary

NTEU Officers: Any member of an NTEU Chapter who has been duly elected, in accordance with the NTEU Bylaws, to serve on a Chapter's Executive Committee. Currently, there are two such Committees, one for Chapter 213 and the other for Chapter 228. The Committee for Chapter 213 is composed of the President, Executive Vice President, 5 Vice Presidents, a Secretary and a Treasurer. The Committee for Chapter 228 is composed of the President, Executive Vice President, Vice President/Secretary, Vice President/Treasurer, and four Vice Presidents.

NTEU Stewards: Those non-elected individuals designated by Chapter Presidents to serve as Stewards for their respective chapters. Up to 32 individuals may be so designated. Additionally, NTEU Officers may engage in Stewardship activity and are entitled to official time for representation purposes and for appropriate steward training. Both NTEU Officers and NTEU stewards may present grievances. An updated list of Officers and Stewards is to be provided to DOE, pursuant to Article 6, Section 6.02.

NTEU Representatives: All Officers and Stewards of NTEU. Additionally, this includes individuals specifically designated by Chapter Presidents or their designees to act on behalf of NTEU on a specific issue. These individuals will not present grievances. NTEU will notify DOE of these designations as they are made.

Days: Normally means working days, unless specifically identified as calendar days. Working days refer to normal business days, and include AWS and flexiplace days, but exclude recognized government holidays and days in which the government is closed, such as snow days or closures due to agency-wide funding lapses associated with continuing resolutions.

Official Time: Duty time for which NTEU officers, stewards, and/or representatives have been approved to work on union business. It is sometimes also used in reference to the time approved for other bargaining unit Employees to pursue grievances. This time, however, should be categorized as administrative time (ATAAPS Codes: BA-Term Negotiations, BB-Mid Term Negotiations, BD-Labor Management Relations, BK-Grievances & Appeals)

Family: (Reference Article 27) for purposes of requesting leave under the various family friendly provisions, family is defined to include the following:

- A. Spouse and spouse's parents;
- B. Children, including adopted children, and their spouses;
- C. Parents;
- D. Brothers and sisters, and their spouses;
- E. Any individual related by blood or affinity whose close association with the Employee is the equivalent of a family relationship.

In witness whereof, the parties here to have entered into this agreement on the 14th day of
December, 2021.

For Department of Energy Headquarters

**Randall K.
Zimmerman**

Digitally signed by Randall K.
Zimmerman
Date: 2021.12.06 09:55:13 -05'00'

Randall Zimmerman Date
DOE HQ Chief Negotiator

Stephen F. Durbin

Digitally signed by Stephen F.
Durbin
Date: 2021.12.06 15:05:52 -05'00'

Stephen Durbin Date
DOE HQ Negotiating Team

**Vasilios G.
Kountouris**

Digitally signed by Vasilios G.
Kountouris
Date: 2021.12.06 15:24:15 -05'00'

Vasilios Kountouris Date
DOE HQ Negotiating Team

Melanie E. Wilson

Digitally signed by Melanie E.
Wilson
Date: 2021.12.07 09:29:49 -05'00'

Melanie Wilson Date
DOE HQ Negotiating Team

Laura G. Ames

Digitally signed by Laura G. Ames
Date: 2021.12.14 12:40:33 -05'00'

Laura Ames Date
DOE HQ Negotiating Team

For National Treasury Employees Union

Ryan Soon

Digitally signed by Ryan Soon
Date: 2021.12.06 08:48:58
-05'00'

Ryan Soon Date
NTEU Chief Negotiator

Karen F. Griffin

Digitally signed by Karen F. Griffin
Date: 2021.11.22 11:26:41 -05'00'

Karen Griffin Date
NTEU Chapter 213 President

Kim A. Parker

Digitally signed by Kim A. Parker
Date: 2021.11.22 13:36:39 -05'00'

Kim Parker Date
NTEU Chapter 228 President

**Sonia O.
Kassambara**

Digitally signed by Sonia O.
Kassambara
Date: 2021.12.01 22:06:45 -05'00'

Sonia Kassambara Date
NTEU Chapter 213 Vice President

Effective Date: January 12, 2022

APPENDIX A

"WEINGARTEN" RIGHTS:

5 U.S.C. 7114(a)(2) provides, in part:

"An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at ... any examination of an Employee in the unit by a representative of the agency in connection with an investigation if

- (i) the Employee reasonably believes that the examination may result in disciplinary action against the Employee; and
- (ii) the Employee requests representation."

I, _____, hereby certify that I received the statement of warning printed above on ____

Appendix B

Douglas Factors

Douglas v. Veterans Administration, 5 MSPR 280 (1981)

The “Douglas Factors” included herein for purposes of illustration, are neither meant to be exhaustive nor intended to be applied mechanically, but rather to outline the tolerable limits of reasonableness:

1. The nature and seriousness of the offense, and its relation to the Employee’s duties, position, and responsibilities, including whether the offense was intentional or technical and inadvertent, or was committed maliciously or for gain, or was frequently repeated.
2. The Employee’s job level and type of employment including supervisory or fiduciary role, contacts with the public, and prominence of the position.
3. The Employee’s past disciplinary record.
4. The Employee’s past work record: including length of service, performance on the job, ability to get along with fellow workers, and dependability.
5. The effect of the offense upon the Employee’s ability to perform assigned duties.
6. Consistency of the penalty with those imposed upon other Employees for the same or similar offenses.
7. The notoriety of the offense or its impact upon the reputation of the agency.
8. The clarity with which the Employee was on notice of any rules that were violated in committing the offense or had been warned about the conduct in question.
9. Potential for the Employee’s rehabilitation.
10. Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter.
11. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the Employee or others.

Appendix C

MONETARY AWARDS SCALE FOR INTANGIBLE BENEFITS FROM SPECIAL ACTS OR SERVICES, SUGGESTIONS, INVENTIONS				
VALUE OF BENEFIT	EXTENT OF APPLICATION			
	Limited Affects functions, mission, or personnel of one office (e.g., field site office or one office within a HQ Departmental element). Affects a small area of science or technology.	Extended Affects functions, mission, or personnel of a several field site offices or HQ office within a Departmental element (e.g., more than one). Affects an important area of science or technology.	Broad Affects functions, mission, or personnel of an entire Departmental element or Departmental element with multiple site offices. Affects a broad area of science or technology.	General Affects functions, mission, or personnel of multiple Departmental elements or throughout the Department or is in the public interest throughout the Nation or beyond.
Moderate Change of an operating principle or procedure with limited impact/use.	Up to \$120	Up to \$300	Up to \$600	Up to \$1,200
Substantial Change of an operating principle or procedure or an important improvement to the value of product or program.	Up to \$300	Up to \$600	Up to \$1,000	Up to \$3,000
High Complete revision of a basic principle or procedure or a highly significant improvement to the value of a product, major activity, or program.	Up to \$600	Up to \$1,200	Up to \$3,000	Up to \$6,000

Exceptional Initiation of a new principle or procedure or a superior improvement to the quality of a critical product, activity, or program.	Up to \$1,200	Up to \$3,100	Up to \$6,000	Up to \$10,000 (awards over \$7,500 must be approved by OCHCO) (Awards over \$10,000 must be approved by OPM)
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MONETARY AWARDS SCALE FOR TANGIBLE BENEFITS	
SAVINGS TO GOVERNMENT	AWARD AMOUNT
Up to \$10,000	10 percent of the benefits
\$10,001 – \$100,000	\$1,000 for the first \$10,000 in benefits, plus 3 percent of benefits over \$10,000
\$100,001 or more	\$3,700 for the first \$100,000 in benefits, plus .005 of benefits over \$100,000 Award amount should not exceed recipient's annual salary.