

2019 SSA/AFGE National Agreement

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NATIONAL AGREEMENT

between

THE AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES (AFGE)

and



The effective date of this Agreement is:
October 27, 2019
Unless Otherwise Noted

Social Security Administration
Office of Labor Management and Employee Relations

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Preamble

This Agreement is entered into by and between the Social Security Administration (hereinafter referred to as SSA or the Employer) and the American Federation of Government Employees (hereinafter referred to as the Union or AFGE).

The parties mutually recognize that the Congress of the United States has expressed public policy concerning labor relations in the Federal Government as follows:

"...the right of employees to organize, bargain collectively and participate through labor organizations of their own choosing in decisions which affect them, safeguards the public interest, contributes to the effective conduct of the public business, and facilitates and encourages the amicable settlement of disputes between employees and their employers involving conditions of employment; and the public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the government."

Therefore, labor organizations and collective bargaining in the civil service are in the public interest. ([5 U.S.C. 71](#))

Pursuant to this policy, the parties have agreed upon the various articles hereinafter set forth. This Agreement constitutes a Collective Bargaining Agreement between the Social Security Administration and the American Federation of Government Employees.

Recognition and Coverage of this Agreement

The American Federation of Government Employees, AFL-CIO, is recognized as the exclusive representative of employees in a nonprofessional unit and a professional unit in accordance with the Certification of Consolidation of Units, Case No. 22- 09146(UC), approved by the Federal Labor Relations Authority on August 30, 1979 and as subsequently added to by the Federal Labor Relations Authority.

This Agreement covers all employees pursuant to said recognition. The parties further agree that should AFGE request certification to include subsequently organized groups of employees in the consolidated unit, such certification will not be opposed by SSA if the grouping would otherwise be considered an appropriate unit under the Law. Upon certification by the FLRA, such groupings shall automatically come under this agreement.

Management Rights

Section 1. Statutory Rights

- A. Subject to subsection (B) of this section, nothing in this Agreement shall affect the authority of any management official of any agency--
 - 1. to determine the mission, budget, organization, number of employees and internal security practices of the agency; and
 - 2. in accordance with applicable laws--
 - a. to hire, assign, direct, layoff and retain employees in the agency or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;
 - b. to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted;
 - c. with respect to filling positions, to make selections for appointments from--
 - (1) among properly ranked and certified candidates for promotion; or
 - (2) any other appropriate source; and
 - d. to take whatever actions may be necessary to carry out the agency mission during emergencies.
- B. Nothing in this section shall preclude any agency and any labor organization from negotiating--
 - 1. at the election of the agency, on the numbers, types and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods and means of performing work;
 - 2. procedures which management officials of the agency will observe in exercising any authority under this section; or
 - 3. appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials.

Article 1

Governing Laws, Regulations and Existing Conditions of Employment

Section 1. Relationships to Laws and Government-Wide Rules and Regulations

In the administration of all matters covered by this agreement, officials and employees shall be governed by existing or future laws and existing government-wide rules and regulations, as defined in [5 U.S.C. 71](#), and by subsequently enacted government-wide rules and regulations implementing [5 U.S.C. 2302](#).

Section 2. Existing Conditions of Employment

In order to change any conditions of employment that were in effect on the effective date of the SSA/AFGE National Agreement, and that are not covered by the SSA/AFGE National Agreement, the Agency shall provide notice and, upon request, bargain with the Union to the extent required by law and in accordance with Article 4 of this Agreement.

Article 2

Union Rights and Responsibilities

- A. In all matters relating to personnel policies, practices and other conditions of employment, the parties will have due regard for the obligations imposed by [5 U.S.C. 71](#) and this agreement.
- B. The Administration shall not restrain, interfere with, or coerce representatives of the Union in the exercise of their rights under [5 U.S.C. 71](#) and this agreement.
- C. The Union has the right to refuse to represent any bargaining unit employee in matters not covered by the negotiated agreement, e.g., statutory appeals of adverse actions, EEO complaints.

Article 3

Employee Rights

Section 1. Right to Unionism

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

- 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 the Government, the Congress, or other appropriate authorities; and
- to engage in collective bargaining with respect to conditions of employment through representatives.

Section 2. Personal Rights

- A. All employees shall be treated fairly and equitably in all aspects of personnel management and without regard to political affiliation, race, color, religion, national origin, sex (including sexual orientation, and gender identity), genetic information, marital status, age, parental status or disability, and with proper regard and protection of their privacy and constitutional rights.

The parties agree that in the interest of maintaining a congenial work environment, Agency employees, including those acting in a union/management capacity, will deal with each other in a professional manner and with courtesy, dignity, and respect. To that end, all Social Security employees, should refrain from coercive, intimidating, loud or abusive behavior.

The parties further agree that bullying is prohibited in the workplace and will not be tolerated. Workplace bullying is repeated humiliating or offensive behavior, whereas a single act normally will not constitute bullying. Each employee is responsible for reporting repeated incidents of alleged bullying to their supervisor or any appropriate management official. Reports of bullying should include specific examples and the “who/what/when/where” facts of how the bullying behavior occurred. Upon receipt by an appropriate management official of a report of workplace bullying, the management official will evaluate and, where appropriate, refer the allegation consistent with Agency policy and this agreement. The Agency will provide information on “Bullying in the Workplace” including examples on an Agency website. The Agency agrees to share the link to the Agency information with all employees annually. The Parties agree that the potential need for anti-bullying training will be a subject for pre-decisional involvement (PDI) in Union Management Cooperation Councils (UMCCs) under Article 29.

- B. The Employer agrees to annually inform employees of their rights under [5 U.S.C. 7114\(a\)\(2\)\(B\)](#) ([Weingarten Rights](#)) through an electronic transmission.
- C. SSA will make every reasonable effort to provide lockable secure storage, in Agency controlled space, for appropriate personal belongings. Any search of this storage, or a desk/workstation, excluding searches conducted by the Office of Inspector General or other law enforcement officials, must be done in compliance [with applicable Agency-wide procedures/policies](#). If the Agency decides to modify existing [Agency-wide procedures/policies](#), it will provide appropriate notice to the union and the opportunity to bargain to the extent required by [5 USC Chapter 71](#).
- D. Management will make reasonable efforts to protect employees' personal belongings. Employees will exercise reasonable care to protect their personal belongings and will minimize the number of personal items brought to the office. Upon request, management will instruct employees on filing a claim for reimbursement under [31 U.S.C. 3721](#) and will make forms available in case of loss.
- E.
 - 1. SSA will make every reasonable effort to conduct discussions between supervisors and employees, other than routine work-related conversations, in private.
 - 2. If an employee is to be served with a warrant or subpoena, it will be done in private to the extent that the Employer has knowledge of and can control the situation.
 - 3. In all discussions with any management official related to a fitness for duty exam, the employee shall be entitled to Union representation; prior to any discussion, the employee shall be notified of this right and permitted the right of representation in such discussion.
- F. All employees who are new to a work unit or office will be introduced to the staff typically within the first week from their report-for-duty date. Such introductions may be conducted in-person, remotely through MS Teams or similar subsequent technology, or a combination of both.
- G.
 - 1. An employee's decision to resign or retire (if eligible for optional retirement) shall be made freely and in accordance with law, including prevailing regulations.
 - 2. If an employee is facing removal or termination, the employee may resign, freely and in accordance with law, including prevailing regulations, any time prior to the effective date. An employee may withdraw his/her/their resignation prior to the effective date, as long as the position is uncommitted or unencumbered.
- H. The Employer will provide retirement planning information to bargaining unit employees through available technology (e.g. use of Government Retirement Benefits (GRB) system) and other Human Resources programs. Such information may include, but is not necessarily limited to, individual counseling, elder care assistance, retirement materials, legal services

counseling, life and medical insurance counseling, Federal benefits options, best retirement dates, Thrift Savings Plan (TSP), TSP withdrawal options, etc.

I. Health Insurance Plan Information

The Agency agrees to provide bargaining unit employees with information on open enrollment periods and, upon request, information on the various types of health plans available to employees, including long-term care insurance, through available technology.

- J. Complaints to management about an employee from members of the public or co-workers, unless determined to be frivolous by management, shall be brought to the attention of the employee, as soon as practicable, after management receives the complaint.
- K. Employees shall have the right to direct and fully pursue their private lives, personal welfare, and personal beliefs without interference, coercion or discrimination at the worksite, and without imposition of discipline or adverse action unless such pursuit impairs the efficiency of the service.
- L. Management may not discipline an employee who refuses to obey an order that is found to be unlawful or illegal.
- M. In accordance with existing statutes and regulations employees have the right to present their personal views to Congress, the Executive Branch or other authorities without fear of penalty or reprisal.
- N. Regardless of jurisdictional laws, absent written consent from all Parties (with the exception of court reporting transcripts in the conduct of official business, or any Agency internal security measures), employees, their representatives, and managers are prohibited from audio or video recording during any interaction between any of these parties. Employees will be put on notice of this provision.
- O. The Agency acknowledges that duty time is appropriate for employees to read Agency transmittals (e.g., Annual Personnel Reminders (APRs), Human Resources Internal Communications (HRICs), PolicyNet transmittal updates).

Section 3. Whistle-Blower Protection

Employees are protected by the Whistleblower Protection Act against reprisal for the lawful disclosure of information, which the employee reasonably believes evidences a violation of any law, rule or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, unless the disclosure is specifically prohibited by law.

The Employer will annually provide employees with an electronic link to the U.S. Office of Special Counsel (OSC) web site that contains forms and information for filing a disclosure. The OSC receives and evaluates whistleblower disclosures.

Section 4. Official Records and Files in General

- A.
1. No personnel record may be collected, maintained, disclosed, or retained except in accordance with law, government-wide regulations, SSA Personnel Policy Manual [S293](#) and this agreement. If the Agency initiates changes to SSA Personnel Policy Manual [S293](#) or other policy that affects official records or files, it will provide appropriate notice to the Union and the opportunity to bargain to the extent required by [5 USC Chapter 71](#). All personnel records are confidential, shall only be viewed or disseminated by officials/employees with an administrative need to know and must be retained in a secure location.
 2. All policies on the maintenance of personnel records, record keeping standards, and special safeguards for automated and/or electronic records will be followed in accordance with applicable law and regulation.
 3. An employee has the right to be timely informed about records that are maintained about him/her/them and are filed, in a system of records that is personally identifiable, that are not legally prohibited from disclosure. Upon request, an employee may also see such records that are not legally prohibited from disclosure and have a copy made of them. The Employer will provide an annual notice by electronic medium to each employee regarding these rights.
- B.
1. Employees and/or their authorized representatives shall be granted a reasonable amount of duty time (employee) or Article 30 time (authorized Union representative) to examine any of their personnel records. The employee shall be granted a reasonable amount of duty time to prepare and enter on the record a response to material placed in such records.
 2. Employees will be advised how to access their electronic official personnel folder and how to obtain a copy of any material contained therein.
 3. Employees will receive email notification of any SF-50 addition to their electronic official personnel folder.
- C. Access to personnel records of the employee by the employee and/or the authorized representative normally shall be granted within two (2) working days of the request if such records are maintained on the premises in which the employee is located and are immediately available. If the records are not so maintained as available, the Employer will initiate prompt action to obtain the records from their location.
- D. To qualify as personal notes or memory joggers, documents may only be kept and maintained by and for the personal use of the management official who wrote them. These notes must be maintained in a secure location. These personal notes or memory joggers will not be used to circumvent timely disclosure to an employee, nor may they be used to retain

information that should properly be contained in a system of records. The personal notes will be kept or destroyed as the manager who wrote them sees fit. If any of these conditions are broken, these personal notes are no longer mere extensions of the supervisor's memory and may become records subject to the Privacy Act.

If a memory jogger is maintained in electronic form, such a record will be retained in a manner that is accessible only by the individual who created the record.

After 12 months, information contained in a memory jogger must be reduced to writing and put into a system of records or it cannot be used in an administrative action taken against an employee.

Section 5. SSA-e7B Extension File

- A. Except as specifically authorized by this agreement the SSA-e7B Extension File, or subsequent successor technology, is the only authorized file for personnel records, which may be maintained by a supervisor(s).
- B. The file will be screened and purged, normally in February, but no later than March each year and outdated material shall be removed and returned to the employee.
- C. Records shall be retained in accordance with applicable records retention periods or as long as an administrative need exists.
- D. Employees shall be advised of the nature and purpose of their SSA-e7B Extension File or subsequent successor technology. Employees shall be notified of any material placed in the SSA-e7B Extension File or subsequent successor technology within three (3) working days. Employees should acknowledge receipt by electronic or digital signature, or email their supervisor that they decline to sign. It is understood such acknowledgment does not constitute agreement with the contents. It is understood an employee may request and, within reason, receive additional copies at any time.

Employees will be allowed to enter into their SSA-e7B file or subsequent successor technology, additional information or documents, within reason, that are appropriate, relevant, work related and that are not in violation of law or government-wide rules or regulations.

Section 6. Representational Rights

- A. If the employee wishes to discuss a problem or potential grievance with a Union representative, the employee shall have the right to contact and meet with the Union representative on duty time. The employee will be released from duties to contact and meet with the Union representative when he/she/they requests to exercise this right, unless there is a need to provide immediate service balanced with the employee's need to meet with a union representative.

If the employee's request to meet with the union representative cannot be immediately approved, management will make a reasonable effort to allow the employee to meet with the union representative when operational needs permit. Delaying an employee's release will extend by one workday any time limits that may apply to the representational matter.

- B. When the manager is aware that a meeting may result in disciplinary action, the manager will inform the employee of the [general subject matter](#) of the meeting and will inform the employee of his/her/their right to have a union representative present if he/she/they choose(s). This does not apply to routine work-related conversations. If an employee reasonably believes that a meeting with management may result in a disciplinary action against him/her/them, he/she/they may request union representation. Once an employee chooses to exercise this right by requesting representation, no further questioning will take place until a union representative is present (including via technology), provided no unreasonable delay occurs. [The union's role](#) is advisory in nature for these meetings. The union representative cannot answer for the employee, nor tell the employee how to respond.
- C. Consistent with [5 U.S.C. 71](#), the Employer will not communicate directly with employees regarding conditions of employment in a manner which will improperly [bypass](#) the Union under law. This does not apply to routine work-related conversations.

D.

- 1. The Agency will provide the Union with reasonable advance written notice of personnel surveys concerning conditions of employment that involve bargaining unit employees when such surveys are initiated at the SSA national level; the national component level; the regional level; or by OHO Headquarters or a DOC or PSC. Upon request, the Agency will provide the Union with written copy of the survey results after completion. If the requested results of the survey will not be made available in a reasonable amount of time, the Agency will provide the Union with an anticipated receipt date.

This section is not intended to preclude any Union involvement in such surveys that may exist in accordance with [5 U.S.C. 71](#). It is further understood that employee surveys will conform to the requirements of [5 U.S.C. 71](#).

- 2. If the Agency elects to use focus groups that utilize bargaining unit employees, the agency will consult with AFGE on the number of bargaining unit participants, which employees participate, the topics to be discussed, etc.

E.

- 1. Consistent with [5 U.S.C. 7114\(a\)\(2\)\(A\)](#), as the exclusive representative of unit employees, the Union shall be given the opportunity to be represented at any [formal discussion](#), including those conducted via electronic communication media (e.g., MS Teams or subsequent successor technology, conference call), between one or more representatives of the Agency and one or more employees or their representatives concerning any grievance, formal EEO complaint settlement discussions to the extent required by law, or any personnel policy or practices or other general condition of

employment. The agency will give the designated Union representative sufficient advance notice, normally 2 business days, to exercise its rights under this section.

2. The attendance of the designated Union representative will be acknowledged by the Agency at the start of such [formal discussions](#). In [accordance with the Statute](#)
 3. , the Union's representative will be given the opportunity to ask questions relative to the matter being discussed on behalf of the employees, and may make a brief statement as to the Union's position on the matter under discussion as long as the representative does not usurp, disrupt, or take charge of the meeting. The parties agree to maintain professional decorum throughout the discussion. Management is under no obligation to delay the start of the meeting if the Union Representative is not present.
- F. In conducting investigations regarding a non-criminal matter that may result in an adverse determination about an employee's rights, benefits, and privileges, the parties are reminded that the Privacy Act requires that, to the extent practicable, information should be initially collected directly from the subject employee.
- G. Last Chance Agreement
1. Last Chance Agreements will only be considered after a disciplinary or adverse action has been proposed.
 2. The Union will be provided notice and the right to be present at meetings where last chance agreements are discussed with the employee.
 3. All Last Chance Agreements must have a specific duration period, not to exceed two years for removals and not to exceed one year for all other disciplinary or adverse actions.
 4. At management's discretion, employees may receive monetary awards while on a Last Chance Agreement or for a period during which an employee was on a Last Chance Agreement. Employees are not eligible to telework during the period on which they are on a Last Chance Agreement. At the conclusion of the Last Chance Agreement, the employee may reapply to telework in accordance with Article 41.
- H. The Union has the right to be present during questioning of potential bargaining unit witnesses for any third party hearing as required by [5 USC 71](#).
- I. The Agency will encourage law enforcement officials, including the Department of Justice, to prosecute any alleged violation of [18 U.S.C. 1114](#) relative to workplace violence by members of the public.
- J. If appropriate, employees may be granted a reasonable amount of duty time to complete required actions related to any reinvestigations/background checks. If management conducts a formal meeting to discuss the reinvestigation process, the union will be afforded their rights

in accordance with [5 USC 71](#) and this article. All affected employees will be provided an electronic copy of the re-investigation form prior to the re-investigation.

Section 7. Voluntary Activities

The parties agree that employee participation in the Combined Federal Campaign, Blood Donor Drives, and other worthy projects will be on a voluntary basis. This does not preclude giving general publicity and encouragement to employees to contribute. The Employer will not require or coerce employees to invest their money, donate to charity or participate in these activities. Participation or nonparticipation will not advantage or disadvantage employees.

Section 8. Outside Activities

- A. Employees who perform outside activities must adhere to the regulations and guidelines set forth in the Annual Personnel Reminders, which include guidance on potential conflicts of interest.
- B. Normally the Agency will approve or disapprove any outside activity requests within 30 workdays of the Agency's receipt of the request. The Employer agrees to include a statement of its reason for disapproving any such request. If the Agency denies the outside activities request, the employee cannot participate in the outside activity.

Section 9. Timely and Proper Compensation

- A. The Employer will make every reasonable effort to ensure that employees are paid by the established Tuesday payday. Employees are responsible for reviewing their electronic earnings and leave statements and timely notifying their supervisors of any unexplained changes or inaccuracies.
- B. Where employees have been overpaid, the employer will provide due process notice of the overpayment in accordance with law and regulation, including notices of hearing rights and waiver requests.
- C. The parties agree to the following conditions and procedures for replacement of full compensation due payment (amount that was due based on payroll transmission) when such payment is not received.
 - 1. The Agency will, at the employee's request, authorize an emergency payment to an employee when his/her/their full compensation due is not received by the established Tuesday payday, subject to items 3 and 4 of this section.
 - 2. Emergency employee payments cannot be an advance of salary, but can only be for the compensation due for a pay period which was not paid to the employee by the established Tuesday payday.
 - 3. Emergency employee payment can be issued in the following situations:

- a. Employee not paid by the scheduled Tuesday payday due to an administrative error or to delay in processing;
 - b. Non-receipt of wire transfer by a Financial Institution.
- 4. An emergency employee payment will not be issued in the following situations:
 - a. Employee is already delinquent repaying a prior debt (e.g., outstanding travel advance, salary overpayment, etc.);
 - b. Employee has resigned or transferred out of SSA.;
 - c. Employee-caused error created non-receipt (e.g., closed their bank account).
- 5. At the time the emergency payment is issued, the Agency will obtain a promissory repayment agreement from the employee who is missing his/her/their full compensation and to whom the emergency payment is made. The repayment agreement will state:
 - a. that the employee has not received the payment;
 - b. that the employee is liable to repay the emergency payment to the Government within 3 days of receipt of a salary payment, i.e., the original payment or any replacement salary payment, whichever is received first;
 - c. that in the event both an original payment and a replacement payment are received, the employee will be responsible for returning to the Payroll Liaison Staff whichever payment is received later;
 - d. that the employee has an affirmative responsibility to notify the Payroll Liaison Staff as soon as possible, i.e., normally within 2 working days, of receipt of the original payment and/or any replacement payment;
 - e. that the employee will be charged interest, administrative fees and late penalty charges as provided under [45 CFR Part 30](#) if it is necessary for the agency to recover the outstanding emergency payment;
- 6. An emergency employee payment will be issued not later than 24 hours following the standard payday (Tuesday) on which the salary payment was not received by the employee.

Section 10. Statutory Requirements

Personnel management in SSA shall continue to be conducted in accordance with the provisions of [5 U.S.C. 2301](#), Merit System Principles, and [5 U.S.C. 2302](#), Prohibited Personnel Practices. These sections will be made available to any employee upon request.

Section 11. New Employee Onboarding

A. Goal of Employee Onboarding

The Onboarding Program will provide employees with information regarding their rights, benefits, roles, and responsibilities as employees of the Agency.

B. Notification and Information

1. As contemplated by Executive Order (EO) 14025, the Agency agrees to inform new employees of their right to union representation and membership, plus contact information for their AFGE Local steward as provided by AFGE. Management will timely inform the appropriate AFGE Local steward of the new employee(s). To assist Management with that goal, the Union agrees to provide updated contact information for the AFGE Local steward to local Management on an ongoing basis. Should EO 14025 be rescinded, this requirement will cease to apply.
2. Management will allow the employee(s) a reasonable amount of duty time to meet with the Union and/or will normally invite the Union to one formal onboarding meeting including the new employee, if held.
3. The Agency will make every effort to schedule employee onboarding during a regularly scheduled work week of Monday through Friday.
4. New employees will be provided a link to the SSA-AFGE National Agreement.
5. The Agency will make information available regarding retirement benefits and Thrift Savings Plan.

Article 4

Negotiations During the Term of the Agreement on Management Initiated Changes

Section 1. General

- A. The Administration will provide the Union reasonable advance notice prior to implementation of changes affecting conditions of employment subject to bargaining under [5 U.S.C. 71](#). The notice will include the nature and scope of the proposed change, the proposed implementation date, the date and time of the briefing if requested, components affected, any applicable Agency guides and manuals related to the change, and the name of the Agency contact person. Upon notice from the Administration, the designated Union representative will notify the designated Management representative of its desire to consult and/or negotiate on the change within the timeframe set for the level of negotiations involved.
- B. If the Union fails to request to bargain within the timeframe set for the level of bargaining involved the Agency may implement the changes.
- C. Bargaining will begin as soon as possible and not later than the timeframe set for the parties involved. Additionally, bargaining will not exceed the number of workdays designated for each component level. All issues not resolved at that time may be referred to the Federal Service Impasses Panel for resolution under its rules.
- D. The parties recognize that the timeframes set in this Agreement to initiate bargaining are based upon normal circumstances and may occasionally need to be shortened to meet compelling operational needs. The Administration agrees not to set artificial deadlines for implementing changes in order to circumvent the normal timeframes.
- E. The parties agree to conduct their negotiations at four (4) levels, which are addressed in detail in this article.
- F. The parties agree to utilize telephone consultation/briefings for all levels, when the parties are not co-located. Consultations/briefings, as referred to in this article, will only be required when there is a duty to bargain, in accordance with [5 U.S.C. 71](#). These briefings should include an explanation of the following:
 - 1. A description of the change.
 - 2. An explanation of how this change will be implemented.
 - 3. An explanation of the purpose of the proposed change.
 - 4. The proposed implementation date.

The parties agree that this should enable them to identify the major issues to be bargained and facilitate the negotiation process.

- G. Management will determine the location of all bargaining. If the parties are not co-located, negotiations will be conducted through the use of appropriate technology as determined by management. If not co-located, the union may request face-to-face negotiations and will be required to pay their own travel expenses.
- H. Effective September 23, 2022: Management may elect to offer face-to-face bargaining at any of the four levels of bargaining. If management elects to offer face-to-face bargaining, it will pay travel and per diem expenses as follows:
 - 1. For three (3) of the five (5) employee Union negotiators for the bargaining period identified in Section 2.E. If for any reason, the negotiations are extended beyond the time frames outlined in that section, (i.e., by mutual agreement or a third party) the Agency will pay the travel costs for two (2) employee union negotiators up through and including Mediation and Impasse proceedings.
 - 2. For two (2) employee Union negotiators for the bargaining period identified in Section 3.E, or for a larger number to provide parity with the number of negotiators used by management. Travel expenses and per diem are not authorized for negotiations conducted at the Wilkes Barre Data Operations Center. If for any reason, the negotiations are extended beyond the time frames outlined in that section, (i.e., by mutual agreement or a third party) the Agency will pay the travel costs for two (2) employee union negotiators up through and including Mediation and Impasse proceedings.
 - 3. For two (2) employee Union negotiators for the bargaining period identified in Section 4.E, or for a larger number to provide parity with the number of negotiators used by management for bargaining at the OHO, ROQP, and FO Regional level if the negotiators are drawn from within the region. Travel expenses and per diem are not authorized for negotiations conducted at OHO (Headquarters) or an individual PSC. If for any reason, the negotiations are extended beyond the time frames outlined in that section, (i.e., by mutual agreement or a third party) the Agency will pay the travel costs for two (2) employee union negotiators up through and including Mediation and Impasse proceedings.
 - 4. For two (2) employee Union negotiators for the bargaining period identified in Section 5.B if the Union negotiators are drawn from within the region and component involved, or for a larger number to provide parity with the number of management negotiators in travel status.
 - 5. All payment of travel expenses and per diem will be governed by applicable law, rule, and regulation.

Section 2. National SSA Level (Level 1)

- A. The parties agree that notice of proposed Agency wide or 2 or more national components (national components are defined in Section 3, A) changes, will be dealt with by the parties at the National level. For notification at the National level, the designated Management

representative will provide timely electronic notice of management initiated change(s) to each member of the AFGE General Committee. The notice will be considered received on the first workday after the day of transmission of the e-mail.

- B. The Union will request consultations and/or bargaining within seven (7) workdays after the date of receipt of the notice of change by submitting its request to a Management designated electronic mailbox.
- C. When bargaining is requested, time will be authorized in accordance with Article 30 for five (5) Union representatives, or a larger number if needed to achieve parity with the number of individuals designated as representing the Agency for such purposes.
- D. Bargaining will begin no later than the first Tuesday following the thirty (30) calendar day period after the date of receipt of the notice of change.
- E. Bargaining will not exceed three (3) workdays. The three (3) workday period includes, any briefing (if not already conducted), preparation, actual bargaining, and mediation. Normally bargaining will not occur during weeks that contain Federal Holidays.

If FMCS assistance is secured and the parties do not reach agreement and are not released to the panel, a subsequent session will normally be held within ten (10) workdays, unless mutually agreed otherwise.

- F. Union negotiators for bargaining may be drawn from any component.

Section 3. National Component Level (Level 2)

- A. The parties agree that notice of proposed changes which affect only one national component nationwide (Field, Program Service Centers, Headquarters, Office of Hearings Operations, Office of Analytics, Review, and Oversight, Wilkes Barre Data Operations Center) or multiple regions within a national component will be matters dealt with by the parties at the component level. The designated Management representative will provide the designated Union representative timely electronic notice of Management initiated change(s) to a Union-designated electronic mailbox. The notice will be considered received on the first workday after the day of transmission of the e-mail.
- B. When bargaining is requested, time will be authorized in accordance with Article 30 for two (2) union representatives or a larger number if needed to achieve parity.
- C. The Union will request consultations and/or negotiations within seven (7) workdays after the date of receipt of the notice of the change by submitting its request to a Management-designated electronic mailbox.

- D. Bargaining will begin no later than the first Tuesday following the twenty-eight (28) calendar day period after the date of receipt of the notice of change.
- E. Bargaining at this level will not exceed three (3) workdays. The three (3) workday period includes preparation, actual bargaining, and mediation. Normally bargaining will not occur during weeks that contain Federal Holidays.

Section 4. Regional/Program Service Centers/Office of Hearings Operations (Headquarters/Region) Changes (Level 3)

- A. The parties agree that notice of proposed changes which affect only one Field Operations Region, Regional Office of Quality Review, Office of Hearings Operations Region, Program Service Center, Office of Hearings Operations Headquarters, or multiple components in one region will be dealt with at that level. The designated Management representative will provide the designated Union representative with timely electronic notice of the Management initiated change(s) to a union-designated electronic mailbox. The notice will be considered received on the first workday after the day of transmission of the e-mail.
- B. The Union will request consultations and/or negotiations within seven (7) workdays after the date of receipt of the notice of the change by submitting its request to a management designated electronic mailbox.
- C. When bargaining is requested, time will be authorized in accordance with Article 30 for two (2) union representatives or a larger number if needed to achieve parity. If bargaining involves multiple components within a region, Article 30 time will be authorized for one union representative from each of the components affected by the change.
- D. Bargaining will begin no later than the first Tuesday following the twenty-eight (28) calendar day period after the date of receipt of the notice of change.
- E. Bargaining at this level will not exceed three (3) working days. These timeframes include preparation, actual bargaining, and mediation. Normally bargaining will not occur during weeks that contain Federal Holidays.

Section 5. Installation Level: Field Offices, Teleservice Centers, Office of Hearings Operations Offices/Satellite, and OQR Satellite Offices (Level 4)

- A. The designated Management representative will provide the Union designated representative with timely notice of the Management initiated change(s), normally to a Union-designated electronic mailbox. If e-mailed, the notice will be considered received on the first workday after the day of transmission of the e-mail.

- B. In these installations, the Union will request consultations and/or bargaining within three (3) workdays after notice of change by submitting its request to a Management designated electronic mailbox. If consultation is requested, the consultation phase will begin within 3 workdays. As part of consultation, the Union may request a briefing. Either party may declare an end to consultation. If consultation is not requested, bargaining will begin no later than the first Tuesday following the ten (10) calendar days after the union's receipt of the notice. If consultation is requested, the bargaining will begin no later than the second Tuesday following the week that consultation ends. Bargaining at this level will not exceed two (2) work days. This bargaining period includes preparation, actual bargaining and mediation. Normally bargaining will not occur during weeks that contain Federal Holidays.
- C. The Union will be entitled to up to two (2) negotiators (but not less than the number of management negotiators) designated by the appropriate Union official. Time will be handled in accordance with Article 30 of the National Agreement.

Section 6

All timeframes under this article may be modified by mutual consent.

Article 4 Appendix A

Ground Rules--Management Initiated Changes

I. Purpose

The following ground rules apply to all midterm bargaining entered into as a result of Management-initiated changes and any corresponding obligation to bargain over such changes under [5 U.S.C. 71](#) of the Statute. These ground rules supplement the procedure set forth in this Agreement, and apply to all levels of bargaining as delegated in Article 4. Absent mutual consent, no other ground rules will be negotiated at any level.

II. Arrangements

- A. If the negotiators are co-located, negotiations will be held in a suitable meeting room provided by the Employer at a site determined by management. If the negotiators are not co-located, negotiations will be conducted by use of appropriate technology as determined by management. If not co-located, the union may request face-to-face negotiations and will be required to pay their own travel expenses.
- B. For National SSA and national component face-to-face bargaining held at Headquarters, Baltimore, Maryland, the Employer will furnish the Union negotiating team with the use of a caucus room which is in close proximity to the negotiation room and which will provide privacy. At other levels, adequate space (a private office, where available) which will ensure privacy will be provided.

The Employer will also provide the Union negotiating team with customary and routine services, i.e., reasonable office supplies (e.g. stapler, paper clips, notepads), tables and chairs, and access to photocopy equipment.

- C. Unless otherwise agreed to, bargaining will begin at 9:00 a.m. and will end no later than 4:30 p.m.
- D. Absent mutual consent, flextime for negotiators will be suspended for the duration of the negotiations to maximize meeting time available for bargaining.
- E. Alternates may substitute for committee members. Such alternates will be entrusted with the right to speak for and to bind the members for whom they substitute.

III. Routine

- A. Bargaining will be done using traditional methods.
- B. During negotiations, the chief negotiator for each party will signify agreement on each section by initialing the agreed-upon section. The chief negotiator for each party will

retain his/her copies and initial the other party's copy. This will not preclude the parties from reconsidering or revising any agreed-upon section by mutual consent.

- C. It is agreed that either party may request a caucus. There is no limit on the number of caucuses which may be held, but each party will make every effort to restrict the number and length of caucuses.
- D. The Agreement shall not be completed and finalized until all proposals have been disposed of by mutual consent. Negotiation disputes, including questions of negotiability and impasse items, will be processed in a manner consistent with [5 U.S.C. 71](#) and implementing regulations. This will not serve as a bar to the parties concluding by mutual consent a general agreement on those items which have been or remain to be negotiated.

IV. Maintenance of Records

- A. Once an MOU is approved under Agency Head Review, a copy of the MOU will be posted on the OLMER website.
- B. It is agreed that no official transcript will be made of the negotiation proceedings. However, each party may make and keep its own notes and records.
- C. The negotiation proceedings will not be recorded by means of any tape/electric/electronic recording device.

V. Authority

Each party shall be represented at the negotiations at all times by one duly authorized chief negotiator/chief spokesperson who is prepared and authorized to discuss and negotiate on matters subject to negotiations and to sign off on agreements for their respective party.

VI. Reopening

- A. Questions of Negotiability
 - 1. If any proposal is claimed to be non-negotiable by either party and subsequently determined to be negotiable, or the declaring party withdraws its allegations of non-negotiability, the proposal will, upon request, be reopened within a reasonable period of time. Such request must be made within 60 calendar days. Nothing in this section will preclude the right of judicial appeal.
 - 2. This procedure does not preclude the parties from revising any proposals to overcome questions of negotiability during the period of negotiations.
- B. Any provisions disapproved by the Agency head review may be referred to the FLRA by the Union. Any provision held negotiable will be incorporated into the Agreement. The

parties will commence negotiations within a reasonable period after receipt of an FLRA decision sustaining the Agency's determination of non-negotiability.

VII. All timeframes in these ground rules may be modified by mutual consent.

Article 5

Union Initiated Mid-Term Bargaining

Section 1. General

- A. Union initiated mid-term bargaining will address negotiable subjects of bargaining as defined by [5 U.S.C. 71](#) and applicable case law. The parties agree that Management may elect or not elect to bargain over subjects relating to [5 U.S.C. 7106\(b\)\(1\)](#) regarding Union initiated mid-term bargaining matters.
- B. The parties agree that the Union may only initiate mid-term bargaining on matters not contained in or covered by the National Agreement and not waived. The terms “contained in and covered by” and “waived” have the meanings as defined by FLRA case law.
- C. The Union will provide Management with reasonable advance notice of its desire to engage in Union initiated bargaining with an explanation of the matter in question. Also, the notice will include an initial proposal and suggested dates for bargaining. A particular demand will only cover one proposed change and will identify the affected employees.
- D. Union initiated mid-term negotiations will be conducted only at the General Committee Level.
- E. Union initiated mid-term bargaining can be invoked one time per year at the General Committee Level. There will be no carryover from year to year. For purposes of this Article, a year is defined as the effective date of the National Agreement to the year anniversary of the Agreement.

Section 2. Process

- A. The Spokesperson of the General Committee, or designee will provide the Associate Commissioner, Office of Labor-Management and Employee Relations or designee with timely electronic notice of the request. The request will be directed to a Management designated electronic mailbox. The request will be considered received on the first workday after the day of transmission of the E-mail.
- B. Management will respond to the request electronically to a Union designated electronic mail box within ten workdays after receipt from the Union. If bargaining is required, the designated representatives will make appropriate arrangements.
- C. Bargaining will be scheduled as soon as possible after the date of an appropriate request, but no later than 30 calendar days.
- D. Bargaining, including preparation and mediation, will not exceed 2 working days.

- E. Both sides will be entitled to two (2) negotiators. Negotiators for bargaining may be drawn from any component. Each party will bear its own costs for all bargaining activities, inclusive of assistance before the Federal Mediation and Conciliation Service (FMCS) and the Federal Service Impasses Panel (FSIP).

Time used by the designated union negotiators will be in accordance with Article 30.

Section 3. Ground Rules – Union Initiated Bargaining

A. Purpose

The following ground rules apply to all Union initiated mid-term bargaining. Absent mutual consent to modify these ground rules, no other ground rules will apply.

B. Briefing Sessions

The Agency may request a briefing session to explore or explain the issue related to the Union initiated request, and its effect on bargaining unit employees. This session may be scheduled in advance of the start of actual negotiations. Where the negotiators are geographically separated, the parties will normally conduct the briefing by technology. Time spent for the briefing will not be considered part of the negotiations time.

C. Arrangements

1. Negotiations will be held in a suitable meeting room at a site determined by management or by using appropriate technology as determined by management.
2. The date negotiations will begin and the daily schedule will be established through consultation. If no agreement is reached on a beginning date, bargaining will start in sufficient time to complete negotiations within the overall timeframe set above.
3. Absent mutual consent, 5/4-9 and 4/40 alternate work schedules for negotiators will be suspended for the duration of the pay period encompassing the negotiations to maximize meeting time available for bargaining.
4. Alternates may substitute for bargaining team members. Such alternates will be entrusted with the right to speak for and to bind the members for whom they substitute.

D. Routine

1. Bargaining will be done using traditional methods.
2. During negotiations, the chief negotiator for each party will signify agreement on each section by initialing the agreed upon section. The chief negotiator for each party will

retain his/her copies and initial the other party's copy. This will not preclude the parties from reconsidering or revising any agreed upon section by mutual consent.

3. It is agreed that either party may request a caucus. There is no limit on the number of caucuses which may be held, but each party will make every effort to restrict the number and length of caucuses.
4. The Agreement shall not be completed and finalized until all proposals have been disposed of by mutual consent. Negotiation disputes, including questions of negotiability and impasse items, will be processed in a manner consistent with [5 U.S.C. 71](#) and implementing regulations. This will not serve as a bar to the parties concluding by mutual consent a general agreement on those items which have been or remain to be negotiated.

E. Maintenance of Records

1. It is agreed that no official transcript will be made of the bargaining proceedings. However, each party may make and keep its own notes and records.
2. The bargaining proceedings will not be recorded by means of any tape/electric/electronic recording device.

F. Authority

Each party shall be represented at the negotiations at all times by one duly authorized chief negotiator/chief spokesperson who is prepared and authorized to discuss and negotiate on matters subject to negotiations and to sign off on agreements for their respective party.

G. Reopening

1. Questions of Negotiability
 - a. If any proposal is claimed to be non-negotiable by either party and subsequently determined to be negotiable, or the declaring party withdraws its allegations of non-negotiability, the proposal will, upon request, be reopened within a reasonable period of time. Such requests for bargaining must be made within 60 calendar days. Nothing in this section will preclude the right of judicial appeal.
 - b. This procedure does not preclude the parties from revising any proposals to overcome questions of negotiability during the period of negotiations.
2. Any provisions disapproved by the Agency head review may be referred to the FLRA by the Union. Any provision held negotiable will be incorporated into the Agreement. The parties will commence negotiations within a reasonable period after receipt of an FLRA decision sustaining the Agency's determination of non-negotiability.
3. All timeframes in these ground rules may be modified by mutual consent.

Article 6

Dues Withholding

Section 1. Payroll Deductions

Any bargaining unit employee(s) may have regular and periodic dues, fees and assessments withheld through payroll deductions if the employee voluntarily completes SF-1187, Request and Authorization for Voluntary Allotment of Compensation for Payment of Employee Organization Dues, or its equivalent and has sufficient compensation to cover the amount of the allotment.

Any non-bargaining unit employee may pay union dues via a discretionary allotment.

The union dues will be paid electronically.

Section 2. Union Responsibilities

- A. The Union will inform members of the voluntary nature of dues withholding and of the conditions governing a member's cancellation of dues withholding.
- B. The Union will forward any SF-1187, or its equivalent, timely and any SF-1188 or equivalent memorandum, within 5 calendar days to the appropriate servicing personnel office when such forms or equivalent memoranda are submitted to the Union.
- C. The Union will inform the employee's servicing personnel office of the name of any participating employee on dues check off who has been expelled or ceases to be a member in good standing of the Union as soon as possible.
- D. The Union agrees to inform the servicing personnel office of changes in the following:
 - 1. The title and address of the individual local Union official responsible for certifying on each employee's authorization form the amount of dues to be withheld.
 - 2. The title and address and/or payee of the individual local Union's electronic account.
 - 3. Changes in dues amounts in either single or multi-level dues structures. Changes in the amount of allotments over which the Union has control may not be made more than once during a calendar year. Changes in the amount of allotments over which the Union does not have control may be made when

required by an outside party.

4. The name of any employee on dues withholding who transfers from one local to another within the bargaining unit, any change in the local to receive dues deducted and any changes in the amount to be deducted based on the transfer to a new local.
- E. The Union will purchase and distribute SF-1187s or their equivalent which includes the following language:
- Dues withholding may be revoked by submitting a SF-1188 or its equivalent within 30 calendar day period prior to the anniversary date of signing indicated on the SF-1187 or its equivalent. If a request for revocation is not submitted within the timeframe cited above, the authorization will recycle for additional 1-year periods on each anniversary of the date a SF-1187 or its equivalent was signed.

Section 3. Management Responsibilities

It is the responsibility of management to:

- A. Ensure that employees who are transferred, reassigned or otherwise relocated to a different local within the bargaining unit remain on dues withholding. Within five working days, Management at an employee's new work location will inform the appropriate Union Local President that a bargaining unit employee has changed duty stations and the location of the employee's prior duty station.
- B. Process voluntary allotments of dues in accordance with this article. Dues changes and SF-1187s or equivalent forms will be processed on a timely basis. Input exceptions will be corrected and re-input at the earliest practicable time.
- C. Withhold employee dues on a biweekly basis.
- D. Transmit electronic remittance to the local allottee Union designated account(s) identified by the Union in accordance with this article, together with the following information that may be provided either on paper or electronically:
 1. The name of each unit employee for whom a deduction is made during that pay period and the amount withheld.
 2. Identification of employee(s) for whom allotments have been temporarily or permanently stopped and the reason(s) therefore.
- E. Upon request from an employee, furnish and process SF-1188s or equivalent in accordance with the terms and conditions specified on SF-1187s or equivalent and this agreement. Management will return SF-1188s or equivalent not timely filed.

- F. Management will forward to the designated Union representative(s) copies of processed SF-1188s or equivalent forms received directly from members.
- G. Management will furnish the designated Union official(s) with a copy of all forms HHS-610 or equivalent.
- H. SSA will provide each applicable Union Local with a list of office SAC codes so that the Union can identify the work location(s) of its members.
- I. If the Agency proposes to automate the dues withholding process, the union will be given notice and an opportunity to bargain to the extent required by [5 USC 71](#).

Section 4. Effective Dates

Effective dates for dues withholding actions will be as follows:

Action	Effective Dates
A. Starting dues withholding	Beginning of the first pay period after computer acceptance of HHS-610(s) or equivalent based on properly executed form SF-1187(s) or equivalent.
B. Revocation by employee	Revocations by bargaining unit employees will be effective on the first full pay period following the employee's anniversary date after computer acceptance of HHS-610(s) based on properly executed forms SF-1188 or equivalent. To be effective, forms SF-1188 must be submitted no earlier than 30 days prior to an employee's anniversary date. The date management receives the SF-1188 is the controlling date for revocation requests. If management does not have the employee's original form SF-1187 to establish the anniversary date, the union will provide a copy from their files within 14 calendar days. If the Union does not have a copy, the employee's anniversary date shall be the first pay period that dues were actually withheld as determined by the Agency's records. Any form SF-1188 or equivalent received outside the 30-day timeframe will be returned. Forms SF-1187 must clearly indicate to the employee that the authorization will recycle on each anniversary date unless timely revocation is received. Beginning of the first pay period after computer acceptance of notification.

C. Termination due to loss of membership in good standing	Beginning of the first pay period after computer acceptance of notification.
D. Termination due to movement to a position outside the unit of recognition	Employees in this situation will be notified in writing that dues withholding will stop two pay periods after the effective date of the action and that employees paying union dues should contact AFGE regarding continuing dues payment through the discretionary allotment process.
E. Suspension due to temporary movement (as documented on an SF-50) to a position outside the unit of recognition	1. Employees in this situation will be notified in writing that dues withholding will stop two pay periods after the effective date of the action and that dues withholding will automatically resume the first pay period that the employee returns to a bargaining unit position. 2. However, an employee may request in writing (on a form provided by the Agency) that dues withholding continue during the temporary movement outside the unit of recognition. The employee may later choose to suspend dues withholding at any time during the temporary movement to a position outside the unit of recognition. 3. If an employee's dues withholding anniversary date occurs during the period of temporary movement outside the unit of recognition the employee can elect to terminate dues withholding in accordance with Section 4.B of this Article.
F. Changes in dues amounts	First full pay period after computer acceptance of the change unless a later date is specified by the Union.
G. Transmittal of electronic remittance to Union.	Normally, ten (10) working days from payday

Section 5. Disputed Eligibility

When the Employer determines a position subject to dues withholding is no longer eligible for such deduction, the Union will be notified in writing. If the Federal Labor Relations Authority determines that an employee who had authorized dues withholding should not have been removed from the bargaining unit, the Agency will reimburse the Union for all dues that should have been withheld during the period the employee's position was in dispute.

Article 7

Duration of Agreement

Section 1. Effective Date

This Agreement will be implemented and become effective per the parties' March 19, 2018 Ground Rules MOU.

Section 2. Duration of the Agreement

This Agreement will remain in full force and effect for 6 years from its effective date and automatically renew itself from year to year thereafter. However, either party may give written or electronic notice of its intent to add, amend, reopen, modify or terminate existing Articles of the Agreement not more than 120 or less than 90 calendar days prior to the expiration date. Such notice must be accompanied by a list of the Articles that either party intends to add, amend, reopen, modify or terminate. Ground rule negotiations will then begin no later than 30 calendar days after receipt of the notice provided by either party. Ground rule negotiations will be conducted in accordance with Article 4, Section 2.

Section 3. Reopener

Negotiations during the term of this Agreement to add to, amend or modify this Agreement may be conducted only by mutual consent of the parties.

Article 07 - Sidebar

The parties agree to extend the 2019 National Agreement until October 25, 2029.

Article 8

Official Travel

Section 1. Compensation and Travel

- A. Bargaining unit employees may be required to perform essential travel away from their official duty station on behalf of the Agency. Travel should be arranged and scheduled so as to minimize the effect of such travel on employees. Travel reimbursement will be paid in accordance with applicable Federal Travel Regulations and this agreement.
- B. When the employee is required to travel during non-duty hours, the employee will be paid overtime when such travel constitutes hours of work under [5 U.S.C.](#) or the Fair Labor Standards Act, if applicable.

If an employee is required to travel on non-duty time, SSA will make every reasonable effort to give a written explanation prior to traveling. If notice is not provided before traveling, it will be provided subsequently upon request of the employee.

- C. To the maximum extent practicable, time spent in travel status away from an employee's official duty station will be scheduled by the Agency within normal working hours of the traveling employee(s). To this end, the Agency agrees to the maximum extent practicable:
 - 1. whenever possible, schedule events to allow employees to travel during their normal duty hours.
 - 2. allow an employee to travel on the day preceding and/or after an event when travel on the day of an event would be outside the traveling employee's regular duty hours.
- D. Employees retain the right to travel on their own time if they so choose, but are responsible for any additional cost incurred to do so.
- E. If an employee is unable to return home during normal duty hours, the employee may request to do so during non-duty hours, and if approved by an authorized management official, will receive appropriate compensation in accordance with the law and this agreement.
- F. For other than local travel, employees will normally be provided with travel authorizations prior to being required to travel away from their official duty station.
- G. If the travel is expected to require employees to be absent from their duty station for two weeks, or more, employees will be given at least five (5) work days notification of their date of departure, when practical.

Section 2. Compensatory Time Off for Travel

- A. Employees will receive travel compensatory time in accordance with law and regulation.
- B. Employees are required to document their time spent in travel.

- C. Requests for compensatory time off for travel will normally be submitted within 5 work days of completion of travel.
- D. Disapproved requests will be returned to the employee with a verbal explanation or written if requested.
- E. Employees requesting travel compensatory time off will use the SSA-71 or equivalent by marking “Other” and indicating “Travel Comp. Time”.
- F. Information on Compensatory Time for Travel will be contained on the Agency website.

Section 3. Change from Per Diem Allowance to Actual Expenses

- A. Advance Authorization. An employee scheduled to travel in an area, for which a per diem allowance is prescribed, may request advance authorization for travel on the basis of actual expenses. Any such request will normally be approved when the supporting justification showing warranted circumstances for the request meet Agency-wide guidelines.
- B. Post Approval. Reimbursement for actual expenses allowable under law and/or government wide rules and regulations will normally be authorized on a post approval basis if the employee can justify that prudent expenses required by the ordered travel exceeds (as defined by Agency-wide guidelines) the prescribed per diem rate. This provision applies only to travel involving assignments of 30 calendar days or less.
- C. While employees are assigned to training or duty away from their regular duty station, they may elect to return home during non-workdays or non-work hours. In such cases, they will be reimbursed for travel expenses not to exceed the amount reimbursable had employees remained at the temporary duty station. However, if there is a personal or family emergency, such as the death or serious illness of a member of the traveling employee’s family or individual related by affinity; or, a catastrophic occurrence or impending natural disaster, such as fire or flood which directly affects the traveling employee’s home, requiring the employee to return to their principal residence, the Agency will pay the reasonable costs (including transportation and per diem) of the traveling employee returning to their principal residence.
- D. A copy of official SSA travel regulations will be made available for employees to review upon request. The Agency will inform employees of the appropriate website for travel regulations and tax implications for long term details.
- E. When an employee in travel status is injured or becomes ill and is expected to remain so for at least three (3) days, the Agency will reimburse the employee for expenses incurred in returning to the employee's normal duty station. In accordance with the provisions of Article 31, a Medical Certificate may be required. Allowances for expenses will be paid in accordance with applicable Federal Travel Regulations.

Section 4. Continuation of Approved Travel Expenses

Employees who are unable to arrive at, or return from their destination during regular duty hours will be reimbursed for authorized travel expenses provided said inability to arrive or return is due to arduous travel conditions beyond the employee's control resulting from natural calamity, unavailability of transportation, or severe weather.

Section 5. Advancement of Expenses

Employees required to travel will normally obtain and use the Government travel card for official travel expenses and the ATM program for authorized cash withdrawals. SSA will make every effort to ensure that employees, who are expected to travel, will receive their travel card and travel authorization in sufficient time to arrange for travel and lodgings.

Travel cash advances, if requested, will be authorized for first time travelers who have applied for the Government travel card but do not have time to receive the travel card prior to traveling, and for those employees on a long-term assignment who have to pay a security deposit and/or the lodging facility in which they stay does not accept the Government travel card. Travel advances will be calculated in accordance with applicable travel regulations and agency policy. Employees may request hardship, religious, and/or credit exceptions to the use of the card.

Normally the Administration will not require an employee to travel overnight prior to receiving a travel advance or card. The Administration shall process all claims for travel expenses as expeditiously as possible.

The government travel card is to only be used for authorized official travel expenses in conjunction with official Government travel and is not to be used for personal purposes. Information regarding the Employee Information Packet, travel rules, regulations, and agency policy will be made available on the agency website. The agency will provide advance notice to the employee of deactivation of the travel card.

Should the agency propose changes to the government travel card program and there is a duty to bargain under [5 USC 71](#), notice and opportunity to bargain will be provided to the Union consistent with the procedures in Article 4.

Section 6. Reimbursements

- A. Management will provide appropriate assistance and training to employees to process travel orders, travel advances, travel authorizations, travel vouchers, and, if requested, travel arrangements (e.g., E2 Solution or any subsequent travel program/software). SSA will provide employees a reasonable amount of duty time to complete and submit these travel related documents.

Copies of training guides, user manuals for the web-based travel system and the name of the appropriate contact for travel assistance will be available on an agency website. The agency

will consider the request of qualified employees to volunteer to train on E2 Solutions or any subsequent travel program/software. Should the agency propose changes to the web based travel program and there is a duty to bargain under [5 USC 71](#), notice and opportunity to bargain will be provided to the Union consistent with the procedures in Article 4.

- B. Management is responsible for insuring that employees are reimbursed timely, normally within five (5) workdays after properly filing a travel voucher. In an effort to pay employees timely, the Agency will work closely with employees when errors or problems are encountered. It is the employee's responsibility for notifying the travel card contractor when a payment issue occurs. If payment to the employee is not made within 30 days from the submission of the travel voucher to the appropriate agency official or agency employee, interest/penalties shall accrue pursuant to the Prompt Payment Act.

If payment is not made within 5 workdays from the approval of a properly filed travel voucher, the agency will explain the reason for the delay to the employee.

- C. Electronic notification of travel payments will be issued to employees.
- D. In the event that a claim for travel expenses is denied, the Agency will notify the employee timely, normally within five workdays of the denial, and identify the basis for denial. Upon request, management will provide a written explanation. In such cases, the Agency will pay non-disputed expenses.

Section 7. Use of Privately Owned Vehicles/Government Furnished Vehicles/Common Carrier

Bargaining unit employees will not be required to use privately owned vehicles, nor will they suffer any loss of pay, reprisal, or adverse action on account of refusal to use a POV for Government business, unless such use is made a condition of employment. If the Administration decides to make use of privately owned vehicles a condition of employment and there is a duty to bargain under [5 USC 71](#), notice and such opportunity to bargain will be provided to the Union by SSA consistent with the procedures in Article 4.

- A. Reasonable periods of time spent by a traveling employee during regular duty hours to make emergency repairs to or refueling of vehicles used to conduct government business will be considered duty time.
- B. In situations where a traveling employee is required to pick up or return a government-furnished vehicle from a motor pool, without first checking in and/or out of the permanent duty station, the Administration will schedule the travel assignments so that the traveler may leave home at the same hour he/she would leave to report to the office, and, upon return, so that he/she may arrive home at the same time he/she would ordinarily arrive had he/she worked at the office.
- C. When an employee uses a privately owned vehicle instead of an available government-furnished vehicle (GFV), mileage will be paid at the maximum reduced rate consistent with GSA regulations.

- D. In all other cases, mileage for use of privately owned vehicles (POVs) will be compensated at the maximum rate permitted by GSA.
- E. Requests for the use of POV/Rental Cars will be approved/disapproved using current SSA policies in a fair and equitable manner.
- F. Common carrier will be used whenever it is reasonably available, unless:
 - 1. the use of common carrier would seriously interfere with the performance of official business;
 - 2. or such use imposes an undue hardship on the employee; or
 - 3. the Federal Travel regulations provide for some other mode; or
 - 4. the employee requests and receives approval to use a POV or rental car; or
 - 5. there is a leased GSA automobile made available to the employee.

Section 8. Document and Property Loss/Theft

An employee is accountable for government documents or property in their possession and/or custody. Employees exercising reasonable care will not be held responsible for documents or property damaged, lost, or stolen from their possession and/or custody.

Section 9. Protective Assistance and Communications While in Travel Status

- A. The Administration recognizes that some travel job assignments present a threat to the personal safety of employees. When such circumstances are brought to the attention of the supervisor by employees or the Union, appropriate measures will be taken to assure the safety of the employee. The parties agree to jointly review existing protective procedures from time to time to assure that employees receive the maximum feasible protection from such dangers.
- B. If an employee is in travel status for at least one week at a single SSA facility, management will provide the employee with email access at that facility when possible. Management will consider requests for email access from employees in travel status for durations of less than one week.
- C. If an employee requests to use an agency cell phone for official travel, management will issue a cell phone if one is available in the employee's office at the time of the request. If more than one person is assigned to travel for the same period of time, management will consider health and safety concerns in determining who is issued a phone if one is made available.

Section 10. Long-Term Assignments and Training Arrangements

An employee on a long-term assignment will be authorized occasional return trip(s) to his/her permanent duty station approximately at the mid-way point of the detail between 90 and 180 days and for details of 180 days or more approximately every 90 days at government expense on non-workdays or during periods of leave. Reimbursement for long term assignments and training arrangements will be in accordance with Federal Travel Regulations.

The Agency will inform employees on long-term assignments, including training, of the types of lodging available. This information, if requested and if applicable, may include such things as whether the facility is handicapped accessible and if there is available public transportation. Employees have the right to select their own lodging from among such facilities, or others the employees choose which meet federal requirements. The Agency will inform employees on long-term assignments of authorized reimbursement rates for lodging during that assignment, including, upon request, of the circumstances in which they can be reimbursed fully for lodging or meals that exceed the established government maximum rates, e.g., actual expenses in lieu of standard reimbursement rates.

Section 11. Travel Attendants

In accordance with law, employees in travel status with a qualified disabling condition who require the assistance of an attendant will be provided such assistance by the Agency. Travel and per diem will be paid for the attendant.

Section 12. Relocation Services and Reimbursements for Permanent and Temporary Relocations

Relocation services and reimbursements, when authorized by the agency, will be consistent with Federal Travel Regulations, GSA regulations, and agency policy.

The agency will provide employees who are authorized relocation assistance with the name of an agency contact person and information on the relocation process, which includes information on transportation of household goods, en route travel, house hunting trips, and services provided by relocation contractor, etc.

In addition, this information will be provided on the agency website.

Section 13.

In cases where the assignment of an employee to a temporary duty station is in the interest of the Government, travel authorizing officials may elect to pay limited relocation benefits instead of long term detail per diem as set forth in the Federal Employee Travel Reform Act (FETRA).

Section 14.

When an employee is assigned to a TDY station within the commute area of his/her permanent duty station, reimbursement will be in accordance with agency policy as of the effective date of this Agreement and the federal travel regulations. If the agency's policy changes and there is a duty to bargain under [5 USC 71](#), such notice and opportunity to bargain will be provided to the Union by SSA consistent with Article 4.

Article 9

Health, Safety and Wellness

Section 1. General

- A. The Administration shall provide a safe and healthy work environment in accordance with Executive Order 12196 and the Department of Labor implementing regulations.
- B. The Administration and the Union agree to cooperate in a continuing effort to avoid and reduce the possibility of and/or eliminate accidents, injuries and health hazards in all areas under the Employer's control. The parties recognize that accurate reporting of incidents is essential to the health and safety of employees in SSA.

Deviations from either the OSHA Standards or the Special SSA Standards will be granted only in accordance with [AIMS GAM 13.04.06](#). At the time a deviation is requested, the Union will be notified at the appropriate level and will receive a copy of the request for deviation. The Union, at the appropriate level, will be kept informed of the status of the request.

The Administration will semi-annually (normally June and December) provide all incident and accident figures (including Agency-level workers' compensation data) required by SSA and OSHA to the General Committee. These figures will be provided by component level and will identify components and facilities. The Administration will make available to the AFGE General Committee upon request, raw data (incident reports, workers' compensation claims, etc.).

- C. Consistent with applicable law and regulations, National Fire Codes and the National Building Code will be used throughout SSA and shall be considered minimum requirements. Special SSA Standards will be recognized as recommended standards for SSA facilities.

If it is necessary to alter [AIMS Chapter 13](#), and there is a duty to bargain under [5 U.S.C. 71](#), notice and such opportunity to bargain will be provided.

- D. Management agrees to inform the appropriate designated union representative of all construction activities occurring during normal work hours. When the activity occurs in space immediately occupied by employees, management will take appropriate safety measures.
- E. When management determines that exposure to unsafe or unhealthy working conditions, which cannot be immediately corrected, may result in the likelihood of illness or injury, employees will be directed to a safe and healthy area in the same office, or deployed to another installation or deployed to an Alternate Duty Station (ADS) for those employees with a signed telework agreement, or granted an excused absence. The Agency will provide notice and, upon request, bargain with the Union to the extent required by [5 USC 71](#).

F. All time authorized for activities under this Article will be in accordance with Article 30 of the National Agreement.

Section 2. Committee

The parties agree to a National Health and Safety Committee. This committee will be composed of Union representatives and management officials. The Union may appoint up to six members.

The National Health and Safety Committee will meet two (2) times a year for three consecutive days from 1:00-4:00 PM EST; extensions will be by mutual agreement. Meetings will be held using appropriate technology. If the union wishes to have face-to-face meetings at Central Office, the union will be required to pay their own travel expenses. Either party may submit agenda items for discussion at these meetings.

In accordance with applicable laws and regulations, the Agency will provide available information which is necessary to the duties of the committee upon request.

Section 3. Installation Health and Safety Structure

A. In each installation, the Administration shall designate a health and safety official and the Union shall designate a health and safety representative. Access to Agency facilities is governed by Agency policy and applicable laws and regulations. Health and safety reps may carry out the following functions:

1. Accompany management on semi annual health and safety inspections. The health and safety representative may provide comments orally or in writing to the management official who is preparing the [5510](#). The completed [5510](#) will include these comments as well as the contact information for the representative and will note any disagreement between the parties related to the inspection. The designated representative will receive a copy of the completed Form SSA-[5510](#)-BK (Report of Safety Hazard).

The parties agree that each worksite facility will be inspected at least twice each calendar year using form SSA-[5510](#). In large facilities, such as headquarters, PSCs, and the DOC, the second inspection will be a follow up inspection conducted within 90 days after completion of the original inspection.

2. Accompany management, as appropriate, on health and safety inspections conducted by other governmental authorities.
3. Receive employee reports of unsafe or unhealthy conditions and share any reports with management. Employees may submit such reports to either the Union or management representative, who will discuss the submission. The official in charge of the installation will decide what, if any, action to take.
Should the union representative be dissatisfied with the installation manager's disposition of the matter, he/she may raise the matter with a union representative of

- the applicable council for further review. Such council designee may further raise the matter at appropriate management levels.
4. Inform management of any alleged unsafe or unhealthy condition, for appropriate action if necessary.
 5. Referral of matters to OSHA and/or NIOSH as appropriate. The union designated health and safety representative will also apprise management prior to a union referral.
 6. Receive copies of any written notice referred by an agency official in response to an employee report of an unsafe or unhealthful condition.
 7. Receive all reports of security incidents involving threats to employees, their offices and property in accordance with [AIMS GAM 10.05.03](#). Such reports may be sanitized as appropriate.
 8. When a facility is closed as a result of weather or other event, which has caused damage to the building, including but not limited to, earthquake, volcanic eruption, fire, tornado, hurricane, tsunami, flood, cyclone, landslide/mudslide, cave-in, etc. and a final re-occupancy walk-through inspection is performed by the agency, the agency will invite the designated health and safety representative to accompany management on the final re-occupancy walk-through inspection. The agency has no obligation to delay the inspection after reasonable advance notification is given.
 9. Be informed of any recalls of products or materials used within the office or facility such as headsets, chemical products, etc.
 10. Upon request, be provided copies of those Safety Data Sheets prepared by the agency regarding chemicals introduced into the workplace.
 11. A copy of the employee portion of the Facility Security Plan will be available electronically and the designated local health and safety representative may submit comments once a year for management consideration.
- B. If no onsite health and safety representative is available, the Union will designate a health and safety representative from a nearby facility.
- C. The Agency will not pay for travel and per diem for any health and safety activities described under this Section.

Section 4. Abatement of Unsafe and Unhealthy Working Conditions

- A. The Employer shall make every reasonable effort to promptly abate unsafe or unhealthy working conditions. Management will timely inform employees of efforts to abate unsafe or unhealthy working conditions.

- B. If there is an emergency situation in an office, the first concern is for the employees and the public. Should it become necessary to evacuate a building, management will take precautions to protect the safety of employees and visitors to the facility. Individuals will not be readmitted until management determines that there is no longer danger to the evacuated personnel. When the potential for danger escalates to a level that requires emergency response team, e.g., police/fire department, they will determine when the facility is safe to reoccupy. The designated Union health and safety representative will be notified as soon as possible regarding an emergency situation.
- C. An abatement plan will be prepared if the abatement of an unsafe or unhealthy working condition will not be possible within 30 calendar days. Such plan shall contain an explanation of the circumstances of the delay in abatement, a proposed timetable for the abatement, and a summary of steps, being taken in the interim to protect employees from being injured as a result of the unsafe or unhealthy working conditions. Form SSA-127 may be used and a copy of the form will be given to AFGE.
- D. When a hazard cannot be abated without assistance of the General Services Administration (GSA), the Employer shall work with GSA in its attempts to secure abatement.

Section 5. Health and Safety Training

- A. At no cost to the Agency, Union health and safety members on the National health and safety committee will be offered equivalent training as given to management's committee members relating to the performance of committee responsibilities. Each designated committee member will receive 4 hours per year of health and safety training, with no carryover. Time authorized for such training will be in accordance with Article 30 of the National Agreement.
- B. If determined appropriate by Management, the Agency may offer additional health and safety training at no cost to the Agency.
- C. The Employer will continue to provide employees with the appropriate orientation and/or training that the Employer deems necessary to perform their jobs safely. Such training shall include instructions in the proper work methods to be used and proper use of required equipment.

Section 6. Local Health Service Needs

- A. The Administration will continue to provide health care services and emergency treatment where presently provided. If the agency elects to change current services, the union will be notified and provided an opportunity to bargain in accordance with [5 USC 71](#). The Administration will provide/pay for flu shots, when reasonably available. Effective September 23, 2022: A reasonable amount of administrative leave will be granted to employees to receive Administration-provided flu shots when offered at an agency facility (commuting will be done on non-duty time).

- B. The Employer will make appropriate arrangements for employees interviewing individuals with known serious communicable diseases.
- C. Management will take appropriate precautions against the spread of infectious disease. Such precautions will include, but are not limited to providing tissues and hand sanitizers on all interviewing desks and made available for shared work stations, as well as liquid soap dispensers and paper towels in bathroom and kitchen areas.
- D. Management will provide timely testing, as determined by the SSA Medical Office, for an employee potentially exposed in the conduct of their official duties to a serious infectious disease. There will be no cost to the employees for leave or the exam.
- E. Evacuation chairs will be provided in accordance with agency policy.

Section 7. Inspections and Notification

- A. Management will assure that the designated Union health and safety representative is notified and invited to accompany management on all SSA-controlled inspections of agency work places, except when that would pose a hazard to the representative. If the designated health and safety representative attends the inspection, they may provide comments electronically to the management official who conducted the inspection.
- B. Management will assure response to employee reports of hazardous conditions and will investigate within twenty-four (24) hours for imminent dangers, three (3) working days for potentially serious conditions, and normally twenty (20) working days for other conditions; assure the anonymity of those making reports. However, an investigation may not be necessary if through normal management action and with prompt notification to employees, the hazardous condition identified can be abated immediately.
- C. When the Employer receives a report that a potentially dangerous or unhealthful condition is present at a particular worksite, the Employer shall timely notify the designated Union Health and Safety representative, as appropriate, of the alleged dangerous unsafe or unhealthful condition. Management will timely inform employees of the alleged dangerous unsafe or unhealthful condition.
- D. The National Health and Safety committee may review or recommend procedures which will be considered for application in appropriate facilities to cover issues such as bomb threats, possible shootings, temperature conditions, conditions of evacuation and similar office health and safety problems.
- E. In accordance with agency policy, the agency will periodically test duress alarms.

Section 8. Temperature Conditions

The parties recognize that temperature conditions in and around work areas can have a direct bearing on employees' health. The parties agree that the problem of temperature extremes, either

hot or cold, and suitable measures to reduce the risk of exposed employees are acceptable matters for referral to the National Health and Safety Committee or designated health and safety representative, as appropriate.

Section 9. Reporting Unsafe and Unhealthy Conditions

The Administration shall assure that no employee is subject to restraint, interference, coercion, discrimination, or reprisal for filing a report of an unsafe or unhealthy working condition, or other participation in agency occupational safety and health program activities.

Section 10. Asbestos

The Agency will ensure abatement of the asbestos hazard pursuant to applicable Government-wide law and regulations. Designated Union health and safety representatives will be notified of all asbestos monitoring and given a copy of all tests monitoring asbestos levels.

Section 11. Indoor Air Quality

- A. The Agency will provide safe, healthful indoor air quality in compliance with applicable laws and industry standards.
- B. To the extent the employer has control, there will be no applications of insecticides/pesticides during work hours. Whenever insecticides/pesticides are used in a large scale application, the designated health and safety representative, as well as the employees, will receive advance notice. Individuals with special health needs will be reasonably accommodated.
- C. To the extent the employer has control, there will normally be no applications of construction/renovation/maintenance/cleaning chemicals during work hours. Such chemicals include paint, carpet glue, HVAC cleaning agents and similar construction like chemicals. However, there may be situations where chemical applications or painting may be done during the workday in isolated areas without disruption to the work environment. In this situation, the designated health and safety representative, as well as the employees, will receive advance notice. Individuals with special health needs will be reasonably accommodated.

Section 12. Onsite Security

- A. The Employer will make reasonable efforts to protect employees from abusive and threatening clients and will take reasonable precautions to ensure such protections.

When management becomes aware of threats received by phone or is alerted to a threat through the Visitor Intake Process (VIPr), appropriate action will be taken in accordance with agency policy.

Employees witnessing an incident are encouraged to alert Management. Reportable incidents include threats or potential threats that affect the security and safety of SSA employees, guards, visitors, facilities and records.

- B. The Employer will arrange for emergency protective assistance at each installation to enable employees to receive assistance if the situation requires it.
- C. If management or an employee becomes aware that a visitor to the office is a fugitive felon, management will take appropriate action to protect the health and safety of employees.

Employees will not be expected to participate in any sting activities e.g., arrest, detain, etc. regarding fugitive felons. If a law enforcement authority enters SSA space to arrest or question a fugitive felon or someone suspected of illegal activity, management will take appropriate action to protect the health and safety of employees.

- D. Whenever an employee is faced with a physically threatening situation, the Employer will provide appropriate assistance.
- E. Employees will not be required to divulge personally identifiable information to the public in individual circumstances where the employee reasonably believes harassment or physical abuse may result. In such cases, the employee should timely inform the supervisor. If an employee prefers not to use his/her name on written correspondence to the public, the employee will use a pseudonym or other identifier approved by management.
- F. Consistent with its right to determine internal security practices:
 - 1. Where conditions warrant, the Employer will provide equipped security guards at SSA facilities.
 - 2. SSA will equip office areas with appropriate security devices, to ensure, to the maximum extent possible, employee safety.
- G. All telephones in offices will be labeled with appropriate emergency numbers.
- H. In accordance with agency policy, Management will make every reasonable effort to document disruptive conduct by non-SSA employees.
- I. Employees will be informed annually of the Identity Protection Program (IPP).

Recognizing the privacy of the individuals involved, upon request, the AFGE General Committee will be provided annually with the number of employees participating in the IPP.

Section 13. Leases

- A. SSA-maintained leases and/or copies of GSA occupancy agreements of leased spaces will be provided to the Union upon request.

- B. The parties recognize the potential impact of solicitations of offers from GSA. The Union will be notified timely of these situations. This provision is not a waiver of the Union's right to request additional information, consultation and bargaining.
- C. To the extent of its discretion, and throughout the term of the lease and/or occupancy agreement, Management will take appropriate action to ensure compliance with provisions of lease and/or occupancy agreements impacting on conditions of employment through timely notification and follow-up with appropriate parties.

Section 14. Emergency Preparedness

- A. Each facility shall have an emergency preparedness plan. This plan will publish the chain of command, which will identify a member of SSA management or designee who will be physically present for employee direction during all scheduled work hours in each permanent installation. The plan will also cover employee procedures in the event of fire, earthquake, bomb threat, tornado, flood, or similar emergency. Evacuation drills will be conducted semiannually.
- B. The Employer agrees that the first concern when an employee is injured on the job is to make certain that he/she gets prompt emergency medical aid. Doubts over whether medical attention is necessary will be resolved in favor of arranging medical aid.
- C. When it is necessary to assist an employee to return home because of illness or incapacitation or to provide transportation to a medical facility, the Employer will assist the employee in arranging for such transportation.
- D. The Employer agrees to maintain adequate first aid supplies at each permanent installation. All employees will have reasonable access to these supplies.
- E. Shelter In Place procedures will be followed in accordance with Agency policy. Should the Agency decide to change Shelter In Place procedures, the Agency will provide notice and bargain to the extent required by [5 USC 71](#).
- F. In the event of a natural disaster or other widespread emergency, management will take appropriate action and timely notify the union. In these situations, the Agency will follow [5 USC 6329c](#) (Weather and Safety Leave), applicable regulations (e.g. [5 CFR Part 630 Subpart P](#)), and Agency policy. Management will grant leave to employees affected by the situation in accordance with Article 31.

Section 15. Stress

The parties agree that recognizing, minimizing and coping with stress are essential parts of employee wellness. Management will make every effort to provide annual training on stress reduction and will make information available on the agency website regarding stress reduction. This will be a part of the SSA Wellness Program.

The designated health and safety representative may initiate an annual discussion with local management on reducing stress in the workplace. The Agency will not pay for travel and per diem for these discussions.

Employees who feel they are experiencing harmful levels of job related stress may contact employee counseling services.

The issue of stress reduction will be an appropriate agenda item for the National Health and Safety committees.

Information on stress management will be available on the agency website.

Section 16. Smoke Free Environment

In keeping with the parties' concern for the health, safety and well-being of all SSA employees, there shall be “no smoking” in any SSA controlled facility. In addition, there will be “no smoking” on any SSA controlled property or premises.

Information on smoking cessation will be available on the agency website.

Employees who wish to stop smoking but who are unable to successfully complete a smoking cessation program, or who have quit smoking but are experiencing related difficulties, may seek additional assistance through the Employee Assistance Program. Employee participation in counseling or cessation programs related to smoking is strictly voluntary.

If there are changes to the agency smoking policy generated by Executive Order, government wide laws, rules or regulations, and there is a duty to bargain under [5 USC 71](#), notice and such opportunity to bargain will be provided consistent with Article 4.

Section 17. Job Safety Analysis

- A. In situations where information indicates that employees in a particular occupation are suffering from a pattern of accidents, disabling injuries and/or illnesses, management will conduct a Job Safety Analysis (JSA).
- B. JSA may consist of but not be limited to the following:
 - 1. General conditions under which the job is performed.
 - 2. An explanation of the job steps.
 - 3. An explanation to determine the hazards that exist or might occur.
 - 4. Recommendations to eliminate any of the hazards identified.
- C. Who shall receive a copy:

1. Copies of all available studies and all completed JSA's will be provided to the Union within 30 days.
2. Each employee covered by a particular JSA will receive a copy within 30 days after completion of the JSA which covers his/her position.
3. When a new employee reports to duty or is reassigned to a new position and a JSA has been completed, he/she will receive a copy within 30 days after reporting to duty in that new job.

Section 18. Work space

The agency will make every reasonable effort to provide work space that comports with OSHA and ANSI standards and, in doing so, may consider other generally acceptable standards, to the extent that such standards do not conflict with OSHA and ANSI standards or with each other. Should the Agency decide to change employee workspace including ergonomic furniture, the Agency will provide notice and bargain to the extent required by [5 USC 71](#).

Section 19. Workplace Violence

The prevention of violence in the workplace by non-employees is a mutual concern to both the Agency and the Union. As determined by management the Agency will take appropriate action to abate unacceptable forms of conduct by non-employees to ensure a safe work environment. When members of the public demonstrate disruptive, violent, or threatening actions or behavior, SSA will take the necessary measures, including banning that individual from appearing in person at any of our offices, to ensure the safety of everyone involved.

Section 20. Wellness

SSA will provide wellness-related information such as stress, smoking cessation, health, nutrition, weight management and control, dental health, respiratory and cardiac health, and fitness, on an Agency-wide website. The information on this website may be supplemented, as applicable, on regional wellness websites.

Agency wellness coordinators will be listed on the agency intranet.

Sidebar – Article 9

The Agency has decided to terminate the Vision Program. If the Agency implements a new Vision Program, AFGE bargaining unit employees may participate.

Article 10

Hours of Work

Section 1. Hours of Work

- A. Hours of work for employees shall be in accordance with applicable law and regulations.
- B. A rest period of fifteen (15) minutes duration will be allowed each employee twice a day provided the employee works seven hours and once a day provided the employee works four hours. A rest period of ten (10) minutes duration will be allowed each employee during each period of extended shift overtime of at least 2 hours duration. On days when all work is overtime (including compensatory time) and/or credit hours, a rest period of fifteen (15) minutes will be allowed for each period of 4 hours worked. Rest periods will not be appended to periods of leave or the beginning or end of the employee's work shift. Management will not restrict employee mobility during rest breaks.
- C. The occurrence of holidays shall not affect the designation of the basic workweek.

Section 2. General Definitions

For the purposes of this article and its Appendices, the following definitions apply:

- A. "Employee" means an AFGE bargaining unit employee of SSA.
- B. "Basic work requirement" means the number of hours, excluding overtime hours, that an employee is required to work or is required to account for by leave or otherwise.
- C. "Fixed shift" means a workday that establishes the employee's arrival and departure times. These times are normally standardized and not variable.
- D. "Overtime" means work that is performed by an employee in excess of eight hours in a day or in excess of 40 hours in an administrative workweek and that is officially ordered or approved by the Agency. "Overtime" does not include "credit hours."
- E. "Core Hours" means that period of time when all employees on a particular shift are expected to be at work.
- F. "Flexible work arrangement" (FWA) means a workday in which the employee may vary the time of arrival and/or departure. A flexible work schedule includes core time and two flexible bands. "Flexible time and flexible bands" mean the specific periods of the workday during which employees may opt to vary their arrival and departure times.
 - 1. "Flextime" is a system of working hours which allows employees to choose their starting time for their 8 hour workday, subject to certain limitations, on a day-to-day basis.

2. "Flexible 5/4/9 work arrangement" for full-time employees is an 80 hour biweekly basic work schedule that is worked in less than 10 days and includes five (5) workdays in one week and four (4) workdays in the other week of the pay period. Participants will work eight 9 hour days each pay period and one 8 hour day each pay period. Participants will have one designated non-workday each pay period. In the case of a part-time employee, a biweekly basic work requirement of less than 80 hours that is scheduled for less than 10 workdays and that may require the employee to work more than 8 hours in a day.
 3. A flexible "4/40" work arrangement is a 40 hour weekly basic work schedule that includes four (4) workdays in one week. Participants will work four 10 hour days each week and have one designated non-workday each week.
- G. Compressed work schedule means that an employee's basic work requirement for each pay period is scheduled for less than 10 work days. "Compressed work schedule" (CWS) is always a fixed shift.
- H. "Credit hours" means those hours worked in excess of an employee's basic work requirement in which an employee on a flexible work schedule elects to work so as to vary the length of a succeeding workday or workweek. The use of credit hours cannot be used in a pattern that represents a 4/40 schedule. Employees who occupy positions designated for fixed work schedules and employees working 9 and 10 hour FWA schedules are not eligible to earn credit hours.
- I. "Holidays" are those days designated as Federal holidays.

Section 3. General Overtime Provisions

- A. Overtime shall be distributed to qualified volunteers whose performance is at least satisfactory. Overtime shall not be distributed or withheld as a reward or penalty.
- B. When an employee, whether covered by the Fair Labor Standards Act or exempt, works regular overtime, such overtime will be scheduled and paid in increments of 15 minutes. When an employee, whether covered by the Fair Labor Standards Act or exempt, works irregular overtime, such overtime will be paid in increments of 15 minutes. Daily increments of less than 15 minutes, if such occur, will be accumulated during the workweek. At the end of the workweek, any increments of 7 minutes or fewer will be rounded down and any increments of 8 minutes or more will be rounded up to the next 15 minute interval.
- C. Employees covered by both the Fair Labor Standards Act and Title [5 U.S.C.](#) shall receive overtime compensation in accordance with whichever benefit is greater.
- D. When approved by Management, employees can accrue and use compensatory time in accordance with applicable law and Government-wide rule and regulation. The Employer may grant an employee's request for compensatory time rather than payment for overtime. An employee may request compensatory time off for hours of work spent in travel status that otherwise would qualify for overtime compensation, in accordance with law, government-wide regulation and Agency policy.

- E. When employees in a voluntary situation indicate in advance that they will work overtime, the Employer should have a reasonable expectation that they will keep their commitment. It is understood that employees occasionally may be unable to report for assigned overtime work. Therefore, an employee who volunteers for overtime work and fails to report as scheduled without good cause may have his or her name placed at the end of any overtime roster. Such employees may be considered for overtime after all eligible employees have been given proper consideration or will be excluded from overtime work for two (2) weeks, whichever comes first.
- F. Employees who are called back to work at the office for a period of overtime unconnected to their regularly scheduled tour, or who work overtime on Saturday and/or Sunday in their official duty station but are unable to complete the minimum overtime scheduled due to work related reasons outside control of the employee, are entitled to a minimum of two hours of overtime pay. Employees who work in their official duty station on a holiday but are unable to complete the minimum scheduled time due to work related reasons outside control of the employee, are entitled to a minimum of two hours of holiday pay.
- G. When scheduled overtime is to be mandated for all employees in the occupation/operating entity, employees will be notified at least 3 days in advance, whenever possible. Notice of 2 days will be given for all other overtime work, whenever possible.
- H. When management decides to use overtime, qualified volunteers will be used before using non-volunteers.

Section 4. Federal Holidays

- A. If a holiday falls on a regular workday, that day is the employee's holiday. If a holiday falls on any non-workday other than Sunday, the day of the "in lieu of" holiday is the preceding workday; e.g., if a holiday falls on Monday and if Monday is a non-workday for the employee under their flexible 5/4/9 or 4/40 work arrangement, the "in lieu of" holiday is the previous Friday. If a holiday falls on Sunday the next workday is the "in lieu of" holiday; e.g., if a holiday falls on Sunday and if Monday is a non-workday for the employee under their flexible 5/4/9 or 4/40 work arrangement, the "in lieu of" is Tuesday.
- B. Holidays that fall on an employee's 9 hour day require the employee to use one hour of leave or an earned credit hour to account for the holiday period. To avoid charge to leave or an earned credit hour the employee will be permitted to either move their 8 hour day to the holiday or charge their day off to the holiday.
- C. Holidays that fall on an employee's 10 hour day require the employee to use two hours of leave or two hours of earned credit hours to account for the holiday period.

Section 5. Flexible 5/4/9 and 4/40 Work Arrangement Procedures (4/40 applies only to those components that have 4/40 as of the date of this Agreement)

- A. Employees will be given an opportunity to request a flexible 5/4/9 or 4/40 work arrangement designating their preferred day(s) off and 8-hour work day if on a flexible 5/4/9 schedule. The employee will submit the request to his/her first line supervisor. The employee's choice will be subject to approval of the first line supervisor.
- B. Employees will have a one (1) month request period beginning two (2) months before the start of the next flexible 5/4/9 or 4/40 work arrangement period (i.e., February is the employee's request period for the April through September flexible 5/4/9 or 4/40 work arrangement; August for the period October through March). The Employer will make a timely decision within ten work days following the request period (i.e., March or September). If a flexible 5/4/9 or 4/40 work arrangement is denied, the employee may adjust their leave requests in accordance with Article 31 of the National Agreement.
- C. An employee may request a change in their flexible 5/4/9 or 4/40 work arrangement day off because of a family emergency. The request must be in writing (i.e., hard copy or e-mail). The supervisor will consider staffing needs and workload conditions prior to acting on the request and respond to the employee.
- D. Employees have the option of going from a flexible 5/4/9 or 4/40 work arrangement to the regular flextime plan at the beginning of any pay period. Employees who wish to change from the regular flextime plan to a 5/4/9 or 4/40 work arrangement may only do so at the start of the six month leave request period. However, employees with bona fide emergency needs, as determined by management, may request participation in a 5/4/9 or 4/40 work arrangement outside the normal request times. If approved by management, affected employees may change to a 5/4/9 or 4/40 work arrangement at the start of the next appropriate pay period.
- E. Employees working a flexible 5/4/9 or 4/40 work arrangement must arrange their arrival time so that they can complete their nine and one-half (9 ½) hours or ten and one-half (10 ½) hours work schedule before the end of the afternoon flexible band.

Section 6. Suspension of Flextime and Flexible 5/4/9 and 4/40 Work Arrangements

- A. Should management determine, after consideration of bona fide operational needs, that it is unable to provide the level of service required to support agency operations and provide service to the American public, the appropriate management official may suspend, for the duration of the operational need, the flexible 5/4/9 or 4/40 schedule and/or credit hours. In these situations, management may assign employees to a fixed shift.

Management may also direct specific arrival or departure times. This notification will normally be made 48 hours in advance.

- B. Employees who are scheduled to attend training may have to revert to the working hours in effect at the training site. Their flexible 5/4/9 or 4/40 work arrangement tour may also be suspended.
- C. If an employee's flexible work arrangement is suspended, it will automatically be restored as soon as possible after the reason for the suspension needs have been met (i.e., the next pay period).

Section 7. Saturday Credit Hours

When overtime is offered in a unit, module, section or office, management may offer up to eight (8) credit hours for those employees who work in that unit, module, section or office. The opportunity to earn Saturday credit hours is only available to employees in those components which permitted Saturday credit hours prior to the effective date of this agreement. However, OHO (Field) and OARO field employees are allowed to earn four (4) credit hours on Saturday under the same provisions described above.

Section 8. Miscellaneous

- A. When an employee is in travel status he/she may participate in the flexible schedules offered at their temporary duty site unless the flexible schedule would interfere with the assigned training or assigned duties.
- B. For family emergencies, management may permit temporary exceptions to an employee's established starting time.
- C. Management may change lunch/break schedules to accommodate operational needs.
- D. All bargaining unit employees are required to use the Agency designated time and attendance system to record their sign in and sign out each day. This includes all hours of compensable time worked and leave used. (Moved and revised from Appendix A, Section 5.F.)
- E. WSUs will follow the provisions of the Article 10 appendix of the component in which they are organizationally aligned.

Article 10 - Appendix A

Flexible Work Arrangements (FWA) and Credit Hours for Field Offices

Section 1. Purpose

This appendix sets forth the FWA and credit hour procedures to be followed in field offices and provides authority for such employees to participate in these arrangements.

Section 2. Employee Options

Employees have the option of participating in FWA (which is flextime or a flexible 5/4/9-work arrangement).

Section 3. Scope

All full-time bargaining unit employees (including temporary employees) working in Field offices are covered by this appendix.

Section 4. Flextime

A. Flextime Shifts

Shift 1 begins one hour (1 hour) before the normal start time and ends one hour after the normal start time. Shift 2 begins at the normal start time and ends one hour after the normal start time.

B. Core Time

Core time for shift one is the period one hour after the normal start time to one hour prior to the normal stop time. For example, if the normal office hours are 8 a.m. to 4:30 p.m. with one-half (1/2) hour for lunch, the core hours are 9 a.m. to 3:30 p.m. Core time for shift two is the period one hour after the normal start time to the normal stop time. For example, if the normal hours are 8:00 a.m. to 4:30 p.m. with one-half (1/2) hour for lunch, the core hours are 9 a.m. to 4:30 p.m.

C. Flexible Band

Flexible band for shift 1 is a 2 hour period starting one hour before the normal start time and ending one hour after normal start time. It will also be one hour prior to the normal end of the workday to one hour after the end of the normal workday. The flexible band for shift 2 is a one hour period starting at the normal start time and ending one hour after the end of the normal start time. It will also be from the end of the normal workday to one hour after the end of the normal workday.

Section 5. Flextime Provisions

A. The Flextime Workday

The usual eight (8) hour workday plus lunch will be replaced by a working day that is composed of two (2) different types of time: core time and a flexible band. Employees with prior supervisor approval may flex out for lunch. The employee must append this time to his/her already established lunch period.

On days where the tour for a part-time employee is less than 8 hours, employees may flex 30 minutes before or after their normal start time. Part-time employees may work flextime on those days that they work an 8 hour tour.

B. In Office Training and Meetings

Consistent with operational needs, training and meetings will be scheduled to minimize interference with the use of the morning flexible band. On days that training and/or meetings are scheduled, employees will arrange their time of arrival so as to be present for such training and/or meetings. Depending on the purpose and anticipated length of training and meetings, management will schedule such activities to begin as late in the flexible band as appropriate.

Management will not require all employees to be present for training that is available on VOD at the time of the training, unless there are issues that require the attendance of all employees at the training.

C. Shift Assignments

Management will assign the minimum number of employees to shift 2 to accommodate employee preference and operational needs.

D. Adjustments to Shift Assignments

In the event of unusual workload or staffing problems, management may assign employees to a different shift. Such assignment will be done equitably. When such adjustments are no longer necessary, employees will return to their scheduled shift assignment.

E. Shift Rotations

Shift rotations, where necessary, will be worked out at the local level taking into consideration the preferences of employees and the operational needs of the office.

F. Start Times

If an employee arrives at the office prior to their scheduled start time, his/her sign-in time will be the time his/her normal flextime is scheduled to start.

G. Lunch and Breaks

To the extent feasible, management will continue existing lunch and break arrangements. Employees will not normally be required to sign-in/sign-out for breaks.

H. Return to Fixed Shift

The conditions listed below are examples of reasons that may be cause for a return to normal working hours for all or some participating employees:

1. Court Leave

Employees eligible for court leave will automatically revert to their normal office working hours for purposes of returning to work when court closes early or their services are not needed by the court.

2. Training

Employees who are scheduled to attend all day or partial day training may be required to revert to normal office working hours.

3. Travel Status

Employees who will be in travel status will either revert to normal office hours or remain on flextime, depending upon operational needs.

4. Delayed Office Openings

When the opening of an office is delayed, all employees scheduled to work at the official duty station will revert to normal office hours.

I. Adjustments to Flextime Bands

Should less than four employees in offices with 12 or more employees or less than two employees in offices with fewer than 12 employees utilize the 15-minute band at the beginning or end of the day for five consecutive workdays, that portion of flexband may be discontinued beginning the next pay period.

That portion of the flexband will be resumed when more than three employees in offices with 12 or more employees or more than one employee in offices with fewer than 12 employees express in writing an interest in working that portion of the band.

Section 6. Flexible 5/4/9-Work Arrangement Eligibility for Field offices

Field offices with 12 or more bargaining unit employees will be allowed to participate in the flexible 5/4/9-work arrangement for field offices. Management will review the office staffing for

all offices annually as of October 1 to determine whether the office meets the criteria to participate.

Section 7. Flexible 5/4/9-Work Arrangement Rules for Field offices

The flexible 5/4/9-work arrangement shall be in accordance with the following rules:

- A. Employees electing to work the flexible 5/4/9 work arrangement can work a flexible schedule that is consistent with the office flexible band. Employees must schedule their arrival so as to complete their 9 ½ hour work schedule (to include lunch) by the end of their flexible band.
- B. Participants will work eight 9-hour days each pay period.
- C. Participants will work one regular 8-hour workday each pay period that corresponds to shift 2.
- D. Participants will have one non-workday each pay period.

Section 8. Determining the Flexible 5/4/9 Work Arrangement

The flexible 5/4/9 work arrangement will be designed so that approximately 10 percent of the employees per position in the office can be off work at one time on a flexible 5/4/9 work arrangement. However, the Employer may allow an excess of 10 percent of the employees per position off on any given day.

Section 9. Scheduling

- A. Management will consider operational needs and employee preference in making assignments and reassignments to work schedules.
- B. Once operational needs are taken care of, any other conflicts in scheduling that result will be resolved in favor of the employee with the earliest service computation date (SCD). Management will timely communicate to the employee any denial of the preferred day off.
- C. After initial assignments, rotation of the non-workday will occur if employee conflicts continue to exist on a semi-annual basis, consistent with semi-annual leave requests, to ensure that all employees have an opportunity to have the most popular non-workday. The rotation may occur in the following or similar fashion: Employees with Mondays off would rotate to Wednesday, Tuesday to Thursday, Wednesday to Friday, Thursday to Monday, Friday to Tuesday, etc.

Section 10. Credit Hour Provisions

A. General Provisions

Employees eligible to work credit hours will be permitted to do so, provided there is appropriate work as determined by management, and it can be performed at the requested time(s).

- B. Employees assigned to Shift 2 may work previously approved credit hours within the office's morning flexible band. Unless otherwise approved by management, employees who work credit hours during this time must complete their normal 8 ½ hour tour and cannot depart prior to the end of core time for Shift 2 (e.g., 4:30 PM).
- C. All full-time employees may participate in the credit hour program consistent with the provisions and requirements of this appendix. Part-time employees are covered on those days that they work an 8-hour tour. Part-time employees may also earn up to three (3) credit hours on their non-tour day(s).

D. Requesting Credit Hours

1. The Employee has the option to request the opportunity to earn credit hours using a method determined by management. The request will ordinarily be made on the workday preceding the day the hours are to be worked, and will be submitted to the immediate supervisor. In the supervisor's absence, the request will be submitted to the next available line manager. Denials must be in writing and returned to the employee as soon as possible.
2. The procedure described in Section 10 D.1 above does not preclude submission of, and approval of a request to work credit hours for more than one workday in the future.
3. The procedure described in Section 10 D.1 above does not preclude requesting same-day credit hours.
4. If credit hours are requested and approved and overtime is subsequently made available, the employee will be afforded the opportunity to elect to work the overtime.

E. Earning Credit Hours

An employee may earn up to three (3) credit hours per workday. Credit hours may be earned in one-quarter (1/4) hour increments. An employee may accrue up to 28 hours during a pay period, however, only a maximum of 24 credit hours may be carried over from the prior pay period. Part-time employees may not carry over from the prior pay period more than one-half of their weekly part-time tour. Credit hours must be earned in advance of their use.

F. Using Earned Credit Hours

The use of credit hours shall be approved in the same manner as annual leave in accordance with Article 31 of the national agreement. Supervisors will approve use of credit hours under the same criteria used for the approval of leave. In the event of a conflict between credit

hour requests, it will be resolved in favor of the employees with the earliest SCD within the work unit by the supervisor.

Article 10 - Appendix B

Credit Hour and Flexible Work Arrangements (FWA) for Teleservice Centers (TSCs)

Section 1. Purpose

This appendix sets forth the credit hour, and FWA (which is flextime or a flexible 5/4/9-work arrangement) procedures to be followed in Teleservice Centers (TSCs) and provides authority for such employees to participate in these plans.

Section 2. Scope

A. General

Employees have the option of participating in either flextime with credit hours or the flexible 5/4/9-work arrangement plan.

B. Credit Hour Plan

All full-time employees (including temporary employees) may participate in the credit hour program consistent with the provisions and requirements of this appendix. Part-time employees are covered on those days that they work an 8 hour tour. Part-time employees may also earn up to 3 credit hours on their non-tour day(s).

C. Flexible 5/4/9-Work Arrangement

TSC employees may participate in the flexible 5/4/9 work arrangement in accordance with the provisions of Section 4 below.

Section 3. Credit Hours Provisions

A. General Provisions

Credit hours are worked at the employee's option subject to the prior approval of management. In addition to prior management approval, working credit hours is conditioned on the availability of appropriate work as determined by management. Credit hours are not to be confused with overtime hours.

B. Requesting Credit Hours

1. Employees should normally request the opportunity to earn credit hours no later than 3:30 p.m. on the workday prior to the proposed date of working the credit hours, however this does not preclude requesting same day credit hours.

2. The employee has the option to request the opportunity to earn credit hours using a method determined by management.
3. The request will be submitted to the immediate supervisor. In the supervisor's absence, the request will be submitted to the next available line manager. Denials of written requests will be in writing and returned to the employee as soon as possible. Denials will specify the reason for disapproval.
4. If credit hours are requested and approved and overtime is subsequently made available, the employee will be afforded the opportunity to elect to work the overtime.

C. Earning Credit Hours

1. An employee may earn up to three (3) credit hours per workday. Credit hours may be earned in one-quarter ($\frac{1}{4}$) hour increments. An employee may accrue up to 28 credit hours during a pay period; however, only a maximum of 24 credit hours may be carried over from the prior pay period. Part-time employees may not carry over from the prior pay period more than one-half of their weekly part-time tour. Credit hours must be earned in advance of their use.
2. Employees assigned to Shift 2 in non-Mega TSCs may work previously approved credit hours within the office's morning flexible band. Unless otherwise approved by management, employees who work credit hours during this time must complete their normal 8 $\frac{1}{2}$ hour tour and cannot depart prior to the end of core time for Shift 2.
3. Mega TSC employees who work approved credit hours must work the credit hours in the flexible band of the employee's prescribed tour.

D. Using Earned Credit Hours

The use of credit hours shall be approved in the same manner as annual leave in accordance with Article 31 of the national agreement. Credit hours can be used together with approved leave.

In the event of scheduling conflicts, the use of leave will take precedence over the use of credit hours. In the event of a conflict between credit hour requests it will be resolved in favor of the employee(s) with the earliest SCD within the work unit.

Section 4. Flexible 5/4/9 Work Arrangement Provisions

A. Eligibility to Participate in flexible 5/4/9 work arrangement

TSC employees are eligible to participate in the flexible 5/4/9 work arrangement in accordance with the provisions set forth in B below.

B. Flexible 5/4/9 Work Arrangement Rules for TSCs

The flexible 5/4/9 work arrangement shall be in accordance with the following rules:

1. Employees electing to work the flexible 5/4/9 work arrangement will work a flexible schedule that is consistent with the office/shift flexible band to which they are assigned. Employees must schedule their arrival so as to complete their 9 hour work schedule by the end of their flexible band.
2. Management will adjust the 4th tour/shift of employees in Mega TSCs electing to work 5/4/9 by 15 minutes on the front end of the flexible band, thus permitting an employee's tour/shift to start 15 minutes earlier on their nine hour workdays. This provision is not applicable on the employee's eight hour day.

This provision does not apply to employees not working 5/4/9.

C. Determining the Flexible 5/4/9 Work Arrangement

The flexible 5/4/9 work arrangement will be designed so that approximately 5 percent of the employees per position in the office can be off work at one time on a flexible 5/4/9 work arrangement. However, the Employer may allow an excess of 5 percent of the employees per position off on any given day.

D. Scheduling

1. Management will consider operational needs and employee preference in making assignments and reassignments to work schedules.
2. Once operational needs are taken care of, any other conflicts in scheduling that result will be resolved in favor of the employee with the earliest SCD. Management will timely communicate to the employee any denial of the preferred non-workday.
3. After initial assignments, rotation of the non-workday will occur, if employee conflicts continue to exist, on a semi-annual basis, consistent with semi-annual leave requests, to ensure that all employees have an opportunity to have the most popular non-workday. The rotation may occur in the following or similar fashion:

Employees with Mondays off would rotate to Wednesday, Tuesday to Thursday, Wednesday to Friday, Thursday to Monday, Friday to Tuesday, etc.

Section 5. Flextime in TSCs

A. Flextime in TSCs

Flextime for TSC's will provide employees an option of reporting either 45 minutes before or after their tour/shift begins; e. g., the TSC tour is 8 a.m. to 4:30 p.m.; the modified flextime reporting times are 7:15 to 8:45. Employees would leave 8 ½ hours after their reporting time (includes 1/2 hour lunch).

B. Scheduling Flextime

1. Employees will be given an opportunity to request the fixed tour of their choosing. Shift rotations will continue under local agreements.
2. Management will consider operational needs and employee preference in making assignments and reassignments to work schedules.
3. Once operational needs are resolved, conflicts in scheduling will be resolved in favor of the employee with the earliest SCD.
4. All full-time bargaining unit employees (including temporary employees) working in any TSC are covered by this appendix. Part-time employees may work flextime on those days that they work an 8 hour tour. On days where the tour for a part-time employee is less than 8 hours, employees may flex 30 minutes before or after their normal start time.

C. TSC Flextime Procedures

1. Core time is the period that begins at the end of a shift's morning flexible band and ends at the beginning of that shift's afternoon flexible band, excluding the lunch period.
2. The beginning of the shift core time will constitute the beginning point for any tardiness or absence that may arise pursuant to Article 31, Section 5 of the National Agreement.
3. All full time TSC employees will be able to report to work any time within the applicable morning flexband and leave during the applicable afternoon flexband after accounting for 8 hours of work, excluding lunchtime.
4. Employees with prior supervisory approval may flex out for lunch. The employee may only append this time to his/her already established lunch period.

D. FLEXIBLE BANDS will be as follows except in the first and last shifts in the Mega Centers.

1. Morning Flexible Band: Begins forty-five (45) minutes before the normal start time and ends forty-five (45) minutes after the normal start time.

Afternoon Flexible Band: Begins forty-five (45) minutes before the normal quitting time and ends forty-five (45) minutes after the normal quitting time.
2. In TSCs with 2 shifts, the second shift has a normal start time fifteen (15) minutes after the currently existing starting time (Shift 1). The flexible band is one and one half (1 ½) hours as above. Management will determine the number of employees assigned to each shift to accommodate operational needs.
3. Shift assignments and rotations will continue under existing local level arrangements.

4. MEGA-TELESERVICE CENTERS (including Salinas TSC)

- a. The first shift in the Mega Centers will start 30 minutes before the normal start time and end 60 minutes after the normal start time.

Example: Normal start time is 7:00 - An employee may report as early as 6:30 and no later than 8:00.

- b. The middle shifts in the Mega Centers will start forty-five (45) minutes before the normal start time and end forty-five (45) minutes after the normal start time.

Example: Normal start time is 8:00 – An employee may report as early as 7:15 and no later than 8:45.

- c. The last shift in the Mega Centers will start thirty (30) minutes before the normal start time and end fifteen (15) minutes after the normal start time.

Example: Normal start time is 10:45 – An employee may report as early as 10:15 and no later than 11:00.

1. The employees in the last shift have the option of coming in up to one and one-half (1 ½) hours before the normal start time, but only if such employees elect to flex out the same amount of time during the workday.

Example: Normal Start time is 10:45 a.m. – The employee reports to work at 9:15, but must flex out one and a half hours (1 ½) during the tour, and they will complete their work tour at 7:15.

- d. Fixed end of shift invocation

1. When an insufficient number of employees are available for phone coverage, managers may assign employees to a fixed end of shift from 6 to 7:15 p.m.
2. The employees required to work this fixed period will be selected in the following manner:

- a. Volunteers
- b. When there is an insufficient number of volunteers, those with the lowest SCD will be chosen.
- c. When there are an excess number of volunteers, those with the highest SCD will be chosen.
- d. Ties in SCD will be broken by a locally agreeable method.
- e. Shift assignments and rotations for Mega Centers will continue under local agreements.

3. Night differential pay is payable in this situation for the period from 6:00 to 7:15 p.m. that the employees have no flexibility about working in accordance with applicable payroll policies.

E. Return to fixed shift

1. The conditions listed below are examples of reasons that may be cause for a return to normal working hours for all or some participating employees.
 - a. Court Leave: Employees eligible for court leave will automatically revert to their normal office working hours for purposes of returning to work when court closes early or their services are not needed by the court.
 - b. Training: Employees who are scheduled to attend all day or partial day training may be required to revert to normal office working hours.
 - c. Travel Status: Employees who will be in travel status will either revert to normal office hours or remain on flextime, depending upon operational needs.
 - d. Delayed Office Openings: When the opening of an office is delayed all employees scheduled to work in the official duty station will revert to normal office hours.

Article 10 - Appendix C

Flexible Work Arrangements (FWA), Compressed Work Schedules (CWS) and Credit Hour Plans for Headquarters Components

Section 1. Purpose

This appendix sets forth the FWAs (which is either flextime, flexible 5/4/9 work arrangement or flexible 4/40 work arrangement for those components that have 4/40 as of the date of this agreement) and credit hour procedures to be followed in Headquarters components of the Social Security Administration and provides authority for such employees to participate in these arrangements.

Section 2. Exceptions

A. FWA and Fixed Shift Employees

The parties agree that there are situations that will not readily accommodate an FWA as defined in Article 10 and implemented by this appendix. However, this will not preclude consideration and disposition of such situations on a case-by-case basis, that to the maximum extent feasible, the Employer will afford fixed shift and twenty-four (24) hour operation employees (e.g., essential functions, NCC employees, etc.) the opportunity to work FWA. Current fixed shift and starting times will continue as at present and must be followed.

B. Use of Credit Hours in 24-Hour Operations

The parties recognize that staffing requirements in fixed shift and 24-hour operations may impose additional problems in the use of credit hours other than those experienced in the remainder of headquarters. The parties agree that in these fixed shift/24-hour operations the priority consideration for the use of credit hours is adequate staffing.

Section 3. General Provisions

A. Employee and Management Options

The parties understand and agree that credit hours or flexible 5/4/9 or 4/40 work arrangements will be initiated by the employee and will be subject to approval by the supervisor. In contrast, the parties understand and agree that overtime and compensatory time (with the exception of religious compensatory time) are initiated by the Employer.

B. Flexible 5/4/9 or 4/40 Work Arrangements

For Headquarters components, the flexbands are 6 a.m. to 9:30 a.m. and 2:30 p.m. to 6 p.m. Consequently, employees working a flexible 5/4/9 or 4/40 work arrangement must arrange

their arrival time so they can complete their nine and one-half (9 1/2) hour or ten and one-half (10 1/2) work schedule by 6 p.m.

C. Credit Hour Accrual and Usage

Headquarters employees may earn credit hours in conjunction with flextime.

Section 4. Special Provisions for Flexible 5/4/9 or 4/40 Work Arrangement

- A. Employees will revert to their established fixed shifts when there is an administrative decision to authorize a late opening. Management will establish a fixed shift schedule for the nine and one-half (9 1/2) hour work day and ten and one-half (10 1/2) hour work day.
- B. An employee will continue to participate in the flexible 5/4/9 or 4/40 work arrangement while in travel status unless there is a need to change the work schedule; e.g., the hours of operation at the travel site differ from those of the employee. Management reserves the right to adjust the work schedules of employees in travel status and if possible should do so in advance of the administrative workweek.

Section 5. Credit Hour Provisions

A. Procedures

- 1. Employees eligible to work credit hours under the provisions of this appendix will be permitted to earn up to three (3) credit hours per day, if approved, provided that there is appropriate work available as determined by management for the employee and it can be performed at the requested time(s). Employees may accrue credit hours so that the total exceeds the 24-hour maximum limit within the pay period. However, the hours in excess of 24 must be requested and used prior to the end of the pay period. All credit hours must be worked within the prescribed flexband. Part-time employees may work up to 3 credit hours on their non-tour day(s).
- 2. Credit Hours can be earned in one-quarter (1/4) hour increments.
- 3. In accordance with law the maximum number of credit hours a full-time employee may carry over from one pay period to the next pay period is twenty-four (24). Part-time employees may accumulate and carry over not more than 1/4 of the hours in such employees' biweekly basic work requirements.

B. Requests to Work Credit Hours

- 1. The employee will have the option to request the opportunity to earn credit hours using a method determined by management. The request will ordinarily be made on the workday preceding the day the hours are to be worked, and will be submitted to the immediate supervisor. In the supervisor's absence, the request will be submitted to the next

available line manager. Same day requests to work credit hours are also acceptable. Denials must be made in writing and returned to the employee as soon as possible.

2. The procedure described in Section 5(B)(1) above does not preclude submission of, and approval of a request to work credit hours for more than one workday in the future.
3. The procedure described in Section 5(B)(1) above does not preclude working same day credit hours.
4. If credit hours are requested and approved and overtime is subsequently made available, the employee will be afforded the opportunity to elect to work the overtime.

C. Usage of Credit Hours

Credit hours can be used in lieu of, or together with approved leave.

Section 6. Flexible 5/4/9 or 4/40 Work Arrangement Provisions

A. Procedures

In maintaining adequate staffing coverage within SSA headquarters components, it is agreed and understood that management will approve flexible 5/4/9 or 4/40 work arrangements in a fair and equitable manner. In order to maintain appropriate resources by positions, management will approve employee requests for specific schedules as long as the requests generally will not result in more than fifteen (15) percent of the staff being off on any given day. However, this amount may be increased depending upon workload and differing demands of respective offices/components. This is over and above the normal leave usage. In computing the fifteen (15) percent staffing figure, management will round up to the next whole person.

B. Requests for Flexible 5/4/9 or 4/40 Work Arrangements

1. Each employee desiring to work under a flexible 5/4/9 or 4/40 work arrangement should submit, on a form designated by management, a written request to their supervisor for a decision. The Employer will act upon these requests as soon as possible, but in no case later than thirty (30) days following the requesting period. Employees already established in a flexible 5/4/9 or 4/40 work arrangement will not be required to file a new request for each new requesting period.
2. All new employees or rehires will be given the opportunity of requesting to participate in the flexible 5/4/9 or 4/40 work arrangement.
3. Once operational needs are taken care of, any other conflicts in scheduling that result will be resolved in favor of the employee with the earliest SCD.
4. Employees requesting a change to their day(s) off under a flexible 5/4/9 or 4/40 work arrangement may only make such changes at the semiannual requesting period. Conflicts in scheduling that involve more requests for a particular day off than can be

accommodated will be handled in accordance with the provision of subsection 3 above. Hardship situations will be handled on an exception basis by management.

5. A new six (6) month flexible 5/4/9 or 4/40 work arrangement will always begin the first day of the first full pay period of the first month of the new flexible 5/4/9 or 4/40 work arrangement schedule.

Article 10 - Appendix D

Flexible Work Arrangements (FWA) and Credit Hour Plans for Office of Hearings Operations (OHO)

Section 1. Purpose

This appendix sets forth the FWA (which is either a flextime, flexible 5/4/9 work arrangement or flexible 4/40 work arrangement) and credit hour procedures to be followed and provides authority for such employees to participate in these arrangements. In reaching agreement on this Appendix, neither party waives any provision of the National Agreement, laws or government-wide regulations. The parties recognize that the FWA provisions reflected in this appendix are solely designed to meet the specific workload and employee needs of the Office of Hearings Operations and may not be appropriate for other SSA components.

Section 2. Scope

All OHO bargaining unit employees (including temporary employees) are covered by this Appendix. Part-time employees are covered for the Flextime and Credit Hour Plan only.

Section 3. Basic Provisions

A. Lunch and Breaks

To the extent feasible, Management will continue existing lunch and break arrangements. Normally, employees will not be required to sign in and sign out for breaks and lunches. If Management decides to establish a shift two, the following lunch and break provisions will apply:

- Employees who report to work before 8:00 am must take their breaks between 9:45 am and 10:30 am and between 1:30 pm and 2:15 pm. These employees must take their lunch period between 11:00 am and 12:30 pm. Employees working the 4/40 FWA must take their lunch period between 11:30 am and 1:00 pm.
- Employees who report to work at 8:00 am or later must take their breaks between 10:30 am and 11:15 am and between 2:15 pm and 3:00 pm. These employees must take their lunch period between 12:30 pm and 2:00 pm.
- Management may approve an employee's request to change his/her break and/or lunch period for a day or for a longer period.

Section 4. Flextime Procedures

A. Flextime procedures for employees of the Office of Hearings Operations are set forth below.

B. Flextime Procedures for OHO Headquarters

1. Core Time and Flexible Bands for OHO Headquarters

Core time is from 9:30 a.m. to 2:30 p.m. The flexible bands are from 6 a.m. to 9:30 a.m. and from 2:30 p.m. until 6 p.m.

2. Periods of Absence

Employees who flex-in and flex-out during their work shift must use the Agency designated time and attendance system. Employees are responsible for working their scheduled workday shift of eight (8), nine (9), or ten (10) hours.

3. Delayed Opening

When the opening of the office is delayed for any reason, the office hours will be 8 a.m. to 4:30 p.m. for the eight-hour tour and 8 a.m. to 5:30 p.m. for the nine-hour tour and 7:30 a.m. to 6:00 p.m. for the ten-hour tour.

C. Flextime Procedure for OHO Field Offices (including other OHO units, except those following the OHOHQ flexband as of the effective date of the agreement)

1. Core Time and Flexible band for OHO Field Offices

Shift one core time is from 9:30 a.m. to 3 p.m. The flexible bands are from 6:30 a.m. to 9:30 a.m. and from 3 p.m. until 6:00 p.m.

Shift two core time is from 9:30 a.m. to 4:30 p.m. The flexible bands are from 8:00 a.m. to 9:30 a.m. and from 4:30 p.m. to 6:00 p.m.

2. Shift assignments

Management will assign a sufficient number of employees to shift two to accommodate employee preference and operational needs. Employees on both shifts one and two participating in the flextime plan may be required to report to work at a set time because of a particular work activity.

If Management decides to establish a shift two, employees will be informed one pay period in advance of their assignment. The employees required to work the shift two will be selected in the following manner:

- Volunteers.
- When there is an insufficient number of volunteers, the employee(s) with the latest SCD will be chosen.

- When there is an excess number of volunteers, the employee(s) with the earliest SCD will be chosen.
- Ties in SCD will be broken by a lottery drawing.
- There will be a shift rotation after each three (3) month interval by using the above procedures. Management will make every reasonable effort to avoid selecting employees for consecutive shift 2 assignments unless the employee volunteers.
- In the event of unusual workloads or staffing problems for shift two, Management will assign the least senior employee(s) within the position to shift 2 until the situation is resolved, but for no longer than three (3) months.

Employees assigned to Shift 2 may work previously approved credit hours within the office's morning flexible band. Unless otherwise approved by management, employees who work credit hours during this time must complete their normal 8 ½ hour tour and cannot depart prior to the end of core time for Shift 2 (e.g., 4:30 PM).

Assignment to shift 2 does not preclude an employee from working overtime between 6:30 am and 8:00 am.

3. Periods of Absence – Flex during Core Hours

Employees who flex-in and flex-out during their work shift must use the Agency designated time and attendance system. Employees are responsible for working their scheduled workday shift of eight (8), nine (9), or ten (10) hours.

4. Delayed Opening

When the opening of the office is delayed for any reason, the office hours will be 8:00 a.m. to 4:30 p.m. for the 8 hour tour, 8 a.m. to 5:30 p.m. for the 9 hour tour and 7:30 a.m. to 6:00 p.m. for the 10 hour tour.

Section 5. Flexible 5/4/9 or 4/40 Work Arrangement for OHO – General

A. Employee Option

The parties understand and agree that the flexible 5/4/9 or 4/40 work arrangement will be requested by the employee. No employee will be forced into a flexible 5/4/9 or 4/40 work arrangement.

B. Eligibility at OHO Headquarters

Full time AFGE bargaining unit employees in OHO Headquarters are eligible to participate in the flexible 5/4/9 or 4/40 work arrangement as described in this appendix.

C. Eligibility for OHO Field Offices

For OHO field offices, eligibility to participate in the flexible 5/4/9 or 4/40 work arrangement is as follows:

Field offices with 15 or more AFGE bargaining unit employees as of the effective date of this Agreement will be allowed to participate in the flexible 5/4/9 or 4/40 work arrangements for field offices. The number of employees will be reviewed on October 1 of each year to determine whether the office meets criteria to participate.

Section 6. Flexible 5/4/9 and 4/40 Work Arrangement Procedures

A. Scheduling Flexible 5/4/9 or 4/40 Work Arrangement

1. Flexible 5/4/9 or 4/40 work arrangement will be designed so that approximately fifteen percent (15%) of the employees per position grouping can be off work at one time. The employer may allow an excess of 15% off on any given day.
2. Management will consider operational needs and employee preference in making assignments and reassignments to work schedules.
3. Conflicts in initial scheduling will be resolved in favor of the employee with the earliest SCD.
4. If a conflict arises after initial assignments, the employees will attempt to resolve the scheduling problem themselves. To ensure that all employees have an opportunity to have the most popular days off, rotation between schedules will occur on a semi-annual basis if the employees cannot resolve the problem.

Section 7. OHO Credit Hour Provisions

A. Eligibility to Participate in the OHO Credit Hour Plan

All OHO AFGE bargaining unit employees are eligible to participate in the credit hour plan. However, an employee may not participate in a flexible 5/4/9 or a 4/40 work arrangement and Credit Hour Plan simultaneously.

B. Credit Hour Procedures in OHO

1. Participants in the OHO credit hour plan will be permitted to earn up to three (3) credit hours per work day, if approved, provided that there is appropriate work, as determined by management, at the requested time(s). Employees may accrue credit hours so that the total exceeds the 24 hour maximum limit within the pay period. However, the hours in excess of 24 must be requested and used prior to the end of the pay period. Part-time employees may work up to 3 credit hours on their non-tour day(s).
2. Credit hours can be earned in one-quarter ($\frac{1}{4}$) hour increments.

3. In accordance with law the maximum number of credit hours a full-time employee may carry over from one pay period to the next pay period is twenty-four (24). Part-time employees may accumulate and carry over not more than $\frac{1}{4}$ of the hours in such employee's biweekly basic work week.
4. Request to work Credit Hours
 - a. The employee has the option to request the opportunity to earn credit hours orally, or in writing by completing a form designated by management. The request will ordinarily be made on the workday preceding the day the hours are to be worked, and will be submitted to the immediate supervisor. Same day requests to work credit hours are also acceptable. In the supervisor's absence, the request will be submitted to the next available line manager. Denials must be in writing and returned to the employee as soon as possible.
 - b. 4(a) above does not preclude submission and approval of a request to work credit hours for more than one workday in the future as long as the total hours accrued does not exceed twenty-four (24).
 - c. 4(a) above does not preclude working same day credit hours.
 - d. If credit hours are requested and approved and overtime is subsequently made available in advance of working the credit hours approved, the employee will be afforded the opportunity to elect to work the overtime.
5. Recording Credit Hours
 - a. Credit hours earned, used, and the balance remaining will be recorded in the manner provided by the payroll system.
 - b. Credit hours earned on a daily basis will be recorded by the employee on the Agency designated time and attendance system.
6. Use of Credit Hours

Credit hours can be used in lieu of, or together with, approved leave and/or compensatory time.

Article 10 - Appendix E

Flexible Work Arrangements (FWA), and Credit Hour Plans for Office of Analytics, Review, and Oversight (OARO) Field

Section 1. Purpose

This appendix sets forth the FWA (which is either flextime, or flexible 5/4/9 work arrangement) and credit hour procedures to be followed in OARO Field and provides authority for OARO Field employees to participate in these arrangements. In reaching agreement on this Appendix, neither party waives any provision of the National Agreement, laws or government-wide regulations. The parties recognize that the FWA provisions reflected in this appendix are solely designed to meet the specific workload and employee needs of OARO Field and may not be appropriate for other SSA components.

Section 2. Scope

The provisions of this appendix apply to full-time and part-time OARO Field employees.

Section 3. Flextime Procedures

A. General

All OARO Field flexible schedules will be consistent with law and this Appendix.

B. Flextime Provisions/Availability of Credit Hours

1. The Parties understand and agree that FWA will be initiated by the employee. In contrast, the parties understand and agree that the Agency initiates overtime and compensatory time.
2. A flextime schedule with credit hours will be available for all full-time and part-time OARO Field employees. Workdays of twelve (12) hours duration will be established for OARO Field employees, the flexible bands start at 6 a.m. and end at 6 p.m.
3. Core hours will be from 9:30 a.m. to 2:30 p.m. Flexible bands will be from 6:00 a.m. to 9:30 a.m. and from 2:30 p.m. to 6 p.m.
4. For employees working a flexible 5/4/9 work arrangement, the flexible band start time is 6 a.m. to 8:30 a.m. Employees who work a flexible 5/4/9 work arrangement must arrange their schedule so that they can complete their nine and one-half (9 1/2) hour work schedule by the end of the workday as provided above.
5. Holidays and premium pay for flexible schedules will be consistent with law and this appendix.

Article 10 Appendix E

6. Employees working a flexible 5/4/9 work arrangement will not be eligible to earn credit hours as described in this Appendix.

C. Special Circumstances

On days that in office training and/or meetings are scheduled, employees will arrange their time of arrival so as to be present for such training and/or meetings.

Section 4. Credit Hour Provisions

- A. All employees covered by this Appendix will be permitted to earn up to three (3) credit hours per work day within the flexible band, with supervisory approval, provided that there is work available for the employee, as determined by management, and it can be performed at the requested time(s). Part-time employees may work up to 3 credit hours on their non-tour day(s).
- B. Credit hours may be earned in increments of one-quarter (1/4) hour. Credit hours may be used in increments of 1/4 hour.
- C. Full-time employees may accrue credit hours so that the total exceeds the 24 hour maximum limit in a pay period. However, the hours in excess of 24 must be requested and used prior to the end of the pay period. A part-time employee may accrue no more than one-fourth (1/4) of the hours in such employee's basic bi-weekly work requirements.
- D. Consistent with the assignment involved and with prior management approval, OARO Field employees may earn credit hours while working in field locations if not on a flexible 5/4/9 work arrangement.
- E. Requesting and Using Credit Hours
 1. The employee has the option to request the opportunity to earn credit hours using a method determined by management. The request will ordinarily be made on the workday preceding the day the hours are to be worked, and will be submitted to the immediate supervisor. In the supervisor's absence, the request will be submitted to the next available line manager. Denials must be in writing and returned to the employee as soon as possible. In the case that there is not enough work available, it is understood that the employee(s) receiving earlier approval will receive priority over those receiving later approval.
 2. E(1) above does not preclude requesting and working, with supervisory approval, same day credit hours.
 3. If credit hours are requested and approved and overtime is subsequently made available, the employee will be afforded the opportunity to elect to work the overtime in lieu of credit hours.

4. Credit hours can be used in conjunction with any other type of leave and/or compensatory time.
5. Part-time employees may work credit hours on their day off, subject to all other provisions of FWA (Maximum of 3 hours per day).

Section 5. Flexible 5/4/9 Work Arrangement Provisions

A. General

The flexible 5/4/9 work arrangement may be suspended and employees may be required to return to fixed shift when they are required to attend training classes or when other situations arise.

B. Requests for Flexible 5/4/9 Work Arrangement (FWA)

1. Employees already established in a flexible 5/4/9 work arrangement will not be required to file a new request for each new requesting period.
2. Management will consider operational needs and employee preference in making assignments and reassignments to work schedules. Once operational needs are taken care of, any conflicts in initial scheduling that result will be resolved in favor of the employee with the earliest SCD. In such cases, as soon as possible within the ten (10) days Management has to act, the supervisor will communicate the reason(s) for denial of the initial request, in writing, to the employee.
3. A new six (6) month flexible 5/4/9 work arrangement will begin the first day of the first full pay period of the first month of the new flexible 5/4/9 work arrangement.

Section 6. General Provisions

Employees who are attending official training courses or conferences will revert to their established fixed schedule, or when necessary, to a schedule set for the course or conference.

Article 10 - Appendix F

Flexible Work Arrangements (FWA), and Credit Hour Plans for Program Service Centers, Regional Offices, and Regional Offices of the General Counsel

Section 1. Purpose

This appendix sets forth the FWA (which is either flextime, flexible 4/40 work arrangement for those that currently have it as of the date of this agreement or flexible 5/4/9 work arrangement) and credit hour procedures to be followed and provides authority for employees to participate in these arrangements. In reaching agreement on this appendix, neither party waives any provision of the National Agreement, laws or government-wide regulations. The parties recognize that the FWA provisions reflected in this appendix are solely designed to meet the specific workload and employee needs and may not be appropriate for other SSA components.

Section 2. Credit Hours

A. Eligibility

The following are excluded from participating in credit hours:

Employees temporarily reverting to a fixed tour pursuant to the terms of this article or appendix.

B. Credit Hour Procedures

1. Credit hours can only be worked on days that the employee is scheduled to work. Credit hours must be worked within established flexible schedules. However, part-time employees may work up to 3 credit hours on their non-tour day(s).
2. Employees may earn credit hours in one-quarter hour (1/4) increments. Both full-time and part-time eligible employees may work a maximum of three credit hours per scheduled workday. Employees will not earn and use credit hours in a pattern that creates a 4/40 work schedule.
3. Employees eligible to work credit hours will be permitted to do so, provided there is appropriate work as determined by management and it can be performed at the requested time(s). Requests to work credit hours must be made using a method determined by management no later than noon the day the credit hour is to be worked. A written explanation will be provided for any denial.
4. Employees may accrue credit hours so that the total exceeds the 24 hour maximum limit within the pay period. However, the hours in excess of 24 must be requested and used prior to the end of the pay period. A full-time employee may carry over from one pay period to the next a maximum of 24 credit hours, regardless of when they were earned, without risk of forfeiture.

5. A part-time employee can accumulate or carry over to a succeeding pay period not more than one-fourth of the hours in such employee's biweekly basic work requirement.
6. If credit hours are requested and approved and overtime is subsequently made available, the employee will be offered the opportunity to elect to work the overtime in lieu of credit hours.

C. Procedures for Using Credit Hours

1. Employees will request to use earned credit hours in advance.
2. Employees may use credit hours in increments of one-quarter hour. They may be used alone, in lieu of or in combination with approved annual leave, sick leave, or leave without pay.
3. Supervisors will approve credit hours using the same criteria used for the approval of leave. Any conflict between credit hour requests will be resolved in favor of the employee(s) with the earliest SCD.

Section 3. Flexible 5/4/9 and 4/40 Work Arrangement Provisions

A. Scheduling flexible 5/4/9 and 4/40 work schedule

1. Management will consider operational needs and employee preferences in making assignments to work schedules. In the event of conflicts after operational needs have been met, the employees involved will be asked to resolve the conflict between or among themselves. Any remaining conflict will be resolved in favor of the employee with the earliest SCD. This process will be repeated for each scheduling period.
2. Employees who discontinue a flexible 5/4/9 or 4/40 work arrangement must wait until the next six month scheduling period cycle before applying to return to a flexible 5/4/9 or 4/40 work arrangement.
3. Employees already established in a flexible 5/4/9 or 4/40 work arrangement will not be required to file a new request for each new requesting period.

B. Special Provisions for Flexible 5/4/9 or 4/40 Work Arrangement

1. Part time employees are not eligible for flexible 5/4/9 or 4/40 work arrangement.
2. An employee may be involved in travel, training, or activities that do not accommodate a flexible 5/4/9 or 4/40 work arrangement. Consequently, an employee may be precluded from participating in the flexible 5/4/9 or 4/40 work arrangement for one or more pay periods. During such periods, the employee may participate in a flexible schedule to the extent that she/he is not required to be on a fixed tour.
3. Operational needs may dictate that an employee participating in the flexible 5/4/9 or 4/40 work arrangement may be required by management to have his/her schedule

modified for a particular pay period. The modifications may include altering the employee's non-work day and/or eight hour day.

4. An employee may request a change in his/her non-work day because of extenuating circumstances, subject to management approval.
5. Employees participating in a flexible 5/4/9 or 4/40 work arrangement who are involuntarily assigned to a new unit eligible for flexible 5/4/9 or 4/40 work arrangement will normally be allowed to continue their existing flexible 5/4/9 or 4/40 work arrangements.

Section 4. Flextime Provisions

For PSC employees, flexible bands and core time as of the effective date of this Agreement remain in effect.

Section 5. General Provisions

- A. Employees in travel status, scheduled for training, conferences, or other activities necessitating set hours may be required to revert to fixed tours as prescribed by the respective PSC, and RO/ROGC.
- B. Employees participating in the flextime plan may be required to report to work at a set time because of a particular work activity, such as a training class. The assignment of a fixed reporting time does not necessarily preclude the employee from working credit hours within the remaining portion of the established flexible schedule for the PSC, and RO/ROGC.
- C. Employees at a temporary duty station (TDY) will be governed by any FWA plan in effect at the TDY.
- D. The agency agrees to make reasonable efforts to schedule meetings during core hours and to give employees as much advance notice of these meetings as possible. Employees who are scheduled to attend special meetings outside core hours must plan their schedules accordingly.
- E. If an employee's non-work period or day causes him/her to miss meeting(s) or training session(s) conveying information for which the employee will be held responsible, his/her supervisor will ensure that this information is timely given to the employee.
- F. The agency agrees that employees should be excluded from the provisions of this appendix only when such action is necessary to ensure that the duties and requirements of an employee's position are fulfilled.

Article 10 - Appendix G

Flextime, Credit Hour Plans, Flexible 5/4/9 and 4/40 Work Arrangements (for those that have 4/40 as of the date of this agreement) for the Wilkes-Barre Data Operations Center (WBDOC) and the Security Records Center (SRC)

Section 1. Purpose

This appendix sets forth the procedures to be followed for flexible 5/4/9 and 4/40 work arrangements, flextime and credit hour procedures in the DOC and SRC, and provides authority for DOC and SRC employees to participate in these plans. In reaching agreement on this Appendix, neither party waives any provision of the National Agreement, laws or government-wide regulations. The parties recognize that the flexible work arrangements (FWA) provisions reflected in this Appendix are solely designed to meet the specific workload and employee needs of the WBDOC and SRC, and may not be appropriate for other SSA components.

Section 2. General

The parties understand and agree that flexible work schedules, flexible 5/4/9 and 4/40 work arrangements, or credit hours will be initiated by the employee and flexible 5/4/9 and 4/40 work arrangements and credit hours will be subject to the approval of management. In contrast, the parties understand and agree that overtime and compensatory time are initiated by the agency.

Section 3. Provisions Related to Flextime

Flexible bands are the specific periods of the workday during which employees have the opportunity to vary their starting and departure times.

The parties agree to continue to follow existing flexible work schedules in effect at the signing of this agreement in the SRC and WBDOC.

Employees at a temporary duty station (TDY) will be governed by the work schedule plan in effect at the TDY.

Section 4. Provisions Related to Credit Hours

A. Procedures for Working Credit Hours

1. Credit hours can only be worked on days that the employee is scheduled to work. Credit hours must be worked within established flexible schedules. However, part-time employees may work up to 3 credit hours on their non-tour day(s).
2. Credit hours are worked in one-quarter hour increments each day. Both full-time and part-time eligible employees may work a maximum of three (3) credit hours per

scheduled workday provided that appropriate work as determined by management is available for the employee and it can be performed at the requested time(s). Credit hours will not be accrued and used in a manner that would be characteristic of a 4/40 work schedule.

Customer Service Branch (CSB) and Workload Support Unit (WSU) employees may work a maximum of 1 ½ credit hours per scheduled workday provided that appropriate work as determined by management is available for the employee and it can be performed at the requested time(s).

To allow for double-use of workstations, some CSB employees may have to move to a vacant workstation in the post flexband credit hour period. The parties recognize the potential overlap between dayshift and nightshift and double use workstations impact on the flexband.

SRC and System Operations (Computer Operators) employees may work a maximum of 2 ½ credit hours per scheduled workday provided that appropriate work as determined by management is available for the employee and it can be performed at the requested time(s).

3. The employee has the option to request the opportunity to earn credit hours using the method determined by management. The request will ordinarily be made on the workday preceding the day the hours are to be worked, or the same workday and will be submitted to the immediate supervisor. In the supervisor's absence, the request will be submitted to the next available line manager. Denials must be in writing and returned to the employee as soon as possible.
4. A full-time employee may accrue up to 28 credit hours during a pay period. However, a maximum of 24 hours only may be carried over from one pay period to the next, regardless of when they were earned without risk of forfeiture. Full-time employees will be permitted to earn up to three (3) credit hours per day. However, the hours in excess of 24 must be requested and used prior to the end of the pay period.
5. A part-time employee can accumulate or carry over to a succeeding pay period not more than one-fourth of the hours in such employee's bi-weekly basic work requirement.
6. If credit hours are requested and approved and overtime is subsequently made available before the work is performed, the employee will be notified and afforded the opportunity to work overtime instead. Once credit hours have been worked, they may not be changed to overtime subsequently made available.
7. Holidays and premium pay for flexible schedules will be consistent with law.

B. Procedures for Using Credit Hours

1. Employees will request to use credit hours in advance.

2. Employees may use credit hours in increments of one-quarter hour. They may be used alone, in lieu of or in combination with approved leave, in order to take a full day(s) off.
3. Supervisors will approve use of credit hours under the same criteria used for the approval of leave. In the event of a conflict between credit hour requests, it will be resolved in favor of the employee(s) with the earliest SCD within the work unit by position.

Section 5. Provisions Related to Flexible 5/4/9 or 4/40 Work Arrangements

A. Scheduling Flexible 5/4/9 or 4/40 Work Arrangements

Management will consider operational needs and employee preferences in making assignments in flexible 5/4/9 or 4/40 schedules. Any conflicts will be resolved in favor of the employee with the earliest SCD within the work unit by position. This process will be repeated for each scheduling period.

B. Special Provisions for Flexible 5/4/9 or 4/40 Schedules

1. Part-time employees are not eligible to participate in flexible 5/4/9 or 4/40 schedule.
2. CSB and WSU employees are not eligible to participate in a flexible 4/40 schedule.
3. An employee may be involved in travel, training, or activities that do not accommodate a flexible 5/4/9 or 4/40 schedule. Consequently, an employee may be precluded from participating in the flexible 5/4/9 or 4/40 schedule for one or more pay periods. During such pay periods, the employee may participate in a flexible schedule to the extent that she/he is not required to be on a fixed shift.
4. An operational need may dictate that an employee participating in a flexible 5/4/9 or 4/40 schedule may be required by the Agency to have his/her schedule modified for a particular pay period. The modification may involve altering which day the employee has as a non-work day or an eight-hour day. The Agency agrees to minimize any such modifications.
5. Employees requesting a change to their non-work day and/or eight-hour day under a flexible 5/4/9 or non-work days under a 4/40 work schedule may make such changes only at the semi-annual requesting period. Hardships will be handled on an exception basis by management.
6. To the extent possible, employees who are participating in a flexible 5/4/9 or 4/40 schedule and are assigned to a new unit will be allowed to continue their existing flexible 5/4/9 or 4/40 schedule.
7. Flexible 5/4/9 or 4/40 schedules will be determined by Management in a fair and equitable manner. Work schedules will be designed so that approximately 10 percent of the employees in the work unit by position can be off work at one time. However, this amount may be increased depending upon workload and differing demands. This

is over and above normal leave usage. In computing the 10 percent staffing figure, Management will round up to the next whole person.

Section 6. General Provisions

- A. Employees in travel status, scheduled for training, conferences, and other activities necessitating set hours may be required to revert to fixed tours as set in the WBDOC and SRC.
- B. On days that training and/or meetings are scheduled, employees will arrange their time of arrival so as to be present for such training and/or meetings. Employees who are scheduled to attend all day or partial day out-of-office training may be required to revert to their established fixed shift schedule.
- C. All new hires and rehires will be afforded the opportunity of electing flexible 5/4/9 or 4/40 schedules at the end of the required training period, provided training is scheduled for the entire workday.
- D. Employees at a temporary duty station (TDY) will be governed by any flexible 5/4/9 or 4/40 schedule in effect at the TDY.
- E. If an employee's non-work period or non-work day causes him/her to miss meeting(s) or training session(s) conveying information for which the employee will be held responsible, his/her supervisor will ensure that this information is timely given to the employee.

Article 11

Use Of Official Facilities And Communications

Section 1. Meeting Space

- A. The Administration will provide private space, as available, for confidential discussions between a bargaining unit member and a designated Union representative, when held in accordance with the terms of this agreement.
- B. The Administration agrees that where meeting space exists within a facility, it may be made available for local meetings and membership drives during lunch periods or for as long as the office is normally opened, subject to management approval. The Union must give sufficient advance notice to ensure no disruption to the normal mode of business.

Section 2. Copies of the Agreement

- A. The Agency will post the ratification copy of this Agreement on the OLMER Website.
- B. A copy of the signed Agreement will be posted on the OLMER Website.
- C. The Administration, in recognition of the special needs of the blind employees in the bargaining unit, will also provide copies of this Agreement in Braille or 508 compliant electronic form to appropriate employees.

Section 3. Distribution of Union Publications

- A. Official publications of the Union may be distributed on SSA property by Union representatives in accordance with Article 30 of this Agreement or during non-duty time. Where available, Union representatives will use centralized employee mail slots/drops to distribute Union publications. Distribution shall be accomplished at a time mutually agreed to by the parties and shall not disrupt operations. All such materials shall be properly identified as official Union issuances. Materials distributed will not malign the character of any Federal employee.

Section 4. Bulletin Boards

- A. The size, number and location of Union bulletin boards will remain as they are as of the effective date of this agreement, provided office facilities remain unchanged.
- B. Union bulletin board space will be prominently identified as such by management and will be located in areas accessible to bargaining unit employees. All postings will be marked

prominently as "Union Notices," and only the designated Union bulletin boards will be used for such postings.

Section 5. Communications Systems

- A. The Administration will continue to make telephones within SSA facilities available to the Union for the conduct of labor-management relations.
- B. The Union agrees that Agency telephones, fax equipment, and computers will not be used for internal Union business.

Section 6. E-Mail

The parties understand that access to and use of the Agency's electronic mail shall not interfere with the mission or operation of SSA.

- A. Therefore, the Administration agrees to provide the Union with access to and use of the Agency's electronic mail subject to the following restrictions:
 - 1. The Union agrees its access and use will comply with applicable government-wide and Agency policies and guidelines and the National Agreement.
 - 2. Access and use is limited to those situations where available hardware and software permit.
 - 3. Access and use for representational activities shall be on approved official time (or non-duty time).
 - 4. Employees must be on non-duty or break time when accessing electronic messages from the union.
 - 5. Effective September 23, 2022: On non-duty time, employee union representatives may solicit for union membership using the Agency email system provided the employee is otherwise permitted to access the system. This does not alter the times when employees are authorized to access the computer or email system. In all other circumstances, electronic mail cannot be used for internal union business.
 - 6. Consistent with [18 U.S.C., Section 1913](#), electronic mail transmissions shall not be used to urge or promote lobbying activities by non union representative employees either in support of or in opposition to any legislation or appropriation of Congress.
 - 7. It is recognized that a transmission with large numbers of addressees could affect system performance. Therefore the union agrees that an e-mail message, with the exceptions noted below, will be transmitted to not more than 100 recipients at one time, including

any CCs or BCCs. GC Members (Council Presidents) may send one e-mail per month to all members of his/her Council. The e-mail message must state “read on non-duty time” in the subject line. Requests for more than one e-mail per month must be sent to OLMER for approval.

A Local president or a designee is authorized to send one e-mail per week to each employee in his/her Local in excess of the 100 recipient limit. Likewise, a local steward in a field office is authorized to send one e-mail per week to each employee in his/her officially assigned duty station in excess of the 100 recipient limit. Larger transmissions are subject to approval by the Agency.

All union e-mail messages must state “read on non-duty time” in the subject line.

8. Since viruses can be transmitted through executable files, messages cannot contain executable file attachments.
- B. Violation of any of the above policies, guidelines or restrictions may subject the abuser to disciplinary action, and may include suspension of access privileges.

Section 7. Employee Data

Semi-annually, the Administration will provide AFGE an alphabetical list in an electronic file including the names, grade and step, position titles, division and or duty station, EOD and SCD of all bargaining unit employees.

Sidebar – Article 11

Agency will provide dedicated space in Central Office comparable to the AFGE Term Bargaining Caucus Room (WLR L1107/1109).

The Union will be able to identify 100 square feet in each region, within 30 days of the effective date of the agreement. Such space will not be located in Field Offices or Hearing Offices. Actual location to be mutually agreed upon by the parties.

The General Committee Spokesperson will inform the Associate Commissioner for the Office of Labor-Management and Employee Relations of the requested locations for the space in each region.

Sidebar – Article 11 (Effective: September 23, 2022)

The Agency and Union will meet by technology at a mutually acceptable time, at the national level, between October 1, 2022 and December 31, 2022 to discuss space of up to 100 square feet within up to ten (10) Agency facilities that may be used by designated 2080, 1440, or 1040 official time hours users.

If the parties cannot mutually agree on space to be used, the parties will utilize FMCS mediation to reach an agreement. If agreement is not reached after mediation, any unresolved union office space disputes will be resolved in the next term bargaining between the parties, i.e., the term bargaining occurring subsequent to the bargaining described in section 7 of the July 25, 2022 EO 14003 UMG Settlement and Limited Reopener Agreement.

If through the discussions described above the Parties cannot mutually agree on space to be used, then, upon request, the Agency will provide a file cabinet for each 2080, 1440, or 1040 official time hours user with an official assigned duty station at that facility, at ten of the Agency facilities identified during the discussions above (up to four file cabinets in each of the ten facilities).

Finally, if through the discussions described above the Parties cannot mutually agree on space to be used in relation to the Flushing Field Office, then, upon request by the General Committee Spokesperson and mutual agreement, the Region and Union will be able to identify up to 100 square feet in the New York Region beyond the space already provided under the existing sidebar to the 2019 SSA-AFGE National Agreement. Such space will not be located in a Field Office or Hearing Office. Actual location to be mutually agreed upon by the Parties. Once mutually agreed upon, the space will be provided for the Union's designated use for a period of one year (when it will revert to the Agency) or until the Agency returns the space to the lessor, whichever is sooner.

Nothing in this agreement precludes the parties from reaching nor requires the parties to reach space agreements sooner, or on space larger than 100 square feet, where such space is readily identifiable and available. Also, nothing in this agreement precludes or requires the parties at any level from discussing and making additional agreements on union space outside of this particular agreement.

Article 12

Recycling and Going Green

Section 1. Purpose and Policy

The parties agree that recycling and going green are important for environmental concerns. The Agency recognizes that it can make more efficient use of natural resources by maximizing recycling and preventing waste wherever possible. Any recycling programs established by the parties will be done in a cost effective manner. The administration will make every reasonable effort to see that employees are environmentally conscious.

Parties agree that revenue generated from recycling be used in accordance with the statute.

The agency is committed to supporting Federal government efforts to increase energy efficiency; reduce greenhouse gas emissions from direct and indirect activities; conserve and protect water resources through efficiency, reuse, and storm water management; eliminate waste, recycle, and prevent pollution; design, construct, maintain, and operate high performance sustainable buildings; and inform Federal employees about these goals.

The issue of recycling will periodically be on the agenda of, and be dealt with at the National Level Union/Management Committee meetings. The union may request an annual briefing during the February UM meeting on the recycling program and going green efforts at SSA, which may include a discussion on funds collected and expenses of the program.

SSA will make information available to SSA employees regarding the Agency Recycling Program and recycling information on the agency intranet.

Article 13

Parking and Transportation

Section 1. Changes in Parking Arrangements

When changes in current parking arrangements are proposed, Management will notify the Union and fulfill any obligation to bargain to the extent required by [5 USC 71](#).

Section 2. Parking Policy

Parking will be handled in accordance with [41 CFR 102-74.305](#).

Section 3. Traffic Violations

- A. An employee who has been issued a citation for a traffic violation on government property, or while conducting official government business within the commuting area of the employee's permanent duty station, and who is found by authorities to be not guilty or the charges are dismissed will be given administrative leave, subject to applicable government-wide laws and regulations, to cover the time spent for appearing in court. This time will include reasonable travel time to court.
- B. Suspension of parking privileges will be for just cause.

Section 4. Shuttle Service

Shuttle service, where available, will be provided to employees traveling between buildings in the course of official business. This does not preclude discontinuance of shuttle service where the Employer determines the service is no longer feasible.

Section 5. Commute Options

- A. The Agency will promote the use of alternative commuting options and provide related information on the agency intranet. Management will also make new employees aware of this information.
- B. The Agency will make arrangements for employees to advertise ridesharing opportunities.
- C. The Agency will make reasonable efforts to work with public transportation agencies to ensure the availability of public transportation to the facility with special emphasis to accommodate mobility-impaired employees.

- D. If an employee expresses an interest in using a bicycle to travel to and from work, the agency will explore options for safeguarding his/her bicycle such as requesting bike racks, permitting employees to store bicycles inside agency space, etc.

Section 6. Transportation Subsidy

The agency will continue to provide a public transportation subsidy program for bargaining unit employees subject to the availability of funds.

All employees are eligible to apply for a transportation subsidy from the Agency. Employees eligible to participate in the agency transportation subsidy program, which will be in accordance with government-wide rules and regulations, may receive a subsidy not to exceed the amount of their actual monthly commuting expenses, up to the maximum amount authorized by this Agreement and the Sidebar.

Article 13

Sidebar

1. As soon as administratively possible after the effective dates shown below, the Agency will reimburse AFGE Bargaining Unit employees (with duty stations outside of the National Capital Region) for allowable transportation expenses in accordance with government wide rules and regulations, up to \$90 per month.
2. AFGE bargaining unit employees in the National Capital Region (NCR) will be reimbursed up to \$125 per month for allowable transportation expenses in accordance with government wide rules and regulations. The agency maintains the discretion, to the extent provided by Law or Executive Order, to increase the monthly reimbursement amounts should a subsequently enacted Law or Executive Order increase the monthly allowable reimbursement limit for the NCR.

Article 14

Reduction-in-Force and Transfer of Function

Section 1. Negotiations

The Administration and the Union recognize that unit employees may be seriously and adversely affected by a reduction-in-force and/or transfer of function action. In the event of a reduction-in-force and/or transfer of function, and there is a duty to bargain under [5 USC 71](#), notice and such opportunity to bargain will be provided to the Union by SSA consistent with Article 4.

Section 2. Notification to Union

- A. Written notification shall be made at the earliest possible date prior to the advance notice to employees. The notification will include:
1. The reason for the action to be taken;
 2. The approximate number of employees who may be affected initially;
 3. The types of positions anticipated to be affected initially; and
 4. The anticipated effective date that action will be taken.
- B. The Administration shall provide the Union with RIF information as required by [5 CFR 351](#).

Section 3. Notice to Employees

The Administration will give an advance notice of 60 calendar days to employees who may be affected by a reduction-in-force action.

Article 15

Contracting Out Bargaining Unit Work

Section 1. Prior Notification to Union

When the Administration anticipates contracting out of work presently being performed by bargaining unit employees, regardless of how the contract is to be implemented the Union will be notified. The notice will include general information concerning the employees who may be affected.

Section 2. Union Requested Discussions

Following such notice, upon request from the Union, the Administration will meet with the Union to discuss the information contained in the notice.

Section 3. Notice to the Union

Prior to contracting out work performed by bargaining unit employees, the Agency will provide notice and, upon request, bargain with the Union to the extent required by [5 USC 71](#) and in accordance with Article 4. When notice is given, it will include information on positions and locations.

Section 4. Employee Privileges and Benefits

Employees' privileges and benefits will not be diminished by allowing contractors to participate in employee programs. Such privileges include, but are not limited to, health screening, health fitness programs, shuttle services, and Government-sponsored training.

Section 5. Briefings

The Agency will provide a contracting out, insourcing, and FAIR briefing in connection with a national Union/Management meeting at least once per year in April. This briefing does not preclude the issue from being addressed at any subsequent national Union/Management meeting.

Article 16

Training and Career Development

Section 1. General Provisions

The Agency and the Union agree that the training and development of employees is important in carrying out the mission of the Agency. The Agency is responsible for ensuring that all employees receive the appropriate training necessary for their assigned duties. The Agency is responsible for ensuring that all employees are provided time to attend or complete assigned training.

Section 2. Non-Discrimination

The Parties agree that nomination and/or selection of employees to participate in training and career development programs and courses shall be nondiscriminatory without regard to sex (including sexual orientation and gender identity), race, color, genetic information, religion, age, marital status, ethnic group, disability, parental status, and Union membership or activity, and shall be in accordance with equal employment opportunity guidelines, and consistent with other applicable laws.

Section 3. Training – Job Related (Technical and General)

- A. Employees will not incur costs for agency required training necessary for the performance of their assigned duties.
- B. When training is required as part of a career ladder plan, the Agency is responsible for ensuring that it is provided.
- C. Employees may initiate discussions regarding individual training needs. Such discussions may or may not be directly linked to an Individual Development Plan (IDP).
- D. At the conclusion of formal, long-term training sessions, participants will be offered the opportunity to evaluate the training based on a survey prepared by the Agency. The Agency will conduct a follow-up survey, normally six (6) months after the conclusion of the formal training class. Normally, result (respondent scores, comments, etc.) will be provided to the appropriate Union official within 60 days after the administration of each survey.
- E. The Parties recognize the value of live interactive training classes, as well as interactive elements as part of self-paced training for technical programmatic courses. The Agency continues to utilize and expand two-way meeting technology (e.g., Microsoft Teams) to approximate the live, in-person interactive training experience. The Agency recognizes that the future of interactive, virtual, initial programmatic training (including items such as discussion of ideal class size) will be a subject for pre-decisional involvement (PDI) in Union Management Cooperation Councils under Article 29.

- F. Components that routinely utilize bargaining unit employee instructors for extended programmatic training will openly solicit and train qualified employees to serve as trainers/instructors. Solicitations will occur as needed (e.g. in advance of anticipated training). To be eligible, employees must at least be in a journey-level position for the position they wish to instruct, have at least a Level 3 performance appraisal, and meet other qualification requirements as determined by management. The potential of component and position-specific “train the trainer” courses will be a subject for PDI in Union Management Cooperation Councils under Article 29.

Section 4. Individual Development Plans (IDP)

Employees shall be encouraged to plan their career development through the establishment of an Individual Development Plan (IDP).

- A. The Agency agrees, on an annual basis, normally the first quarter of the calendar year, to provide information and assistance, if necessary, to employees for the purpose and means of establishing IDPs. Employees requiring assistance will normally consult with their first line supervisor in completing and submitting their IDP. If the first line supervisor is unavailable, the employee may request assistance from the second line supervisor or designee. The approving management official will also be identified.
- B. Because of the nature of their appointments, IDPs are not appropriate for term or temporary employees.
- C. Employees may initiate IDPs through their designated management official. The designated management official will, if requested, assist the employee in the preparation of the IDP and will review it with the employee to assure conformance with organizational needs and individual career needs. The plan will be referred to the designated approving official and the employee will be notified of approval/disapproval or the need for modification. The Agency acknowledges that duty time is appropriate for employees to complete an IDP. Time for approved IDP training activities will be addressed in accordance with Section 8 of this Article.
- D. IDP information will be available to employees on an agency website.

Section 5. Training Programs

- A. The Agency will remind employees, at least annually, of the availability of Government-sponsored training programs, the general scope of training, the criteria for approval of training, the nomination procedures, and advise employees of their right to request a reasonable accommodation with respect to training. The Agency agrees to advise individual employees, upon request, of currently available Government-sponsored training courses so as to provide the employee the opportunity to express timely interest. The Agency will provide information via the intranet concerning SSA-sponsored training and educational programs.

- B. Training nominations and/or approval will be based on the potential use of the training in the employee's current position, or IDP if any, and other criteria established by applicable law, rule, or regulation. Nominating and approving officials will apply such criteria equitably.
- C. When an employee is nominated for training, a copy of the employee's IDP, if relevant, will be attached to the nomination and will be considered in the process. Employees will be notified in writing of the approval or disapproval of their nominations and the reason for disapproval. To the extent feasible, employees will be notified of the approval or disapproval prior to the starting date of the training. Should an employee's nomination for training, including training courses contained in an IDP, be disapproved for lack of resources, the employee may be renominated as funds later become available, and the nomination will be given first consideration.

Section 6. National Training Committees

- A. The Agency and the Union have agreed to continue the National Training Committees (NTC). The purpose of the NTCs is to review agency training and career development programs and make necessary recommendations. It shall meet to discuss training methodologies, training and career development needs, education and communication, efficacy of training initiatives; and other related issues. It will be a focal point for sharing information on agency-wide training and career development.
- B. The NTC is a recommending body that will meet two (2) times per year and submit joint recommendations to the Deputy Commissioner for Human Resources, with a copy provided to the General Committee Spokesperson.
- C. The NTC will be composed of up to twelve (12) members. Up to six (6) will be appointed by the Union and up to six (6) by the Agency. The dates for these meetings will be set by mutual consent of the parties. The parties may agree to additional meetings. The meeting(s) will be held on two consecutive days from 1:00-4:00 PM EST, via technology. Time authorized for NTC meetings will be handled in accordance with Article 30.
- D. This committee is not a waiver of Union statutory rights to information, consultation or negotiations. The Union reserves the right to request negotiations on issues impacting conditions of employment.
- E. Training may also be an appropriate subject for discussion at the Union Management Cooperation Councils.

Section 7. Technical Mentoring

- A. Technical Skills Mentoring is defined as providing appropriate on the job assistance to employees new to particular jobs.
- B. Mentors should be highly motivated, knowledgeable employees with good interpersonal skills.

C. Management will make every reasonable effort to:

1. Allow interested employees who are qualified to volunteer in the mentoring process and will openly solicit for volunteers when needed. Where management determines an employee is not qualified to mentor or decides not to utilize the employee in the mentoring process, they will discuss the reasons with the employee, if requested.
2. Accommodate employees with special needs or special equipment by obtaining mentors who are familiar with special equipment or accommodations used by individuals.
3. Consider an employee's request to freely withdraw from mentoring, and if denied provide a written explanation.
4. Share links to existing SSA training on mentoring to new mentors and organize an orientation meeting between the mentor and mentee.

D. Management recognizes that mentoring may consume a portion of the mentor's time and consideration will be given to adjusting workloads as deemed necessary.

E. The mentoring phase of training is a learning period that enables employees to become familiar with their new assignments. Management realizes that there is a learning curve in the mentoring process for the mentor and the employee. The mentoring process should ideally involve ongoing three-way communication among the technical mentor, the employee, and management.

F. Management recognizes the importance of continuity and will make every reasonable effort to ensure that the mentoring process is completed without interruption (e.g. scheduling blocks of time to allow for a mentor and an employee to meet to discuss casework and other work items, time for a mentor to review an employee's work).

G. Trainees who believe they need additional assistance or training at the conclusion of their mentoring period may make a request for management's consideration.

Section 8. Training Expenses

When training is approved, the Agency will pay costs of tuition, required textbooks and other expenses as appropriate, and may pay travel costs, subject to travel regulations and fiscal considerations. When management approves the scheduling of training during the employee's basic workweek, duty time may be approved for training, unless the training is deferred or cancelled. If travel funds are not authorized and the training would otherwise be approved, the employee will be notified and may request to be excused to attend the training, without travel reimbursement, in accordance with [PPM S630.9](#).

Section 9. Certification

Employees, (i.e., attorneys who are members of the Bar (state, territory or District of Columbia), nurses, and physicians) who are required to earn continuing education credits to maintain certification and/or licensure related to the employee's job series will be granted administrative leave, not to exceed 10 hours in any one calendar year to maintain such certification or licensure. The Agency will not incur any costs for such training. Administrative leave for continuing education training must be requested by the employee and approved in advance by Management, subject to workload considerations and applicable government-wide laws and regulations regarding administrative leave.

Section 10. Career Development Programs

The Parties recognize that career development programs at the Agency and component levels are appropriate subjects for discussion in Union Management Cooperation Councils under Article 29.

Section 11. Continuing Legal Education Requirements

The Agency shall reimburse tuition up to \$200.00 per fiscal year to a GS-0905 attorney for course(s) necessary to satisfy the employees mandatory continuing legal education requirements to maintain a law license. The employee shall submit proof of payment to the Agency for reimbursement. Reimbursement may be delayed until enactment of a full year appropriation. Reimbursement will begin in fiscal year (FY) 2024.

In situations where an employee has an active membership in more than one bar (state, territory or District of Columbia), they may receive reimbursement sufficient to obtain the number of CLE hours necessary to maintain an active membership in the bar with the lesser CLE requirement.

Section 12. Law License Fee Reimbursement

A. To the extent the Agency or OPM requires a law license in order to be employed as a bargaining unit GS-0905 series attorney, the Agency will reimburse law license fees for one State bar. If the employee is licensed in more than one State, the Agency will reimburse the law license fee for the State with the lowest law license fee amount.

B. Each year, employees may submit law license reimbursement requests on a rolling basis as the employee pays his, her, or their dues for professional law licenses. Reimbursement may be delayed until enactment of a full year appropriation. Reimbursement will begin in FY 2024.

C. To be eligible for law license fee reimbursement, the requestor must be a bargaining unit GS-0905 attorney at the beginning of the period covered by the law license and on the date requesting reimbursement. The employee must remain employed with SSA for the duration of the licensing period for which the employee received reimbursement or may be subject to the recovery of funds, at a pro-rated amount.

D. All GS-0905 attorneys seeking reimbursement for a bar law license must annually provide documentation that they maintain active legal licensure in one or more U.S. jurisdictions. Reimbursement will be made upon receipt of proof of payment and consistent with other legal and fiscal requirements.

E. Qualified bargaining unit GS-0905 attorneys are eligible for reimbursement of up to \$300 of their individual annual law license fees each year. Law license fees paid on a bi-annual or tri-annual basis shall be reimbursed up to \$600.00 or \$900.00, respectively.

Article 17

Monetary Awards

Section 1. Purpose

Recognition of employees through monetary awards reflects the parties' efforts to promote continuous quality service and to recognize employee contributions to Agency performance. Employee recognition is based on achievement and acknowledges the individual and collaborative accomplishments of employees to promote the success of the Agency mission, goals and objectives. Strong emphasis is placed on recognition of efforts to improve service to the public. The program recognizes the accomplishments of employees both as individuals and as members of groups or teams. Those who contribute to the success of their work unit, and thus, the Agency, deserve recognition of their accomplishments. Recognition of group accomplishments also promotes and acknowledges the value we place on working together.

The program provides for two forms of monetary recognition (Recognition of Contribution (ROC) and Exemplary Contribution or Service Award (ECSA)), enabling the award recipient to be recognized in a meaningful manner. It provides the flexibility necessary to adapt to a changing work environment and unanticipated circumstances. The intent of this program is that employees will be appropriately rewarded regardless of changes in the Agency's organizational structure, work processes or work initiatives.

The Agency will provide a briefing and explanation to AFGE if the Agency's award budget does not follow OMB's recommendation.

Section 2. Policy

- A. Except for Recognition of Contribution Awards (ROC), there is no limit on the number of awards that an individual employee may receive or frequency with which he/she may receive awards during an appraisal period. The timing and frequency is determined by the type of award. No more than one Recognition of Contribution Award can be granted for an appraisal period. Exemplary Contribution or Service Awards will normally be granted as close as possible to the event being recognized.
- B. When employees are eligible to be considered for an award, the relative significance and impact of their contributions will be considered in determining which type of award(s) would constitute appropriate recognition, and the amount of money to be awarded. Funding availability must also be considered in the granting of monetary awards.
- C. Awards will be processed in a timely and expeditious manner.
- D. The Agency will provide an award recipient with documentation of the award received which may include a certificate. For awards other than ROCs, the acknowledgment will include a justification statement.

Section 3. Award Funding Process

- A. A component as defined for this Section is an organizational component with a Deputy Commissioner or equivalent.
- B. If the Agency establishes an award budget for a fiscal year, the awards funds will be distributed as follows:
 - a. 75% for ROC Awards (Performance Awards)
 - b. 25% for ECSA Awards (Exemplary Contribution or Service Award).

In addition, there will be a separate QSI allocation.

- C. If there are any unspent ROC funds for a Deputy Commissioner or equivalent component, management will reallocate such funds to that Deputy Commissioner or equivalent component's ECSA fund.
- D. The amount of award funding to be allocated to an organizational component for performance awards for bargaining unit employees will be based on the payroll of bargaining unit employees in that component as of September 30 of the preceding fiscal year, e.g. September 30, 2018 for the FY19 Awards Program.

The amount of funds to be allocated to an organizational component for the ECSA for bargaining unit employees will be based on the number of bargaining unit employees within the component as of September 30 of the preceding fiscal year, e.g. September 30, 2018 for the FY19 Awards Program.

- E. The Agency will provide the Union with the number of bargaining unit employees within each Deputy Commissioner or equivalent component as of September 30th of the prior fiscal year within 30 days of the date the award funds are allocated to each Deputy Commissioner or equivalent component.
- F. Following the processing of awards for a fiscal year, the Agency will provide the Union with (by March 1st):
 - 1. The number of ROC award recipients by Deputy Commissioner or equivalent component with each recipient's element average, position and grade as of the end of the fiscal year, and award amount.
 - 2. A listing by name of all ECSA award recipients by Deputy Commissioner or equivalent component with each employee's position and grade as of the end of the fiscal year, and award amount.
 - 3. A total summation of amounts spent and unspent for each of the two award categories by Deputy Commissioner or equivalent component.
 - 4. The number of QSIs approved and cost for these QSIs for each Deputy Commissioner or equivalent component.

5. The total ECSA fund (including reallocation of ROC funds) for each Deputy Commissioner or equivalent component.

Section 4. Eligibility Requirements

To be eligible for an award an employee must be in good standing and have a rating of record with an Element Average of at least 4.0 for ROCs, and an Element Average at least 3.0 for all other awards.

An employee is in good standing when he/she has a rating of record (an appraisal) of at least summary Level 3 and his/her current performance is at least successful.

Element Average is a computation summary derived in the performance evaluation process. Each performance element in the employee's appraisal is assigned a rating of 1, 3, or 5. The individual performance element ratings are added together and the total is divided by the number of performance elements and the resulting number is the Element Average. An Element Average is not computed for those employees with a Level 1 rating because they are not eligible for awards.

The Agency has the discretion to not grant a monetary award to an employee who received a reprimand. Employees who have received any other form of formal discipline (e.g. suspension, or demotion) are not eligible to receive any type of monetary award not already paid for the fiscal year in which the discipline is imposed or through the end of the next fiscal year. Affected employee will only lose award eligibility for one fiscal year.

If an employee was subject to a disciplinary action and the action is resolved by settlement or litigation, the employee will be considered in good standing and may be granted a monetary award if otherwise eligible.

Section 5. Types of Awards

- A. Recognition of Contribution (ROC) – ROC recognizes employees who have maintained high quality performance. It may be awarded in the form of a Quality Step Increase (QSI) or cash award. To be eligible for a cash ROC an employee must have a rating of record with an Element Average of at least 4.0. To be eligible for a QSI an employee must have a rating of record with an Element Average of 5.

Employees who are ROC eligible and are in good standing at the time of consideration for an award may be considered for a ROC award with the following exceptions:

- Employees who are separated from the Agency as of the date that DCHR issues the award funding memo to the Deputy Commissioner or equivalent level components are not eligible to receive a ROC award.

- The parties agree that if an employee becomes eligible for a ROC award based on a change in his/her appraisal by settlement, the employee may be granted a ROC award, if otherwise eligible;
- Probationary employees are not eligible;
- Employees with an Element Average of less than 4.0 are not eligible;
- Employees may not be granted more than one ROC for an appraisal period;
- Employees may not be granted more than one QSI within a 52 week period; and,
- Employees may not be serving on a temporary promotion when a QSI is to take effect.

A ROC eligible employee, who is not granted a ROC award, will, upon request, be provided the rationale for not receiving the ROC award.

- B. Exemplary Contribution or Service Award (ECSA) – An ECSA is a cash award which recognizes individual contributions to group achievement and performance that have promoted the mission of the Agency or extraordinary acts performed while on duty. Award amounts should be linked to the significance and impact of the accomplishment or contribution. The minimum amount to be awarded for an ECSA is \$200 with a maximum amount of \$800. To be eligible for an ECSA an employee must perform an extraordinary service or act in connection with or related to official duty, or demonstrate exemplary contributions to group/team performance. ECSAs may be granted and distributed throughout the appraisal period and as close to the contribution or extraordinary service or act as possible.

NOTE: A group or team is defined as two or more individuals working together toward a common purpose or goal.

Section 6. Honorary Awards

The Agency provides various honorary awards to recognize exceptional and meritorious service, such as superior accomplishments, teamwork, length of service and other achievements. Honorary awards are granted independently without a cash award.

Section 7. Miscellaneous

If the Agency decides to implement a suggestion program, and there is a duty to bargain under [5 USC 71](#), such notice and opportunity will be provided to the Union by SSA consistent with Article 4.

Article 18

Equal Employment Opportunity

Section 1. Policy

The Administration and the Union affirm their commitment to the policy of providing equal employment opportunities to all employees and to prohibit discrimination because of race, color, religion, sex (including sexual orientation, gender identity, and pregnancy), national origin, disability, genetic information, or age. In addition, the parties recognize their commitment to the policy of prohibiting discrimination on the basis of marital status, parental status or political affiliation. The Administration will have a positive, continuing and results-oriented program of affirmative action. The parties agree that Equal Employment Opportunity shall be administered in accordance with Title [5 U.S.C.](#), Title VII of the Civil Rights Act of 1964, as amended, the Civil Rights Act of 1991, the Rehabilitation Act of 1973 as amended, the Age Discrimination in Employment Act (ADEA), Executive Order 11478 as amended, and other authorizing legislation, and applicable regulations.

Section 2. Affirmative Programs for Equal Employment Opportunity

A. Establishment and implementation of the two Equal Employment Opportunity Program Plans (Affirmative Programs for Equal Employment Opportunities (APEEO) and Disabled Veterans Affirmative Action Plan (DVAAP)) is a fundamental Administration objective. The Administration will continue to provide overall management support and budgetary planning to achieve equal employment opportunity objectives throughout the Administration, as outlined in [29 CFR 1614.102](#), [Section 501](#) of the Rehabilitation Act, and the CFR for Disabled Veterans.

1. The Administration will provide the Union with the Equal Employment Opportunity Commission's (EEOC) Management Directive (MD) 715 policy guidance, standards, and reporting requirements for developing the APEEO Plans, including timeframes set by the EEOC. If any of these procedures change, the agency will inform the General Committee Spokesperson of the change(s).
2. The Administration will provide a copy of the annual EEOC MD 715 Report to the Union.

B. Monitoring:

1. SSA shall provide the Union annual status reports on workforce profile and action items (included in EEOC MD 715);
2. Any and all EEOC evaluation of SSA progress will be timely provided to the Union.

3. The parties will meet annually for two consecutive days from 1:00-4:00 PM EST via technology to assess progress and make recommendations for adjustments, as appropriate. The Union will be represented by up to six persons. This Union monitoring team and their management counterpart will be considered as the parties' National EEO Monitoring Committee.

In addition to its monitoring activities, the committee will receive a briefing on the total Agency Program.

Committee recommendations will be submitted to the Director of OCREO. Should recommendations be referred to higher levels, the Union will be notified timely. The union participation does not waive any rights pursuant to [5 USC 71](#).

Section 3. Adverse EEO Impact

Should adverse EEO impact be evidenced pursuant to the Affirmative Programs for Equal Employment Opportunity Plan, specific and measurable objectives shall be set to correct the conditions. Those objectives will include but not be limited to:

- A. Validating existing selection procedures or;
- B. Modifying or substituting selection procedures to alleviate adverse impact.

Section 4. Information and Data

- A. The Administration shall make available to employees written information describing the APPEO, and the EEO complaint procedure. The Agency will also make available the telephone number of the Civil Rights and Equal Opportunity Manager or Office of Civil Rights and Equal Opportunity Counseling Coordinator.
- B. The Agency agrees to provide the completed MD-715 in an electronic format. Should the information be available on the web, the Agency will refer the Union to the appropriate website in lieu of providing electronic reports. The No FEAR Act statistical data will be accessible to bargaining unit employees on the Agency website.

Section 5. Counselors

- A. The parties agree that sufficient numbers of trained EEO counselors are necessary to a properly administered EEO program. Counselors will be given appropriate training and will be available and accessible to employees.

- B. It is mutually agreed by the parties that the Union at appropriate levels may submit nominees for EEO counselor positions being filled on a collateral duty basis. The Administration will appoint the equal opportunity counselors and will give consideration to the Union nominees.
- C. Employee representatives in EEO complaints will have prompt access, subject to applicable EEOC procedures, to copies of the EEO Counselor Report and EEO Report of Investigation and the 7B file with the employee's permission.
- D. Training on the subject of sexual harassment shall continue to be included in SSA's training program provided to EEO counselors.
- E. The Counselor will provide the employee or his/her representative a copy of the initial contact form.

Section 6. Complaints

- A. Any employee who wishes to file or has filed a complaint shall be free from coercion, interference, and reprisal, and shall be entitled to expeditious processing of the complaint within the time limits prescribed by regulations. Any employee who seeks to file a complaint shall have the right to select a representative of his/her choosing.
- B. An employee has the option of filing a grievance under the negotiated grievance procedure (Article 24) or a formal complaint under the agency EEO complaint procedure, but not both. EEO counselors will provide an inquiring employee a written description of both procedures.
- C. The Administration agrees to furnish the Union statistical reports concerning discrimination complaints filed by bargaining unit employees. The Agency agrees to provide the above information in an electronic format. Should the information be available on the web, the Agency will refer the union to the appropriate website in lieu of providing electronic reports.

Section 7. Duty Status

- A. When an employee files a complaint of discrimination under the statutory procedure, he/she and the designated personal representative (if employee of the Agency), shall have a reasonable amount of duty time to prepare the complaint and to respond to Agency and EEOC requests for information, in accordance with EEOC regulations ([29 C.F.R. Part 1614.605](#)). Generally, the employee and his/her designated personal representative (if an employee of the Agency and otherwise in duty status) may have up to eight hours of duty time for preparation through the investigation stage of the complaint. Thereafter, if the employee requests an EEOC conducted hearing, the employee and his/her designated personal representative (if an Agency employee and otherwise in duty status) may generally have up to 24 hours of duty time for preparation through the hearing stage. The employee and his/her designated personal representative (if an Agency employee and otherwise in a

duty status) may have up to eight hours of duty time to prepare any appeals filed with the EEOC. The complainant and his/her designated representative (if an Agency employee) must request this time in advance from their manager(s) and must provide sufficient information requested by the Agency to justify the time.

The agency will apply “reasonable time” as defined by the EEO Statute. The 8/24/8 parameters serve as a guideline only with no arbitrary cutoff. Management will determine the amount of time granted in accordance with EEOC regulations. If management denies a request for time the denial will be in writing, if requested.

Consistent with the 8/24/8 parameters described above, time for travel to an EEOC required event beyond the control of the personal representative (i.e., hearing, deposition) is an appropriate use of statutory EEO time.

- B. In consideration of the unique importance of this plan to all SSA employees, the Union, and the Administration, the Employer agrees to provide notice and bargain to the extent required by [5 U.S.C. 71](#) on changes to the AEP plan.

Travel expenses for statutory complaints will be paid in accordance with [29 C.F.R. 1614.605](#).

Section 8. Sexual Harassment

The parties recognize that harassment on the basis of sex is a violation of Section 703 of Title VII of the Civil Rights Act of 1964. Unwelcome sexual advances, request for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when the conditions as described in 29 C.F.R. Section 1604.11 are present.

Section 9. Employee Evaluation

Employees who use authorized official time ([in accordance with 29 C.F.R.](#)) in EEO activities who otherwise would be in a duty status will not be disadvantaged on their appraisals for approved absences to participate in functions authorized under this article.

Section 10. Reasonable Accommodations for Qualified Employees with Disabilities

- A. In accordance with [Section 501](#) of the Rehabilitation Act of 1973, as amended, Section 403 of the Vietnam Veterans Readjustment Assistance Act of 1974, as amended, and other Government-wide rules and regulations pertaining to the employment of individuals with disabilities, SSA is committed to affirmative action for the employment, placement, and advancement of qualified individuals with disabilities and disabled veterans.

- B. SSA will offer reasonable accommodation to the known physical or mental limitations of qualified individuals with a disability, regardless of type of appointment, in accordance with law, unless the agency can demonstrate that the accommodation would impose an undue hardship on the operation of SSA's program as defined in [29 C.F.R. 1614.203](#).
- C. If requested, the agency will provide an employee with information on filing a request for reasonable accommodation. An employee may request reasonable accommodation orally or in writing. The agency will inform the employee of the appropriate management official with authority to engage in an interactive process to discuss reasonable accommodation.
- D. The parties recognize that individual accommodations will be determined on a case-by-case basis, taking into consideration the employee's specific disability, existing limitations, the work environment and any undue hardship imposed on the operation of SSA's program as defined above. Qualified employees with disabilities may request specific accommodations.
- E. Both parties agree that reasonable accommodation means an adjustment made to a job and/or the work environment that enables a qualified person with a disability to perform the duties of that position. SSA will eliminate undue delay in considering requests for reasonable accommodations for employees with disabilities despite general fiscal constraints. Such accommodations are to be considered as exceptions to the general restrictions and will be evaluated on a case-by-case basis with regard to the merit of the request.
- F. Should a non probationary employee become unable to perform the essential functions of his or her position even with reasonable accommodation due to a disability the agency shall consider providing reassignment to a vacant funded position as a reasonable accommodation pursuant to [29 C.F.R. § 1614.203](#).
- G. For employees with disabilities, job restructuring is one of the principal means by which some qualified workers with disabilities can be accommodated. The principal steps in restructuring jobs are:
 - 1. Identify which factor, if any, which makes a job incompatible with a worker's disability.
 - 2. If a barrier is identified in a nonessential job function, it may be eliminated so that the capabilities of the person may be used to the best advantage.
 - 3. Job restructuring does not alter the essential functions of the job, rather, any changes made are those which enable the person with a disability to perform those functions.
- H. Both parties agree that in many cases, changes in the work environment enable persons with disabilities to more effectively perform their job duties. Alterations may be, but not limited to:
 - 1. Rearranging files or shelves;

2. Widening access areas;
3. Maintaining hazard-free pathways;
4. Raising or lowering equipment;
5. Moving equipment controls from one side to the other, or modifying them for hand or foot operation;
6. Installing special holding devices on desks, benches, chairs or machines.
7. With respect to the modernized systems environment, examples of accommodations are:
 - a. The surface that holds the terminal will be adjusted to a level suitable to the employee's needs.
 - b. The keyboard will have "light touch." Guards and other adaptive devices will be considered.
 - c. Visually impaired employees will be permitted to label "home" keys.
 - d. Operational and training materials will be available in Braille.
 - e. Lap trays will be considered.
 - f. Computer based voice-output systems or VDT screen enlargers will be provided for visually impaired employees.
 - g. Hardware and software will be configured to accommodate color blindness (blinking cursor, highlighting).
 - h. Printer switches will be available in "light touch" and located in an easily accessible location.
- I. An employee may be provided assistive devices if the Administration determines that the use of the equipment is necessary to perform official duties. Such equipment does not cover personal items which the employee would be expected to provide such as, hearing aids or eye glasses.
- J. SSA facilities shall be accessible to employees with disabilities.
- K. The Administration will be liberal in granting leave to accommodate the condition of qualified employees with disabilities.

Supervisors will advise qualified employees with disabilities of the administrative procedures available to them when weather conditions make it extremely difficult or hazardous to report to work and the office is open.

- L. Leave without pay may be granted to accommodate a disability.
- M. Qualified employees with disabilities, who uses prosthetic devices, wheel chair, crutches, guide dog, or other similar assistive devices, may request sick leave for equipment repair or guide dog training or medical treatment.
- N. The Administration will provide qualified employees with disabilities full consideration for all training opportunities. Once an employee is selected for training, the Administration will provide reasonable accommodation to the employee to attend and complete the training.

It is the intent of the Administration to provide on-the-job training opportunities to qualified employees with disabilities consistent with operational needs.

Reasonable accommodations for training, both formal and on-the-job opportunities, include such things as:

1. modification of training and reference materials (example: training guides in Braille);
 2. provision for a qualified interpreter for deaf trainees;
 3. use of a mentor to provide individualized training;
 4. assuring physical access to training facilities, restrooms, and lodgings.
- O. As with all bargaining unit employees, qualified employees with disabilities may seek Union assistance and/or representation on their individual concerns, consistent with the terms of this agreement.
 - P. For the purpose of continuing to provide reasonable accommodations for employees who are deaf or hard of hearing, management agrees to provide interpreter services or other appropriate communication support for those employees who seek Union assistance and/or representation on their individual concerns. To the extent possible, this should be arranged in advance unless the employee wants to retain confidentiality.
 - Q. To provide qualified employees with disabilities equal opportunity to perform official business travel certain additional travel expenses necessarily incurred to accommodate the employee's disability may be reimbursed under the Federal Travel Regulations.

Section 11. Miscellaneous

Accommodation of employees with religious needs will be addressed consistent with applicable federal laws, rules and regulations.

EEO Alternative dispute resolution (ADR) will be handled in accordance with the agency policy. The policy will be maintained on the agency website. If the Agency changes the EEO ADR Policy, the union will be provided notice and an opportunity to bargain to the extent required by [5 USC 71](#).

At the AEP meeting, the Agency will share the following ADR information regarding bargaining unit employees:

1. Number of Agency ADR cases
2. Number of ADR cases excluded from ADR
3. Number of ADR cases in which ADR was not elected by employees
4. Number of ADR cases in which ADR was not elected by management
5. Number of ADR cases in which settlement was reached

In addition, when a settlement is reached, involving a bargaining unit employee, the appropriate (O)CREO staff or designee will send to the appropriate local president a sanitized copy of the settlement language. Within 5 calendar days of receipt the local president may notify the appropriate (O)CREO staff or designee if they believe conditions of employment are affected.

Sidebar

The union will be given a briefing at the 2019 AEP committee meeting on the Anti-Harassment Program. The union will be afforded the opportunity to provide recommendations for Agency consideration. If the Agency changes the program, the union will be given notice and an opportunity to bargain in accordance with [5 USC 71](#).

The union's right to be present for [Weingarten meetings](#) and [formal discussions](#) will be in accordance with [5 USC 71](#) and Article 3 of this Agreement.

Article 19

Office Space

Section 1. Office Openings, Consolidations, Moves, Relocations, Expansions and Renovations

The Agency will provide the Union with advance information related to any office opening, consolidation, relocation, expansion, or renovation. These actions will be accomplished in accordance with applicable Agency policies. This Article fulfills the parties' obligation to negotiate in accordance with [5 USC 71](#).

Section 2. Procedures

- A. Prior to the renovation, relocation, expansion, there will be a general orientation meeting with employees to review the procedures, dates, times, and other aspects of the office opening, consolidation, relocation, expansion, or renovation.
- B. The Union will be provided with a copy of the new or revised floor plan resulting from an office opening, consolidation, relocation, expansion, or renovation. The union will have five workdays from receipt of floorplan to request consultation. If requested by the union, the parties will consult via technology, unless the parties are located in the same installation.

Consultations will normally last from 1-3 consecutive days but may be extended to 5 days on a case by case basis. The parties will not be engaged in discussions during the entire consultation period. Requests for additional extension(s) may be approved by management. However, either party may end consultation. Management will give bona fide consideration to union recommendations regarding the floor plan and will provide an explanation for any recommendations not adopted.

- C. If there will be significant changes in décor due to an office opening, consolidation, relocation, expansion, or renovation, the parties will agree to establish a décor committee. Management and the Union will each appoint up to two members to the committee. The committee will select décor and color choices from the samples provided by management for items such as carpet, tile, paint, window coverings, and countertops. The committee will cease to exist once the office opening, consolidation, move, relocation, expansion, or renovation is completed unless there is mutual agreement to reconvene the committee for subsequent décor issues.
- D. If an employee's personal materials and/or files will be moved due to an office opening, consolidation, relocation, expansion, or renovation, employees may receive a reasonable amount of duty time to pack and unpack those items. Employees will be provided boxes in which to pack their personal items.

- E. If employee seat assignments will be changed as a result of an office opening, consolidation, relocation, expansion, or renovation, employees will be allowed to select their new seat assignments within designated units based on service computation dates (SCD).
- F. If the applicable Facility Security Plan is changed as a result of an office opening, consolidation, relocation, expansion, or renovation, employees will be briefed on the updated Facility Security Plan within 30 days. A copy of the employee portion of the plan will be made available electronically.
- G. Following the completion of the office opening, consolidation, relocation, expansion, or renovation, management agrees to conduct an evacuation drill, shelter in place drill, and a health and safety inspection in accordance with the Facility Security Plan and Article 9.
- H. If management chooses to redeploy employees to other locations during an office consolidation, relocation, expansion, or renovation, management will first determine the numbers, types, grades and qualifications of employees to be redeployed to other work locations. Employees will identify their preferences from among available locations. Management will select based on SCD.
- I. If management chooses to retain a skeleton staff during an office consolidation, relocation, expansion, or renovation, management will first determine the numbers, types, grades and qualifications of employees needed for the skeleton staff. Employees will be given an opportunity to volunteer for the skeleton staff and management will select from qualified volunteers based on SCD. If there are an insufficient number of volunteers, management will use inverse seniority to assign qualified employees to the skeleton staff.
- J. The Union will be notified of the relocation/renovation dates when finalized. Management will contact the Union's designee to discuss any issues that may come up during the relocation process. Employees will be advised in advance of any renovations.
- K. Management will provide the union with a copy of the occupancy agreement.
- L. Employees may request assistance to arrange their permanent workstation and equipment, including the height of any fixed work surface at installation.
- M. Ergonomic information is available on the agency website.
- N. It is recognized that lifting or moving furniture and heavy boxes is not a regular duty of bargaining unit employees.
- O. Management will consider employees' safety when determining placement of the security cameras and location of the guard.
- P. A combination of design features may be used to control noise in the interviewing area.
- Q. Furniture including cubicle walls used as part of the relocation/renovation will be clean and in good working order after installation.

- R. The agency will post a copy of the floor plan, when it is finalized.
- S. Employees will be provided keys for lockable personal storage space.

Article 20

Child Care and Elder Care

Section 1. Policy and Purpose

The parties recognize that working parents/personal primary caregivers may have special child and elder care needs during working hours. The parties recognize the need for such parents/personal primary caregivers to secure appropriate child and elder care arrangements. The Agency will continue its efforts to secure adequate funding in order to support and foster child care services for its employees, consistent with this Agreement and SSA's funding policy.

Section 2. Child Care Activities

The Agency will continue to provide information via SSA intranet to assist employees in meeting and/or support various activities in order to meet ongoing child care needs. These may include, but are not limited to, such things as child care and parenting information, child care resource and referral information, workshops, and counseling as available through the Employee Assistance Program.

In accordance with [40 U.S.C. 590\(e\)](#), the Agency agrees to pay legally permissible expenses for training, conferences or other meetings in connection with the provision of child care services for Agency employees who have oversight responsibilities for the operation of Agency supported or sponsored child care facilities; e.g., members of local child care committees, board of directors, etc., if the Agency determines such training, etc., is relevant and necessary.

The Agency will provide information regarding child care on the agency website that may include topics such as children's wellness, family resources, parenting challenges and solutions, and resources regarding the Agency's child care centers nationwide.

The Parties agree that the issue of a potential child care subsidy is an appropriate subject for pre-decisional involvement (PDI) in Union Management Cooperation Councils under Article 29. Should these discussions result in a management decision to establish a child care subsidy, Management will provide notice and bargain to the extent required by [5 U.S.C. 71](#).

Section 3. National Child Care Committee

The National SSA/AFGE Child Care Committee will be comprised of one representative from each national component of AFGE and an appropriate number of management members. The Committee will meet for two consecutive days from 1:00-4:00 PM EST (or longer by mutual agreement) at least annually (or more often by mutual agreement). This meeting will take place via technology.

The major purpose of the Committee will be to monitor all child care activities and provide recommendations to the Agency on child care options/solutions for SSA offices such as construction, consortium, resource/referral activities, educational programs, emergency drop-in

child care (occasional care), sick child care, school-age program, etc. This information may include, but is not limited to, the status of current activities, availability of funds, and results of surveys and/or feasibility studies. The Committee will also research the availability of grant monies and other fund raising alternatives, etc.

Based on a consensus, Committee recommendations will be forwarded to the Deputy Commissioner for Human Resources for a decision. At the same time, a copy of the recommendations will be forwarded to the Spokesperson, AFGE/SSA General Committee. Agency decisions, including rationale, will be forwarded to the Committee within a reasonable timeframe, normally not to exceed 90 days. Either party may send recommendations to the Agency.

The Agency will have subject matter experts available to meet with the Committee on an as needed basis.

The six Union representatives on the Committee will be authorized time in accordance with Article 30.

Section 4. Existing Child Care Center Board of Directors

Where there is a Board of Directors for an existing SSA child care center, the Union will designate one representative to serve on the Board of Directors. Union representatives on the Committee will be authorized time in accordance with Article 30.

Section 5. Employee Needs

The Agency agrees to grant emergency annual leave requests and to consider emergency requests for leave without pay brought about by unexpected changes in child care and elder care arrangements contingent upon operational emergency.

The Agency agrees to utilize programs which may assist employees with child/elder care needs; for example part-time employment, job sharing, leave, flextime, etc.

The Agency recognizes that it may be necessary for employees to contact child/elder care providers during duty hours.

Section 6. Facilities

In accordance with [40 U.S.C. 590](#), the Agency will provide space, equipment, furnishings and other services that the Agency determines necessary to support the operation of each SSA child care facility.

Section 7. Miscellaneous

The Parties agree that this Article will not delay or impact on any pending child/elder care initiatives. The Union will be kept informed of the child/elder care initiatives. Child/elder care

initiatives are an appropriate subject for discussion in Union-Management Cooperation Council under Article 29.

Section 8. Lactation

The Parties agree to provide support for lactating employees. To the extent required by law, a lactating employee must be granted reasonable time to express breast milk for the employee's nursing child each time the employee has a need to do so. This may include rest/break periods, meal periods, changes in work schedules/shifts, the ability to flex out, the use of annual leave, LWOP, credit hours, compensatory time, or other arrangements as appropriate.

If requested, Management may grant extensions of rest/break times or the meal period for up to a total of 15 minutes per day for employees to express breast milk. As an exception to the provisions of Article 10, Appendices A and B, nursing employees in field offices and teleservice centers may request to flex out at times during the workday in addition to the meal period in order to express breast milk.

Management will provide a private place, other than a restroom, that is shielded from view (including from video recording devices) and free from intrusion from co-workers and the public, which may be used by an employee to express breast milk. This onsite private location should afford a comfortable environment for the nursing employee and contain a small table, a comfortable chair, and one electrical outlet. To the extent feasible, Management will provide space with a lockable door and avoid assigning a space that contains high-traffic equipment like copiers, printers, etc. There should be a sink nearby if one is not located in the room. For each Agency facility lacking a dedicated refrigerator for storing expressed milk, upon request, the Agency will provide one "mini-fridge" per site, for dedicated storage of expressed milk. The "mini-fridge" may be used for other storage when not in use for this purpose. Normally, the "mini-fridge" will be located within the dedicated lactation space. The space will be cleaned daily in accordance with existing office cleaning procedures.

Employees will not be required to sign an SSA Lactation Program Agreement to use Agency space for lactation purposes. Employees may be requested to sign an acknowledgement statement regarding use of an Agency health unit facility for lactation purposes.

Employees who request to express breast milk at the workplace will be informed of these provisions.

Section 9. Elder Care

The Agency will provide resource information on elder care issues such nursing homes, home health care agencies, assisted living facilities, elder law, financial counseling, and medical advice on an Agency website.

Section 10. Emergency Backup Child/Elder Care

The Agency will establish an emergency backup care program for dependent minors and/or adult dependent or disabled family members. This program will provide a maximum of 5,000 care visits per fiscal year for all employees combined. Each employee will be limited to five (5) visits (one day equals one visit) per fiscal year, subject to availability on a first-come, first-served basis. At its discretion and subject to the availability of funds, the Agency may increase the total number of visits per fiscal year beyond 5,000.

The Agency will provide detailed information regarding this service on an Agency intranet site. To participate, each employee must comply with all other rules and requirements established by the program.

The program will begin no sooner than fiscal year (FY) 2025 to provide sufficient time for the Agency to complete the procurement process, and subject to budgetary considerations. Additionally, implementation of this program may be delayed in any fiscal year until enactment of a full year appropriation.

The Agency will reassess continuation of this program each fiscal year, and may, at its sole discretion, discontinue the program for any reason. Prior to discontinuing the program, the Agency will consult the Union.

Article 21

Performance

Section 1. Introduction

The parties agree to the following performance appraisal program in order to provide quality public service and an assessment of employee performance. The purpose of the performance appraisal program is to provide a framework for honest feedback and open, two-way communication between an employee and their supervisor.

Section 2. Overview

- A. The appraisal program uses a three-tier rating system for ratings on individual performance elements and for the summary appraisal rating.

Employees will be rated on four elements. The appraisal program offers three summary appraisal rating of record levels with clear distinctions among those performance levels to differentiate between high performing employees (Level 5 – Outstanding Contribution), the more typical successful employees (Level 3 – Successful Contribution), and employees whose performance is clearly failing (Level 1 – Not Successful).

Employees in developmental programs may be placed on a developmental performance plan.

- B. The appraisal program is used to make certain personnel decisions.

1. Within-Grade Increase - An employee who has attained an appraisal rating of “Successful” will be entitled to a within-grade increase, as long as current performance is consistent with the rating of record.
2. An appraisal rating of at least “Successful” is required in order to be considered for awards and/or promotions.
3. The performance appraisal will be considered in making determinations regarding reductions in force (RIF) in accordance with Article 14 of this agreement.

- D. This system will be a positive building block in the foundation of a relationship based on shared interests and mutual objectives. The appraisal system will emphasize:

1. Employee Contribution
2. Employee Development
3. Administrative simplicity

Section 3. Appraisal Program Definitions and Principles

- A. Terms used in this article will have the same meaning as in government wide regulations.
- B. Performance Elements are work assignments and responsibilities that are key to achieving the Agency's mission and goals and reflect the Agency's commitment to providing outstanding public service.
- C. Critical element means a work assignment or responsibility of such importance that unacceptable performance on the element would result in a determination that an employee's overall performance is unacceptable. All critical elements to be used for performance appraisals will be provided in writing to the employee at the beginning of the rating period or when elements change during the rating period.
- D.
 - 1. Performance standard means the management approved expression of the performance threshold(s), requirement(s), or expectation(s) that must be met to be appraised at a particular level of performance.
 - 2. A performance standard may include, but is not limited to, quality, quantity, timeliness, and manner of performance.
 - 3. To the maximum extent feasible, the performance standards and critical elements will be consistent for standard or like positions.
 - 4. If management changes any critical elements or standards, management may-convene a focus group consisting of management, employees and the union to obtain input prior to implementation. If a focus group is convened, the parties will negotiate the parameters (composition, length, process, etc.) of the focus group at that time. When there are any changes to critical elements or standards and there is a duty to bargain under [5USC71](#), notice and such opportunity to bargain will be provided to the Union by SSA consistent with the procedures in Article 4.
- E. Performance plan means all of the written, or otherwise recorded, performance elements that set forth expected performance. A plan must include all critical and non-critical elements and their performance standards.
- F. Alignment Statement is a standardized form that managers will provide to employees, normally at the beginning of the appraisal period, to facilitate discussion regarding how their work contributes to achievement of Agency goals and objectives. The statement may be supplemented with information about component goals and targets.
- G. Rating of record means the performance rating prepared at the end of an appraisal period for performance of agency-assigned duties over the entire period and the assignment of a

summary level within a pattern (as specified in Sec. 430.208(d)), or in accordance with Sec. 531.404(a)(1) of this chapter (Code of Federal Regulations). There are three summary appraisal levels for this performance plan: Outstanding Contribution (Level 5), Successful Contribution (Level 3), and Not Successful (Level 1).

- H. Progress review means communicating with the employees about performance compared to the performance standards of critical and non-critical elements.
- I. Element Average – The average of the performance element ratings which is used to determine eligibility for awards. It is a computation summary derived in the performance evaluation process. Each performance element in the employee’s appraisal is assigned a rating of 1, 3, or 5. The individual performance element ratings of 3 and 5 are added together and the total is divided by the number of performance elements and the resulting number is the Element Average.

Section 4. Length of Appraisal Period

- A. The appraisal period is one year. The appraisal period is normally from October 01 through September 30. A rating of record will be prepared at the end of the appraisal period and issued to the employee within 30 days of the completed appraisal period.
- B. The minimum appraisal period for employees is 120 days. Employees must be under a performance plan for a minimum of 120 days to be eligible for an annual performance appraisal at the end of their appraisal period. Employees serving in a probationary period will not receive a rating of record until after completion of their probationary period.
- C. Employees who have been under their performance plan for less than 30 days and are approved for an extended absence in excess of 150 days will begin a new minimum appraisal period upon their return to duty. This does not preclude the appraising official from considering the employee’s performance during the period the employee was under the performance plan for less than 30 days.
- D. Annual Performance Appraisal

The appraising official will schedule time for a one-on-one meeting with the employee to issue his/her rating of record within 30 days of the end of the employees’ appraisal period. However, if there is more than one management official at the meeting to issue the rating of record, the employee may request to have a union representative attend the discussion (in person or telephonically) provided no delay occurs.

If employees have not served under their performance plans for the minimum appraisal period, their annual performance appraisal will be postponed until the 120-day appraisal period has been completed.

Annual performance appraisals for new employees will be postponed until they have been in their position for one year.

Section 5. Issuing Performance Plans and Conducting Expectation Discussions

- A. The appraising official will issue performance plans containing the Level 3 and 5 standards for each element to employees no later than 30 days from the beginning of their appraisal periods.

The appraising official will meet with the employee one-on-one to discuss the employee's performance plan at the time it is issued. However, if there is more than one management official at this discussion, the employee may request to have a union representative attend the discussion (in person or telephonically) provided no delay occurs.

The appraising official and the employee will discuss the performance expectations so as to attempt to arrive at a full and complete understanding of what is required to achieve the successful contribution performance level (Level 3) described in the plan. The discussion will also include some examples for Level 5 performance in an attempt to arrive at a general understanding of the outstanding contribution performance level. The discussion will also clarify any questions that the employees have concerning their performance plan.

- B. Expectation discussions provide meaningful context to Level 3 performance standards and provide a means to align employee contributions to Agency goals and objectives.
- C. The discussion will also include an explanation of the performance plan terminology, the method(s) to be used to determine the level of performance in each element, the nature and type of work product or other result to be counted, reviewed, or otherwise monitored. The discussion shall attempt to avoid subsequent misunderstandings about the performance expectations and their application to the employee's performance.

In the context of this discussion, supervisors will:

1. discuss the Alignment Statement with employees and review its content.
 2. discuss employee performance elements, standards and expectations that will be used to evaluate the employee.
 3. discuss data sources and numeric data, e.g. indicators of quality, quantity, timeliness, that may be considered in measuring employee performance, and upon request explain how the data source may be used in assessing employee performance.
 4. discuss employee development needs and opportunities and the relationship between employee performance and employee recognition.
- D. If there are numeric or quality performance standards and/or numeric or quality expectations, they will clearly be identified in the employee's performance plan.

- E. The appraising official will document the expectations discussed with the employee. Standard expectations may be developed for standard positions. This documentation will be filed in the employee's SSA-7B Extension File, or electronic equivalent, as part of the appraisal program. The employee may also have his/her comments placed in the SSA -7B Extension File or electronic equivalent.

Employees and their supervisors will sign the performance plan to acknowledge that the performance plan has been issued and the initial performance discussion has been held. The signed performance plan will be placed in the SSA-7B Extension File or electronic equivalent. Managers may meet with employees collectively, in addition to individual performance discussions, to convey information that is general for all employees, such as agency goals and objectives.

- F. Subsequent expectation discussions should be held when there is a change in the work situation such as:

1. a change in the rating official/supervisor of record,
2. a detail,
3. a change in component goals or objectives,
4. a return to duty from an extended absence of ninety (90) days or more,
5. any change in work assignment or process that would significantly affect the employee performance plan, or
6. a change in performance expectations contained in the employee performance plan.

If any of the above have a significant effect on employee performance, it will be considered a factor in appraising the employee's performance.

If there is more than one management official at a performance expectation discussion, the employee may request to have a union representative attend the discussion (in person or telephonically) provided no delay occurs.

Section 6. Monitoring Performance and Communications

- A. Ongoing two-way communication between the manager and the employee is an effective tool for successful performance. Discussions should be a candid, forthright dialogue between the manager and the employee aimed at improving performance, the work process, or product. These discussions will provide the employee the opportunity to seek further guidance and understanding of his/her work performance, to surface needs, or to participate in a dialogue about his/her contribution. Discussions may be initiated by the manager or by the employee. If an employee requests a discussion with his/her rating official to discuss his/her performance, it will normally be scheduled within five workdays.

- B. Supervisory conclusions based upon observations of an employee by management will be timely communicated to the employee during informal discussions and/or the progress review. If the employee disagrees with the supervisory conclusions on individual cases or overall performance to date, he/she may provide management with written rebuttals that will be placed in the SSA-7B Extension File or electronic equivalent.
- C. An employee may inform his/her appraising official in writing, which includes email, of factors beyond his/her control that have affected his/her performance. The appraising official will consider such factors when evaluating performance for the appraisal period. The written documentation will be placed in the employee's SSA-7B Extension File or electronic equivalent.

D. Formal Performance Discussion

At least once during the appraisal period, approximately midway through the appraisal period, management will have a documented performance discussion with each employee regarding the employee's performance. During the discussion, management should discuss the employee's performance and results achieved within each performance element, reinforce expectations, and identify needs for performance improvement in meeting those expectations. If there is more than one management official at a performance discussion, the employee may request to have a union representative attend the discussion (in person or telephonically) provided no delay occurs.

To ensure that all performance related activities are identified and documented, employees should provide feedback about their performance to their rating official.

- E. Supervisors should document the content of performance discussions.
- F. Employees and supervisors will sign the performance plan to acknowledge that the formal discussion was held. The documentation will be placed in the SSA-7B Extension File or electronic equivalent.
- G. Optional Employee Self-Assessment

Employees will be provided the option of completing an end-of-cycle self-assessment, highlighting their accomplishments relating to the performance plan. Employees, who wish to submit a self-assessment, must do so no later than the end of their appraisal period. A reasonable amount of time will be provided for this activity. Self-assessments should be maintained in the SSA-7B Extension File or electronic equivalent. Management will inform employees of the above self-assessment option thirty (30) days prior to the end of the appraisal period.

H. Feedback from Workgroup/Special Projects/Details

Rating officials are responsible for obtaining feedback regarding an employee's performance on workgroups, special projects, or details outside the normal work unit. In determining

whether to solicit feedback, consideration should be given to the activity, duration of the activity, and the amount of time the employee spent on the activity.

Feedback should be obtained in writing from the supervisor responsible for the workgroup, project or detail. The assignment supervisor may include feedback obtained from a non-supervisory project leader, technical expert or team leader. Employees should be given a copy of the feedback and provided an opportunity to include comments. Feedback information should be maintained in the SSA-7B Extension File or electronic equivalent.

I. Considerations in Assessing Performance

1. The Agency, when assessing performance, will consider factors which affect performance that are beyond the control of the employee.
2. When numerical goals, guidelines, indicators, and expectations are factors in appraising an employee in a given critical element, management will consider the employee's other job assignments and the actual amount of time available to perform the job function being appraised under that critical element.
3. The Agency has determined that only time spent performing work related to an employee's critical job elements and standards will be considered in performance appraisals. Authorized time spent performing EEO representational duties and Union representational functions will not be considered as a negative factor when evaluating any critical job elements.
4. In the performance of and accounting for Agency work, the Agency will take appropriate steps to ensure measures and their application are accurate.
5. The procedures that are used to gather information in order to evaluate employee performance must reasonably ensure the accurate evaluation of performance. Reviews and/or sampling to assess performance will, to the extent practical, accurately reflect the employee's work.
6. Management will timely disclose to each employee sources of performance data and the relevant records that relate to his/her performance appraisal. Employees have the right to respond to performance data that is used to assess his/her performance.
7. The Agency will not establish arbitrary limitations, such as caps, curves or forced distributions, on appraisal ratings.
8. Each employee's performance will be evaluated solely against his/her performance standards.
9. Special skills and contributions, such as translation and interpretive activities, done as part of, or in addition to, regular job duties.

10. An employee shall not be rated on a performance standard that was not disclosed to him/her as part of a written performance appraisal plan.

J. Documentation of Annual Performance Appraisal

Standard forms will be used to document the employees' performance. Rating supervisors will sign and date the annual performance appraisals. Employees will sign and date their annual performance appraisals to indicate receipt. Appraisals will be maintained in the SSA-7B Extension File or electronic equivalent and recorded on the Agency's automated management information system. Appraisals will be maintained in accordance with SSA's policies and procedures.

K. Element Average

In order to differentiate degrees of performance to determine eligibility for awards, the Element Average will be computed based on the rating of each individual element. An Element Average is not computed for those employees with a Level 1 rating because they are not eligible for awards.

1. Only performance element ratings of 3 and 5 will be used.
2. All elements are given equal weight in computing the element average.

Section 7. Procedures for Performance Below the Successful Contribution Level

- A. The procedures for dealing with performance below the Successful Contribution Level only apply to employees who are entitled to the procedural and appeal rights described in [5 CFR 432](#). Employees not entitled to statutory appeal rights may be terminated for performance reasons with appropriate written notice.

B. Opportunity to Perform Successfully (OPS)

When an employee's performance is below the Successful Contribution Level, the manager should initiate a performance improvement plan, the OPS Plan. The OPS represents a formal process for performance improvement developed by the manager with consideration of employee input. The employee may request to have a union representative present during the initial discussion of the OPS.

To institute an OPS Plan, the manager must provide written notice to the employee that includes:

1. the critical element(s) for which performance is unacceptable;
2. the performance requirement(s) or standard(s) that must be attained in each critical element at issue in order to demonstrate acceptable performance;

3. a statement that the employee will have any WIGI or career ladder promotion withheld for the duration of the plan;
4. a summary of assistance already provided, along with the results;
5. a statement of the plan for providing additional assistance to the employee (e.g., targeted training, mentoring, etc.). The parties agree that placing an employee solely on 100% review does not equate to appropriate assistance.
6. a statement that unless the employee's performance in the critical element(s) improves to and is sustained at an acceptable level, the employee may be reassigned, reduced in grade, or terminated.

OPS Plans will be instituted for a period of 60 calendar days. Managers may terminate the plan if successful performance is demonstrated and sustained before the end of the 60 days. Managers may extend the period if the employee is demonstrating significant progress toward the Successful Contribution Level of performance.

A copy of the written OPS notice will be placed into the employee's SSA-7B Extension File or electronic equivalent.

During the OPS, the manager will conduct ongoing discussions with the employee about progress toward improvement. The manager will document these discussions and work reviews in the employee's SSA-7B Extension File or electronic equivalent.

At the end of the OPS period if performance has not improved to the Successful Contribution Level, a Level 1 rating of record will be issued. If performance has improved to the Successful Contribution Level, the employee will be notified in writing of his/her successful completion of the OPS and a copy of the notice will be placed in his/her SSA-7B Extension File or electronic equivalent. If a rating of record is due, the rating will be Level 3.

Employees are considered to be performing at the Not Successful level (Level 1) while under an OPS Plan. If a rating of record becomes due while an employee is under an OPS Plan, the rating of record will be delayed until the plan is completed. If a WIGI becomes due while an employee is under an OPS Plan, a Not Successful rating of record will be prepared and the WIGI will be denied.

Section 8. Performance-Based Actions

- A. Managers will initiate a performance-based action if, despite the additional assistance provided in accordance with the OPS Plan, the employee's performance has not improved to the Successful Contribution Level by the end of the OPS period. This will result in the employee's reassignment to another position or reduction in grade or termination.

- B. Demotions or removals for performance-based reasons must be accomplished in accordance with the applicable law and government-wide regulations governing the employees covered and the procedures to be followed (i.e., [5 CFR Part 432](#) or [5 CFR Part 752](#)).
- C. An employee receiving a proposed action based on unacceptable performance is entitled to:
 - 1. 30 day advance written notice of the proposed action that identifies both the specific instances of unacceptable performance by the employee on which the proposed action is based and the critical element(s) of the employee's position involved in each instance of unacceptable performance;
 - 2. to be represented by the Union, an attorney or other representative;
 - 3. time to respond to the notice of proposed action orally and in writing;
 - 4. a final written decision within 30 days after the expiration of the advance notice period.
- D. The employee may appeal to the Merit Systems Protection Board in accordance with applicable law, or the Union on behalf of the employee may timely file a written request to invoke arbitration under the terms of this Agreement. The choice of appeal forum is irrevocable. An employee shall be deemed to have exercised the appellate option at such time as the employee timely initiates an appeal under the statutory procedure, or the Union on behalf of the employee timely files a written request to invoke arbitration, whichever occurs first. Arbitration must be invoked no later than thirty (30) days after the effective date of the action unless EEO counseling is initiated pursuant to Article 24 Section 8.
- E. The Not Successful (Level 1) rating of record for an employee who has been demoted or reassigned for performance-based reasons in accordance with this Section will continue in effect until completion of the employee's appraisal period for his/her current position. However, if the employee is eligible for a WIGI prior to the completion of this appraisal period, a rating of record will be issued when the employee has demonstrated successful performance for at least 120 days.

Section 9.

The Agency will provide a yearly report, no later than March of each year, to the Union of the distribution of appraisal levels by position and grade level within each component, to the extent permitted by law and regulation. The Agency will also provide a report of the distribution of appraisal levels by EEO protected class within each component, to the extent permitted by law and regulation. Such reports will not contain personally identifiable information about any individual.

Article 21 Sidebar

The Social Security Administration (SSA) and the American Federation of Government Employees (AFGE) have reached the following understandings related to the implementation of Article 21 from the 2019 SSA-AFGE National Agreement:

The provisions of Article 21 will be effective on October 27, 2019 with the following understandings for affected employees who are transitioning from provisions under the 2012 National Agreement:

- All active PAs will be terminated as of October 27, 2019. Management will then determine if the employee needs to be placed on an OPS.
- Active OPS Plans that have 60 days or less remaining as of October 27, 2019 will remain unchanged.
- Active OPS Plans that have more than 60 days remaining as of October 27, 2019 will be terminated and the employee will be placed on a new 60-day OPS Plan.
- All employees on an NHT Plan as of October 27, 2019 remain on the NHT Plan through the end of the current appraisal cycle. These employees will then be placed on the appropriate Plan type (e.g., Non-Managers, Development Program, etc.).

Article 22

Within-Grade Increases

Section 1. Basis for Granting or Denying

- A. Within-grade increases will be granted or denied on the basis of whether an employee attains an acceptable level of competence and meets other statutory requirements. The decision to grant or withhold a within-grade increase must be supported by the employee's most recent appraisal in accordance with Article 21.
- B. Denial of a within-grade increase may not be used in lieu of disciplinary action.
- C. At any time during the waiting period when a supervisor's evaluation leads to a conclusion that an acceptable level of competence is not being met, the supervisor will provide the employee with performance assistance in accordance with Article 21.

Section 2. Denials

After completion of the waiting period, if the within-grade increase is to be denied, the employee will be given the supervisor's official determination in writing. The determination will include:

- A. a statement of the reasons for the negative determination;
- B. identification of the areas in which the employee must improve in order to be granted a within-grade increase;
- C. the right to request a reconsideration not more than 15 days after receiving the negative determination;
- D. the statement: Pursuant to [5 U.S.C. 5335\(c\)](#), an employee must request a reconsideration prior to grieving a WIGI withholding;
- E. the name of the official to whom the employee may submit a request for reconsideration;
- F. the opportunity for the employee to contest, orally and/or in writing, the basis for the negative determination;
- G. that an employee and/or his/her representative in duty status shall be granted a reasonable amount of time in accordance with Article 30 (Union representative) or duty time (employee) to review material relied upon to support the negative determination and to prepare a response to the determination;

- H. that an extension of the time period for making a reconsideration presentation may be granted upon request to the reconsideration official;
- I. Language will be added to the Notice of Decision to Withhold Within-Grade Increase which states, "If you wish, you may provide a copy of this Notice to your union representative".

Section 3. Reconsiderations

- A. When an employee files a request for reconsideration of a negative determination, an employee reconsideration file will be established which shall contain all pertinent documents relating to the negative determination.
- B. On or before fifteen (15) days following the date of receipt of the employee's presentation or the date of completion of any investigation, whichever is later, the reconsideration official shall issue a notice of decision to the employee. Language will be added to the notice which states: "If you wish, you may provide a copy of this decision to your Union representative". If the negative determination is sustained, the notice of decision shall inform the employee that any grievance filed will enter the grievance procedure at the pre-arbitration stage. The employee may file a grievance in accordance with the provisions of Article 24. If the employee is alleging discrimination, the employee will have 45 calendar days following the denial of the WIGI to contact an Agency EEO counselor or 30 calendar days to file an appeal to the Merit Systems Protection Board (MSPB).
- C. If the decision reverses the negative determination, the within-grade increase shall be effective on the first day of the first pay period following completion of the required waiting period.

Section 4. Redeterminations

When a determination is made that an employee's job-related activities are not at an acceptable level and the determination is final, the determining official may grant the within-grade increase at any time when in his/her judgment the employee has demonstrated sustained total performance at an acceptable level of competence. In such cases, the within-grade increase will be effective the first day of the first pay period after the acceptable determination is made. After withholding a within-grade increase, the determining official shall determine whether the employee's total performance is at an acceptable level of competence within each 26 weeks following the original due date for the within-grade increase unless a favorable decision has been made during the interim or action to demote or remove the employee has been taken. If the new determination is favorable to the employee, the effective date of the within-grade increase will be the first day of the first pay period after the acceptable determination has been made. If the new determination is unfavorable, the employee is entitled to a notice of negative determination and notification of the right to reconsideration in accordance with Section 2 of this article. The parties agree that any appeal to arbitration which may be filed on the basis of a final decision

sustaining a negative determination will be combined with any related grievance which may be concurrently in process.

Section 5. Effective Date/Administrative Error

A within-grade increase shall be effective on the first day of the first pay period following completion of the required waiting period and the employee meets conditions for eligibility. When, due to administrative error, oversight or delay, a positive determination is made after the waiting period is completed, the effective date of the within-grade increase shall be retroactive to the original due date. In such cases, interest will be paid in accordance with law and applicable regulations.

Article 23

Disciplinary and Adverse Actions

Section 1. Statement of Purpose and Policy

The Parties agree that the objective of discipline is to correct and improve employee behavior so as to promote the efficiency of the service. The Parties agree to the concept of progressive discipline which is designed primarily to correct and improve employee behavior. A common pattern of progressive discipline is reprimand, short-term suspension, long-term suspension and removal. Any of these steps may be bypassed where management determines by the severe nature of the behavior that a lesser form of discipline would not be appropriate.

The Parties further agree that normally, discipline should be preceded by counseling and assistance including oral and written counseling which are informal in nature. Counseling and warnings will be conducted privately and in such a manner so as to avoid embarrassment to the employee. Written counseling memos will be maintained in the e7B file or subsequent successor technology for up to one year. Bargaining unit employees will be subject to disciplinary or adverse action only for just cause.

For the purposes of this article all references to written documents include the ability to transmit said documents electronically.

Section 2. Timeliness of Discipline

If the Agency feels that disciplinary or adverse action is necessary, such action will be initiated timely after the conclusion of any misconduct investigation of the offense.

Section 3. Definition of "Day"

For the purpose of this Article, the word "day" means calendar day unless otherwise specified.

Section 4. Investigations

- A. The Agency may conduct an investigation prior to proposing any disciplinary or adverse action.
- B. If the Agency conducts an investigation, the Union's right to be present will be in accordance with [5 USC 7114\(a\)\(2\)\(B\)](#) and Article 3, Section 6 of this Agreement.
- C. [Weingarten investigations](#) will be initiated timely after the alleged offense was committed, made known to the appropriate Agency official, or referred (e.g. at the conclusion of other formal investigations by the Office of the Inspector General (OIG), Office of Special Counsel (OSC), and the Agency anti-harassment program), to the appropriate Agency official.

- D. The Agency shall provide its [Weingarten investigation](#) summary notes to the employee and, if represented, the employee's representative as soon as possible after the investigation meeting.

Section 5. Reprimand

An official reprimand is a written disciplinary action which specifies the reasons for the action. The reprimand will specify that the employee may be subject to more severe disciplinary action upon any further offense and that a copy of the reprimand will be made a part of both the SSA-e7B Extension File or subsequent successor technology and the Official Personnel Folder (eOPF) for up to 1 year or as long as an administrative need exists (e.g., litigation, pending disciplinary actions).

If a discussion is to be held when a reprimand is given, the supervisor will advise the employee of his/her/their right to Union representation prior to the start of the discussion. The letter of reprimand will inform the employee of the right to file a grievance on the reprimand under the negotiated grievance procedure, and the right to Union representation.

Upon request, the employee and/or the employee's designated representative will be provided, in a timely manner, copy(s) of the material relied upon to support the reprimand.

Section 6. Short-Term Suspensions

- A. An employee against whom a suspension for 14 days or less is proposed is entitled to:
1. An advance written notice of fifteen (15) calendar days stating the specific reasons for the proposed action;
 2. The right to review the material which is relied on to support the reason(s) for the proposed action;
 3. Ten (10) calendar days to respond orally and in writing and to furnish affidavits and other documentary evidence in support of the response; and
 4. Be represented.
- B. The employee will be given a reasonable amount of duty time to prepare and present a response to the proposal. Oral presentations will normally be conducted face-to-face with the deciding official if the employee and the deciding official are co-located. If the employee and deciding official are not co-located, or by mutual agreement, oral presentations may be conducted virtually using meeting technology (e.g., MS Teams, conference call).
- C. After considering the employee's response, the deciding official will issue a written decision. Normally the deciding official will be at a higher level of management than the proposing official.

- D. If the decision is unfavorable to the employee, the decision may be grieved, beginning with the last (pre-arbitration) step of the grievance procedure.

Section 7. Removal, Suspension for More Than 14 Days, Reduction-in-Grade, Reduction in-Pay, and Furlough of 30 Days or Less

- A. An employee against whom such an action is proposed is entitled to:
1. Advance written notice of thirty (30) calendar days stating the specific reasons for the proposed action;
 2. The right to review the material which is relied on to support the reason(s) for the proposed action;
 3. Twenty-five (25) calendar days to respond orally and in writing, and to furnish affidavits and other documentary evidence in support of the response; and
 4. Be represented.
- B. The employee will be given a reasonable amount of duty time to prepare and present a response to the proposal. Oral presentations will normally be conducted face-to-face with the deciding official if the employee and the deciding official are co-located. If the employee and deciding official are not co-located, or by mutual agreement, oral presentations may be conducted virtually using meeting technology (e.g., MS Teams, conference call).
- C. After receiving the employee's response, the deciding official will issue a written decision. Normally the deciding official will be at a higher level of management than the proposing official. If the decision is to effectuate an action specified in this section, it will specify the reason therefore, the effective date, the action to be taken, and the decision appeal rights.

The employee may appeal the decision to the Merit Systems Protection Board or, the employee may file a written grievance under the terms of this agreement. Any such grievance will be initiated at the last (pre-arbitration) step.

The choice of the appeal forum is irrevocable. An employee shall be deemed to have exercised the employee's option at such time as the employee or the employee's designated representative timely initiates an action under the statutory procedures, or timely files a written grievance at the last (pre-arbitration) step, whichever occurs first. Any grievance must be initiated no later than 20 days after the effective date of the action.

- D. Employees shall be entitled to representation in all phases of these procedures.
- E. Indefinite suspensions will be taken in accordance with [5 U.S.C. Chapter 75](#) and [5 C.F.R. Part 752](#).

Section 8. Requests for Information and Materials Relied Upon

If requested by the employee or the employee's designated representative, the Agency, in a timely manner, will provide copies of all material, including written statements by witnesses, relied upon to support the proposal notice. Nothing precludes the Union from requesting additional information in accordance with [5 USC 7114\(b\)\(4\)](#).

Section 9. Requests for Time Extensions on Proposals

The Agency will not unreasonably deny a request for extension of the time to respond to proposals.

Section 10. Notice to Union

The Agency will provide the Union, quarterly, a sanitized copy of all reprimands and proposals of more serious disciplinary/adverse actions.

Article 24

Grievance Procedure

Section 1. Purpose

The purpose of this article is to provide a mutually acceptable method for the prompt and equitable settlement of grievances filed by bargaining unit employee(s), the Union or the Administration.

Section 2. Coverage and Scope

A grievance means any complaint:

- A. by an employee(s) concerning any matter relating to the employment of the employee;
- B. by the Union concerning any matter relating to the employment of any employee;
- C. by any employee(s), the Union or the Administration concerning:
 - 1. the effect or interpretation, or a claim of breach, of a collective bargaining agreement; or
 - 2. any claimed violation, misinterpretation or misapplication of any law, rule or regulation affecting conditions of employment.
- D. Grievances on the following matters are excluded from the scope of this procedure:
 - 1. any claimed violation of [5 U.S.C. 73](#) relating to prohibited political activities;
 - 2. retirement, life insurance or health insurance;
 - 3. a suspension or removal under [5 U.S.C. 7532](#) relating to national security;
 - 4. any examination, certification, or appointment;
 - 5. the classification of any position which does not result in the reduction in grade or pay of an employee;
 - 6. non-selection for non bargaining unit positions;
 - 7. non-selection for bargaining unit employees from amongst properly rated and ranked candidates with the exception that employees may file grievances alleging unlawful discrimination as defined by Title VII. However, employees may file a grievance for

non-selection from the exercise of a priority consideration. Employees may also file either a grievance or unfair labor practice, but not both, alleging anti-union animus;

8. Termination of an employee serving under a probationary or trial period;
9. Non-adoption of a suggestion;

Section 3. Exclusivity

Grievances may be initiated by employee(s) covered by this Agreement and/or their Union representative or by the Administration. Representation of bargaining unit employees shall be the sole and exclusive province of the Union.

This is the exclusive procedure available to bargaining unit employees, the Union or the Administration for the resolution of grievances.

Section 4. Representation

- A. Upon filing of a grievance, an employee may elect to be self-represented or represented by a Union representative or designee approved in writing by the Union.
- B. The Union has the right to be present during any proceeding under the negotiated grievance procedure. If the Union is not the designated representative, a copy of the grievance will be provided to the Union within five (5) workdays of the filing date. The Agency will provide the Union reasonable advance notice of any grievance meeting/discussion when the Union is not the designated representative. A copy of each grievance decision will be timely provided to the Union, normally within five workdays.
- C. Where the grievant elects Union representation, meetings and communications with regard to the grievant's attempts at resolution shall be made through the designated Union representative.
- D. For employees on flextime, the parties agree to schedule all steps in the grievance process during the core hours of the grievant and representative unless the parties mutually agree otherwise.

For employees on a fixed shift, the parties agree to schedule all steps in the grievance process during the fixed shift of the grievant and representative unless the parties mutually agree otherwise.

In situations where the grievant(s) and representative are on different work schedules and/or locations, the parties agree to make every reasonable effort to schedule all steps in the grievance process to the common work times of the grievant(s) and representative unless the parties mutually agree otherwise.

Section 5. Resolution of Grievances and Employee Standing

The Union and the Administration agree that grievances should be settled in an orderly, prompt, and equitable manner so that the efficiency of the Administration may be maintained and morale of employees shall not be impaired. Every effort shall be made by the Administration and the Union to settle grievances at the lowest level possible. Employees and their representatives will be unimpeded and free from restraint, interference, coercion, discrimination or reprisal, consistent with [5 U.S.C. 71](#) and this agreement, in seeking adjustment of grievances. In accordance with Article 40, Alternate Dispute Resolution (ADR) is an option available to the parties to address disputes.

The parties may elect, by mutual agreement, to combine multiple grievances filed on the same or similar issue and will process the combined grievance in accordance with the procedures described in Section 10.

Before the Agency or Union is required to render a decision at the last step of the grievance process, the written grievance must clearly describe the matter(s) being grieved, including the date/place of the occurrence and the individuals involved. The written grievance must also identify the article(s), section(s), and provisions of the agreement that are involved, explain the alleged violation, and state the requested relief.

Only issues identified in the written grievance will be considered by the grievance deciding official. Neither party may consider issues that were not raised at the last step of the grievance process. An arbitrator may only consider issues that were raised during the grievance process.

Section 6. Grievability/Arbitrability Questions

In the event either party should declare a grievance nongrievable or nonarbitrable, the original grievance shall be considered amended to include this issue. The parties agree to raise any questions of grievability or arbitrability of a grievance, at least 21 days prior to the arbitration hearing. All disputes of grievability/arbitrability shall be referred as threshold issues in the related grievance, except where the parties agree to hear the threshold issue and merits of the grievance separately.

Section 7. Time Limits and Proof of Service

- A. A grievance concerning a continuing practice or condition may be presented at any time. Except as covered in Section 8(B) a grievance concerning a particular act or occurrence must be presented to the Step 1 management official within fifteen (15) working days of the action or date the employee became aware of the act or occurrence.

- B. Effective September 23, 2022: Proof of service for the filing of a grievance shall be a certified mail return receipt from the United States Postal Service; a delivery receipt from a commercial delivery service; a written acknowledgement when hand delivered; or when delivered via email, a read receipt or an electronic delivery receipt demonstrating service to the appropriate grievance official and any alternate official identified in an out-of-office notice.
- C. All the time limits in this article may be extended by mutual consent.

Section 8. Options

- A. In accordance with [5 U.S.C. 7121](#), an employee at his/her option may raise matters covered under [Section 4303](#) (Unacceptable Performance) and [7512](#) (Adverse Actions) under the appropriate statutory procedures or the negotiated grievance procedure, but not both. An employee shall be deemed to have exercised his/her option at such time as the employee timely files a notice of appeal under the applicable appellate procedures or timely files a grievance in writing, whichever event occurs first.

An employee affected by a prohibited personnel practice under [Section 2302\(b\)\(1\)](#) of the Civil Service Reform Act may raise the matter under a statutory procedure or the negotiated procedure but not both. An employee shall be deemed to have exercised his/her option at such time as he/she timely files a grievance in writing or files a written complaint under the statutory EEO procedure, whichever event occurs first.

- B. Before filing a grievance which alleges discrimination, the employee may first discuss the allegation with an EEO counselor. This discussion must be within 45 calendar days after the event causing the allegation or after the date the employee became aware of the event. The counselor shall have 30 calendar days to resolve the matter informally. If the counselor is unsuccessful, he/she will give the employee a written notice stating his/her right to file either a formal complaint under the statutory EEO procedure or a grievance under this procedure. If the employee elects to file under the negotiated procedure, he/she shall proceed under Section 9 of this article within 15 working days and if the counseling process was used, attach a copy of the counselor's notification to the grievance. The EEO counselor will advise the employee with whom the grievance may be initially filed. For the purpose of this section, the Step 1 official is the official who took the action which gave rise to the allegation of discrimination or his/her designee. If this official is also the Step 1, 2 or 3 official identified in Section 9, the grievance will be entered at that step of the grievance procedure. If the official is the Step 3 official or higher, that official will have 15 working days to attempt to resolve the matter and issue a decision. If the matter is not resolved, the grievant will have 5 workdays to elect to have the matter reviewed by a higher appropriate authority identified by the Administration. That official will have 25 workdays to either resolve the matter or render a final decision. If the employee does not elect to use EEO Counseling, any grievance must be initiated within 45 calendar days of the event which gave rise to the allegation, or after the date the employee became aware of the event, in accordance with the above procedure.

Section 9. Procedures for Employee Grievances

Step 1

A grievance must be submitted in writing, preferably on the standard grievance form provided by the Administration, and presented to the Step 1 management official (designated in the Grievance Steps Chart below) within 15 working days of the action or date the employee became aware of the act or occurrence.

If multiple employees with the same Step 1 or Step 2 grievance official (per the grievance chart in Section 9 of this article) file a single grievance over the same matter, one grievant for every four (4) grievants will be selected to serve as the “de facto” grievant(s) through the completion of the remaining step(s) of the grievance process. If there are less than 4 grievants to the original grievance, there will be one “de facto” grievant. Unless authorized by management, only the “de facto” grievant(s) will be permitted to attend and participate in oral presentation(s) and discussions with management regarding the grievance. If the grievance is pursued to arbitration, individual relief may be appropriate.

Within ten (10) working days after receipt of the grievance, the Step 1 official must hold a meeting or, if one is not requested, issue a decision in writing. If the meeting is held after the fifth workday, the Step 1 official must issue a decision within five (5) working days after the meeting. The decision will either grant, partially grant, or deny the relief sought. The grievance may be appealed to the Step 2 official within five (5) working days after receipt of the Step 1 decision. The Step 1 official will forward the grievance material to the Step 2 official as indicated by the grievant's election to proceed to the next step.

Step 2

- A. If the Step 2 official is located in the same installation as the grievant or the union representative, the grievant or the union representative shall have five (5) workdays to make an oral and/or written presentation.
- B. If the Step 2 official is not in the same installation as the grievant or the union representative, the grievant or the union representative shall have ten (10) workdays to make an oral and/or written presentation.
- C. The Step 2 official or designee will, as speedily as possible, attempt to resolve the grievance and will, within ten (10) workdays after the presentation date give a written decision containing the reasons for the decision.
- D. The grievance may be appealed to the Step 3 official within five (5) workdays after receipt of the Step 2 decision.

- E. The Step 2 official will forward the appropriate grievance material to the Step 3 official as indicated by the grievant's election to proceed to the next step.

Step 3

- A. If the Step 3 official is located in the same installation as the grievant or the union representative, the grievant or the union representative shall have five (5) working days to make an oral and/or written presentation.
- B. If the Step 3 official is not located in the same installation as the grievant or the union representative, the grievant or the union representative shall have ten (10) workdays to make an oral and/or written presentation.
- C. The Step 3 official or designee will as speedily as possible, attempt to resolve the grievance and will within ten (10) workdays after the Step 3 presentation date give a written decision containing the reason for the decision.
- D. If the decision is not acceptable, the Union may refer it to arbitration in accordance with Article 25 (Arbitration).
- E. In Field Offices (OARO, OHO, DCO) and OGC Regional Offices where oral presentations are to be made to management officials outside of the installation, face-to-face meetings are preferred whenever feasible. If such meetings cannot be arranged within the timeframes for oral presentations, the parties may meet at a later date as scheduling will permit or may conduct the oral presentation by telephone, but will not delay the grievance process longer than 30 calendar days.

GRIEVANCE STEPS CHART			
COMPONENT	Step One Official	Step Two Official	Step Three Official
OHO (HQ)	Immediate Supvr.	Next Level Supvr.	Next Level Supvr.
OHO (Field)	Immediate Supvr.	Next Level Supvr.	Regional Chief Admin Law Judge
Headquarters (Local 1923)	Immediate Supvr.	Br/Div Director/Center Director	Office/Staff Director or equivalent

FO	Immediate Supvr.	District Manager	Area Director
FO (Non-Mega TSC)	Immediate Supvr.	TSC Manager	Regional TSC Mgr. or Next Level Supvr. if no Regional TSC Manager
FO (Mega TSC)	Immediate Supvr.	Next Level Supvr.	TSC Director
OARO	Immediate Supvr.	Next Level Supvr.	Next Level Supvr.
DOC	Immediate Supvr.	Branch Chief	Appropriate Director
RO	Immediate Supvr.	Next Level Supvr.	ARC/MOS
OGC (Region)	Immediate Supvr.	Chief Counsel	A Deputy General Counsel
OGC (Headquarters)	Immediate Supvr.	Associate General Counsel	A Deputy General Counsel
PSC	Immediate Supvr.	Next Level Supvr	ARC/PCO
If an employee's immediate supervisor is the Step 2 official, the grievance will be considered entered at that step of the grievance procedure. Likewise, if an employee's immediate supervisor is the Step 3 official or higher, the grievance will also be considered entered at Step 2 of the grievance procedure. If the matter is not resolved, the Agency will designate a higher authority official to review the grievance and decision and either resolve the matter or render a final Agency Step 3 decision.			

The employee may feel he or she cannot initially discuss the alleged grievance with the immediate supervisor. If so, the employee may grieve the matter initially with the Step 2 Official. If this is done, it is understood that this is the second step in the grievance procedure.

The Step 2 and Step 3 officials listed above may use designees to complete their responsibilities. In the field council, the above delegation applies except that the Step 3 official or designee in his/her immediate office will issue the decision.

Section 10. Union Management Grievance

Either party may submit grievances through their respective representatives at the national, component, or local levels. Grievances at the national level will be submitted to the Commissioner or designee or the General Committee spokesperson or designee as appropriate. Grievances at the component level will be submitted to the component head or designee or the AFGE component president or designee, as appropriate. Grievances at the local level will be submitted to the Regional Chief ALJ, Regional Commissioner, Regional Director, Regional Chief Counsel, Associate Commissioner or equivalent and the designated Union official, as appropriate. Management officials listed above may use designees to complete their responsibilities.

A grievance concerning a continuing practice or condition may be presented at any time.- A grievance concerning a particular act or occurrence must be presented to the other party within twenty-five (25) working days of the action or date the moving party became aware, of the act or occurrence.

When a grievance is filed, the parties will meet and/or discuss the matter within ten (10) working days after receipt unless the grieving party waives the meeting/discussion. A written decision will be issued within ten (10) working days of the meeting or of the date of waiver. If the grievance is not settled by this method, the grieving party may invoke arbitration within thirty (30) working days after receipt of the final decision. However, prior to invoking arbitration, each party will consult with appropriate levels within its respective organization. Either party may move its grievance to arbitration 45 calendar days after the grievance was filed.

Arbitration awards or grievance settlements shall not be applicable or precedential beyond the jurisdiction of the parties to the grievance, unless the parties at a higher level agree otherwise.

Section 11. Grievance Decision

All grievance decisions will be in writing and state the issue being grieved, a summary of the findings and the rationale for the decision. Copies of relevant documents cited in the decision will be provided if they are not otherwise readily available to the employee.

Section 12. Failure to Meet Requirements

- A. Failure on the part of the Administration to meet any of the time requirements of these procedures will permit the grievance to advance to the next step.
- B. If the moving party fails to timely pursue the grievance after receiving a decision at any step of the process, the grievance shall be terminated.
- C. If a decision is not issued, the grievance will not terminate.

Section 13. Withdrawal

The Union, acting as the responsible representative of all employees in the bargaining unit, may, at any step of this procedure, withdraw on a nondiscriminatory basis from the grievance.

Section 14. Use of E-Mail in the Grievance Process

Effective September 23, 2022: All grievances require an original signature at filing and proof of service (per Section 7.B of this Article) regardless of the type of grievance or where the grievance enters the process. In addition to a handwritten signature, an “original signature” may include an electronic signature added using the employee’s agency-issued personal identity verification (PIV) card or “/s/” typed before the employee’s typed name. The email filing the grievance must state in the subject line: “Grievance Filed Under Article 24.” A grievance decision at any step in the process may be issued via email. Grievances filed under Section 8 or Section 9 of this Article may also be advanced via email through the remaining steps in the process. When advancing a grievance via email, the employee or the union representative (whichever is applicable) must request an oral presentation or the oral presentation will be considered waived for the grievance step.

If a grievance is filed, advanced, or a grievance decision is transmitted via email, the email will be considered received on the first workday after the day of transmission of the email.

Article 24 Sidebar

Grievances filed pursuant to Section 10 of this Article may be filed electronically at the appropriate level to a management-designated mailbox.

Within 60 days after the one year anniversary of the National Agreement, the parties agree to meet via technology to discuss how to implement electronic filing of Section 9 grievances.

If the Agency decides to implement an electronic grievance filing system for Section 9 and/or Section 10 grievances, the Agency will provide the Union with advance notice, a briefing, and an opportunity to consult and bargain to the extent required by [5 USC 71](#).

Article 24 Sidebar

The Social Security Administration (SSA) and the American Federation of Government Employees (AFGE) have reached the following understandings related to the implementation of Article 24 from the 2019 SSA/AFGE National Agreement:

1. The Parties will follow the provisions of Article 24 of the 2012 SSA/AFGE National Agreement for any grievance filed prior to the effective date of Article 24 of the 2019 SSA/AFGE National Agreement regardless of the status of the grievance.
2. The Parties will follow the provisions of Article 24 of the 2019 SSA/AFGE National Agreement for any grievances filed on or after the effective date of Article 24.

Article 25

Arbitration

Section 1. Invoking Arbitration

A grievance processed under this agreement, if unresolved, may be referred to arbitration as provided for in this article. Only the Union or the Administration may refer a grievance to arbitration. A notice to invoke arbitration must be in writing and served on the opposite party within fifteen (15) work days after receipt of the written decision rendered in the final step of a grievance filed under Article 24.

The parties within fifteen (15) working days prior to the date of the arbitration hearing shall try to define the issue(s). If the parties fail to agree on a joint submission of the issue for arbitration, each party shall submit a separate submission and the arbitrator shall determine the issue or issues to be heard.

Section 2. Arbitrator Selection

- A. The party invoking arbitration (invoking or moving party) will contact the other party to jointly request a panel of 7 arbitrators from the Federal Mediation and Conciliation Service (FMCS). The invoking party may unilaterally request a panel of arbitrators from FMCS if the other party does not respond within 14 calendar days.
- B. The invoking party will be responsible for paying any applicable fees to the FMCS.
- C. The invoking party will contact the other party upon receipt of the arbitrator panel from FMCS. Initial contact will be in writing, either by letter or electronic mail, to the non-moving party's representative. The moving party will request that the FMCS serve a copy of the panel list on both Parties (Union and Management).
- D. The parties will meet (usually by phone) within 30 calendar days of receipt of the FMCS panel to attempt to agree upon the selection of an arbitrator from the panel. If the parties do not mutually agree upon selection of one arbitrator, the parties shall alternately strike names from the panel until one name remains who shall be the arbitrator. The invoking party will have the first strike. The invoking party will notify FMCS of the selection of the arbitrator and will simultaneously serve a copy of the notification on the other party.
- E. If the arbitrator does not contact the parties within 21 days of the date of the parties' notification to FMCS, the invoking party will contact the arbitrator in writing and copy the non-moving party in that message to request hearing dates. The arbitration will be scheduled on a date and time when the arbitrator is available and which is mutually agreeable to both the moving and non-moving parties.

- F. In the event an arbitrator is not assigned as of the effective date of this agreement, the selection procedures outlined in A-E above will apply. For cases that have an assigned arbitrator, the arbitrator will hear the case and render a decision. In the event an assigned arbitrator is unable to fulfill his/her responsibilities for any reason, a new arbitrator will be selected in accordance with the selection procedures outlined in A-E above.

Section 3. Refusal to Participate

Should either party refuse to participate in arbitration, the other party may contact the arbitrator to raise the concern. The arbitrator will jointly discuss the concern with the parties to attempt to resolve the concern. If mutual resolution is not reached the arbitrator will determine how to proceed.

Section 4. Arbitration Sunset Provisions

If a hearing date has been set as of the effective date of this Agreement and is postponed for any reason, a 12-month extension from the cancellation date will be granted to hold that hearing. For any case for which arbitration was invoked before the effective date of this Agreement but not scheduled, the case must be heard within one year after the effective date of this Agreement. All cases invoked on or after the effective date of this Agreement must be heard within two years from the date of invocation.

If any of these timeframes are not met, the case terminates and can no longer be heard.

A three month extension from the end of the sunset period will be granted based on any of the following conditions: (a) postponement by the mutual consent of the parties; (b) withdrawal by the arbitrator;-(c) illness or death of the arbitrator;-or (d) inclement weather or catastrophic event.

Section 5. Procedures

- A. As soon as possible after invocation, each party will identify its representative for communications with the arbitrator and for responding to any questions. If either party changes the originally identified representative, that party will notify the other party, as well as the arbitrator, as soon as possible.
- B. The procedures used to conduct the arbitration shall be determined by the arbitrator. Each party will be entitled to have one (1) representative and one (1) technical advisor at each hearing. Each party is entitled to one (1) observer who may not participate or engage in the hearing. The Union observer, if an agency employee, will be on time in accordance with Article 30 of this Agreement, LWOP, or paid leave and at no cost to the Agency.
- C. The arbitrator's fees and expenses will be shared equally by the parties.

- D. Effective September 23, 2022: If the Administration requests a transcript, the Administration will bear the entire cost of such transcript and will furnish one electronic copy to the Union.
- E. Effective September 23, 2022: The arbitration hearing shall be held, if possible, electronically via video technology. In-person hearings may be conducted if both parties agree.
- F. Effective September 23, 2022: For Article 24, Section 9 grievances where the arbitration hearing is held in-person, the agency will pay the authorized travel and per diem costs of one grievant, if the grievant is an SSA employee at the time of the hearing. If the grievant is no longer an SSA employee at the time of the hearing, the agency will pay authorized travel and per diem from the grievant's duty station at the time the grievance was filed to the site of the hearing. The parties agree to keep the number of witnesses to a reasonable number. The union will pay all costs for its representatives and witnesses with the exception that the agency will pay the travel and per diem costs of two union witnesses who are current SSA employees.

The parties will normally exchange preliminary witness lists 15 workdays prior to arbitration.

- G. The arbitrator's decision shall be final and binding. In other than expedited cases, the arbitrator shall make specific finding of fact(s) based on the evidentiary record. However, either party may file an exception to the arbitrator's award in accordance with applicable law and regulations. The arbitrator will be requested to render the decision as quickly as possible.
- H. If the arbitration award is unclear to either party, the award shall be returned to the arbitrator for clarification.

Section 6. Effect of Arbitrator's Award

The arbitrator shall have no power to add to, subtract from, disregard, alter, or modify any terms of this agreement.

Section 7. Expedited Arbitration Procedures

The moving party will request a list of arbitrators who are willing to hear expedited cases with respect to any grievance which involves:

- An employee's formal performance appraisal, other than demotions or removals for unacceptable performance under [5 U.S.C. Chapter 43](#);
- Final decision to withhold a within-grade salary increase;
- Reprimands and suspensions of 14 days or less;

- Counseling and oral warnings;
 - Action imposing sick leave restriction;
 - Denials of sick leave, annual leave, and LWOP;
 - AWOL charges; and
 - Any other matter mutually agreed upon.
- A. The parties agree that the primary purpose of this supplemental arbitration procedure is to provide a swift and economical method for the resolution of identified disputes.

The hearing shall be informal.

No briefs shall be filed or transcripts made.

There shall be no formal evidence rules.

If possible, two (2) cases a day will be scheduled and heard by the same arbitrator.

- B. A single case should normally not require more than four (4) hours to be heard with each party being allowed up to two (2) hours to examine witnesses and make opening and closing statements. The arbitrator shall ensure that the length of the hearing is not unnecessarily extended because of irrelevant or repetitious testimony. The arbitrator may also waive the time limits for good and sufficient reasons.
- C. The arbitrator may issue a bench decision at the hearing but, in any event, the arbitrator shall render the decision within five (5) work days after conclusion of the hearing. This decision shall be based on the record developed by the parties before and at the hearing and shall include a brief written explanation of the decision.
- D. The arbitrator's decision shall be final and binding on both parties. However, either party may file an exception to the arbitrator's award in accordance with applicable law and regulations.

At the approximate mid-point of the National Agreement, the Parties will review the status of the arbitration process. This will include a review of the FMCS process, and how it is working. If the parties mutually agree, Section 2 of Article 25 may be reopened, in order to update or modify any provision.

Article 25 Sidebar

The Social Security Administration (SSA) and the American Federation of Government Employees (AFGE) have reached the following understandings related to the implementation of Article 25 from the 2019 SSA-AFGE National Agreement:

The provisions of Article 25 will be effective on October 27, 2019 with the following exception:

For any grievance that is invoked for arbitration prior to the effective date of Article 25 of the 2019 SSA-AFGE National Agreement October 27, 2019, the arbitrator will be selected and paid in accordance with the Panel procedures described in Article 25 of the 2012 SSA-AFGE National Agreement regardless of when the hearing is held. If the arbitrator is unable to hear the case for any reason after October 27, 2019, a new arbitrator will be selected and paid under the FMCS procedures described in Article 25 of the 2019 SSA-AFGE National Agreement.

If a grievance is invoked for arbitration on or after October 27, 2019, the arbitrator will be selected and paid in accordance with the FMCS procedures described in Article 25 of the 2019 SSA-AFGE National Agreement.

Article 26

Merit Promotion

Section 1. Purpose and Policy

The purpose of the provisions contained herein are to ensure that merit promotion principles are applied to all employees without regard to political, religious, or labor organization affiliation or non-affiliation, marital status, race, color, sex (including sexual orientation and gender identity), national origin, disability, age, genetic information, and shall be based solely on job-related criteria. This article sets forth the merit promotion system, policies, and procedures applicable only to bargaining unit positions in the Administration.

Section 2. Career Development Programs

- A. The Agency will publicize all career development programs when they are announced. Announcements will contain adequate specific application instructions. Such programs will be offered depending on the availability of funds and the needs of the Agency.

Career Development Programs will provide opportunities for temporary developmental assignments to increase knowledge of SSA programs and work processes.

- B. Neither party waives its rights under [5 U.S.C. 71](#) regarding the implementation of career development programs.

Section 3. Career Ladder Positions

- A. Career ladder positions help employees to develop to successfully perform higher-level duties through training and incremental assignment of more complex work. The responsibilities assigned to the entry levels of career ladder positions will involve more basic skills and knowledge, as compared to the journey level responsibilities. The responsibilities at each level of the career ladder position will be conveyed to employees through the position description and career ladder plan. Career ladder plans and/or revisions of plans will be tailored to the complexity of the job duties.
- B. Each career ladder position will have a career ladder plan. The career ladder plan will outline the criteria for each grade level which an employee must meet in order to be promoted. An electronic copy of the plan will be made available to each employee upon entry into the career ladder position and when he/she is promoted to a new level of the career ladder plan. The employee will also be advised of his/her earliest date of promotion eligibility. In addition, the employee and the union will be provided with an electronic copy of any revised career ladder plan within 30 days of each revision. When career ladder plans are established

and/or revised, the Administration will provide notice to the Union. Bargaining, to the extent required by [5 USC 71](#) will be in accordance with Article 4.

Section 4. Career Ladder Advancement

- A. At the time the employee reaches his/her earliest date of promotion eligibility, the Administration will decide whether to promote the employee.
 - 1. If an employee is eligible for promotion, the Administration will certify the promotion which will be effective at the beginning of the first pay period after the requirements are met.
 - 2. If an employee is not meeting the criteria for promotion to the next grade level of the career ladder, the employee will be provided with **30** days written notice prior to earliest date of promotion eligibility.
 - 3. In the event that the employee met the promotion criteria but the appropriate management official failed to initiate the promotion timely, the promotion will be retroactive to the beginning of the first pay period after the pay period in which the requirements were met.
- B. At any time a supervisor and/or the employee recognizes the employee's need for assistance in meeting the career ladder advancement criteria, the supervisor will develop a plan with input from the employee to assist the employee in meeting those performance expectations or the career ladder advancement criteria. The plan should include all applicable training as well as any other appropriate support.

If a non-probationary employee fails to meet the promotion criteria after the appropriate assistance, the Administration will:

- 1. Provide the employee with additional time to meet the promotion criteria. The Agency will promote the employee at any time that the employee meets the promotion criteria or
- 2. Reassign the employee to another position at the same grade and step.

Section 5. Applicability of Competitive Procedures

- A. Promotions - Any selection for promotion of more than 120 days must be made on a competitive basis unless it is excluded by Section 6 below.
- B. Reassignments or Changes to Lower Grade - Any selection to a position that provides specialized experience as defined in the OPM Qualification Standards that the employee does not already have and is required for subsequent promotion to a designated higher-grade

position and/or to a position with known promotional potential must be made on a competitive basis.

- C. Training - Competitive procedures will be applicable to selections for training when eligibility for promotion to a particular position depends on whether the employee has completed that training.
- D. Appointments - Competitive procedures apply to the transfer of a Federal employee or to the reinstatement of a former Federal employee to a position above the highest grade previously held permanently unless the position is a higher-graded successor position or to a position at or below that grade if the position has promotional potential above the highest grade previously held permanently. The employee must not have been demoted or separated for personal cause from the higher grade(s) and, when competitive procedures apply, be identified as a well-qualified candidate with eligible SSA employees to be eligible for appointment. To the extent feasible, the same qualification standards and the same methods of evaluation will be applied to both SSA employees and persons being considered for appointment to higher-graded positions above the highest grade previously held permanently by transfer or reinstatement.
- E. Selection from an OPM-approved register or delegated examining unit certificate.
- F. Participation in bargaining unit Career Development Programs may be used to non-competitively place participants into bargaining unit positions.

Section 6. Applicability of Noncompetitive Actions

- A. Promotions - The following promotions may be taken on a noncompetitive basis unless otherwise provided:
 - 1. Promotion of the incumbent of a position that is reclassified at a higher grade due to the accretion of additional duties and responsibilities and not a planned management action. To be eligible for a noncompetitive promotion in this situation the employee must have performed the higher-level duties for at least 6 months, must have continued to perform the same basic function, and the employee's former position must be absorbed administratively into the new position.
 - 2. Promotion of an incumbent or an individual entitled to reemployment rights to a position that is reclassified to a higher grade without significant change in duties or responsibilities, either on the basis of a new classification standard or as the result of correction of an original classification error. When the incumbent of the upgraded position meets the legal requirements and qualification standards for promotion to the higher grade, the incumbent will be promoted.
 - 3. Promotion of an employee previously selected competitively for a lower step of a career ladder.

4. Promotion after receiving priority consideration.
 5. Promotion of an employee when directed by authorized authorities (i.e., judges, arbitrators, FLRA and other appropriate authorities).
 6. Agencies may non-competitively reinstate, transfer, promote an employee up to the highest grade and step previously held on a permanent basis under career or career-conditional appointment, provided the employee was not demoted or separated from that grade because of deficiencies in performance or "for cause" reasons.
 7. Temporary promotions to a higher grade totaling 120 days or less during any 12 month period. If a temporary promotion that was not expected to exceed 120 days was originally made on a noncompetitive basis, any extension beyond 120 days must be made under competitive procedures.
 8. Career ladder promotions following noncompetitive conversion of a Pathways Program employee in accordance with the requirements of applicable OPM policy.
 9. Promotion of an employee covered by an approved training agreement.
 10. Promotion of an employee placed competitively in a trainee position.
- B. Reassignments or Changes to Lower Grade - A reassignment or change to lower grade to a position that does not provide specialized experience as defined in the OPM Qualification Standards that the employee does not already have and is required for subsequent promotion to a designated higher-grade position or to a position having no known promotional potential may be taken on a noncompetitive basis.
- C. Details - The following details may be made on a noncompetitive basis:
1. Details of 120 days or less to a higher-grade position.
 2. Details of 120 days or less to a position at the same or lower grade with known promotional potential, or to a position which provides specialized experience as defined in the OPM Qualification Standards required for subsequent promotion to a designated higher-graded position.
 3. Details to a position at the same or lower grade with no known promotion potential, or to a position which does not provide specialized experience as defined in the OPM Qualification Standards required for subsequent promotion to a designated higher-graded position.
 4. Details to unclassified duties.

Promotional credit or points may not be given for any non-competitive detail, including any non-competitive temporary promotions.

D. Other Noncompetitive Actions

1. Conversion of an employee from a temporary promotion to a permanent promotion in the same position and office provided the vacancy announcement for the temporary promotion indicated that the promotion could later become permanent.
2. Transfer of a Federal employee or reinstatement of a former Federal employee (including conversion to reinstatement from a temporary appointment) to a position at the same or lower grade than the highest permanent grade held under a career or career-conditional appointment provided the candidate was not demoted or separated for personal cause from a higher grade and also provided that the position does not have known promotional potential to a grade higher than the highest permanent grade held.
3. Reinstatement to the same career ladder position for which an employee was previously selected competitively or to a similar career ladder position having similar qualification requirements and having no greater known promotional potential.
4. Reinstatement of a former SSA employee to a position which is the higher-graded successor to a position he/she previously held. Such reinstatements may be made non-competitively when classification of the successor position is based on the establishment of a new position classification standard or the revision of a position classification standard.
5. A position change permitted by reduction-in-force regulations.

E. Procedures for details are described in Article 27.

Section 7. Vacancy Announcements and Areas of Consideration

- A. All actions requiring the use of competitive procedures under this Agreement will be announced on the SSA Intranet/Internet, e.g. Internal Vacancy On-line (IVOL).
- B. Areas of Consideration- The area of consideration for a position vacancy is that area in which the Administration should reasonably expect to locate enough well-qualified candidates. Employees within an area of consideration are given the opportunity to be considered by means of the vacancy announcement and application procedures and/or by being automatically considered without having to submit an application. Unless otherwise indicated in this article, areas of consideration are applicable when filling bargaining unit position vacancies are as follows:

1. The normal area of consideration for positions with Baltimore/Washington, D.C./Falls Church headquarters duty stations is Baltimore/Washington, D.C./Falls Church headquarters-wide. At the discretion of management, the normal area of consideration for positions at this level may be expanded.
 2. The normal area of consideration for positions at the GS-8 through GS-15 levels and equivalent Wage Grade levels is SSA region-wide. This area of consideration includes all SSA installations in the region in which the duty stations of the vacancy is geographically located. At the discretion of management, the normal area of consideration for positions at this level may be expanded.
 3. The normal area of consideration for positions at the GS-7 level and below and equivalent Wage-Grade levels is SSA commuting area. This area of consideration includes all SSA installations in the commuting area of the vacancy. At the discretion of management, the normal area of consideration for positions at this level may be expanded.
 4. When a position is established at the grade of full performance level, together with one or more trainee grades, the grade of the full performance level will be used to determine the area of consideration for the trainee positions regardless of the grade at which it is being filled at any given time.
- C. For positions in the Philadelphia Region, the term “region-wide” excludes SSA Headquarters in Baltimore, Maryland/Washington D.C., and OHO Headquarters in Falls Church, Virginia. At the discretion of management, the normal area of consideration for positions at this level may be expanded.
- D. For positions/organizations not covered in this section, management will determine the appropriate area of consideration.
- E. Reducing the Area of Consideration.

When solicitation throughout the normal area would be clearly impractical because of operational needs, management may reduce the area of consideration. The announcement package will document the reduced area of consideration. Management will identify the clear operational needs to the union upon request.

- F. Employees outside the normal area of consideration may request a reassignment or change to lower grade via the general availability process.
- G. If the agency posts a vacancy announcement for a bargaining unit position, the agency will decide whether to authorize relocation expenses at the time the announcement is posted.
- H. When filling a higher graded position which has been created by reengineering the duties of one or more lower graded position(s), the area of consideration will be restricted to the incumbents of the lower graded positions(s).

Section 8. Information on Vacancy Announcements.

A. Vacancy announcements will include, as a minimum:

1. Statement of nondiscrimination;
2. Announcement number and opening and closing dates;
3. Position number(s), title(s), series, and grade(s);
4. Number of vacancies to be filled;
5. Promotional test to be used, if any;
6. Geographic and organizational location;
7. Time in grade requirements, if any;
8. Area of consideration;
9. Summary of qualification requirements (including KSA's),
10. Hours of work and/or the availability of alternative work schedule options, including telework;
11. If appropriate, a statement that the vacant position is a trainee position leading to a noncompetitive promotion;
12. Permanent or temporary nature, and duration, if temporary;
13. Filing instructions.
14. Name and telephone number of the personnel specialist or other individual to contact for specific assessment criteria and other information relating to the announcement;
15. The Servicing Personnel Office (SPO);
16. Closing date of the announcement;
17. Statement as to whether the agency will pay relocation expenses for the vacancy. All relocation expenses will be in accordance with federal travel regulations and other applicable laws and government wide rules and regulations.
18. The rating and ranking criteria.

B. Announcing Career Ladder Vacancies and Vacancies Covered by Training Agreements.

1. Career ladder vacancies and vacancies covered by training agreements may be announced at any or all grades.

C. Posting and Distribution of Vacancy Announcements.

1. Vacancy announcements will be posted on the SSA Intranet/Internet.
2. Individual vacancy announcements will remain open and posted for 15 workdays.
3. Open continuous announcements will remain posted at all times unless the Administration determines to discontinue the use of these announcements. An employee may file at any time as outlined in the vacancy announcement. The cutoff date for the applicants to be considered for a specific vacancy will be the date the request to fill the vacancy is received in the SPO. Applications received after that date will be considered for future vacancies.

- D. Amending Vacancy Announcements. If a vacancy announcement has been posted and is later found to contain a substantial error, the announcement will be amended if the selecting official still intends to fill the position under the competitive process. The amendment should cite the change(s) and indicate whether or not the original applicants need to re-file in order to be considered.
- E. If a vacancy announcement is cancelled, notice will be posted on the SSA Intranet. The reason for the cancellation will be made part of the promotion file and provided to AFGE upon request. Such cancellations will not be used to compromise merit promotion principles.

Section 9. Employee Applications

- A. Who Must File: To be considered for an announced vacancy, an employee must file and sign the electronic SSA- 45, Occupational Questionnaire, and other required supporting documentation.
- B. Time Limits: The time limits for filing for an announced vacancy are as follows:
 - 1. Individual Announcements - Applicants who wish to be considered for a posted vacancy must apply by the closing date shown on the vacancy announcement. The electronic application and any other documentation will be considered received on the day of transmission.
 - 2. Short-Term Absence - An employee on approved absence from duty for 1 to 3 weeks may file for a vacancy upon returning to duty. Employees absent throughout the entire open period of an announcement must apply within 3 workdays following their return. The application must be accompanied by supervisory certification of the dates of absence. The SPO will arrange for the employee's consideration if the BQL has not yet been furnished to the selecting official.
 - 3. Long-Term Absence - Prior to departure, employees who are scheduled to be absent in excess of 3 weeks should provide the SPO with a written request to be considered for positions posted during their absence and a complete application. The request must cite the title, series, grade and specific organization location of each position for which they wish to be considered.
- C. Multiple Applications: When an employee has applied for, or been automatically considered for, more than one announcement, he/she will be bound by the first promotion or reassignment (in the case of a career ladder) for which the employee has reported unless:
 - 1. He/she has accepted a reassignment and another vacancy leads to a promotion to a higher grade;
 - 2. Another vacancy is in a career ladder or a trainee position leading to a higher grade;

3. He/she has accepted a temporary promotion or reassignment and the other position is permanent or temporary, with a later expiration date; or
 4. The other position is outside the commuting area.
- D. Wage grade employees may compete for General Schedule positions and vice versa but must meet applicable legal requirements including minimum qualifications requirements.
- E. Applications
1. Management will afford bargaining unit employees access and instructions so that they may use SSA's personal computers to complete automated applications, e.g. Internal Vacancies On-Line (IVOL). Access includes a reasonable amount of time during an employee's working hours to prepare or modify his/her application.
 2. The Agency will provide appropriate training on how to file for a vacancy and how to complete a SSA-45. The Agency will continue to make instructional material on the promotional process available to bargaining unit employees.
 3. Electronic vacancy announcements for bargaining unit positions will be made available to AFGE, upon request, for up to 180 days after the selection.

Section 10 Development of Promotion Criteria

The IVOL Application is used to rate and rank applicants in accordance with the Knowledge, Skills and Abilities (KSA's) for the position to be filled. The Occupational Questionnaire is a factor in determining the employee's potential to perform in the vacant position. The Occupational Questionnaire will be based on a relationship between the promotion criteria and the job duties. Questions will be in accordance with [5 CFR, Part 300, Subpart A](#).

The Agency is responsible for developing/updating evaluation criteria and KSA's. The Agency will ensure the establishment of a valid crediting plan for Wage Grade positions.

All information that is collected in the application process will conform to [5 CFR Part 300](#). In addition, the Employer will ensure that this process is consistent with and follows the guidelines outlined in Part 60-3, Uniform Guidelines on Employee Selection Procedures (1978); [43 Federal Register 38295](#) (August 25, 1978).

Promotion criteria used to evaluate candidates must be job related and consistently applied. Promotion criteria will be developed by identifying the major tasks/duties of the position based on information contained in the position description, career ladder plan, qualification standards and or classification standards. Any task examples will be related to the knowledge, skills and abilities required for the position.

Section 11 Rating and Ranking

- A. The Agency will review the applications to ensure that applicants meet the minimum qualifications for the position.
- B. Management may use automated processes, e.g. Internal Vacancies On-line (IVOL), to rate applicants against the evaluation criteria or KSAs. The rating will be applied consistently to all applicants.
- C. The agency may rank applicants in descending score order, determine which applicants have a score which is at least 50% of the total maximum score for the entire rating schedule and develop a tentative BQL.
- D. Only applicants who earned at least 50% of the total maximum points may be considered for the BQL and referred to the selecting official.
- E. The number of candidates to be included on the BQL is determined by the number of vacancies to be filled. For one vacancy, the BQL would consist of the 15 highest ranked applicants plus ties for the last place. For each additional vacancy, the BQL would include the next 5 highest ranking applicants plus ties for last place.
- F. If additional vacancies arise prior to the approval of the BQL, the selecting official may request that the number of candidates referred for initial selection be based on the larger number of vacancies. Such requests will be documented in the announcement package.
- G. Separate BQ lists will be established for positions posted at more than one grade level or for more than one geographic location. The number of names referred on each list will be determined by the number of vacancies to be filled at each grade level or geographic location. If the number of vacancies to be filled at each grade level or geographic location is not specified, the number of names referred will be based on the total number of vacancies to be filled.
- H. An abbreviated rating procedure may be used when the number of candidates to be rated is no greater than the number of names that would be included on the BQL for the number of vacancies to be filled. Applicants may be rated against the entire rating schedule or may be rated only up to the point where it is apparent that the applicant would or would not receive at least 50% of the total maximum score possible under the entire rating schedule.
- I. The Human Resources Specialist will certify the BQL.
- J. The approved BQL and the applications submitted by the best qualified candidates will be given to the selecting official.
- K. Previously approved BQ lists may be amended to add the names of applicants who were erroneously excluded, provided that initial selection(s) have not been made.

Section 12 Best-Qualified List (BQL) Determinations

- A. Qualified applicants will be rated and ranked on the BQL based on their responses to the IVOL occupational questionnaire.
- B. All scoring to determine placement on the BQL will be done by technology.

Section 13. Selection

- A. The selecting official may use all available information, including honorary/monetary awards and performance appraisals, to determine the candidate(s) to determine the candidate(s) who merit promotion. If the selecting official obtains written information on an applicant from any source, it must be placed in the promotion package.
- B. Employees will not be adversely affected in any selection decision solely because of their leave balances.
- C. The approved BQL shall be referred to the selecting official in rank order.
- D. Selection interviews may be conducted with one or more of the candidates; not all candidates must be interviewed.
- E. The selecting official will normally make selections within 90 calendar days of receipt of the BQL.
- F. The issue of competitive selections to address any under-representational issues is an appropriate topic for discussion at the annual meeting referenced in Article 18 of the National Agreement.
- G. In the event that an unanticipated vacancy(s) in the same position and location as the posted vacancy occurs within six months of the selection, the selecting officer may make additional selections from the best-qualified candidates on that list.
- H. When a selection has been made, the Administration will arrange a release date, notify the employee, and ensure that the appropriate personnel forms are processed. The effective date of a promotion action, other than promotion within a career ladder, will be the first day of the pay period in which the employee is scheduled to report. However, if the employee is within one pay period of the end of a waiting period increase, consideration should be given to promoting the employee at the beginning of a pay period on or after the effective date of the within-grade increase. If due to administrative error, the personnel action was not processed in a timely manner, the promotion effective date will be made retroactive to the beginning of the pay period in which the employee actually reported.

- I. Competitive selections will be posted on the SSA Intranet. Normally, the postings will be made within 10 workdays after the close of the pay period during which the selection(s) was/were made effective.
- J. Employees selected for career ladder positions will be promoted to the next higher-grade level at the beginning of the first pay period after selection, provided time-in-grade and any other legal promotion requirements are met.

Section 14. Employee Information

- A. A copy of the promotion plan will be posted on SSA's Intranet site.
- B. Employees are entitled to the following information upon request about vacancies filled under the competitive provisions of this article and for which they are/were under consideration.
 - 1. Whether the employee was eligible and qualified for the position;
 - 2. How his/her points were derived;
 - 3. The cut off score for the BQL and whether the employee was included on the BQL; and,
 - 4. The name(s) of the employee(s) who was selected for the vacancy.

Section 15. Union Review of Competitive Actions

- A. The Union will be permitted to audit competitive selection actions taken under this Article when it has reason to believe a discrepancy exists or when requested to do so by an employee.
- B. The Union will provide the designated agency official with the names of the Union representatives who are responsible for conducting audits. Any changes to the list of designated representatives will be sent to the Agency in writing. The representative designated to conduct the audit will not have been an applicant for the promotion package audited.
- C. Employees who believe they were improperly excluded from the best qualified list may request a review of the promotion package through the Union process described below.
- D. If the employee chooses to use the Union procedure, he/she must make a written or oral request to the Union within 15 working days after the selection is posted to the SSA intranet. A Union request under Subsection (A.) above may be made within 60 days following the date the selection is posted to the SSA intranet.

- E. The designated official responsible for the package will make all pertinent records from that package available either electronically or via hard copy to the Union auditor within 20 working days of receipt of the written request. The Union will treat the information confidentially. The aforementioned pertinent records shall include the vacancy announcement, training and awards (if provided as part of the employee's application), applications, occupational questionnaire, employee answers to the occupational questionnaire, the total overall score for the questions, name of the selecting official, selection certificates, declinations and information in the promotion package in accordance with Section 13.A.

While the parties agree that there is no need to meet the statutory standards of [5 USC 7114 \(b\)\(4\)](#) to obtain the information, e.g., particularized need, the Agency nonetheless is legally entitled to protect the privacy of the applicants involved in the action, which may include sanitizing the documents provided. Sanitized documents may include identifiers.

- F. If an error is discovered which resulted in an employee's exclusion from a well-qualified group, the provision of Section 16 of this article will apply.
- G. Employees who elect to use the grievance procedure rather than the Union audit procedure must initiate action in accordance with Article 24, Grievance Procedure.

Section 16. Priority Consideration

- A. Definition - For the purpose of this Article, a priority consideration is the bona fide consideration for non-competitive selection given to an employee as the result of a previous failure to properly consider the employee for selection because of procedural, regulatory or program violation. A priority consideration does not give the employee a guarantee to be selected for any vacancy.
- B. Processing
 1. Employees will be notified in writing by the authorized Management official of entitlement to each priority consideration. Such notice will advise employees that if a vacancy is announced and posted and the employee wishes to exercise his/her priority consideration, he/she should submit the necessary application to the designated Agency human resources official with a written request that he/she wishes priority consideration for the vacancy.
 2. Priority consideration is to be exercised by the selecting official at the option of the employee for an appropriate vacancy. An appropriate vacancy is one for which the employee is interested, is eligible, and that leads to the same grade level as the vacancy for which proper consideration was not given.
 3. Prior to the evaluation of other applicants, the name(s) of the employee(s) requesting to exercise priority consideration will be referred to the selecting official. The selecting official will make a determination on the request prior to evaluating other applicants.

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

C. Union Notification

In order to assure compliance with this section, the Union will be furnished statistics on priority considerations granted and exercised and the results. Statistics will be kept and supplied to the Union on a semi-annual basis. The Union will also be notified in writing of each individual priority consideration completed.

Section 17. Temporary Promotions

When employees are temporarily assigned to a position of a higher grade for a period in excess of 30 days, the assignment must be made via temporary promotion effective the first day of the assignment. The temporary promotion should be initiated at the earliest date it is known by management that the detail is expected to exceed thirty (30) calendar days. The thirty (30) calendar day provision will not be circumvented by rotating employees into a higher graded position for less than thirty (30) calendar days in order to avoid the higher rate of pay.

Section 18. Miscellaneous

In January of each year, the Agency agrees to provide to the AFGE General Committee Spokesperson, information on the number of bargaining unit vacancies by grade, series, component, location, and job title filled with an Agency employee for the prior fiscal year. Information will also be included on bargaining unit external hires for the prior year.

Article 27

Details

Section 1. Definitions

A detail is the temporary assignment of an employee to a different position or function, or to perform the duties of the same position at or for a different duty station for a specific period, with the employee returning to his/her/their regular duties or duty station at the end of the detail.

Section 2. Documentation

A detail to a different position in excess of 30 calendar days will be reported on Standard Form 50 (SF-50) and maintained as a permanent record. A detail to a position that is identical to an employee's current position for 120 days or more will be reported on the SF-50 and maintained as a permanent record.

Section 3. Duration

The Agency is responsible for keeping details within the shortest practicable time limits and assuring that details do not compromise the open competitive principle of the merit system.

Section 4. Higher Graded Duties

Those details to higher graded positions or to positions with known promotional potential which require competition will be handled in accordance with Article 26.

Section 5. Lower Graded Duties

Should the requirements of the Employer necessitate an employee being detailed to a lower-graded position, it will not adversely affect the employee's ability to bid for any job for which the employee would have been eligible had the employee not been detailed to the lower graded position.

Section 6. Union Officials

Management will make a reasonable effort to avoid placing Union officials on details that would prevent Union officials from performing their representational functions. The Employer agrees to notify the union prior to placing Union Officials on details away from their official duty stations.

Section 7. Reassignments

When an employee is non-competitively reassigned to a different position, the employee will be given a reasonable period, as determined by management, in which to become proficient. Reassigned employees will be provided appropriate training, where needed, in accordance with

Article 16. If the employee cannot attain satisfactory performance, management will consider reassigning the employee back to the previous position or a new position at the same grade level.

Section 8. Temporary Assignment of Duties for Medical Reasons

Upon request, the Agency will make a reasonable effort to assign limited duties to an employee who is temporarily unable to perform the full range of his/her/their assigned duties because of medical reasons. The Agency may require sufficient medical documentation in support of the request.

Section 9. Procedures for Filling Non-Competitive Details in Excess of 120 Calendar Days

The following will apply when filling non-competitive details in excess of 120 calendar days to both classified and unclassified positions:

- A. The Agency will determine the qualifications necessary to perform the details. They will be objective and job related.
- B. The Agency will determine the area of solicitation in which to post the detail. Postings will be completed electronically. In the event the Agency releases an email broadcasting the posted detail opportunity, the Agency will forward a courtesy copy to the appropriate union official.
- C. The employer will not set artificial qualifications or artificial areas of solicitation to avoid the provisions of F below.
- D. Postings will be for a reasonable period of time to allow all eligible employees the opportunity to become aware of and apply for details.
- E. After the posting period, the Agency will list the qualified candidates in seniority order. Seniority will be determined by SCD.
- F. The Agency will give serious consideration to selecting the most qualified senior employee(s) who volunteered for the detail.
- G. If an insufficient number of candidates apply for the detail, the agency will use inverse seniority (by Service Computation Date (SCD)) to select equally qualified employee(s) from within the area of solicitation.
- H. An employee will normally be detailed only once during any 12-month period under this provision. Such employee will be eligible for additional details in excess of 120 calendar days (based on the provisions of E and F above) or more in situations of insufficient volunteers; and the employee volunteers for the assignment.

Section 10. Temporary Compassionate Assignments

Employees may request an assignment to another SSA facility in a different geographic location, a temporary residence other than the employee's Article 41 approved Alternative Duty Station (ADS) in a different geographic location, or, their current Article 41 ADS, for up to 60 days based on a temporary personal situation (e.g., illness of parent, etc.) outside of the employee's control. "Different geographic location" is defined as being outside the two-hour commuting area. The employee must submit a written request stating the nature of the personal situation, a prioritized list of office(s), the ADS, or temporary residence, for the assignment, and the anticipated length of the assignment. Management may require additional documentation regarding the nature of the temporary personal situation. Assignment approval is at the discretion of Management. The Agency will incur no costs from temporary compassionate assignments. An employee may request additional time under these same conditions.

Section 11. Virtual Details

Virtual details will be addressed in accordance with this section, except virtual details in the Office of Hearings Operations (OHO) which are handled in accordance with the Virtual Assignment MOU between AFGE Council 215 and OHO dated August 22, 2022.

A virtual detail is a temporary assignment of an employee to perform the duties of a different position or function without physically reporting to the duty station of the detail. During a virtual detail, the employee remains stationed at their permanent duty station and, if applicable, their alternate duty station, while performing the work of the component/installation/work unit to which they are detailed. An employee on a virtual detail is expected to return to their permanent position at the end of the detail.

When Management determines a detail can be performed virtually, management will state the option of a virtual detail in the posting. Virtual details under this section will be handled in accordance with Articles 26 and 27, as applicable.

In the event the Agency makes changes to conditions of employment regarding expansion of non-OHO virtual details, the Agency will provide notice and bargain to the extent required by [5 U.S.C. 71](#).

The Agency agrees to incorporate the Hardship Reassignment Process MOU dated May 21, 2015 and the General Availability MOU dated May 21, 2015 into the National Agreement.

Article 28

Classification

Section 1. General

- A. The parties agree that position descriptions shall accurately state the principal duties and responsibilities of the position.
- B. The Agency will apply newly issued OPM classification and job grading standards within the timeframes established by OPM. Standards are available to the Union through the OPM website.
- C. The Union may submit its views concerning occupational classification standards to the Office of Personnel Management.

Section 2. Position Description

- A. The Agency will maintain a complete and up-to-date file of position descriptions of all classified positions in the bargaining unit and will provide each employee with a copy of his/her position descriptions.
- B. When an employee has a question concerning the proper classification of his/her position, the employee will discuss the situation with his/her immediate supervisor. If the immediate supervisor cannot resolve the employee's concerns to the employee's satisfaction, the employee may request that the supervisor arrange for a Classification Specialist to provide further information to the employee.
- C. If a classification inquiry results in an audit, the employee will be afforded an opportunity to discuss the results and analysis of the classification audit with his/her immediate supervisor. If the immediate supervisor cannot resolve the employee's concerns to the employee's satisfaction, the employee may request that the supervisor arrange for a Classification Specialist to provide further information to the employee. The request will normally be honored.
- D. If a classification audit is determined to be appropriate, the Union will be notified as to the anticipated starting date of the audit. The initiating employee will be provided the results of the classification audit upon completion thereof.
- E. Upon request, the Union will be provided a copy of all official information relating to the classification of a position, including but not limited to the position description, analysis/evaluation reports (if available), and organizational and functional information.

- F. Where there is a statutory duty to bargain the impact of classification activity on employee(s), SSA will provide notice and an opportunity to bargain consistent with the procedures in Article 4.
- G. If a classification audit is adverse (i.e., a position is reclassified at a lower grade) affected employees will be given three pay periods advance notice.

Section 3. Classification Appeals

- A. Upon request, the Agency will provide any employee information on the procedures for filing classification appeals to SSA or OPM.
- B. An employee who files a classification appeal to SSA or OPM is entitled to a copy of the position description, analysis/evaluation reports (if available), organizational and functional information and other official information related to classification of the position.
- C. General Schedule and Federal Wage System employees who file classification appeals to SSA will have their appeals decided within a reasonable period of time. Upon request, the initiating employee and/or his/her union representative will be provided a copy of the classification appeals file.

Section 4. Effective date

Changes in grade level based on reclassification resulting from action other than OPM appeals will be effective on the first pay period following final approval of the action.

Article 29

Union-Management Cooperation Councils

In the spirit of Executive Orders 14003 and 14025 and related guidance and recommendations, as well as the President's Management Agenda, which promote greater cooperation between labor and management, SSA and AFGE agree to establish the following Agency-level Union-Management Cooperation Councils (UMCCs) between AFGE and SSA. Should Executive Orders 14003 or 14025 be rescinded, this Article will immediately revert to the previous 2019 version.

Section 1. PURPOSE

The UMCCs are intended to design, implement, and maintain within SSA a cooperative constructive working relationship between labor and management at the agency to improve the productivity and effectiveness of the Federal Government.

Pre-decisional involvement (PDI) at the UMCCs occur at the level of recognition (i.e. the six (6) National Level UMCCs). PDI does not waive management's statutory right to make decisions under [5 USC 71](#), nor does it waive AFGE's right to engage in bargaining prior to implementation to the extent required by [5 USC 71](#) and if applicable, Article 4 of the SSA-AFGE National Agreement.

Section 2. OBJECTIVES

Normally, discussions within the UMCCs will be guided by the following principles:

- A. Cooperation
- B. Mutual respect
- C. Trust
- D. Transparency and open communication
- E. Efficiency
- F. Consideration of each other's views and interests, and
- G. Good faith commitment to incorporating input on issues where accepted by Management

Section 3. DEFINITION

The basic principles of PDI are as follows:

- A. The pre-decisional process begins early enough to incorporate meaningful involvement.
- B. Discussion and consideration of each party's needs and interests

- C. Where not prohibited by law, Management will provide adequate information to the union regarding mutually acceptable PDI subjects.
- D. Some subjects may not be appropriate for PDI, due to their confidential or sensitive nature.

Section 4. STRUCTURE

- A. UMCCs will normally be comprised of the Deputy Commissioners, or designees for, Human Resources, Operations, Hearings Operations, Analytics, Review, and Oversight (or any appropriate combination thereof depending upon agenda subjects), and appropriate necessary staff members, and shall collectively meet with twelve (12) representatives of the American Federation of Government Employees six (6) times a year. Each meeting may also be attended by a rotating Deputy Commissioner or designee from the remaining headquarters components as appropriate based on the agenda. Four (4) of the meetings will be held via MS Teams or similar meeting technology. Two (2) of the National UMCCs will be held in-person at SSA Headquarters in Woodlawn. Consistent with the Federal Travel Regulation (FTR), the Agency will pay for travel and per diem for up to six (6) union participants to attend the in-person meetings. For any in-person meeting, participants may opt to attend virtually through the use of MS Teams or similar meeting technology.
- B. One member from each side shall serve as co-chairs.
- C. The Parties will appoint note-takers for each meeting and notes from prior meetings will be shared prior to subsequent meetings.
- D. These meetings will be held on the first Tuesday of the month from 10 AM Eastern Time to 4 PM Eastern Time. Dates/times may be changed by mutual agreement.
- E. All participating Union representatives, up to twelve, who would otherwise be in duty status, will be granted official time in accordance with the provisions in Article 30.
- F. Matters proposed for discussion by either party will be forwarded to the other party at least fourteen (14) calendar days prior to these meetings. Any matter not submitted by this timeframe will not be considered for discussion unless by mutual consent of the parties.
- G. During the initial UMCC sessions, the Parties will develop metrics for evaluating the extent to which the UMCC's activities improve delivery of services and products to the public, cut costs, and advance employee interests. The Parties will also measure the outcome of any accepted PDI input based upon these same criteria. Development of the metrics for prospective PDI subjects will not impede PDI on the subjects previously agreed to in the Sidebar to this Article.

Section 5. PDI Procedures

PDI at UMCCs will operate as follows:

- A. PDI subjects may be proposed by either Party for consideration. The Parties must jointly agree on PDI subjects. The co-chairs will agree on which available PDI subject will be addressed 60 days in advance of the first scheduled UMCC. Subsequent UMCCs will conclude with mutual agreement of what PDI subject will be addressed at the next scheduled meeting. In the event the Parties do not jointly agree on PDI subjects, the meeting may be deferred by mutual agreement or may be limited to discussion topics in accordance with Section 4F.
- B. As part of the Parties' consideration of a proposed PDI subject, the Parties will identify appropriate metrics for the proposed subject, in accordance with Section 4G, above.
- C. Once the PDI topic is mutually agreed upon, the Agency will provide the union information and/or a briefing on the PDI subject to the extent needed for the union to provide meaningful input. Briefings will be provided within the confines of the scheduled UMCCs.
- D. PDI will occur within the scheduled UMCCs. The Union will provide pre-decisional input on the approved subject at the scheduled UMCC. Union input that is adopted by management, will be reduced to writing. Such PDI documentation of management's intent will not constitute collective bargaining agreements under [5 U.S.C. 71](#) due to their pre-decisional nature. During the given UMCC where PDI occurs in accordance with 5A, above, to the extent possible, Management will explain why they are unable to adopt certain items of union input.
- E. After Management has made a final decision on the subject, incorporating mutually agreeable input from the Union, if appropriate, the Agency will provide formal notice to the Union and bargain to the extent required by [5 USC 71](#).
- F. The decision is implemented.
- G. Pre-decisional involvement does not mean co-management.
- H. Subjects covered by the Parties CBA, as defined by Federal Labor Relations (FLRA) case law, are not appropriate subjects for PDI, with the exception of subjects noted in this Agreement as appropriate for PDI under this Article.
- I. The Parties will not discuss active grievances, unfair labor practices, litigation, local concerns, or ongoing negotiations (term or mid-term), but rather systemic subjects.

Section 6. Component Level Meetings

- A. In addition to the National Level UMCCs, the Parties will hold component level UMCC meetings as follows:

1. DCO and AFGE Council 220
2. DCO and AFGE Council 109
3. DCHO and OAO and AFGE Council 215
4. DCARO and AFGE Council 224
5. DCO and AFGE Local 2809
6. HQ components and AFGE Local 1923

Each component UMCC shall meet four (4) times per year, but not during weeks in which the National UMCC is meeting. Each meeting will be attended by the component Deputy Commissioner or designee, and appropriate necessary staff members. The Union will be represented by up to six (6) union officials. These meetings will be conducted via technology. These meetings will be scheduled by mutual agreement and will typically be conducted from 1 PM Eastern Time to 4 PM Eastern Time. PDI is limited to National Level UMCCs. Component level meetings may be deferred by mutual agreement.

- B. These component meetings shall be to exchange information and discuss issues dealing with personnel practices and procedures, matters affecting working conditions and other appropriate subjects. Individual grievances, complaints or any other issue in a formal appellate procedure will not be a subject of discussion at these meetings.
- C. Matters proposed for discussion by either party will be forwarded to the other party at least fourteen (14) calendar days prior to these meetings. Any matter not submitted by this timeframe will not be considered for discussion unless by mutual consent of the parties.

Section 7. Training

The Parties agree to jointly reach out to the Federal Mediation and Conciliation Service (FMCS) and schedule relationship training between the UMCC parties. As the Agenda item for a one-time additional scheduled National UMCC under this article, the Parties will participate in a virtual relationship-building training, with curriculum and instruction provided by FMCS.

Sidebar – Article 29

The parties agree that the following topics will be scheduled agenda subjects for PDI under Article 29:

- Expanded use of video (on camera in trainings and meetings) and recordings of trainings and meetings held through MS Teams or subsequent technology
- The future of interactive programmatic training
- Potential anti-bullying training
- Potential mentor training program
- Potential child care subsidy program

Additionally, the Parties agree that the use of SSA artificial intelligence (AI) based initiatives impacting bargaining unit employees is an appropriate subject for discussion at UMCCs. Upon request, the Agency will provide an initial overview briefing on the current status of AI based initiatives from both the Systems and Operational Component perspectives. Thereafter, either party may request or provide an update on such initiatives during an UMCC.

Additionally, the Parties agree that SSA Career Development Programs are an appropriate topic of discussion at both the National and Component UMCCs. Upon request, the Agency will provide an initial overview briefing on the current status of SSA Career Development Programs. Thereafter, either party may request or provide an update on such initiatives during any UMCC.

Article 30

Official Time*

Section 1. Policy Statement

Designated official time users are expected to accomplish the duties of the Agency position to which they have been assigned. The Administration recognizes that in the furtherance of good labor-management relations as provided for in the Civil Service Reform Act of 1978, Union officials have the responsibility of carrying out representational duties.

*Effective September 23, 2022, references to “union time” in this article are changed to “official time.”

Section 2. Designation

- A. The Union will provide the Office of Labor Management and Employee Relations (OLMER) with electronic lists of all designated union representatives within 30 days of the effective date of this Agreement. The Union will continue to provide OLMER with updated summary lists as necessary. Each list will include the name, union position, designated official time hours available to the representative, component, council, local, duty location and telephone number of each designated union representative.
- B. Only those employees identified on the list provided by the Union will be authorized official time for union representational activities and labor-management relations functions.

Section 3. Union Sponsored Training

- A. The Administration recognizes that union sponsored training is an appropriate representational activity for which official time may be used. When requesting official time for union sponsored training or conferences, the Union will provide the appropriate management official with documentation, at the time of the request, denoting the date, location, subject matter and provider or sponsor of the training or conference. The request will also include a statement detailing how the course content is appropriate for official time in accordance with [5 USC 71](#) and the provisions of this article. Management will timely respond to the request after receiving the information from the Union.
- B. The Administration's sole expense for all union sponsored training will be official time.

Section 4. Exclusions

- A. Effective September 23, 2022: Official time may be appropriate for use by a union representative for representational work performed at home. Official time is not appropriate for use by a union representative outside the time the union representative would otherwise be in duty status. This section is not intended to preclude a remedy of straight time in accordance with case law.
- B. In accordance with [5 USC 7131](#) (b), the use of official time is prohibited for internal union business.
- C. Official time is not permissible for Worker's Compensation Cases.
- D. Designated official time users on an Opportunity to Perform Successfully plan will not be authorized official time during the period of the plan.
- E. Unless specifically authorized by management, approved official time can only be used in an SSA controlled facility.

Section 5. Provisions for Official Time

- A. Consistent with [5 U.S.C. 71](#) and this Agreement, union representatives will be granted official time, subject to availability as described below, for the following representational activities:
 - 1. Term Negotiations—to prepare for and negotiate a collective bargaining agreement.
 - 2. Mid-Term Negotiations—to prepare for and bargain over issues raised during the life of a term agreement.
 - 3. Dispute Resolution—to process grievances up to and including arbitrations and to process appeals of bargaining unit employees to the MSPB, FLRA and, as necessary, to the courts.
 - 4. General Labor-Management Relations—meetings between labor and management officials to discuss general conditions of employment, labor-management committee meetings, labor relations training for union representatives, union participation in formal meetings and investigative interviews, and all other general labor relations activities consistent with [5 USC 71](#).
- B. Beginning October 1, 2022, official time is limited to 250,000 hours. Unused official time hours do not carry over into the next fiscal year.
- C. Beginning October 1, 2022, Union representatives may be allowed to use official time hours described in Section 5.B in the performance of union representational activities as described in Section 5.A as follows:

1. Twelve (12) union representatives will be authorized to use up to 2080 hours in a fiscal year and,
2. Fifteen (15) union representatives will be authorized to use up to 1440 hours in a fiscal year and,
3. One hundred and thirty-five (135) union representatives will be authorized to use up to 1040 hours in a fiscal year and,
4. All other union representatives will be authorized to use up to 520 hours in a fiscal year.
5. All official time use is subject to the availability of bank hours as described in Section 5.B.

Union reps who have reached their individual cap will be authorized official time in accordance with sections [7131\(a\)](#) or [7131\(c\)](#) of title 5, United States Code. Time for these activities will be charged to the union bank for that fiscal year. However, if the bank has been exhausted, time will be charged to the bank for the following fiscal year.

- D. Union representatives are required to stagger their use of authorized official time hours over the course of the fiscal year. Union representatives will work out official time usage with their supervisors to accommodate both union representational activities and Agency assigned duties. The parties recognize that a mutually agreed upon schedule is required for scheduling official time.
- E. Time spent by union officials, representing employees in the informal and formal stages of the EEO complaints process, up to and including appeals, is official time under this Article is charged toward the individual caps and bank.

Section 6. General Accountability Provisions for Official Time Users

Union representatives will use WebTA or equivalent on a daily basis. If a union representative is unable to use WebTA because he/she is off site on labor-management business, the union representative will notify the supervisor in advance and make arrangements with his/her supervisor to complete the required WebTA entries in advance. The union representatives will revise entries as necessary upon return to the official duty station to properly account for his/her time and attendance.

Section 7. Official Time Requests and Reporting Procedures

- A. All requests for official time will be submitted via OUTTS or equivalent electronic reporting system. Sufficient information (time, date, representational category, contact telephone number, and specific location if other than normal duty station) must be included with the request to allow the approving official to determine if the time requested and activity described meet the criteria outlined in this Article. Approval from an authorizing

official must be obtained prior to engaging in official time. Any employee who uses official time without advance management approval will be considered absent without leave and subject to appropriate disciplinary action. The representative will inform the supervisor when he/she returns to work after completion of the representational activity.

- B. If management is unable to approve a request for official time, the reason for denial will be provided. If an operational need does not permit the union representative to use the official time when requested, management will make a reasonable effort to allow the representative to use the official time within two workdays after the request was made keeping in mind the interests of the union and employees as well as the needs of the employer.
- C. Accounting of Official Time will be submitted via OUTTS or equivalent electronic reporting system.
- D. OUTTS may be modified as necessary to accommodate the provisions of this Article.

Section 8. Representational Activities at the Local Level

The Agency will not pay travel and per diem for local representational activities.

Section 9. Allegations of Abuse

Alleged abuses of official time shall normally be brought to the attention of an appropriate union official on a timely basis by an appropriate management official. Management may also initiate appropriate action to address the issue. Repeated or serious abuse of official time may result in disciplinary action as well as suspending use of official time for the duration of this Agreement.

Section 10. Leave Without Pay

A union representative may request leave without pay to engage in Union activities on the national, district or local level, for up to one year. All requests must be sent to the appropriate management official by the AFGE General Committee Spokesperson. Management will consider the request and determine whether or not to grant the leave without pay.

Article 31

Time and Leave

Section 1. Leave Increments

All absences will be charged in increments of one-quarter (1/4) hour.

Section 2. Annual Leave

- A. Employees shall accrue leave in accordance with statute and regulations of the Office of Personnel Management.

Annual leave is provided and used to allow employees an annual vacation period of extended leave for rest and recreation and to provide periods of time off for personal and emergency purposes. The use of accrued annual leave is the right of the employee, subject to the right of the Employer to approve the time at which leave may be taken. Employees should apply in advance for approval of all anticipated leave to permit the orderly scheduling of leave and to avoid leave forfeitures which might otherwise result.

When "use or lose" leave is requested in writing before November 15th of each year and cannot be approved or used prior to the end of the leave year the excess annual leave will be restored in accordance with applicable rules and regulations and must be used within the next two leave years. Additionally, employees with excess annual leave may elect to donate such leave pursuant to agency policy on the Voluntary Leave Transfer Program. If the agency changes its policy, it will provide appropriate notice to the union and the opportunity to bargain to the extent required by [5 USC 71](#).

In addition, if OPM establishes an emergency leave transfer program to assist employees affected by an emergency or major disaster, SSA will consider participating and establishing such a program to assist SSA employees.

- B. Normally, leave requested in advance will be granted except when conflicts of scheduling or undue interference with the work of the Administration would preclude it. Leave may also be granted when it is not scheduled in advance and workload considerations permit. Leave for personal emergencies, ordinarily infrequent in number, will normally be granted. Requests for leave based on the death of a family member or any individual related by affinity will be considered a personal emergency for leave approval. Once operational needs and the appropriate level of service have been determined by management, the Employer will make every reasonable effort to allow the maximum number of employees to use leave, while meeting those needs.
- C.
1. Advanced annual leave is leave time requested by the employee, approved by the delegated authority, and taken but not yet earned by the employee.

2. An employee may be advanced the lesser of 80 hours or the amount of annual leave an employee would accrue during the remainder of the leave year (i.e., maximum of 80 hours in the leave year). This provision does not apply to employees who are currently on a leave restriction or who have been disciplined for leave related offenses in the past two years.
- D. During the months of February and August of each year, employees will be notified to submit requests for extended annual leave of one calendar week or more and/or requests for days immediately preceding and following federal holidays for the six (6) month periods April through September and October through March, respectively. Such written requests should be submitted to the appropriate leave approving official by the last day of February and August, respectively.

Leave approvals/denials requested pursuant to this section will be provided within fifteen (15) working days after the close of the request period.

When conflicts arise in scheduling annual leave (A/L) requests received during the six (6) month leave request periods above, they will be resolved using a continuously rotating procedure to address employee's leave preferences. The procedure will operate as follows:

- Each leave approving official will initially establish an Employee A/L Roster in service computation date (SCD) order (from earliest to most recent SCD).
- This roster will be used to resolve individual conflicts in favor of and at the option of, the employees highest on the roster.
- Once the roster process is invoked, management will confirm with each employee involved in the conflict whether or not he/she wishes to exercise his/her option. Employees granted leave, as a result of the roster process, will have his/her name placed at the bottom of the list whether or not the leave is taken.
- Once established, the list will rotate continuously and will be used to resolve all conflicts for all subsequent leave scheduling periods.
- The Union will be provided employee SCD dates when rosters are initially established and employees will have access to the rosters (paper or electronic).

When leave slots remain after management has invoked the leave roster and made the final decision on extended annual/holiday leave requests, employees will have the opportunity to submit/resubmit leave slips for that same period. Once management notifies employees that extended annual/holiday leave decisions have been made and additional slots are available, employees will be notified that they have five (5) workdays to submit leave requests for any remaining slots for days before or after holidays or for a full week during the six month leave request period. Any conflicts for leave submitted during that five (5) day period will be approved based upon the employee with the oldest SCD having first choice. Management will resolve any further conflicts in SCD by a random draw with one local participant designated by the union.

When extended annual/holiday leave requests are submitted after the February or August leave-scheduling periods, the leave requests will be considered on a first-come, first-served basis. Conflicts arising from leave requests received by management on the same day will be resolved using SCD. Management will resolve further conflicts in SCD by a random draw.

Section 3. Excused Absences

- A. Management may excuse rare occurrences of tardiness of less than one hour.
- B. When management determines that exposure to unsafe or unhealthy working conditions, may result in the likelihood of illness or injury, employees will be directed to a safe and healthy area in the same office, or deployed to another installation, or deployed to an Alternate Duty Station (ADS) for those employees with a signed telework agreement, or granted an excused absence.
- C. Consistent with operational needs, management may excuse an employee who is donating blood without compensation for a reasonable amount of time; normally up to 3 hours, for the purposes of donation and recovery. Employees who donate blood platelets without compensation through a Hemapheresis Program will normally be authorized up to four (4) hours of excused absence. However, the total administrative leave will be limited to the remaining scheduled hours of duty on that day. An employee who is not accepted for donating blood/blood platelets is only entitled to the time necessary to travel to and from the donation site and the time needed to make the determination. Absence for blood/platelet donations must be approved in advance.
- D. The Employer will excuse employees for a reasonable time, when practicable to do so without seriously interfering with operations, to vote in any election or referendum on a civic matter in his/her community. An employee will be excused from duty on Election Day so as to permit him/her to report for work up to 3 hours after the polls open or to leave work up to 3 hours before the polls close, whichever results in the lesser amount of time off.

The Employer will notify employees of this right at the beginning of each fiscal year and shall encourage employees to avail themselves of the right to register and vote and utilize voting options such as early voting, mail-in ballots, etc.

- E. The Agency will follow [5 USC 6329c](#) (Weather and Safety Leave), applicable regulations (e.g. [5 CFR Part 630 Subpart P](#)), and Agency policy in the event of a full day closure, delayed opening, or early dismissal. If the agency changes its policy, it will provide appropriate notice to the union and the opportunity to bargain to the extent required by [5 USC 71](#).
 - 1. All SSA employees are to presume that the office is open each regular workday unless specifically announced otherwise. Although employees are expected to be prepared to deal with most emergencies, conditions might occur which will make the closing of all or some SSA offices necessary. The decision to close the office or open it late will be based on the Agency's concern for the health and safety of its employees including the hazardous conditions that the majority of employees might face reporting to their

workplace or returning home, weighed against the mission of the Agency, including due consideration to the needs of the public. The Agency will announce a full day closing or delay in opening through a method determined by the Agency (e.g., MENS, call tree, news media, etc.). Depending on the circumstances of the particular situation, attempts will be made to make a closing decision and announcement as early as possible. Employees should be advised that, when emergency conditions develop during non-working hours, they should follow the Agency's specific instructions.

As an additional method of communicating closings and delayed openings, the Agency may provide a telephone number for employees to call to receive a recorded message giving instructions about office hours.

2. When employees request leave/LWOP/credit hours because of conditions discussed above when early dismissals or non-workdays have not been authorized, leave approving officials shall be as liberal as possible in approving such leave, consistent with operational needs and the Agency's obligation to serve the American public. They will give special consideration to physical or other conditions which subject employees to special hazards in such circumstances.
3. If the Agency proposes to change any fixed shift, the Union will be given appropriate notice and the opportunity to bargain to the extent required by [5 USC Chapter 71](#).
4. When an announcement is made that an office will open late, employees on flextime and affected by the announcement will revert to a prescribed fixed shift for that day. Flextime will be canceled. If the announcement is made too late to effectively cancel flextime for all employees, employees who report and begin to work will be permitted to leave when they have completed the number of hours in their scheduled workday, provided they continue to work, or the end of their established fixed shift, whichever comes first. Those employees eligible to request to work credit hours may be able to do so.
5. Contingent upon law and regulation, if emergency conditions exist and the post of duty is not closed managers may grant up to two (2) hours of administrative leave to those employees arriving after the beginning of core hours or scheduled start time. The granting of such leave is contingent upon the manager determining that the employee made reasonable efforts to arrive timely and was delayed by the conditions.

F. Employees with Disabilities or Employees with Mobility Impairments

During emergency conditions, qualified employees with disabilities or employees with mobility impairments, may be unable to report to work even though the office is open. In this situation, management may grant excused absences to these employees without an approved telework agreement. These employees with an approved telework agreement will be expected to work at their ADS or request leave in accordance with Article 41.

- G. When a decision is made by Management to grant excused absences agency-wide before Federal holidays, especially at Christmas and New Years the Union at the appropriate level and employees will be informed as soon as possible.

- H. The employer may grant excused absence to permit employees to participate in judicial proceedings arising out of work place incidents of violence by members of the public against employees.
- I. Upon request, subject to certification by a physician, leave approving officials will approve excused absence for employees who serve as living donors for bone marrow, organ and tissue donation and transplantation are entitled to leave in accordance with law ([5 USC 6327](#)) and/or government-wide regulations.

The length of absence from work can vary depending on the medical procedure involved in the donation.

Section 4. Sick Leave

- A. Employees may use sick leave accrued in accordance with the statute and regulations of the Office of Personnel Management in the following situations:
 - Incapacity due to illness or injury.
 - Medical, dental, optical or surgical examination or treatment.
 - Incapacity due to pregnancy or confinement.
 - Required to give care and attendance to an immediate family member or any individual related by affinity who is afflicted with a contagious disease. Contagious disease means a disease which is ruled as subject to quarantine, isolation or restricted movement as prescribed by the health authorities having jurisdiction.
 - Presence at the post of duty would jeopardize the health of others because of exposure to a contagious disease as described above.
- B.
 1. Employees normally shall not be required to furnish a medical certificate from a health care practitioner to substantiate a request for approval of sick leave unless sick leave exceeds three (3) consecutive workdays. Normally, unless an employee is on sick leave restriction in accordance with this article, he/she will not be required to obtain medical certification for sick leave of 3 consecutive work days or less. When an employee's absence indicates a possible abuse of sick leave, the submission of a medical certificate or appropriate documentation, as determined by management, may be required to support any sick leave absence regardless of its duration. Such request will be made at the time the sick leave request is received by the appropriate management official and the management official will explain why he/she suspects sick leave abuse.
 2. In cases where the nature of the illness is such that an employee did not need to see a medical practitioner, a medical certificate normally will not be required if the employee provides an acceptable explanation.

3. An employee with a chronic medical condition that does not require medical treatment but does result in periodic absences from work for three (3) consecutive days or more will not be required to furnish a physician's certificate on a continuing basis if the employee: (1) is not on leave restriction and (2) provides, if requested, an updated valid medical certificate every six months which clearly states the continuing need for periodic absences.
 4. In the event a medical certificate is necessary, a document provided by a physician or practitioner or equivalent, stating the dates under care and dates of incapacitation, shall normally be considered sufficient.
 5. Employees who are incapacitated for duty due to illness/disability will provide initial notice for sick leave and the anticipated return to duty date. Employees will not be unreasonably requested to provide continual notices regarding sick leave requirements unless their situation changes or abuse is suspected. The procedures for requesting unanticipated sick leave will be in accordance with Section 5 of this article.
 6. Employees will not normally be required to reveal the nature of the illness as a condition for the approval of the requested sick leave.
 7. The Employer will treat as confidential any medical information given by an employee in support of a request for sick leave. Medical documentation may only be maintained, disclosed, or retained in accordance with law, government-wide regulations, and agency policy.
- C. Where the Agency has reason to believe that an employee is abusing the use of sick leave, the Agency may inquire further into the matter. If there is evidence that an employee's leave pattern may indicate that an abuse of sick leave exists, the employee shall first be advised by an interview, which shall be recorded in the SSA-7B file or electronic equivalent, of the reasons a medical certificate may be required for each subsequent absence or sick leave. The use of sick leave for scheduled medical appointments caused by recurring and previously documented medical conditions will not be considered a leave pattern that indicates an abuse of sick leave.

If the employee's leave pattern continues, the employee will be advised in writing as to whether an acceptable medical certificate may be required for each subsequent absence for which sick leave is requested.

The sick leave usage of all employees under sick leave restriction will be reviewed at least every six (6) months and a written decision to continue or lift the restrictions made. If the review shows significant improvement, the supervisor will lift the restriction. If sick leave abuse recurs within 6 months of terminating the original restriction, the employee may be placed back on sick leave restriction with appropriate written notice to the employee.

- D. Employees who are incapacitated for duty because of serious illness or disability may be advanced sick leave for up to 30 days. The employee will not be required to utilize any annual leave prior to utilizing the advanced sick leave. Sick leave will be advanced when the following required conditions have been satisfied:

1. The employee is serving under a career or career-conditional appointment.
2. The employee has a minimum of 1 year's Federal civilian service.
3. All available accumulated sick leave to his/her credit has been exhausted.
4. There is no expectation that the employee is contemplating separation by retirement or resignation.
5. A medical certificate substantiates that a serious illness or injury exists, and that the employee will be capable of subsequently returning to work and fulfilling the full scope of his/her job.
6. There is no expectation that the employee will not remain employed after his/her return to duty long enough to repay the advance of sick leave.
7. The employee does not have a current letter of warning or disciplinary action properly proposed or effected for abuse of sick leave.

Section 5. Unanticipated Use of Leave

If the use of annual leave or sick leave cannot be anticipated, the request for approval shall be called in:

- by the start of fixed shift for fixed shift employees
- by the end of morning flexband for flexible schedule employees
- by the time an employee is required to report for training or for a scheduled work activity.

Employees may not call earlier than the beginning of their normal flexband/tour. The parties recognize that occasionally circumstances exist, infrequent in number, when employees may not be able to call in timely as described above.

Contact will be made with the employee's immediate supervisor or other designated official. In the event that neither are available employees may utilize voice mail, where it exists, to notify the supervisor or designated official of their need for leave, the type of leave requested and a phone number where the employee can be reached. In the event the employee is unable to make the call, any responsible person can make the notification. In the event the employee does not report during the reporting period, the supervisor will not record the leave status until the end of the scheduled shift, except for the need to process time and attendance records. If the employee's leave status has not been clarified by the end of the shift, the absence may be charged to AWOL. A charge of AWOL will be amended to approved leave when an acceptable reason or evidence is provided to meet the existing provisions for approving leave.

Section 6. Leave Balances

- A. Employees will not be denied leave usage solely because of their leave balances.
- B. Employees will not be denied overtime or credit hours solely because of their leave balances.
- C. Employees will not be adversely affected in any employment decision solely because of their leave balances.
- D. Employees will not be placed on sick leave restriction solely because of their leave balances.

Section 7. Leave Without Pay

With the exception of circumstances listed in (D) below, leave without pay (LWOP) is not a right which accrues to an employee and may not be demanded by an employee. However, nothing precludes an employee from requesting LWOP for any purpose.

- A. Requests for LWOP will be given serious consideration.
- B. LWOP may be requested in the same manner and for the same purposes as annual leave and sick leave. Denial of requests for LWOP will be provided in WebTA, or equivalent.
- C. Upon return to duty after a period of LWOP, Management will restore the employee to the position which the employee held prior to the leave or to a similar position at the same grade level and pay within the commuting area.
- D. Employees have a right to LWOP consistent with government wide rules and regulations:
 - When a disabled veteran requests LWOP for medical treatment,
 - When requested by a reservist or National Guard member for military duties in accordance with appropriate military orders.
 - When requested by an employee who has suffered an incapacitating job-related injury or illness and is waiting adjudication of a claim for employee compensation by the Office of Workers' Compensation Program, or
 - When an employee makes a request under the Family and Medical Leave Act, or the Expansion of the Family and Medical Leave Act and meets the criteria for that program.

Section 8. Military Leave

Military Leave will be granted in accordance with law and appropriate regulations. The OPE Website will provide the latest information regarding Military Leave. In addition, the OPE Website will provide an electronic link to the Military Leave information on the OPM Website.

Section 9. Court Leave

- A. In accordance with law and regulations, an employee with a regular scheduled tour of duty is entitled to court leave (CL) for:
1. jury duty with a Federal, District of Columbia, State or local court; In the District of Columbia, a State, territory, or possession of the United States including the Commonwealth of Puerto Rico, or the Trust Territory of the Pacific Islands.
 2. witness duty on behalf of a State or local Government.
 3. witness duty on behalf of a private party when the Federal or District of Columbia or a State or local Government is a party to the judicial proceeding.
- B. An evening or night shift employee who performs court services during the day may elect to be granted court leave for the employee's regularly scheduled night tour of duty. The employee will continue to be entitled to night differential in accordance with applicable payroll policies.
- C. At the employee's request an employee will normally be granted an adjustment in the Tour of Duty so the employee's hours coincide with the court day(s).
- D. If an employee is excused from court service with sufficient time to enable that employee to return to duty for at least two (2) hours of the scheduled workday (i.e., normal fixed shift), including travel time, the employee shall return to duty unless granted appropriate leave by the Employer. It is the employee's responsibility to request and receive approval prior to going on leave.
- E. Even though no compensation is received for serving jury duty in a federal court, employees may keep expense money received for mileage, parking, or required overnight stay. Money received for performing jury duty in state or local courts are indicated on the pay voucher or check as either "fees for services rendered" or "expense money." "Expense money" may be kept by employees; "fees for service rendered" must be submitted to the appropriate financial office.
- F. Employees who are summoned as witnesses in their private capacity in judicial proceedings in the District of Columbia, a State, territory or possession of the U.S. including the Commonwealth of Puerto Rico and the Trust Territory of the Pacific Islands are entitled to court leave when the United States, the District of Columbia or a State or local government is a party and the employee is not one of the parties in the suit.

Employees who are summoned as witnesses in an official capacity on behalf of the Federal government are on official duty, not court leave.

Section 10. Leave for Maternity, Paternity and Adoption Reasons

- A. The Employer will be liberal when granting leave for maternity/paternity/ adoption reasons and will apply its policies fairly. Such leave may include LWOP, sick leave (when appropriate) or annual leave.
- B. The following conditions apply to the granting of leave to cover a period of absence for maternity/paternity/adoption reasons. Sick leave will be granted for the period of incapacitation due to pregnancy and confinement and also when the employer cannot accommodate a pregnant employee's request for modification of duties when supported by acceptable medical evidence. Additional periods of annual leave and leave without pay may be granted in whatever order the employee requests for a non-incapacitated period. Once requested and approved, the order of leave may be changed only on approval by the proper supervisory authority.

The employee also may request and be granted annual leave or leave without pay instead of sick leave for the period of incapacitation. When requested by the employee and upon consultation with the supervisor, the total absence for maternity/paternity/adoption reasons will be authorized for a period up to 225 consecutive calendar days. The 225 consecutive calendar days are not extended due to any intermittent partial or full days worked, holiday pay, etc. The intermittent return to work for partial or full days does not end entitlement to up to 225 consecutive days for maternity, paternity or adoption leave. Requests for additional leave following the end of the period of maternity leave will be handled in accordance with applicable regulations and this agreement.

In considering requests for sick leave, annual leave, and/or leave without pay for maternity/paternity/adoption reasons, the proper supervisory authority will apply pertinent laws, regulations, and this Agreement in the same way they would apply them in any other cases. No arbitrary cutoff date requiring an employee to cease work or prevent an employee from returning to work will be established. If cutoff dates are established, they must be based on physical capability of the employee to perform the duties of the job after a determination by a competent medical authority.

The employee should submit notice, at least 3 months in advance, of the prospective need for leave for maternity/paternity/adoption reasons.

- C. All other leave for maternity/paternity/adoption purposes will be granted in accordance with Family and Medical Leave Act. Requests for advanced leave will be handled on a case-by-case basis.

Leave approvals/denials requested pursuant to this section will be provided within ten (10) working days after receipt of the request for maternity leave.

Section 11. General Leave Policies and Practices

- A. Normally, leave requests, approvals and denials will be made in WebTA or equivalent.

- B. SSA also agrees to respond to all other leave requests in a timely manner.
- C. Every effort will be made to accommodate employees who are arranging for and/or attending funerals and similar emergencies for immediate relatives, "significant others" or their dependents.
- D. Use of leave will not be the sole basis for denial of overtime or credit hours.
- E. The Employer will provide employees with its written reasons for any denial of leave.
- F. Leave will not be denied as a disciplinary measure.
- G. Employees, upon request and with the approval of the supervisor, may change previously authorized annual leave to sick leave in accordance with Section 4 of this article.

Sidebar – Article 31

Within 30 days of the effective date of the agreement, the parties will consult in the Mid-Atlantic, Southeastern, Mid-America, and Great Lakes PSCs regarding whether there is agreement to continue the seniority based system. Absent mutual consent of the parties, the leave roster process will be used.

Article 32

Veterans

Section 1

Veterans have served and sacrificed in defense of our nation. Recognizing Veterans' unique experiences, SSA will support Veteran employees as they transition from military service to the civilian workforce.

Section 2

SSA will provide sufficient information regarding various benefits that Veterans may be eligible for as SSA/federal employees.

Section 3

Upon request, Employee Assistance Program counselors will assist service members with transitioning from military to the civilian work environment.

Section 4

SSA will provide Veterans with information on the agency website, such as benefits, counseling service, accommodations and disability services, military and Veteran resources, and military leave.

Section 5

In accordance with applicable laws and regulations, SSA will honor reserve commitments for employees who are members of the military.

Section 6

SSA will adhere to applicable laws and regulations regarding leave for Veterans and members of the military.

[\(Veterans New Hire Checklist\)](#)

Article 33

Temporary, Probationary, Part-Time Permanent and Seasonal Employees

Section 1. General

All employees of the bargaining unit shall be covered by the terms of this Agreement to the extent consistent with CSRA and other applicable laws and regulations.

Section 2. Temporary Employees

- A. Should the need arise to employ individuals at other than entry-level positions, the Union will be informed prior to the appointment.
- B. The Administration will notify the Union of the proposed separation of temporary employees.
- C. Temporary employees may be separated at anytime upon notice in writing from the Agency. When it is determined that a temporary employee is to be separated, the employee will normally be given two (2) weeks notice.

Section 3. Probationary Employees

- A. The Administration agrees to provide probationary employees with the opportunity to develop and to demonstrate their proficiency.
- B. During the probationary period, the employees' conduct and performance in the actual duties of their positions may be observed, their preemployment background investigated, and they may be separated from the service for cause.
- C. Probationary employees will be entitled to ongoing counseling about their conduct and performance and their standing through completion of their probationary period.
- D. Probationary employees have the right to Union representation.
- E. It is management's intent that, when a probationary employee is to be separated, the employee will ordinarily be given two (2) weeks notice of termination, when practicable, or such notice as the remaining probationary period permits.
- F. In cases of impending separation (for cause other than misconduct), the Administration will give consideration to placement of the probationary employee in positions commensurate with his/her demonstrated ability.

Section 4. Part-Time Employees

- A. If a full-time employee wishes to convert to part-time, he/she shall make a request to his/her supervisor. The Administration will give good faith consideration to the employee's request based on the employee's circumstances and the needs of the organization.
- B. Employees who accept or convert to part-time positions have no guarantee that they will subsequently be converted to full-time employment, but the Administration agrees to consider the employee's request based on the employee's circumstances and the needs of the organization. Management will give first consideration, where workloads and staffing considerations permit, to increasing an incumbent to full-time before seeking an outside hire for the same position and location.
- C. The Administration will advise the employee of the effects of change to part-time employment and, in case of change in grade, the salary of the part-time appointment.
- D. Requests for changes to part-time and full-time employment can be made in writing and will be retained and considered for at least 6 months.
- E. An employee who is denied a conversion from full-time to part-time or vice versa shall be notified in writing, upon request, of the reasons.
- F. The Administration agrees to establish regular tours of duty for part-time permanent appointees which are consistent with appropriate law, rules and regulations. Tours of duty for part-time employees will be established or changed by Standard Form 52. Tours of duty determine the employee's eligibility for pay on holidays as well as other benefits and entitlements under law.
- G. The Administration recognizes that part-time employment may be particularly appropriate for certain classes of employees; e.g.,
 - 1. Individuals seeking gradual transition into retirement or another career;
 - 2. Individuals who for health, family, education, or other personal reasons require a reduced workweek.
- H. As a general rule a full-time employee will not normally be required to accept part-time employment as a condition of continued employment, nor will the Administration, where operating conditions permit, abolish a full-time position occupied by an employee in order to make that position available on a part-time basis.
- I. Management will give consideration to an employee's request for temporary adjustment of a part-time work schedule because of personal hardship or to permit participation in management approved details, other assignments or training, if operating conditions permit.
- J. In the administration and application of the article, all part-time employees shall be treated fairly and equitably in all aspects of personnel management consistent with law, government-wide rule or regulation and the national agreement.

K. Leave

A regularly scheduled part-time employee with less than 3 years of service earns 1 hour of annual leave for each 20 hours in a pay status. With 3 but less than 15 years of service, the employee earns 1 hour of annual leave for each 13 hours in pay status; with 15 or more years of service, 1 hour for each 10 hours in pay status. Hours in pay status include straight-time and overtime hours up to a total of the Agency's basic working hours in a pay period (normally 80 hours). Leave is charged for absence during the hours the employee is scheduled to work. A part-time employee is eligible for all other leave categories e.g., absence without leave, funeral leave or excused absences on the same basis as a full-time employee. A part-time employee is eligible to participate in flexible and compressed work schedules and credit hours as permitted by the National Agreement.

L. Holidays

If a holiday falls on a day a part-time employee is scheduled to work and the employee does not work, the employee is paid for the number of hours scheduled for that day. If the part-time employee works during his or her scheduled hours on a holiday, the employee is entitled to holiday premium pay only for those hours scheduled.

M. Health Insurance

A part-time employee is eligible to participate in the Federal Employees Health Benefits program. The coverage provided for a part-time and full-time employee is the same but the cost to a part-time employee is greater based on [PPM S340 1](#), [Exhibit 2](#).

N. Position Change

A part-time employee is covered by an agency's merit promotion program and should be reassigned, detailed or promoted in accordance with such programs in the same way and under the same circumstances as other career or career-conditional employees.

O. Reduction in Force

In a RIF, part-time employees are placed in a separate competitive level from comparable full-time employees. When released from competitive level, a part-time employee can compete only for other part-time jobs. Similarly a full-time employee has assignment rights only to a full-time position and cannot displace a part-time employee.

- P. If an employee is engaged in part-time work and the Agency deems that it is necessary to convert the individual to full-time work, to the maximum extent feasible, it shall give the employee at least two weeks notice prior to the start of the effected administrative work week. The employee will be given an opportunity to explain how such action may cause undue hardship. The Agency on presentation of a reasonable explanation showing the undue hardship will then make every reasonable attempt to alleviate the situation and to find other ways to accomplish the work. The Agency will afford the employee a written explanation of the reason for change to a full-time position for any period of time exceeding two full pay periods.

Section 5. Furlough and Recall Procedures (DOC)

Furlough and recall of seasonal employees in the Data Operations Center will be accomplished in the following manner. The Union reserves the right to bargain the furlough and recall procedures on seasonal employees other than those employed in the Data Operations Center.

Furlough

- A. The Administration shall canvass and furlough first those seasonal employees of the installation who volunteer to be furloughed. If more employees wish to be furloughed than is necessary, the employees with the earliest service computation date will be placed on furlough.
- B. Furlough those seasonal employees whose most recent summary appraisal is less than the successful contribution level, those with the most recent service computation dates first.
- C. Furlough those seasonal employees whose most recent summary appraisal is the successful contribution level or better, those with the most recent service computation dates first.
- D. In cases of ties on any roster, the choice shall be determined by lot.

Recall

- A. Seasonal employees whose most recent summary appraisal was the successful contribution level or better will be recalled first, based on the earliest service computation dates. All other seasonal employees will constitute the second group for recall, and within that group, also, recall will be by service computation date.
- B. In case of ties on any roster, the choice will be determined by lot.

Notices

- A. Notice of recall shall be given to employees at the earliest feasible date, but not less than ten (10) workdays before the effective date of the action.
- B. Management will attempt to give employees at least 10 days advance notice of furlough.
- C. The Union will be provided a copy of all recall lists, based on service computation date.
- D. The Union will be provided a copy of all furlough lists, based on service computation date.
- E. The Union, if it requests them, will be provided copies of notices of furloughs and recalls which are sent to the employees.

Section 6. Job Sharing/Splitting

A. Purpose

The Administration will give good faith consideration to the employees' initial requests and requests for continuing participation in job sharing/job splitting based on employee circumstances and needs of the organization.

Job sharing/job splitting provides employees with considerable work scheduling flexibility beyond normal part-time work. It provides opportunities for increased part-time work and provides assistance to employees with special spousal care, child care, elder care, or other special needs.

Job sharing/job splitting is limited to two employees in a team. The job sharers must seek management assistance and approval in drawing up the job share plan so that the work will be properly divided.

B. Definitions

Job sharing is a form of part-time employment in which the tours of duty of two employees are arranged in such a way as to cover a single full-time position. Job sharing will be considered only if the traditional part-time employment is not practical or feasible.

Job splitting is a form of job sharing where the duties and functions of one full-time position are split to create two new positions, each staffed by a part-time employee. Job splitting will be considered only if the traditional part-time employment and job sharing is not practical or feasible.

C. Status

Although they share the duties of a full-time position, job sharers are considered to be individual part-time employees for purposes of appointment, tour of duty, pay, classification, leave, holidays, benefits, position change, service credit, record keeping, reduction in force, adverse actions, grievances and personnel ceiling.

D. Tour of Duty

Each employee to the maximum extent feasible shall be informed of his/her regularly scheduled work hours, as agreed to by the Employer, employee and the other job sharer. Management will make every reasonable effort to avoid scheduling additional hours not contiguous with the established tour of duty. If management schedules noncontiguous hours, it will provide an explanation in writing justifying the need to work nonconsecutive hours. The Employer agrees that the statutory, regulatory and contractual provisions shall apply in any situation in which overtime may be worked.

A variety of different work scheduling arrangements can be used, for example, split days (one job sharer works mornings and the other afternoons), alternate days (one job sharer works Monday, and the other Tuesday, etc.) or split weeks (one job sharer works from Monday morning through noon Wednesday and the other works noon Wednesday through Friday). Job sharers may also work alternate weeks so long as each job sharer works no

more than 32 hours a week and has at least one hour of work regularly scheduled in each of the two weeks of the biweekly pay period. The latter is necessary in order to meet the legal definition of regularly scheduled work which permits an employee to earn leave. The work schedules of job sharers may overlap (one job sharer may work from 10 a.m. to 2 p.m. every day and the other from noon to 4 p.m.). This arrangement can provide agencies with extra coverage during heavy workload periods. A certain amount of overlap may also be desirable to enable job sharers to attend staff meetings or familiarize each other with work developments. It is not an absolute requirement for job sharers to split the hours of a full time position in half. For example, one job sharer could work 24 hours each week and the other 16. In an office with flexible or compressed work schedules, one member may work five days a week from 7 a.m. to 1 p.m. and the other member from 12 noon to 6 p.m., five days a week.

E. Flexibility

Job sharing can provide the agency and the employees with considerable work scheduling flexibility. Work disruptions which tend to occur when employees are on extended leave can be reduced through job sharing. One job sharer might be off for three weeks, but the other would still be on duty and could work additional hours to cover the full schedule in accord with law, rule and regulation and the National Agreement.

F. Job Classification

Job sharers will share identical position descriptions since they are sharing one full-time position. Job splitters may have different position descriptions and career ladders. Job splitting will not be used to reduce the grade(s) of any current positions nor will it be used to compromise any current career ladders.

G. Merit Promotion

A job sharing team may apply for a full time position under agency merit promotion programs but the qualifications of each job sharer will be evaluated individually. If both job sharers are among the best qualified, they will be referred as a team to the selecting official. A job sharer may also apply individually for promotion to a part-time or full-time position. In the latter case, the job sharer would have to agree to a full-time work schedule if selected for the position.

H. Other Provisions

1. Additional hours will not be assigned to employees engaged in job sharing for the purpose of eliminating the need to schedule qualified, full-time employees for overtime. Such overtime hours will be assigned and accomplished according to contractual obligations.
2. The employment of an individual in a part-time position or a seasonal position shall not be a basis for exclusion from participation in a job sharing/job splitting program.

3. In the event that one of the employees participating in a job sharing arrangement leaves job sharing for any reason, then management shall make every reasonable effort to assist the employee in locating a new job sharing partner.
4. Employees currently employed in a part-time position and covered by the same position description may request the opportunity to enter into a job sharing arrangement consistent with the terms of this article.
5. The Employer agrees to make known to all employees on a periodic basis the availability of part-time employment, including job sharing and job splitting and to assist any interested employee in setting up a job sharing/job splitting arrangement.
6. Each employee entering into a job sharing/job splitting arrangement shall be given a written explanation of their rights, benefits, and work schedule. This information will include the intended work schedule. The job sharing/job splitting plan is to be signed and dated by the Employer and the employees.

It is understood that during that period, the employee may be required to increase his/her tour of duty depending upon the needs of the organization and the terms of their job sharing/job splitting agreement.

Changes to any approved job sharing arrangement will require the establishment of a new job sharing plan consistent with this article.

7. Any conflicts between SSA's or OPM's Guides and this article shall be resolved by following this article.
8. If the agency's policy on job sharing/job splitting changes and there is a duty to bargain under [5 USC 71](#), notice and opportunity to bargain will be provided to the Union by SSA consistent with Article 4.
9. Employees who enter into job sharing have no guarantee that they will subsequently be converted to full-time or regular part-time employment, but the Administration agrees to consider the employee's request based on the employee's circumstances and the needs of the organization. An employee who is denied conversion shall be notified in writing of the reasons, upon request.
10. If SSA determines that a position cannot be job shared, it will so notify the Union at the General Committee level in writing of its reasons as soon as possible.
11. Management agrees that each member of the job sharing/job splitting team will be provided adequate workspace and will make reasonable efforts to provide in-office security to protect employee's personal belongings.
12. It is understood that job-sharing/job splitting is not intended to require employees to perform job duties when they are not in duty status. Therefore, every effort will be made to minimize the need for communications with employees while not on duty.

13. Leave requests by employees in a job sharing situation shall be approved or denied in accordance with Article 31. Leave will not be denied solely on the basis of participation in a job share situation.
14. The Union is not precluded from conducting job share/job splitting surveys which will be mailed to job share/job splitting participants. SSA will provide the Union designee with a listing of the names, grades, positions, and duty stations of the affected employees.
15. Where an employee requests to work part-time and job sharing/job splitting is being considered, SSA will grant reasonable amounts of duty time for employees to speak with/to each other about the possibility of job sharing/job splitting, drafting and revising their proposals, completing the surveys, discussions with management and the Union about job sharing/job splitting and their proposals.
16. SSA will give bona-fide consideration to employees requesting reassignment from a non-job sharing position to a job sharing position and from a job sharing position to another job sharing position. This will also include positions in other locations, as specified by the employee. An employee whose request is denied shall be notified of the reasons in writing upon request.
17. Awards for job sharers will be consistent with Article 17 of the National Agreement.
18. When management meets with potential job-sharing participants, the Union will be provided notice and an opportunity to be present under Article 3, Section 6, E of the National Agreement.

Potential job-sharing/job splitting participants shall submit a written proposal to their immediate supervisor.

Potential participants will receive a written response from management within a reasonable amount of time (normally within 10 work days) of submitting their written proposal informing them of acceptance or rejection of their job sharing/job splitting proposal. If rejected, the reasons will be stated. The participants may revise their written proposal to accommodate the reasons given for rejection and resubmit it for another decision.
19. If at any time the Spokesperson, AFGE General Committee (or designee) or the Deputy Commissioner for Human Resources (or designee) believes that there is a problem with the plan, either party may submit to the other party an outline of the situation. Both parties will make a good-faith effort to resolve any problems or misunderstandings expeditiously.
20. The parties to this Agreement recognize that certain positions may involve those that are traditionally career-ladder. In these positions, employees entering into a job-sharing arrangement must be at the journey person grade. In those situations where employees are not in a career-ladder, job sharers must be at the same grade.

Performance appraisals for the part-time employees, including job sharing/job splitting, will be handled in accordance with the National Agreement. Throughout the tenure in a part-time position the employee's appraisal will not reflect the performance of the job share partner.

Article 34

Workers' Compensation (OWCP)

Section 1. Counseling

- A. The Employer agrees that when an employee suffers job-related illness or injury in the performance of duties and reports it to his or her supervisor, the supervisor and/or the servicing personnel office will counsel the affected employee no later than the next work day or as soon as practical as to the following:
 - 1. The right to file for compensation benefits;
 - 2. The types of benefits available; and
 - 3. The procedure for filing claims including instructions on how to access workers' compensation forms.
 - 4. The option to use compensation benefits in lieu of sick or annual leave.
 - 5. Whether Continuation of Pay (COP) is applicable.
- B. The supervisor will notify the local Union steward when he or she becomes aware that a bargaining unit employee has filed an OWCP claim.
- C. An employee who has filed for compensation benefits will be counseled, upon request, by his/her supervisor and/or a personnel specialist at any stage in the processing of the case concerning such options as may be available to the employee at that point.
- D. Upon request, the Agency will assist an employee with filing a Workers' Compensation claim through the ECOMP or comparable electronic system. This may include scanning and/or converting paper documents to an acceptable electronic format.
- E. The Agency and employee will fulfill its workers' compensation related responsibilities in a timely manner.

Section 2. Employee Options

- A. An employee with a job-related injury/illness (including conditions aggravated by job-related factors) may elect to be placed on sick or annual leave instead of leave without pay, pending approval or disapproval of his/her compensation claim.
- B. Employees shall have the option of buying back the leave used and having it reinstated to their account if their claim for compensation is approved.
- C. An employee with a job related traumatic injury may claim up to 45 days of COP. The entitlement to COP is not available to employees who file an occupational disease claim.

Section 3. Return to Work

- A. Where the employee requests and supports his/her request with appropriate medical information, the Employer will make a serious effort to assign the employee on a temporary basis to duties consistent with the employee's medical needs, pending resolution of his/her claim.
- B. Where the employee requests and supports his/her request with an approved OWCP claim and appropriate medical information, the Employer will make a serious effort to assign the employee to duties consistent with the employee's medical needs. Any such action will be consistent with the negotiated merit promotion article.
- C. When an employee who has been determined by OWCP to be disabled has recovered sufficiently that he or she is required to seek reemployment, management will make a serious effort to offer appropriate employment.

Section 4

Information on forms, rights and procedures under Worker's Compensation, including a link to the Department of Labor worker's compensation internet site, will be maintained on SSA's Intranet. Annual reminders on how to access the SSA site will be given to all employees.

Article 35

Employee Assistance and Counseling

Section 1. Policy Statement

- A. The Administration and the Union jointly recognize that treatable illnesses and disorders occur in the work force as a result of alcohol, drug and dangerous substance abuse. The parties further recognize that whenever such conditions adversely impact on an employee's work performance, attendance, reliability or conduct, the employee should constructively address these problems through participation in counseling and treatment where appropriate.
- B. Therefore, the Employer and the Union will work together to encourage troubled employees whose work performance is adversely affected to pursue counseling help or treatment.

Section 2. Referrals/Community Resources

The Administration agrees to assist employees in securing counseling services when work performance, attendance, reliability or conduct are adversely affected as a result of alcohol, drug or dangerous substance abuse. This may be accomplished through providing information and encouragement to the employee to use any of the following types of services where available:

- A. Referrals to available counseling services in the local community.
- B. Counseling services provided by the Administration either onsite or on an as-needed basis.
- C. Counseling services provided through joint efforts with other Federal Agencies.

Section 3. Voluntary Participation and Employee Responsibility

Although the existence and functions of counseling and referral programs will be publicized to employees, no employee will be required to participate or be penalized for merely declining referral to a counseling service. Should any counseling appointment or treatment require an absence from duty, the employee must get sick leave approval or make other appropriate arrangements with his/her supervisor.

Section 4. Confidentiality/Relationship to Disciplinary and Adverse Action

- A. The parties recognize that all confidential information and records concerning employee counseling and treatment will be maintained in accordance with applicable laws, rules and regulations.
- B. Without an employee's specific written consent, the supervisor may not obtain information about the substance of the employee's involvement with a counseling program. Information obtained with the employee's authorization from such counseling programs may not serve as

the basis for disciplinary or adverse actions unless required to enforce the law or terms of last chance agreements. Disciplinary actions should be based on job behavior or performance problems, not progress in a counseling program. In evaluating an employee's work performance and job-related conduct, the supervisor may take into account whether an employee referred to counseling is cooperating with a recommended plan of counseling.

- C. If as a result of a proposed disciplinary or adverse action, an employee notified management for the first time that he/she has a substance abuse problem that significantly contributed to the misconduct and is seeking the services of EAP, management will normally put the proposed action in abeyance for a period of not more than 1 year while the employee undergoes treatment under terms and conditions agreed to. This provision only applies in the first instance of substance abuse and does not apply if severe, egregious or criminal misconduct is involved.

If at the end of such period, there are no further instances of related misconduct the proposal held in abeyance will be dropped. Violation of any agreed to conditions, or continued misconduct as referenced in the proposed disciplinary or adverse action during the abeyance period will result in activation of the proposed disciplinary or adverse action process.

- D. Requests for counseling or referral assistance will not be a factor in job security or promotional opportunities.

Section 5. Access to Services

Employees are on official duty when they meet with the EAP provided they inform their supervisors of their appointment with the EAP counselor. These meetings with EAP counselors may entail up to 6 sessions with the actual number being based on sound clinical judgment as determined by the counselor. Employees who do not want their supervisors to know of their attendance must arrange appointments outside duty hours or request leave approval.

Employees who are referred to community services for treatment will request leave in accordance with Article 31.

Article 36

Research Programs and Demonstration Projects

Section 1. Definitions

For the purpose of this agreement, the following definitions apply (in accordance with [5 USC 47](#)):

"Research program" means a planned study of the manner in which public management policies and systems are operating, the effects of those policies and systems, the possibilities for change, and comparisons among policies and systems.

"Demonstration project" means a project conducted by the Office of Personnel Management, or under its supervision, to determine whether a specified change in personnel management policies or procedures would result in improved Federal personnel management.

Section 2. Notification to Union

The Administration will notify the Union of any inquiry from a higher level authority concerning a research program or demonstration project which is applicable to bargaining unit employees. Such notification will be at an early enough date so as to ensure that the Union's input is considered before making a decision. The Administration will provide the Union with copies, without cost, of all documents relating to such an inquiry.

Section 3. Negotiation

In accordance with the Civil Service Reform Act, the Union shall have the right to negotiate on research programs and demonstration projects after any agreement between the Administration and the Office of Personnel Management with regard to such projects is finalized.

Section 4. Evaluation

After implementation of the program, the Union will be kept informed of the progress on a continuing basis. Any official evaluation reports shall reflect the Union's position. If the position of the Union is different from the Administration's, the Administration shall attach a copy of the Union's position.

Section 5. Access to Data

The parties agree that the Union shall be given access to data which is maintained by the Administration.

Section 6. Waivers

Any research or demonstration project shall be consistent with and may not amend or waive any provision of this agreement, except by mutual written consent of the parties.

Article 37

Tests and Employee Selection Process

Section 1. General

The Administration recognizes its responsibility to maintain selection procedures in compliance with Federal policy concerning validity, job relatedness and this agreement.

Section 2. Tests

When tests are used as part of the criteria for selection to a training/career development program or for internal placement, they will be consistently and uniformly applied to the grade and series of the specified position. Within 120 days after the effective date of this agreement, the Agency will provide the Union with a list of tests that are covered by this section.

Section 3. Duty Time

Employees will be granted duty time to take internal tests that may be used for promotion and/or placement in SSA.

Section 4. Notice to the Union

When there are any changes in the application of an existing test and/or the inclusion of a new test which will be utilized for internal placement and there is a duty to bargain under [5 USC 71](#), notice and such opportunity to bargain will be provided to the Union by SSA consistent with the procedures in Article 4.

Article 38

Multilingual/Bilingual Employees

Section 1. Purpose and Scope

- A. This article covers those employees who occupy positions that require the possession and use of multilingual or bilingual skills.
- B. This article also applies to employees who use multilingual/bilingual skills in their jobs.
- C. Management will continue to give consideration to multilingual/bilingual employees for details, reassignments, leave approval, hours of work or any other conditions of employment, like all other employees.
- D. Employees will not be disadvantaged in any condition of employment as a result of their use of multilingual/bilingual skills in their job.

Section 2. Definitions

- A. Multilingual/bilingual means proficiency in a language or languages, in addition to English. This definition also includes American Sign Language.
- B. Multilingual/bilingual skills and duties may include speaking, understanding, reading and writing.

Section 3. Appraisal Considerations

- A. The parties recognize that multilingual/bilingual duties may incorporate an additional workload for affected employees and that multilingual/bilingual duties often involve additional time, effort, and case complexities. For the purposes of assigning work and appraising employee performance, Management agrees to consider the additional effort that may be required by multilingual/bilingual employees.
- B. Progress reviews will reflect multilingual/bilingual performance contributions as appropriate, under applicable performance plans.

Section 4. Assistance and Training

- A. Upon request, the Employer will make available appropriate bilingual dictionaries as available.
- B. Upon request, the Employer will make a reasonable effort to provide applicable language glossaries of SSA terminology.

- C. The development of multilingual/bilingual skills may be an appropriate use of GETA funds.
- D. Upon request, the employer will make every reasonable effort to allow an employee to interview in English during the initial mentoring period, while he/she is learning the technical aspects of the position. Management may consider the public service demands and resources available in making this determination. It is understood that this provision does not eliminate the need to also mentor the employee while conducting interviews in all assigned languages as part of the initial mentoring period. Mentors should be highly motivated, knowledgeable employees with good interpersonal skills.

Section 5. Awards

- A. Multilingual/bilingual service accomplishments may be an appropriate basis for the granting of awards in accordance with the provisions of Article 17.
- B. SSA, upon request, will furnish AFGE with data each year, indicating by component, the number, amounts and types of awards for multilingual/bilingual employees.

Article 39

Work At Home By Exception

Section 1. Purpose

Work at home by exception is normally for a limited period of up to six (6) months for employees who, because of medical reasons, temporarily have difficulty commuting to work on tour days but are able to perform the duties of their position at home. Management will grant extensions to work at home by exception with acceptable medical documentation.

Section 2. Employees Covered

All SSA AFGE bargaining unit employees are covered by this policy except those:

- A. Serving in their probationary period, first year of trial period, in a formal training program, or development program. Formal training does not include the normal progression of an employee through a career ladder. However, formal training may include periods when an employee needs close supervision or regular feedback from management and/or technical mentors that cannot effectively be accomplished at home.
- B. Who have been suspended for being absent without permission for more than 5 days in any calendar year, or
- C. Who have been suspended for viewing, downloading or exchanging pornography on a Federal government computer or while performing official Federal government duties.

Section 3. Requirements

- A. Requests to work at home by exception must be in writing and include the following:
 - 1. Employees may be required to complete a Telework Program Request and Agreement consistent with [PPM S650 1](#). If the Agency changes the Telework Program Request and Agreement, the union will be given notice and an opportunity to bargain to the extent required by [5 USC 71](#).
 - 2. A statement that the employee is performing at or above the successful contribution level;
 - 3. A statement of the reason for working at home including an explanation of the medical condition or disability which makes it difficult for the employee to commute to work;
 - 4. An explanation of the injury or illness (with medical certification concerning the employee's ability to commute and work at home);

5. A statement detailing how the work will be transmitted, maintained and secured at the employee's home in accordance with agency policy;
6. A statement of the days and hours requested for work at home by exception;
7. A statement of the duties of the employee's position to be performed at home;
8. A list of the equipment requested for the employee's use; and
9. A statement that any computer security/access issues have been resolved.

Section 4. Conditions While Working at Home by Exception

Employees approved to work at home by exception may work overtime or earn credit hours, at home if pre-approved to do so by the Agency.

Should the ODS close for a full or partial day, an employee working at home by exception is expected to complete their full workday or request leave. However, if an employee loses power, internet connectivity, or is in unsafe/unhealthy/dangerous situation, the employee may request administrative leave in accordance with applicable laws, regulations, and this agreement.

Management will determine how the quality and quantity of work performed will be measured.

Section 5. Approval

The employee will be informed by the immediate supervisor as to which management official has the delegated authority to approve the employee's request to work at home by exception.

Article 40

Alternative Dispute Resolution

Section 1. Commitment

The Social Security Administration and the Union are committed to consider the use of Alternative Dispute Resolution (ADR) to resolve disputed matters and to foster a good labor/management relationship.

A referral for ADR can be made only by mutual agreement of the union and management and shall be in writing to the appropriate party. If an employee is self-represented, the Union will be entitled to be present during ADR discussions to the extent permitted by law.

Union and Management at all levels may use ADR to resolve disputed matters.

Section 2. Principles of ADR

- A. ADR is an informal process which seeks early resolution of employee(s), union, and management disputes.
- B. ADR should be undertaken in good faith and be effective, timely, and efficient. It should focus on conflict resolution and problem-solving and foster a cooperative labor and management relationship.
- C. Participation in the ADR process must be voluntary with the mutual consent of the parties. Either party may voluntarily withdraw at any time in the process.
- D. If the parties agree to utilize ADR, each party will bear the full costs of its participants in the ADR process, including travel and per diem. The parties will utilize no-cost mediators in the ADR process.
- E. ADR may be used to resolve the entire dispute or a portion of the dispute.
- F. ADR resolutions shall not be precedential unless specifically agreed to by the parties.
- G. ADR will be a process available for Article 24, Section 8, 9, and 10 grievances. The process can be used at any step of the grievance procedure or prior to the scheduling of a hearing.
- H. The parties will utilize appropriate technology to conduct ADR mediation unless a no-cost mediator is available for face-to-face ADR. Time spent in mediation will not exceed four hours, but may be extended by mutual consent of the parties.
- I. At the end of the ADR process, the parties will be asked to complete an evaluation of the process. A copy of the evaluations shall be provided to the union and appropriate agency officials.

- J. Time spent by designated union representatives in the ADR process will be charged as time in accordance with Article 30.

Section 3. The Process

- A. The parties may use various sources for mediators such as FMCS, GSA Schedule, Federal Executive Board(s), state and college/university mediation services, etc.
- B. If the dispute is resolved in whole or in part, the mediator will assist the parties in crafting the settlement. If there is no resolution, any documents created, as part of the mediation process will be destroyed (e.g., shredded.) Materials developed outside of the mediation process (e.g., grievance documents) will be retained per existing contractual, legal and regulatory requirements.
- C. On the day the parties agree to participate in ADR, any grievance time limits pursuant to Article 24 will be suspended. If mediation fails to resolve all issues in dispute, or either party withdraws, time limits will resume the next work day.
- D. If arbitration is invoked and a hearing is scheduled, the ADR process is not applicable.
- E. ADR will be an appropriate topic for discussion at the National Union-Management Meeting.

Article 41

Telework

Section 1—Purpose

The SSA Telework Program permits eligible AFGE bargaining unit employees to perform Agency-assigned work at a management-approved alternate duty station (ADS). The Agency may offer telework opportunities provided that the technological components and equipment are available and in place and that sensitive materials, including Personally Identifiable Information (PII), can be safeguarded. Management will make telework determinations consistent with the eligibility criteria contained herein, taking into account requirements of the position, performance of the employee, impact on organizational performance, level of service provided to the American public, and availability of appropriate technology.

Section 2—Definitions

- A. Alternate Duty Station (ADS) – a management-approved work site that is geographically convenient to the employee’s official duty station (ODS). Specifically:
 - 1. An employee’s residence as reflected in his/her Telework Program Request and Agreement; or
 - 2. Another SSA facility that may be closer to an employee’s home and where there is space to accommodate additional Agency employees.
- B. Official Duty Station (ODS) – the employee’s official Agency worksite.
- C. Telework Program Request – a written application for participation in the Telework Program in which the employee describes the general and specific work assignments that the employee proposes to perform at the ADS.
- D. Telework Program Request and Agreement – a written agreement contained in [PPM S650 1](#) between the supervisor and the employee defining the employee’s obligations and responsibilities under the Telework Program. If the Agency changes the Telework Program Request and Agreement, the union will be given notice and an opportunity to bargain to the extent required by [5 USC 71](#).
- E. Portable Work - work normally performed at the employee’s ODS that can be effectively performed at the ADS. This work is part of the employee’s regular work assignment or approved special work assignments.
- F. Non-Portable Work – Assignments that are not portable include those assignments that require face-to-face customer contact or the employee’s physical presence at the ODS.

- G. Core Day(s)–Day(s) of the week not eligible for telework. Core days shall be limited to no more than two core days per week.
- H. Scheduled Telework - An employee with an approved telework agreement teleworks on a routine, regular, and recurring basis at ADS.
- I. Unscheduled Telework - An employee with an approved telework agreement is required to telework on a non-scheduled day at an ADS.
- J. Episodic - Employee may request to work on a temporary project on a case-by-case basis. The request is subject to management approval. It is anticipated that instances of episodic telework will be infrequent, based upon unique workload needs of the agency, and limited in duration.

Section 3—Eligibility

Each Deputy Commissioner will determine the number of scheduled telework days, if any, eligible positions, and percentage of employees permitted to telework.

In accordance with applicable law, each Deputy Commissioner will also determine whether teleworkers are eligible to work the following:

- Credit hours at the ADS
- A 5/4/9 or 4/40 work schedule
- Overtime at the ADS (unless required by FLSA, e.g. late interview or call)
- A part-time schedule
- At the ADS on a non-tour day

Participation will be voluntary and employees may withdraw from the program at any time with notice to their immediate supervisor.

To be eligible to participate in Telework, an employee must meet all of the following conditions:

- A. Not currently on an OPS or have been on an OPS in the 12 months preceding the date of the request to telework;
- B. Not currently on sick leave restriction or have been counseled for sick leave abuse or placed on sick leave restriction in the 12 months preceding the date of the request to telework;
- C. Not in a probationary period or formal training status. Employees who previously completed a probationary period will be considered on a case-by-case basis. Formal training does not include the normal progression of an employee through a career ladder. However, formal training may include periods when an employee needs close supervision or regular feedback from management and/or technical mentors that cannot effectively be accomplished at the ADS.

- D. Complete appropriate Agency Telework training;
- E. Sign and abide by the conditions of the Telework Program Request and Agreement.
Once an employee is approved for participation in the Telework Program, it is understood that management may change the general and specific work assignments set forth in the Telework Program Request and Agreement.
- F. Maintain at least an acceptable level of performance (e.g., successful contribution rating) or not be under review (e.g. increased service observations);
- G. Have sufficient portable work to be completed at the ADS;
- H. Not be excluded from participation by law, or by government-wide rule or regulation;
- I. Use approved appropriate technology;
- J. Not have been disciplined under Article 23 in the 12 months preceding the date of the request to telework or while on an approved telework agreement.

Section 4—ODS Shared Work Space

Employees who telework may be required to share space (e.g. shared cubicles, hoteling) with other employees.

Section 5—Telework Procedures

- A. Work performed under a Telework arrangement may be scheduled, unscheduled, or episodic.
- B. Requests to Participate in Telework

- 1. Scheduled Basis

Employees will request to participate in the Telework program by electronically submitting a Telework Program Request and Agreement consistent with [PPM S650 1](#). Management will act on requests within ten (10) working days of the close of the request period for scheduled telework. If the number of eligible employees exceeds the coverage requirements on a specific day, approval will be made in SCD order starting with the most senior. If the participant's request is denied, management will annotate the reasons for the denial on the telework request form.

During the months of February and August of each year employees may request to participate in scheduled telework. Employees will not have to submit future requests once the original request is approved unless: a schedule change is requested by the employee

during the February and August timeframes; the employee needs to revise the telework request and/or agreement; or the employee is otherwise directed by management.

2. Episodic

Employees may request at any time to participate in episodic telework as described in Section 2. Employees not previously approved to telework may request to do so by electronically submitting a Telework Program Request and Agreement consistent with [PPM S650 1](#). Management will act on these requests no later than five (5) working days following receipt of the request. If the participant's request is denied, management will annotate the specific reasons for the denial on the telework request form. Depending on the nature of the assignment and employees' personal circumstances, employees may be approved to work episodic telework up to five days per week at the ADS.

3. Off Cycle Requests

Management will consider requests, submitted electronically, to change a scheduled telework day or participate in telework outside the normal request times. If approved, employees may begin participating in telework or working the newly approved schedule at the start of the next pay period.

C. Modifications

The parties recognize that Agency assigned functions, the nature of work to be performed and the types of positions can vary significantly from office to office. Management has sole discretion to change, reduce, suspend, or eliminate approved telework day(s) for any employee(s), office, component, or agency-wide due to operational needs. Management also has sole discretion to change, reduce, suspend, or eliminate approved telework day(s) for any employee due to the employee's performance.

Section 6—Hours of Work and Employee Availability

Teleworkers are in a duty status when teleworking and are expected to have the resources necessary to perform their jobs and concentrate on official duties without interruption. Employees may not use duty time for any purpose other than performing Agency-assigned work. Telework is not a substitute for dependent care.

Management is responsible for supervising work in accordance with the Fair Labor Standards Act. Article 10 of the SSA/AFGE National Agreement will apply to those employees who work at an ADS.

Management may require that employees provide electronic notification to their supervisor at the beginning and/or end of their workday.

Requests for leave will be handled in accordance with Article 31 of the SSA/AFGE National Agreement.

A. Office Closure/Early Dismissal/Late Opening

If there is a full day closure at the ODS, all employees with an approved Telework Program Request and Agreement are required to complete a full workday at the ADS, unless the employee requests and has leave approved.

In emergency, office closure, or other unique situations (e.g. facility issues, transit strike, dignitary visit, political convention, etc.), employees with approved telework agreements will telework regardless of whether the emergency, office closure, or unique situation occurs on a scheduled or unscheduled telework day, unless otherwise directed by management (e.g. deployed to another office, etc.). In these situations, employees may also request to use leave.

If there is an early dismissal, or late opening in the ODS, and the employee is scheduled to work at their residence as the ADS, the employee is required to complete a full workday, unless the employee requests and is approved for leave. Employees with approved telework agreements may be required to work a portion of their day at their ADS in instances of early dismissal unless the employee requests and is approved for leave.

If the ADS is in another SSA facility, the employee must abide by the office closure, early dismissal, or late opening rules for that location. The employee may be required to report to their ODS.

B. Alternate Duty Station Problem(s)

Employees will promptly inform management of any disruptions at the ADS, e.g. equipment failure, power outages, telecommunication difficulties etc. that impact the employee's ability to perform Agency assigned duties. In these situations, management may require the employee to report to the ODS or the employee may request leave. If the disruption (e.g. loss of electrical service or internet connectivity at the ADS) is through no fault of the Agency, the employee will be in a non-duty status from the time of the disruption to the end of the scheduled workday or until the employee reports to the ODS. The employee may request leave for the non-duty period. However, if the ODS is closed and the condition(s) creating the disruption make(s) the ADS unsafe, the employee may be granted leave in accordance with Article 31.

The parties recognize that once the ADS is approved, the employee will not change the ADS location without management approval.

C. Split Days at the ADS and ODS

Employees may split a workday between the ADS and the ODS with the approval or at the direction of management. Upon request, management will explain to employees the basis for denying their request(s) to split a workday.

When employees request to split a workday between the ADS and the ODS, the commute between the ADS and ODS is normal commute time (i.e., the employee is not on duty time). If an employee is directed to split a workday by management, the commute between locations will be duty time.

D. Telephones

- When working at the ADS, an employee must be accessible by telephone to his or her supervisors, clients, colleagues, and external customers during working hours, exclusive of the lunch period and break periods.
- The employee's break and lunch periods will be the same as at the ODS.
- While at the ADS, the employee is responsible for retrieving, and responding in a timely manner, to voice mail left at both the ADS and the ODS.
- Employees will not be reimbursed for out-of-pocket expenses related to telephone calls.

E. Electronic Communications

- Employees must read and respond to emails as if they were at the ODS.
- Management may require that employees use instant messaging, video, or similar technology while working at the ADS.
- Employees should ensure that the instant message or similar technology accurately reflects their work status. Employees are expected to timely respond to instant messages from management.

F. Telework Suspensions

Employee(s) may be required to report to their official duty station for training, conferences, meetings or other operational needs. Employees may resume telework as soon as the suspension of telework is over.

G. Call Backs

Employees may be called back to the ODS when warranted. Employees are required to report to their ODS as soon as possible and no more than two hours after notification. Transportation between the ADS and the ODS is considered commuting and does not entitle the employee to reimbursement for official travel.

H. Replacement Time and In-Lieu-Of Days

If management temporarily suspends telework or calls an employee back to the ODS, the employee is not guaranteed "replacement time" or an "in lieu of" telework day. However, the employee's telework day may be temporarily switched to another day with management's approval.

Employees whose scheduled telework day is affected by a holiday or leave do not receive an in-lieu-of day.

I. To avoid lost productivity due to inclement weather, Management has discretion to approve employee requests to telework on an unscheduled day due to hazardous commuting conditions caused by inclement weather if the ODS remains open. Employees must call their supervisor or other designated management official by the end of the morning flexband to make the request. If the request is denied, then the employee will be expected to report to the ODS or may request leave consistent with Article 31. Based on reasonable weather forecasts, Management also has the discretion to offer optional telework in advance in situations in which the ODS may be open but commuting conditions are likely to be hazardous.

If management reasonably believes that a forecasted inclement weather event could cause the ODS to close for a workday or workdays, management may assign employees with approved telework agreements to work at their ADS on the workday(s) anticipated to be affected by inclement weather. Management will provide employees with timely advance notice of such assignment to allow employees to prepare. Employees will not lose their regularly scheduled telework days if assigned to weather-related telework on a non-scheduled day.

J. Employees may request to telework on a temporary basis for projects, or on routine workloads if due to personal circumstances, on a case-by-case basis. The request is subject to management approval. Assuming all eligibility criteria are met, denials will only be for bona fide operational needs. It is anticipated that instances of episodic telework will be infrequent, based upon unique workload needs of the agency or due to personal circumstances of the requesting employee, and limited in duration. Management will provide the employee with a specific reason for any denied request in writing.

Section 7—Environment and Security

A. Work site

If the ADS location is in the employee's residence, the employee is responsible for maintaining the ADS work site in a manner that is conducive to business and is free of hazards. The ADS work site shall include furniture/equipment deemed necessary by management to perform the employee's duties at the ADS such as a desk, chair, surge protector, locking file cabinet or similar secure storage device, etc.. In addition, there must be proper lighting, power, other utilities, adequate environmental conditions, a readily accessible and working fire extinguisher, and a working smoke detector.

The employee is responsible for all operating costs, home maintenance and any other incidental costs (e.g., utilities, high-speed internet access, mortgage payments, rent, insurance, and taxes, etc.) associated with the use of the ADS. The Agency is not liable for damages to employee's personal or real property occurring during the course of performance of official duties except to the extent established by law.

The employee does not relinquish any entitlement to reimbursement for appropriately authorized expenses incurred while conducting business for the employer as provided for by law and regulation.

B. Workers' Compensation

Teleworkers are covered under the Federal Employees' Compensation Act (FECA) and the Agency's policy and procedures concerning workers' compensation for injuries sustained while performing their official duties at the ADS. The employee will immediately notify his/her supervisor of any accident or injury occurring at the ADS in the course of performing official duties. FECA claims will be handled in accordance with Article 34 of the SSA/AFGE National Agreement.

C. Federal Tort Claims

For purposes of the Federal Tort Claims Act, the employee's ADS is treated as an extension of the official duty station.

D. Security/Safeguarding Work

Employees working at the ADS are bound by Agency policies and procedures on transporting, safeguarding, disclosure and destruction of Agency information, records and data. This includes policies on protecting Personally Identifiable Information (PII), the Federal Information Security Management Act, the Privacy Act, [5 U.S.C. § 552](#) the regulations implementing the Privacy Act, including those at [20 C.F.R. Part 401](#); [42 U.S.C. § 1306](#); and all other statutes, regulations, and Agency policies pertaining to the disclosure, retention, and electronic transmission of official records and information.

E. Home Inspections

Management may inspect the ADS to ensure conformity with the conditions set forth in the Telework Program Request and Agreement. Management may inspect the ADS with twenty-four (24) hours advance notice during the teleworker's regular core hours. Management will not inspect non-work space in the ADS.

F. Agency Owned IT Equipment

The Agency will determine the appropriate IT equipment for teleworkers. SSA retains ownership and control of any SSA furnished hardware, software, and data and is responsible for maintaining, providing support and repairing the equipment; however, there will be no on site IT support provided in employees' homes. The employee is not responsible for costs related to maintenance of government owned equipment.

Employees have a continuing responsibility to safeguard Government property and are responsible for the care, security and effective utilization of the Government property they use. In accordance with Agency policy, employees may be required to reimburse the Agency for failure to exercise reasonable care of Government property. Failure to exercise these responsibilities may result in termination from telework in accordance with Section 10 of this Article.

Management may require that employees working at an approved ADS obtain (at their own expense) high-speed/broadband internet access sufficient to support the accomplishment of the

employee's assigned duties.

Section 8—Accountability and Evaluation of Work

Management will evaluate work performed at the ADS in accordance with the Telework Program Request and Agreement and in accordance with Article 21 of the SSA/AFGE National Agreement.

Management may require employees on telework to submit a daily accounting of the work performed at the ADS. The format and required content will be determined by management.

Section 9—Employee Conduct at the ADS

All laws, government-wide rules, government-wide regulations, and Agency policies governing employee conduct at the ODS continue to apply at the ADS including, but not limited to, the Privacy Act and the Standards of Ethical Conduct for Employees in the Executive Branch.

Section 10—Termination from the Telework Program

Employees may voluntarily terminate their participation in the Telework program at any time by notification to their supervisor and may reapply at the next application period.

Management retains the right to terminate an employee's participation in the Telework Program if:

- a. The employee no longer meets one or more of the eligibility requirements contained in Section 3; or
- b. The employee fails to comply with any of the conditions set forth in the Telework Program Request and Agreement; or
- c. The employee fails to comply with the provisions of this article; or
- d. There is a diminishment in the employee's performance.

Management will normally counsel employees about specific problems, including a diminishment in performance, before removing an employee from the Telework Program, except in the case of serious violations. When an employee's participation in the Telework Program is terminated, the employee will be notified in writing of the reason for termination and the effective date of the termination. Management will consider individual circumstances when determining the effective date of removal from the program. An employee, who has been removed from the Telework Program may reapply for Telework at the first application cycle following a 1-year termination period, unless otherwise prohibited by law, rule, or government-wide regulation.

If a disciplinary action is reversed, the employee will normally resume telework at the beginning of the first pay period following the reversal as long as the employee meets the eligibility requirements.

Section 11. AFGE Notification

Should the Agency modify, suspend, or terminate all or a significant part of its telework program, appropriate notice will be provided to the Union.

References

5 USC CHAPTER 71—LABOR-MANAGEMENT RELATIONS

- [SUBCHAPTER I—GENERAL PROVISIONS \(§§ 7101—7106\)](#)
- [SUBCHAPTER II—RIGHTS AND DUTIES OF AGENCIES AND LABOR ORGANIZATIONS \(§§ 7111—7120\)](#)
- [SUBCHAPTER III—GRIEVANCES, APPEALS, AND REVIEW \(§§ 7121—7123\)](#)
- [SUBCHAPTER IV—ADMINISTRATIVE AND OTHER PROVISIONS \(§§ 7131—7151_to_7154\)](#)

7101. Findings and purpose

(a) The Congress finds that—

(1) experience in both private and public employment indicates that the statutory protection of the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them—

(A) safeguards the public interest,

(B) contributes to the effective conduct of public business, and

(C) facilitates and encourages the amicable settlements of disputes between employees and their employers involving conditions of employment; and

(2) the public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the Government.

Therefore, labor organizations and collective bargaining in the civil service are in the public interest.

(b) It is the purpose of this chapter to prescribe certain rights and obligations of the employees of the Federal Government and to establish procedures which are designed to meet the special requirements and needs of the Government. The provisions of this chapter should be interpreted in a manner consistent with the requirement of an effective and efficient Government.

7102. Employees' rights

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

(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 the Government, the Congress, or other appropriate authorities, and

(2) to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this chapter.

7103. Definitions; application

- (a)** For the purpose of this chapter—
- (1)** “person” means an individual, labor organization, or agency;
- (2)** “employee” means an individual—
- (A)** employed in an agency; or
- (B)** whose employment in an agency has ceased because of any unfair labor practice under section 7116 of this title and who has not obtained any other regular and substantially equivalent employment, as determined under regulations prescribed by the Federal Labor Relations Authority;
- but does not include—
- (i)** an alien or noncitizen of the United States who occupies a position outside the United States;
- (ii)** a member of the uniformed services;
- (iii)** a supervisor or a management official;
- (iv)** an officer or employee in the Foreign Service of the United States employed in the Department of State, the International Communication Agency, the Agency for International Development, the Department of Agriculture, or the Department of Commerce; or
- (v)** any person who participates in a strike in violation of section 7311 of this title;
- (3)** “agency” means an Executive agency (including a nonappropriated fund instrumentality described in section 2105 (c) of this title and the Veterans’ Canteen Service, Department of Veterans Affairs), the Library of Congress, the Government Printing Office, and the Smithsonian Institution ^[1] but does not include—
- (A)** the Government Accountability Office;
- (B)** the Federal Bureau of Investigation;
- (C)** the Central Intelligence Agency;
- (D)** the National Security Agency;
- (E)** the Tennessee Valley Authority;
- (F)** the Federal Labor Relations Authority;
- (G)** the Federal Service Impasses Panel; or
- (H)** the United States Secret Service and the United States Secret Service Uniformed Division.
- (4)** “labor organization” means an organization composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose the dealing with an agency concerning grievances and conditions of employment, but does not include—
- (A)** an organization which, by its constitution, bylaws, tacit agreement among its members, or otherwise, denies membership because of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;
- (B)** an organization which advocates the overthrow of the constitutional form of government of the United States;
- (C)** an organization sponsored by an agency; or
- (D)** an organization which participates in the conduct of a strike against the Government or any agency thereof or imposes a duty or obligation to conduct, assist, or participate in such a strike;
- (5)** “dues” means dues, fees, and assessments;
- (6)** “Authority” means the Federal Labor Relations Authority described in section 7104 (a) of this title;
- (7)** “Panel” means the Federal Service Impasses Panel described in section 7119 (c) of this title;
- (8)** “collective bargaining agreement” means an agreement entered into as a result of collective bargaining pursuant to the provisions of this chapter;
- (9)** “grievance” means any complaint—
- (A)** by any employee concerning any matter relating to the employment of the employee;
- (B)** by any labor organization concerning any matter relating to the employment of any employee; or
- (C)** by any employee, labor organization, or agency concerning—
- (i)** the effect or interpretation, or a claim of breach, of a collective bargaining agreement; or

- (ii)** any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment;
- (10)** "supervisor" means an individual employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment, except that, with respect to any unit which includes firefighters or nurses, the term "supervisor" includes only those individuals who devote a preponderance of their employment time to exercising such authority;
- (11)** "management official" means an individual employed by an agency in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the agency;
- (12)** "collective bargaining" means the performance of the mutual obligation of the representative of an agency and the exclusive representative of employees in an appropriate unit in the agency to meet at reasonable times and to consult and bargain in a good-faith effort to reach agreement with respect to the conditions of employment affecting such employees and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but the obligation referred to in this paragraph does not compel either party to agree to a proposal or to make a concession;
- (13)** "confidential employee" means an employee who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations;
- (14)** "conditions of employment" means personnel policies, practices, and matters, whether established by rule, regulation, or otherwise, affecting working conditions, except that such term does not include policies, practices, and matters—
- (A)** relating to political activities prohibited under subchapter [III](#) of chapter [73](#) of this title;
 - (B)** relating to the classification of any position; or
 - (C)** to the extent such matters are specifically provided for by Federal statute;
- (15)** "professional employee" means—
- (A)** an employee engaged in the performance of work—
 - (i)** requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital (as distinguished from knowledge acquired by a general academic education, or from an apprenticeship, or from training in the performance of routine mental, manual, mechanical, or physical activities);
 - (ii)** requiring the consistent exercise of discretion and judgment in its performance;
 - (iii)** which is predominantly intellectual and varied in character (as distinguished from routine mental, manual, mechanical, or physical work); and
 - (iv)** which is of such character that the output produced or the result accomplished by such work cannot be standardized in relation to a given period of time; or
 - (B)** an employee who has completed the courses of specialized intellectual instruction and study described in subparagraph (A)(i) of this paragraph and is performing related work under appropriate direction or guidance to qualify the employee as a professional employee described in subparagraph (A) of this paragraph;
- (16)** "exclusive representative" means any labor organization which—
- (A)** is certified as the exclusive representative of employees in an appropriate unit pursuant to section [7111](#) of this title; or
 - (B)** was recognized by an agency immediately before the effective date of this chapter as the exclusive representative of employees in an appropriate unit—
 - (i)** on the basis of an election, or
 - (ii)** on any basis other than an election,
 and continues to be so recognized in accordance with the provisions of this chapter;
- (17)** "firefighter" means any employee engaged in the performance of work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment; and

(18) “United States” means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, and any territory or possession of the United States.

(b)

(1) The President may issue an order excluding any agency or subdivision thereof from coverage under this chapter if the President determines that—

(A) the agency or subdivision has as a primary function intelligence, counterintelligence, investigative, or national security work, and

(B) the provisions of this chapter cannot be applied to that agency or subdivision in a manner consistent with national security requirements and considerations.

(2) The President may issue an order suspending any provision of this chapter with respect to any agency, installation, or activity located outside the 50 States and the District of Columbia, if the President determines that the suspension is necessary in the interest of national security.

[1] So in original. Probably should be followed by a comma.

7104. Federal Labor Relations Authority

(a) The Federal Labor Relations Authority is composed of three members, not more than 2 of whom may be adherents of the same political party. No member shall engage in any other business or employment or hold another office or position in the Government of the United States except as otherwise provided by law.

(b) Members of the Authority shall be appointed by the President by and with the advice and consent of the Senate, and may be removed by the President only upon notice and hearing and only for inefficiency, neglect of duty, or malfeasance in office. The President shall designate one member to serve as Chairman of the Authority. The Chairman is the chief executive and administrative officer of the Authority.

(c) A member of the Authority shall be appointed for a term of 5 years. An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced. The term of any member shall not expire before the earlier of—

(1) the date on which the member’s successor takes office, or

(2) the last day of the Congress beginning after the date on which the member’s term of office would (but for this paragraph) expire.

(d) A vacancy in the Authority shall not impair the right of the remaining members to exercise all of the powers of the Authority.

(e) The Authority shall make an annual report to the President for transmittal to the Congress which shall include information as to the cases it has heard and the decisions it has rendered.

(f)

(1) The General Counsel of the Authority shall be appointed by the President, by and with the advice and consent of the Senate, for a term of 5 years. The General Counsel may be removed at any time by the President. The General Counsel shall hold no other office or position in the Government of the United States except as provided by law.

(2) The General Counsel may—

(A) investigate alleged unfair labor practices under this chapter,

(B) file and prosecute complaints under this chapter, and

(C) exercise such other powers of the Authority as the Authority may prescribe.

(3) The General Counsel shall have direct authority over, and responsibility for, all employees in the office of General Counsel, including employees of the General Counsel in the regional offices of the Authority.

7105. Powers and duties of the Authority

(a)

(1) The Authority shall provide leadership in establishing policies and guidance relating to matters under this chapter, and, except as otherwise provided, shall be responsible for carrying out the purpose of this chapter.

(2) The Authority shall, to the extent provided in this chapter and in accordance with regulations prescribed by the Authority—

(A) determine the appropriateness of units for labor organization representation under section 7112 of this title;

(B) supervise or conduct elections to determine whether a labor organization has been selected as an exclusive representative by a majority of the employees in an appropriate unit and otherwise administer the provisions of section 7111 of this title relating to the according of exclusive recognition to labor organizations;

(C) prescribe criteria and resolve issues relating to the granting of national consultation rights under section 7113 of this title;

(D) prescribe criteria and resolve issues relating to determining compelling need for agency rules or regulations under section 7117 (b) of this title;

(E) resolves issues relating to the duty to bargain in good faith under section 7117 (c) of this title;

(F) prescribe criteria relating to the granting of consultation rights with respect to conditions of employment under section 7117 (d) of this title;

(G) conduct hearings and resolve complaints of unfair labor practices under section 7118 of this title;

(H) resolve exceptions to arbitrator's awards under section 7122 of this title; and

(I) take such other actions as are necessary and appropriate to effectively administer the provisions of this chapter.

(b) The Authority shall adopt an official seal which shall be judicially noticed.

(c) The principal office of the Authority shall be in or about the District of Columbia, but the Authority may meet and exercise any or all of its powers at any time or place. Except as otherwise expressly provided by law, the Authority may, by one or more of its members or by such agents as it may designate, make any appropriate inquiry necessary to carry out its duties wherever persons subject to this chapter are located. Any member who participates in the inquiry shall not be disqualified from later participating in a decision of the Authority in any case relating to the inquiry.

(d) The Authority shall appoint an Executive Director and such regional directors, administrative law judges under section 3105 of this title, and other individuals as it may from time to time find necessary for the proper performance of its functions. The Authority may delegate to officers and employees appointed under this subsection authority to perform such duties and make such expenditures as may be necessary.

(e)

(1) The Authority may delegate to any regional director its authority under this chapter—

(A) to determine whether a group of employees is an appropriate unit;

(B) to conduct investigations and to provide for hearings;

(C) to determine whether a question of representation exists and to direct an election; and

(D) to supervise or conduct secret ballot elections and certify the results thereof.

(2) The Authority may delegate to any administrative law judge appointed under subsection (d) of this section its authority under section 7118 of this title to determine whether any person has engaged in or is engaging in an unfair labor practice.

(f) If the Authority delegates any authority to any regional director or administrative law judge to take any action pursuant to subsection (e) of this section, the Authority may, upon application by any interested person filed within 60 days after the date of the action, review such action, but the review shall not, unless specifically ordered by the Authority, operate as a stay of action. The Authority may affirm, modify, or reverse any action reviewed under this subsection. If the Authority does not undertake to grant review of the action under this subsection within 60 days after the later of—

(1) the date of the action; or

- (2)** the date of the filing of any application under this subsection for review of the action; the action shall become the action of the Authority at the end of such 60-day period.
- (g)** In order to carry out its functions under this chapter, the Authority may—
 - (1)** hold hearings;
 - (2)** administer oaths, take the testimony or deposition of any person under oath, and issue subpoenas as provided in section 7132 of this title; and
 - (3)** may require an agency or a labor organization to cease and desist from violations of this chapter and require it to take any remedial action it considers appropriate to carry out the policies of this chapter.
- (h)** Except as provided in section 518 of title 28, relating to litigation before the Supreme Court, attorneys designated by the Authority may appear for the Authority and represent the Authority in any civil action brought in connection with any function carried out by the Authority pursuant to this title or as otherwise authorized by law.
- (i)** In the exercise of the functions of the Authority under this title, the Authority may request from the Director of the Office of Personnel Management an advisory opinion concerning the proper interpretation of rules, regulations, or policy directives issued by the Office of Personnel Management in connection with any matter before the Authority.

7106. Management rights

- (a)** Subject to subsection (b) of this section, nothing in this chapter shall affect the authority of any management official of any agency—
 - (1)** to determine the mission, budget, organization, number of employees, and internal security practices of the agency; and
 - (2)** in accordance with applicable laws—
 - (A)** to hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;
 - (B)** to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted;
 - (C)** with respect to filling positions, to make selections for appointments from—
 - (i)** among properly ranked and certified candidates for promotion; or
 - (ii)** any other appropriate source; and
 - (D)** to take whatever actions may be necessary to carry out the agency mission during emergencies.
- (b)** Nothing in this section shall preclude any agency and any labor organization from negotiating—
 - (1)** at the election of the agency, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;
 - (2)** procedures which management officials of the agency will observe in exercising any authority under this section; or
 - (3)** appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials.

7111. Exclusive recognition of labor organizations

- (a)** An agency shall accord exclusive recognition to a labor organization if the organization has been selected as the representative, in a secret ballot election, by a majority of the employees in an appropriate unit who cast valid ballots in the election.
- (b)** If a petition is filed with the Authority—
 - (1)** by any person alleging—
 - (A)** in the case of an appropriate unit for which there is no exclusive representative, that 30 percent of the employees in the appropriate unit wish to be represented for the purpose of collective bargaining by an exclusive representative, or

(B) in the case of an appropriate unit for which there is an exclusive representative, that 30 percent of the employees in the unit allege that the exclusive representative is no longer the representative of the majority of the employees in the unit; or

(2) by any person seeking clarification of, or an amendment to, a certification then in effect or a matter relating to representation;

the Authority shall investigate the petition, and if it has reasonable cause to believe that a question of representation exists, it shall provide an opportunity for a hearing (for which a transcript shall be kept) after reasonable notice. If the Authority finds on the record of the hearing that a question of representation exists, the Authority shall supervise or conduct an election on the question by secret ballot and shall certify the results thereof. An election under this subsection shall not be conducted in any appropriate unit or in any subdivision thereof within which, in the preceding 12 calendar months, a valid election under this subsection has been held.

(c) A labor organization which—

(1) has been designated by at least 10 percent of the employees in the unit specified in any petition filed pursuant to subsection (b) of this section;

(2) has submitted a valid copy of a current or recently expired collective bargaining agreement for the unit; or

(3) has submitted other evidence that it is the exclusive representative of the employees involved;

may intervene with respect to a petition filed pursuant to subsection (b) of this section and shall be placed on the ballot of any election under such subsection (b) with respect to the petition.

(d) The Authority shall determine who is eligible to vote in any election under this section and shall establish rules governing any such election, which shall include rules allowing employees eligible to vote the opportunity to choose—

(1) from labor organizations on the ballot, that labor organization which the employees wish to have represent them; or

(2) not to be represented by a labor organization.

In any election in which no choice on the ballot receives a majority of the votes cast, a runoff election shall be conducted between the two choices receiving the highest number of votes. A labor organization which receives the majority of the votes cast in an election shall be certified by the Authority as the exclusive representative.

(e) A labor organization seeking exclusive recognition shall submit to the Authority and the agency involved a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives.

(f) Exclusive recognition shall not be accorded to a labor organization—

(1) if the Authority determines that the labor organization is subject to corrupt influences or influences opposed to democratic principles;

(2) in the case of a petition filed pursuant to subsection (b)(1)(A) of this section, if there is not credible evidence that at least 30 percent of the employees in the unit specified in the petition wish to be represented for the purpose of collective bargaining by the labor organization seeking exclusive recognition;

(3) if there is then in effect a lawful written collective bargaining agreement between the agency involved and an exclusive representative (other than the labor organization seeking exclusive recognition) covering any employees included in the unit specified in the petition, unless—

(A) the collective bargaining agreement has been in effect for more than 3 years, or

(B) the petition for exclusive recognition is filed not more than 105 days and not less than 60 days before the expiration date of the collective bargaining agreement; or

(4) if the Authority has, within the previous 12 calendar months, conducted a secret ballot election for the unit described in any petition under this section and in such election a majority of the employees voting chose a labor organization for certification as the unit's exclusive representative.

(g) Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules or decisions of the Authority.

7112. Determination of appropriate units for labor organization representation

(a) The Authority shall determine the appropriateness of any unit. The Authority shall determine in each case whether, in order to ensure employees the fullest freedom in exercising the rights guaranteed under this chapter, the appropriate unit should be established on an agency, plant, installation, functional, or other basis and shall determine any unit to be an appropriate unit only if the determination will ensure a clear and identifiable community of interest among the employees in the unit and will promote effective dealings with, and efficiency of the operations of the agency involved.

(b) A unit shall not be determined to be appropriate under this section solely on the basis of the extent to which employees in the proposed unit have organized, nor shall a unit be determined to be appropriate if it includes—

(1) except as provided under section 7135 (a)(2) of this title, any management official or supervisor;

(2) a confidential employee;

(3) an employee engaged in personnel work in other than a purely clerical capacity;

(4) an employee engaged in administering the provisions of this chapter;

(5) both professional employees and other employees, unless a majority of the professional employees vote for inclusion in the unit;

(6) any employee engaged in intelligence, counterintelligence, investigative, or security work which directly affects national security; or

(7) any employee primarily engaged in investigation or audit functions relating to the work of individuals employed by an agency whose duties directly affect the internal security of the agency, but only if the functions are undertaken to ensure that the duties are discharged honestly and with integrity.

(c) Any employee who is engaged in administering any provision of law relating to labor-management relations may not be represented by a labor organization—

(1) which represents other individuals to whom such provision applies; or

(2) which is affiliated directly or indirectly with an organization which represents other individuals to whom such provision applies.

(d) Two or more units which are in an agency and for which a labor organization is the exclusive representative may, upon petition by the agency or labor organization, be consolidated with or without an election into a single larger unit if the Authority considers the larger unit to be appropriate. The Authority shall certify the labor organization as the exclusive representative of the new larger unit.

7113. National consultation rights

(a) If, in connection with any agency, no labor organization has been accorded exclusive recognition on an agency basis, a labor organization which is the exclusive representative of a substantial number of the employees of the agency, as determined in accordance with criteria prescribed by the Authority, shall be granted national consultation rights by the agency. National consultation rights shall terminate when the labor organization no longer meets the criteria prescribed by the Authority. Any issue relating to any labor organization's eligibility for, or continuation of, national consultation rights shall be subject to determination by the Authority.

(b)

(1) Any labor organization having national consultation rights in connection with any agency under subsection (a) of this section shall—

(A) be informed of any substantive change in conditions of employment proposed by the agency, and

(B) be permitted reasonable time to present its views and recommendations regarding the changes.

(2) If any views or recommendations are presented under paragraph (1) of this subsection to an agency by any labor organization—

(A) the agency shall consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and

(B) the agency shall provide the labor organization a written statement of the reasons for taking the final action.

(c) Nothing in this section shall be construed to limit the right of any agency or exclusive representative to engage in collective bargaining.

7114. Representation rights and duties

(a)

(1) A labor organization which has been accorded exclusive recognition is the exclusive representative of the employees in the unit it represents and is entitled to act for, and negotiate collective bargaining agreements covering, all employees in the unit. An exclusive representative is responsible for representing the interests of all employees in the unit it represents without discrimination and without regard to labor organization membership.

(2) An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at—

(A) 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

(B) 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.

(3) Each agency shall annually inform its employees of their rights under paragraph (2)(B) of this subsection.

(4) Any agency and any exclusive representative in any appropriate unit in the agency, through appropriate representatives, shall meet and negotiate in good faith for the purposes of arriving at a collective bargaining agreement. In addition, the agency and the exclusive representative may determine appropriate techniques, consistent with the provisions of section 7119 of this title, to assist in any negotiation.

(5) The rights of an exclusive representative under the provisions of this subsection shall not be construed to preclude an employee from—

(A) being represented by an attorney or other representative, other than the exclusive representative, of the employee's own choosing in any grievance or appeal action; or

(B) exercising grievance or appellate rights established by law, rule, or regulation; except in the case of grievance or appeal procedures negotiated under this chapter.

(b) The duty of an agency and an exclusive representative to negotiate in good faith under subsection (a) of this section shall include the obligation—

(1) to approach the negotiations with a sincere resolve to reach a collective bargaining agreement;

(2) to be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on any condition of employment;

(3) to meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays;

(4) in the case of an agency, to furnish to the exclusive representative involved, or its authorized representative, upon request and, to the extent not prohibited by law, data—

(A) which is normally maintained by the agency in the regular course of business;

(B) which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and

- (C)** which does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining; and
- (5)** if agreement is reached, to execute on the request of any party to the negotiation a written document embodying the agreed terms, and to take such steps as are necessary to implement such agreement.
- (c)**
- (1)** An agreement between any agency and an exclusive representative shall be subject to approval by the head of the agency.
- (2)** The head of the agency shall approve the agreement within 30 days from the date the agreement is executed if the agreement is in accordance with the provisions of this chapter and any other applicable law, rule, or regulation (unless the agency has granted an exception to the provision).
- (3)** If the head of the agency does not approve or disapprove the agreement within the 30-day period, the agreement shall take effect and shall be binding on the agency and the exclusive representative subject to the provisions of this chapter and any other applicable law, rule, or regulation.
- (4)** A local agreement subject to a national or other controlling agreement at a higher level shall be approved under the procedures of the controlling agreement or, if none, under regulations prescribed by the agency.

7115. Allotments to representatives

- (a)** If an agency has received from an employee in an appropriate unit a written assignment which authorizes the agency to deduct from the pay of the employee amounts for the payment of regular and periodic dues of the exclusive representative of the unit, the agency shall honor the assignment and make an appropriate allotment pursuant to the assignment. Any such allotment shall be made at no cost to the exclusive representative or the employee. Except as provided under subsection (b) of this section, any such assignment may not be revoked for a period of 1 year.
- (b)** An allotment under subsection (a) of this section for the deduction of dues with respect to any employee shall terminate when—
 - (1)** the agreement between the agency and the exclusive representative involved ceases to be applicable to the employee; or
 - (2)** the employee is suspended or expelled from membership in the exclusive representative.
- (c)**
- (1)** Subject to paragraph (2) of this subsection, if a petition has been filed with the Authority by a labor organization alleging that 10 percent of the employees in an appropriate unit in an agency have membership in the labor organization, the Authority shall investigate the petition to determine its validity. Upon certification by the Authority of the validity of the petition, the agency shall have a duty to negotiate with the labor organization solely concerning the deduction of dues of the labor organization from the pay of the members of the labor organization who are employees in the unit and who make a voluntary allotment for such purpose.
- (2)**
- (A)** The provisions of paragraph (1) of this subsection shall not apply in the case of any appropriate unit for which there is an exclusive representative.
- (B)** Any agreement under paragraph (1) of this subsection between a labor organization and an agency with respect to an appropriate unit shall be null and void upon the certification of an exclusive representative of the unit.

7116. Unfair labor practices

- (a)** For the purpose of this chapter, it shall be an unfair labor practice for an agency—

- (1)** to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;
 - (2)** to encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;
 - (3)** to sponsor, control, or otherwise assist any labor organization, other than to furnish, upon request, customary and routine services and facilities if the services and facilities are also furnished on an impartial basis to other labor organizations having equivalent status;
 - (4)** to discipline or otherwise discriminate against an employee because the employee has filed a complaint, affidavit, or petition, or has given any information or testimony under this chapter;
 - (5)** to refuse to consult or negotiate in good faith with a labor organization as required by this chapter;
 - (6)** to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter;
 - (7)** to enforce any rule or regulation (other than a rule or regulation implementing section [2302](#) of this title) which is in conflict with any applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed; or
 - (8)** to otherwise fail or refuse to comply with any provision of this chapter.
- (b)** For the purpose of this chapter, it shall be an unfair labor practice for a labor organization—
- (1)** to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;
 - (2)** to cause or attempt to cause an agency to discriminate against any employee in the exercise by the employee of any right under this chapter;
 - (3)** to coerce, discipline, fine, or attempt to coerce a member of the labor organization as punishment, reprisal, or for the purpose of hindering or impeding the member's work performance or productivity as an employee or the discharge of the member's duties as an employee;
 - (4)** to discriminate against an employee with regard to the terms or conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;
 - (5)** to refuse to consult or negotiate in good faith with an agency as required by this chapter;
 - (6)** to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter;
 - (7)**
 - (A)** to call, or participate in, a strike, work stoppage, or slowdown, or picketing of an agency in a labor-management dispute if such picketing interferes with an agency's operations, or
 - (B)** to condone any activity described in subparagraph (A) of this paragraph by failing to take action to prevent or stop such activity; or
 - (8)** to otherwise fail or refuse to comply with any provision of this chapter.
- Nothing in paragraph (7) of this subsection shall result in any informational picketing which does not interfere with an agency's operations being considered as an unfair labor practice.
- (c)** For the purpose of this chapter it shall be an unfair labor practice for an exclusive representative to deny membership to any employee in the appropriate unit represented by such exclusive representative except for failure—
- (1)** to meet reasonable occupational standards uniformly required for admission, or
 - (2)** to tender dues uniformly required as a condition of acquiring and retaining membership.
- This subsection does not preclude any labor organization from enforcing discipline in accordance with procedures under its constitution or bylaws to the extent consistent with the provisions of this chapter.
- (d)** Issues which can properly be raised under an appeals procedure may not be raised as unfair labor practices prohibited under this section. Except for matters wherein, under section [7121 \(e\)](#) and (f) of this title, an employee has an option of using the negotiated grievance procedure or an appeals procedure, issues which can be raised under a grievance procedure may, in the discretion of the aggrieved party, be raised under the grievance procedure or as an unfair labor practice under this section, but not under both procedures.
- (e)** The expression of any personal view, argument, opinion or the making of any statement which—

- (1)** publicizes the fact of a representational election and encourages employees to exercise their right to vote in such election,
 - (2)** corrects the record with respect to any false or misleading statement made by any person, or
 - (3)** informs employees of the Government's policy relating to labor-management relations and representation,
- shall not, if the expression contains no threat of reprisal or force or promise of benefit or was not made under coercive conditions,
- (A)** constitute an unfair labor practice under any provision of this chapter, or
 - (B)** constitute grounds for the setting aside of any election conducted under any provisions of this chapter.

7117. Duty to bargain in good faith; compelling need; duty to consult

(a)

- (1)** Subject to paragraph (2) of this subsection, the duty to bargain in good faith shall, to the extent not inconsistent with any Federal law or any Government-wide rule or regulation, extend to matters which are the subject of any rule or regulation only if the rule or regulation is not a Government-wide rule or regulation.
- (2)** The duty to bargain in good faith shall, to the extent not inconsistent with Federal law or any Government-wide rule or regulation, extend to matters which are the subject of any agency rule or regulation referred to in paragraph (3) of this subsection only if the Authority has determined under subsection (b) of this section that no compelling need (as determined under regulations prescribed by the Authority) exists for the rule or regulation.
- (3)** Paragraph (2) of the subsection applies to any rule or regulation issued by any agency or issued by any primary national subdivision of such agency, unless an exclusive representative represents an appropriate unit including not less than a majority of the employees in the issuing agency or primary national subdivision, as the case may be, to whom the rule or regulation is applicable.

(b)

- (1)** In any case of collective bargaining in which an exclusive representative alleges that no compelling need exists for any rule or regulation referred to in subsection (a)(3) of this section which is then in effect and which governs any matter at issue in such collective bargaining, the Authority shall determine under paragraph (2) of this subsection, in accordance with regulations prescribed by the Authority, whether such a compelling need exists.
- (2)** For the purpose of this section, a compelling need shall be determined not to exist for any rule or regulation only if—
- (A)** the agency, or primary national subdivision, as the case may be, which issued the rule or regulation informs the Authority in writing that a compelling need for the rule or regulation does not exist; or
- (B)** the Authority determines that a compelling need for a rule or regulation does not exist.
- (3)** A hearing may be held, in the discretion of the Authority, before a determination is made under this subsection. If a hearing is held, it shall be expedited to the extent practicable and shall not include the General Counsel as a party.
- (4)** The agency, or primary national subdivision, as the case may be, which issued the rule or regulation shall be a necessary party at any hearing under this subsection.

(c)

- (1)** Except in any case to which subsection (b) of this section applies, if an agency involved in collective bargaining with an exclusive representative alleges that the duty to bargain in good faith does not extend to any matter, the exclusive representative may appeal the allegation to the Authority in accordance with the provisions of this subsection.

- (2)** The exclusive representative may, on or before the 15th day after the date on which the agency first makes the allegation referred to in paragraph (1) of this subsection, institute an appeal under this subsection by—
- (A)** filing a petition with the Authority; and
 - (B)** furnishing a copy of the petition to the head of the agency.
- (3)** On or before the 30th day after the date of the receipt by the head of the agency of the copy of the petition under paragraph (2)(B) of this subsection, the agency shall—
- (A)** file with the Authority a statement—
 - (i)** withdrawing the allegation; or
 - (ii)** setting forth in full its reasons supporting the allegation; and
 - (B)** furnish a copy of such statement to the exclusive representative.
- (4)** On or before the 15th day after the date of the receipt by the exclusive representative of a copy of a statement under paragraph (3)(B) of this subsection, the exclusive representative shall file with the Authority its response to the statement.
- (5)** A hearing may be held, in the discretion of the Authority, before a determination is made under this subsection. If a hearing is held, it shall not include the General Counsel as a party.
- (6)** The Authority shall expedite proceedings under this subsection to the extent practicable and shall issue to the exclusive representative and to the agency a written decision on the allegation and specific reasons therefor at the earliest practicable date.
- (d)**
- (1)** A labor organization which is the exclusive representative of a substantial number of employees, determined in accordance with criteria prescribed by the Authority, shall be granted consultation rights by any agency with respect to any Government-wide rule or regulation issued by the agency effecting any substantive change in any condition of employment. Such consultation rights shall terminate when the labor organization no longer meets the criteria prescribed by the Authority. Any issue relating to a labor organization's eligibility for, or continuation of, such consultation rights shall be subject to determination by the Authority.
- (2)** A labor organization having consultation rights under paragraph (1) of this subsection shall—
- (A)** be informed of any substantive change in conditions of employment proposed by the agency, and
 - (B)** shall be permitted reasonable time to present its views and recommendations regarding the changes.
- (3)** If any views or recommendations are presented under paragraph (2) of this subsection to an agency by any labor organization—
- (A)** the agency shall consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and
 - (B)** the agency shall provide the labor organization a written statement of the reasons for taking the final action.

7118. Prevention of unfair labor practices

- (a)**
- (1)** If any agency or labor organization is charged by any person with having engaged in or engaging in an unfair labor practice, the General Counsel shall investigate the charge and may issue and cause to be served upon the agency or labor organization a complaint. In any case in which the General Counsel does not issue a complaint because the charge fails to state an unfair labor practice, the General Counsel shall provide the person making the charge a written statement of the reasons for not issuing a complaint.
- (2)** Any complaint under paragraph (1) of this subsection shall contain a notice—
- (A)** of the charge;
 - (B)** that a hearing will be held before the Authority (or any member thereof or before an individual employed by the authority and designated for such purpose); and
 - (C)** of the time and place fixed for the hearing.

(3) The labor organization or agency involved shall have the right to file an answer to the original and any amended complaint and to appear in person or otherwise and give testimony at the time and place fixed in the complaint for the hearing.

(4)

(A) Except as provided in subparagraph (B) of this paragraph, no complaint shall be issued based on any alleged unfair labor practice which occurred more than 6 months before the filing of the charge with the Authority.

(B) If the General Counsel determines that the person filing any charge was prevented from filing the charge during the 6-month period referred to in subparagraph (A) of this paragraph by reason of—

(i) any failure of the agency or labor organization against which the charge is made to perform a duty owed to the person, or

(ii) any concealment which prevented discovery of the alleged unfair labor practice during the 6-month period,

the General Counsel may issue a complaint based on the charge if the charge was filed during the 6-month period beginning on the day of the discovery by the person of the alleged unfair labor practice.

(5) The General Counsel may prescribe regulations providing for informal methods by which the alleged unfair labor practice may be resolved prior to the issuance of a complaint.

(6) The Authority (or any member thereof or any individual employed by the Authority and designated for such purpose) shall conduct a hearing on the complaint not earlier than 5 days after the date on which the complaint is served. In the discretion of the individual or individuals conducting the hearing, any person involved may be allowed to intervene in the hearing and to present testimony. Any such hearing shall, to the extent practicable, be conducted in accordance with the provisions of subchapter II of chapter 5 of this title, except that the parties shall not be bound by rules of evidence, whether statutory, common law, or adopted by a court. A transcript shall be kept of the hearing. After such a hearing the Authority, in its discretion, may upon notice receive further evidence or hear argument.

(7) If the Authority (or any member thereof or any individual employed by the Authority and designated for such purpose) determines after any hearing on a complaint under paragraph (5) of this subsection that the preponderance of the evidence received demonstrates that the agency or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, then the individual or individuals conducting the hearing shall state in writing their findings of fact and shall issue and cause to be served on the agency or labor organization an order—

(A) to cease and desist from any such unfair labor practice in which the agency or labor organization is engaged;

(B) requiring the parties to renegotiate a collective bargaining agreement in accordance with the order of the Authority and requiring that the agreement, as amended, be given retroactive effect;

(C) requiring reinstatement of an employee with backpay in accordance with section 5596 of this title; or

(D) including any combination of the actions described in subparagraphs (A) through (C) of this paragraph or such other action as will carry out the purpose of this chapter.

If any such order requires reinstatement of an employee with backpay, backpay may be required of the agency (as provided in section 5596 of this title) or of the labor organization, as the case may be, which is found to have engaged in the unfair labor practice involved.

(8) If the individual or individuals conducting the hearing determine that the preponderance of the evidence received fails to demonstrate that the agency or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, the individual or individuals shall state in writing their findings of fact and shall issue an order dismissing the complaint.

(b) In connection with any matter before the Authority in any proceeding under this section, the Authority may request, in accordance with the provisions of section 7105 (i) of this title, from the Director of the Office of Personnel Management an advisory opinion concerning the proper interpretation of rules, regulations, or other policy directives issued by the Office of Personnel Management.

7119. Negotiation impasses; Federal Service Impasses Panel

(a) The Federal Mediation and Conciliation Service shall provide services and assistance to agencies and exclusive representatives in the resolution of negotiation impasses. The Service shall determine under what circumstances and in what manner it shall provide services and assistance.

(b) If voluntary arrangements, including the services of the Federal Mediation and Conciliation Service or any other third-party mediation, fail to resolve a negotiation impasse—

(1) either party may request the Federal Service Impasses Panel to consider the matter, or

(2) the parties may agree to adopt a procedure for binding arbitration of the negotiation impasse, but only if the procedure is approved by the Panel.

(c)

(1) The Federal Service Impasses Panel is an entity within the Authority, the function of which is to provide assistance in resolving negotiation impasses between agencies and exclusive representatives.

(2) The Panel shall be composed of a Chairman and at least six other members, who shall be appointed by the President, solely on the basis of fitness to perform the duties and functions involved, from among individuals who are familiar with Government operations and knowledgeable in labor-management relations.

(3) Of the original members of the Panel, 2 members shall be appointed for a term of 1 year, 2 members shall be appointed for a term of 3 years, and the Chairman and the remaining members shall be appointed for a term of 5 years. Thereafter each member shall be appointed for a term of 5 years, except that an individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced. Any member of the Panel may be removed by the President.

(4) The Panel may appoint an Executive Director and any other individuals it may from time to time find necessary for the proper performance of its duties. Each member of the Panel who is not an employee (as defined in section 2105 of this title) is entitled to pay at a rate equal to the daily equivalent of the maximum annual rate of basic pay then currently paid under the General Schedule for each day he is engaged in the performance of official business of the Panel, including travel time, and is entitled to travel expenses as provided under section 5703 of this title.

(5)

(A) The Panel or its designee shall promptly investigate any impasse presented to it under subsection (b) of this section. The Panel shall consider the impasse and shall either—

(i) recommend to the parties procedures for the resolution of the impasse; or

(ii) assist the parties in resolving the impasse through whatever methods and procedures, including factfinding and recommendations, it may consider appropriate to accomplish the purpose of this section.

(B) If the parties do not arrive at a settlement after assistance by the Panel under subparagraph (A) of this paragraph, the Panel may—

(i) hold hearings;

(ii) administer oaths, take the testimony or deposition of any person under oath, and issue subpoenas as provided in section 7132 of this title; and

(iii) take whatever action is necessary and not inconsistent with this chapter to resolve the impasse.

(C) Notice of any final action of the Panel under this section shall be promptly served upon the parties, and the action shall be binding on such parties during the term of the agreement, unless the parties agree otherwise.

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(1) either party may request the Federal Service Impasses Panel to consider the matter, or

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(2) The Panel shall be composed of a Chairman and at least six other members, who shall be appointed by the President, solely on the basis of fitness to perform the duties and functions involved, from among individuals who are familiar with Government operations and knowledgeable in labor-management relations.

(3) Of the original members of the Panel, 2 members shall be appointed for a term of 1 year, 2 members shall be appointed for a term of 3 years, and the Chairman and the remaining members shall be appointed for a term of 5 years. Thereafter each member shall be appointed for a term of 5 years, except that an individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced. Any member of the Panel may be removed by the President.

(4) The Panel may appoint an Executive Director and any other individuals it may from time to time find necessary for the proper performance of its duties. Each member of the Panel who is not an employee (as defined in section 2105 of this title) is entitled to pay at a rate equal to the daily equivalent of the maximum annual rate of basic pay then currently paid under the General Schedule for each day he is engaged in the performance of official business of the Panel, including travel time, and is entitled to travel expenses as provided under section 5703 of this title.

(5)

(A) The Panel or its designee shall promptly investigate any impasse presented to it under subsection (b) of this section. The Panel shall consider the impasse and shall either—

(i) recommend to the parties procedures for the resolution of the impasse; or

(ii) assist the parties in resolving the impasse through whatever methods and procedures, including factfinding and recommendations, it may consider appropriate to accomplish the purpose of this section.

(B) If the parties do not arrive at a settlement after assistance by the Panel under subparagraph (A) of this paragraph, the Panel may—

(i) hold hearings;

(ii) administer oaths, take the testimony or deposition of any person under oath, and issue subpoenas as provided in section 7132 of this title; and

(iii) take whatever action is necessary and not inconsistent with this chapter to resolve the impasse.

(C) Notice of any final action of the Panel under this section shall be promptly served upon the parties, and the action shall be binding on such parties during the term of the agreement, unless the parties agree otherwise.

7120. Standards of conduct for labor organizations

(a) An agency shall only accord recognition to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. Except as provided in subsection (b) of this section, an organization is not required to prove that it is free from such influences if it is subject to governing requirements adopted by the organization or by a national

or international labor organization or federation of labor organizations with which it is affiliated, or in which it participates, containing explicit and detailed provisions to which it subscribes calling for—

(1) the maintenance of democratic procedures and practices including provisions for periodic elections to be conducted subject to recognized safeguards and provisions defining and securing the right of individual members to participate in the affairs of the organization, to receive fair and equal treatment under the governing rules of the organization, and to receive fair process in disciplinary proceedings;

(2) the exclusion from office in the organization of persons affiliated with communist or other totalitarian movements and persons identified with corrupt influences;

(3) the prohibition of business or financial interests on the part of organization officers and agents which conflict with their duty to the organization and its members; and

(4) the maintenance of fiscal integrity in the conduct of the affairs of the organization, including provisions for accounting and financial controls and regular financial reports or summaries to be made available to members.

(b) Notwithstanding the fact that a labor organization has adopted or subscribed to standards of conduct as provided in subsection (a) of this section, the organization is required to furnish evidence of its freedom from corrupt influences or influences opposed to basic democratic principles if there is reasonable cause to believe that—

(1) the organization has been suspended or expelled from, or is subject to other sanction, by a parent labor organization, or federation of organizations with which it had been affiliated, because it has demonstrated an unwillingness or inability to comply with governing requirements comparable in purpose to those required by subsection (a) of this section; or

(2) the organization is in fact subject to influences that would preclude recognition under this chapter.

(c) A labor organization which has or seeks recognition as a representative of employees under this chapter shall file financial and other reports with the Assistant Secretary of Labor for Labor Management Relations, provide for bonding of officials and employees of the organization, and comply with trusteeship and election standards.

(d) The Assistant Secretary shall prescribe such regulations as are necessary to carry out the purposes of this section. Such regulations shall conform generally to the principles applied to labor organizations in the private sector. Complaints of violations of this section shall be filed with the Assistant Secretary. In any matter arising under this section, the Assistant Secretary may require a labor organization to cease and desist from violations of this section and require it to take such actions as he considers appropriate to carry out the policies of this section.

(e) This chapter does not authorize participation in the management of a labor organization or acting as a representative of a labor organization by a management official, a supervisor, or a confidential employee, except as specifically provided in this chapter, or by an employee if the participation or activity would result in a conflict or apparent conflict of interest or would otherwise be incompatible with law or with the official duties of the employee.

(f) In the case of any labor organization which by omission or commission has willfully and intentionally, with regard to any strike, work stoppage, or slowdown, violated section [7116\(b\)\(7\)](#) of this title, the Authority shall, upon an appropriate finding by the Authority of such violation—

(1) revoke the exclusive recognition status of the labor organization, which shall then

immediately cease to be legally entitled and obligated to represent employees in the unit; or

(2) take any other appropriate disciplinary action.

7121. Grievance procedures

(a)

(1) Except as provided in paragraph (2) of this subsection, any collective bargaining agreement shall provide procedures for the settlement of grievances, including questions of arbitrability.

Except as provided in subsections (d), (e), and (g) of this section, the procedures shall be the exclusive administrative procedures for resolving grievances which fall within its coverage.

(2) Any collective bargaining agreement may exclude any matter from the application of the grievance procedures which are provided for in the agreement.

(b)

(1) Any negotiated grievance procedure referred to in subsection (a) of this section shall—

(A) be fair and simple,

(B) provide for expeditious processing, and

(C) include procedures that—

(i) assure an exclusive representative the right, in its own behalf or on behalf of any employee in the unit represented by the exclusive representative, to present and process grievances;

(ii) assure such an employee the right to present a grievance on the employee's own behalf, and assure the exclusive representative the right to be present during the grievance proceeding; and

(iii) provide that any grievance not satisfactorily settled under the negotiated grievance procedure shall be subject to binding arbitration which may be invoked by either the exclusive representative or the agency.

(2)

(A) The provisions of a negotiated grievance procedure providing for binding arbitration in accordance with paragraph (1)(C)(iii) shall, if or to the extent that an alleged prohibited personnel practice is involved, allow the arbitrator to order—

(i) a stay of any personnel action in a manner similar to the manner described in section 1221 (c) with respect to the Merit Systems Protection Board; and

(ii) the taking, by an agency, of any disciplinary action identified under section 1215 (a)(3) that is otherwise within the authority of such agency to take.

(B) Any employee who is the subject of any disciplinary action ordered under subparagraph (A)(ii) may appeal such action to the same extent and in the same manner as if the agency had taken the disciplinary action absent arbitration.

(c) The preceding subsections of this section shall not apply with respect to any grievance concerning—

(1) any claimed violation of subchapter III of chapter 73 of this title (relating to prohibited political activities);

(2) retirement, life insurance, or health insurance;

(3) a suspension or removal under section 7532 of this title;

(4) any examination, certification, or appointment; or

(5) the classification of any position which does not result in the reduction in grade or pay of an employee.

(d) An aggrieved employee affected by a prohibited personnel practice under section 2302

(b)(1) of this title which also falls under the coverage of the negotiated grievance procedure may raise the matter under a statutory procedure or the negotiated procedure, but not both. An employee shall be deemed to have exercised his option under this subsection to raise the matter under either a statutory procedure or the negotiated procedure at such time as the employee timely initiates an action under the applicable statutory procedure or timely files a grievance in writing, in accordance with the provisions of the parties' negotiated procedure, whichever event occurs first. Selection of the negotiated procedure 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 this title in the case of any personnel action 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.

(e)

(1) Matters covered under sections 4303 and 7512 of this title which also fall within the coverage of the negotiated grievance procedure may, in the discretion of the aggrieved employee, be raised either under the appellate procedures of section 7701 of this title or under the negotiated grievance procedure, but not both. Similar matters which arise under other personnel systems applicable to employees covered by this chapter may, in the discretion of the

aggrieved employee, be raised either under the appellate procedures, if any, applicable to those matters, or under the negotiated grievance procedure, but not both. An employee shall be deemed to have exercised his option under this subsection to raise a matter either under the applicable appellate procedures or under the negotiated grievance procedure at such time as the employee timely files a notice of appeal under the applicable appellate procedures or timely files a grievance in writing in accordance with the provisions of the parties' negotiated grievance procedure, whichever event occurs first.

(2) In matters covered under sections 4303 and 7512 of this title which have been raised under the negotiated grievance procedure in accordance with this section, an arbitrator shall be governed by section 7701 (c)(1) of this title, as applicable.

(f) In matters covered under sections 4303 and 7512 of this title which have been raised under the negotiated grievance procedure in accordance with this section, section 7703 of this title pertaining to judicial review shall apply to the award of an arbitrator in the same manner and under the same conditions as if the matter had been decided by the Board. In matters similar to those covered under sections 4303 and 7512 of this title which arise under other personnel systems and which an aggrieved employee has raised under the negotiated grievance procedure, judicial review of an arbitrator's award may be obtained in the same manner and on the same basis as could be obtained of a final decision in such matters raised under applicable appellate procedures.

(g)

(1) This subsection applies with respect to a prohibited personnel practice other than a prohibited personnel practice to which subsection (d) applies.

(2) An aggrieved employee affected by a prohibited personnel practice described in paragraph (1) may elect not more than one of the remedies described in paragraph (3) with respect thereto. For purposes of the preceding sentence, a determination as to whether a particular remedy has been elected shall be made as set forth under paragraph (4).

(3) The remedies described in this paragraph are as follows:

(A) An appeal to the Merit Systems Protection Board under section 7701.

(B) A negotiated grievance procedure under this section.

(C) Procedures for seeking corrective action under subchapters II and III of chapter 12.

(4) For the purpose of this subsection, a person shall be considered to have elected—

(A) the remedy described in paragraph (3)(A) if such person has timely filed a notice of appeal under the applicable appellate procedures;

(B) the remedy described in paragraph (3)(B) if such person has timely filed a grievance in writing, in accordance with the provisions of the parties' negotiated procedure; or

(C) the remedy described in paragraph (3)(C) if such person has sought corrective action from the Office of Special Counsel by making an allegation under section 1214 (a)(1).

(h) Settlements and awards under this chapter shall be subject to the limitations in section 5596 (b)(4) of this title.

7122. Exceptions to arbitral awards

(a) Either party to arbitration under this chapter may file with the Authority an exception to any arbitrator's award pursuant to the arbitration (other than an award relating to a matter described in section 7121 (f) of this title). If upon review the Authority finds that the award is deficient—

(1) because it is contrary to any law, rule, or regulation; or

(2) on other grounds similar to those applied by Federal courts in private sector labor-management relations;

the Authority may take such action and make such recommendations concerning the award as it considers necessary, consistent with applicable laws, rules, or regulations.

(b) If no exception to an arbitrator's award is filed under subsection (a) of this section during the 30-day period beginning on the date the award is served on the party, the award shall be final and binding. An agency shall take the actions required by an arbitrator's final award. The award may include the payment of backpay (as provided in section 5596 of this title).

7123. Judicial review; enforcement

(a) Any person aggrieved by any final order of the Authority other than an order under—

(1) section 7122 of this title (involving an award by an arbitrator), unless the order involves an unfair labor practice under section 7118 of this title, or

(2) section 7112 of this title (involving an appropriate unit determination),

may, during the 60-day period beginning on the date on which the order was issued, institute an action for judicial review of the Authority's order in the United States court of appeals in the circuit in which the person resides or transacts business or in the United States Court of Appeals for the District of Columbia.

(b) The Authority may petition any appropriate United States court of appeals for the enforcement of any order of the Authority and for appropriate temporary relief or restraining order.

(c) Upon the filing of a petition under subsection (a) of this section for judicial review or under subsection (b) of this section for enforcement, the Authority shall file in the court the record in the proceedings, as provided in section 2112 of title 28. Upon the filing of the petition, the court shall cause notice thereof to be served to the parties involved, and thereupon shall have jurisdiction of the proceeding and of the question determined therein and may grant any temporary relief (including a temporary restraining order) it considers just and proper, and may make and enter a decree affirming and enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Authority. The filing of a petition under subsection (a) or (b) of this section shall not operate as a stay of the Authority's order unless the court specifically orders the stay. Review of the Authority's order shall be on the record in accordance with section 706 of this title. No objection that has not been urged before the Authority, or its designee, shall be considered by the court, unless the failure or neglect to urge the objection is excused because of extraordinary circumstances. The findings of the Authority with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any person applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to adduce the evidence in the hearing before the Authority, or its designee, the court may order the additional evidence to be taken before the Authority, or its designee, and to be made a part of the record. The Authority may modify its findings as to the facts, or make new findings by reason of additional evidence so taken and filed. The Authority shall file its modified or new findings, which, with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The Authority shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the judgment and decree shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

(d) The Authority may, upon issuance of a complaint as provided in section 7118 of this title charging that any person has engaged in or is engaging in an unfair labor practice, petition any United States district court within any district in which the unfair labor practice in question is alleged to have occurred or in which such person resides or transacts business for appropriate temporary relief (including a restraining order). Upon the filing of the petition, the court shall cause notice thereof to be served upon the person, and thereupon shall have jurisdiction to grant any temporary relief (including a temporary restraining order) it considers just and proper. A court shall not grant any temporary relief under this section if it would interfere with the ability of the agency to carry out its essential functions or if the Authority fails to establish probable cause that an unfair labor practice is being committed.

7131. Official time

(a) Any employee representing an exclusive representative in the negotiation of a collective bargaining agreement under this chapter shall be authorized official time for such purposes, including attendance at impasse proceeding, during the time the employee otherwise would be in a duty status. The number of employees for whom official time is authorized under this subsection shall not exceed the number of individuals designated as representing the agency for such purposes.

(b) Any activities performed by any employee relating to the internal business of a labor organization (including the solicitation of membership, elections of labor organization officials, and collection of dues) shall be performed during the time the employee is in a non-duty status.

(c) Except as provided in subsection (a) of this section, the Authority shall determine whether any employee participating for, or on behalf of, a labor organization in any phase of proceedings before the Authority shall be authorized official time for such purpose during the time the employee otherwise would be in a duty status.

(d) Except as provided in the preceding subsections of this section—

(1) any employee representing an exclusive representative, or

(2) in connection with any other matter covered by this chapter, any employee in an appropriate unit represented by an exclusive representative,

shall be granted official time in any amount the agency and the exclusive representative involved agree to be reasonable, necessary, and in the public interest.

7132. Subpoenas

(a) Any member of the Authority, the General Counsel, or the Panel, any administrative law judge appointed by the Authority under section 3105 of this title, and any employee of the Authority designated by the Authority may—

(1) issue subpoenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence from any place in the United States; and

(2) administer oaths, take or order the taking of depositions, order responses to written interrogatories, examine witnesses, and receive evidence.

No subpoena shall be issued under this section which requires the disclosure of intramanagement guidance, advice, counsel, or training within an agency or between an agency and the Office of Personnel Management.

(b) In the case of contumacy or failure to obey a subpoena issued under subsection (a)(1) of this section, the United States district court for the judicial district in which the person to whom the subpoena is addressed resides or is served may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

(c) Witnesses (whether appearing voluntarily or under subpoena) shall be paid the same fee and mileage allowances which are paid subpoenaed witnesses in the courts of the United States.

7133. Compilation and publication of data

(a) The Authority shall maintain a file of its proceedings and copies of all available agreements and arbitration decisions, and shall publish the texts of its decisions and the actions taken by the Panel under section 7119 of this title.

(b) All files maintained under subsection (a) of this section shall be open to inspection and reproduction in accordance with the provisions of sections 552 and 552a of this title.

7134. Regulations

The Authority, the General Counsel, the Federal Mediation and Conciliation Service, the Assistant Secretary of Labor for Labor Management Relations, and the Panel shall each prescribe rules and regulations to carry out the provisions of this chapter applicable to each of them, respectively. Provisions of subchapter **II** of chapter **5** of this title shall be applicable to the issuance, revision, or repeal of any such rule or regulation.

7135. Continuation of existing laws, recognitions, agreements, and procedures

(a) Nothing contained in this chapter shall preclude—

(1) the renewal or continuation of an exclusive recognition, certification of an exclusive representative, or a lawful agreement between an agency and an exclusive representative of its employees, which is entered into before the effective date of this chapter; or

(2) the renewal, continuation, or initial according of recognition for units of management officials or supervisors represented by labor organizations which historically or traditionally represent management officials or supervisors in private industry and which hold exclusive recognition for units of such officials or supervisors in any agency on the effective date of this chapter.

(b) Policies, regulations, and procedures established under and decisions issued under Executive Orders 11491, 11616, 11636, 11787, and 11838, or under any other Executive order, as in effect on the effective date of this chapter, shall remain in full force and effect until revised or revoked by the President, or unless superseded by specific provisions of this chapter or by regulations or decisions issued pursuant to this chapter.

5 USC CHAPTER 72—ANTIDISCRIMINATION; RIGHT TO PETITION CONGRESS

- [SUBCHAPTER I—ANTIDISCRIMINATION IN EMPLOYMENT](#)
(§§ 7201—7204)
- [SUBCHAPTER II—EMPLOYEES RIGHT TO PETITION](#)
CONGRESS (§ 7211)

7201. Antidiscrimination policy; minority recruitment program

(a) For the purpose of this section—

(1) “underrepresentation” means a situation in which the number of members of a minority group designation (determined by the Equal Employment Opportunity Commission in consultation with the Office of Personnel Management, on the basis of the policy set forth in subsection (b) of this section) within a category of civil service employment constitutes a lower percentage of the total number of employees within the employment category than the percentage that the minority constituted within the labor force of the United States, as determined under the most recent decennial or mid-decade census, or current population survey, under title 13, and

(2) “category of civil service employment” means—

(A) each grade of the General Schedule described in section 5104 of this title;

(B) each position subject to subchapter IV of chapter 53 of this title;

(C) such occupational, professional, or other groupings (including occupational series) within the categories established under subparagraphs (A) and (B) of this paragraph as the Office determines appropriate.

(b) It is the policy of the United States to insure equal employment opportunities for employees without discrimination because of race, color, religion, sex, or national origin. The President shall use his existing authority to carry out this policy.

(c) Not later than 180 days after the date of the enactment of the Civil Service Reform Act of 1978, the Office of Personnel Management shall, by regulation, implement a minority recruitment program which shall provide, to the maximum extent practicable—

(1) that each Executive agency conduct a continuing program for the recruitment of members of minorities for positions in the agency to carry out the policy set forth in subsection (b) in a manner designed to eliminate underrepresentation of minorities in the various categories of civil service employment within the Federal service, with special efforts directed at recruiting in minority communities, in educational institutions, and from other sources from which minorities can be recruited; and

(2) that the Office conduct a continuing program of—

(A) assistance to agencies in carrying out programs under paragraph (1) of this subsection, and

(B) evaluation and oversight and such recruitment programs to determine their effectiveness in eliminating such minority underrepresentation.

(d) Not later than 60 days after the date of the enactment of the Civil Service Reform Act of 1978, the Equal Employment Opportunity Commission shall—

(1) establish the guidelines proposed to be used in carrying out the program required under subsection (c) of this section; and

(2) make determinations of underrepresentation which are proposed to be used initially under such program; and

(3) transmit to the Executive agencies involved, to the Office of Personnel Management, and to the Congress the determinations made under paragraph (2) of this subsection.

(e) Not later than January 31 of each year, the Office shall prepare and transmit to each House of the Congress a report on the activities of the Office and of Executive agencies under subsection (c) of this section, including the affirmative action plans submitted under section 717 of the Civil Rights Act of 1964 ([42 U.S.C. 2000e-16](#)), the personnel data file maintained by the Office of Personnel Management, and any other data necessary to evaluate the effectiveness of the program for each category of civil service employment and for each minority group designation, for the preceding fiscal year, together with recommendations for administrative or legislative action the Office considers appropriate.

7202. Marital status

(a) The President may prescribe rules which shall prohibit, as nearly as conditions of good administration warrant, discrimination because of marital status in an Executive agency or in the competitive service.

(b) Regulations prescribed under any provision of this title, or under any other provision of law, granting benefits to employees, shall provide the same benefits for a married female employee and her spouse and children as are provided for a married male employee and his spouse and children.

(c) Notwithstanding any other provision of law, any provision of law providing a benefit to a male Federal employee or to his spouse or family shall be deemed to provide the same benefit to a female Federal employee or to her spouse or family.

7203. Handicapping condition

The President may prescribe rules which shall prohibit, as nearly as conditions of good administration warrant, discrimination because of handicapping condition in an Executive agency or in the competitive service with respect to a position the duties of which, in the opinion of the Office of Personnel Management, can be performed efficiently by an individual with a handicapping condition, except that the employment may not endanger the health or safety of the individual or others.

7204. Other prohibitions

[(a) Repealed. [Pub. L. 90-83](#), § 1(44), Sept. 11, 1967, [81 Stat. 208](#).]

(b) In the administration of chapter 51, subchapters III and IV of chapter 53, and sections [305](#) and [3324](#) of this title, discrimination because of race, color, creed, sex, or marital status is prohibited with respect to an individual or a position held by an individual.

(c) The Office of Personnel Management may prescribe regulations necessary for the administration of subsection (b) of this section.

5 USC 2301. Merit System Principles

(a) This section shall apply to-

- (1) an Executive agency; and
- (2) the Government Printing Office.

(b) Federal personnel management should be implemented consistent with the following merit system principles:

(1) Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.

(2) All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.

(3) Equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector, and appropriate incentives and recognition should be provided for excellence in performance.

(4) All employees should maintain high standards of integrity, conduct, and concern for the public interest.

(5) The Federal work force should be used efficiently and effectively.

(6) Employees should be retained on the basis of the adequacy of their performance, inadequate performance should be corrected, and employees should be separated who cannot or will not improve their performance to meet required standards.

(7) Employees should be provided effective education and training in cases in which such education and training would result in better organizational and individual performance.

(8) Employees should be-

(A) protected against arbitrary action, personal favoritism, or coercion for partisan political purposes, and

(B) prohibited from using their official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for election.

(9) Employees should be protected against reprisal for the lawful disclosure of information which the employees reasonably believe evidences-

(A) a violation of any law, rule, or regulation, or

(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(c) In administering the provisions of this chapter-

(1) with respect to any agency (as defined in section 2302(a)(2)(C) of this title), the President shall, pursuant to the authority otherwise available under this title, take any action, including the issuance of rules, regulations, or directives; and

(2) with respect to any entity in the executive branch which is not such an agency or part of such an agency, the head of such entity shall, pursuant to authority otherwise available, take any action, including the issuance of rules, regulations, or directives;

which is consistent with the provisions of this title and which the President or the head, as the case may be, determines is necessary to ensure that personnel management is based on and embodies the merit system principles.

(Added [Pub. L. 95-454, title I, §101\(a\), Oct. 13, 1978, 92 Stat. 1113](#) ; amended [Pub. L. 101-474, §5\(c\), Oct. 30, 1990, 104 Stat. 1099](#) .)

Amendments

1990-Subsec. (a). Pub. L. 101-474 redesignated par. (3) as (2) and struck out former par. (2) which provided that this section is applicable to Administrative Office of United States Courts.

Effective Date

Chapter effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

Section Referred to in Other Sections

This section is referred to in sections 2302, 4107, 4313, 5379 of this title; title 10 sections 1612, 1722; title 22 section 3902; title 31 section 732; title 41 section 433.

5 U.S. Code 2302 - Prohibited Personnel Practices

04-23-2021

(a)

(1) For the purpose of this title, “**prohibited personnel practice**” means any action described in subsection (b).

(2) For the purpose of this section—

(A) “**personnel action**” means—

(i) an appointment;

(ii) a promotion;

(iii) an action under **chapter 75 of this title** or other disciplinary or corrective action;

(iv) a detail, transfer, or reassignment;

(v) a reinstatement;

(vi) a restoration;

(vii) a reemployment;

(viii) a performance evaluation under **chapter 43 of this title** or under title 38;

(ix) a decision concerning pay, benefits, or awards, or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other action described in this subparagraph;

(x) a decision to order psychiatric testing or examination;

(xi) the implementation or enforcement of any nondisclosure policy, form, or agreement; and

(xii) any other significant change in duties, responsibilities, or working conditions;

with respect to an employee in, or applicant for, a **covered position** in an **agency**, and in the case of an alleged **prohibited personnel practice** described in subsection (b)(8), an employee or applicant for employment in a Government corporation as defined in **section 9101 of title 31**;

(B) “**covered position**” means, with respect to any **personnel action**, any position in the competitive service, a career appointee position in the Senior Executive Service, or a position in the excepted service, but does not include any position which is, prior to the **personnel action**—

(i) excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character; or

(ii) excluded from the coverage of this section by the President based on a determination by the President that it is necessary and warranted by conditions of good administration;

(C) “**agency**” means an Executive **agency** and the Government Publishing Office, but does not include—

(i) a Government corporation, except in the case of an alleged **prohibited personnel practice** described under subsection (b)(8) or section 2302(b)(9)(A)(i),

(B), (C), or (D);

(ii)

(I) the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, the National Security **Agency**, the Office of the Director of National Intelligence, and the National Reconnaissance Office; and

(II) as determined by the President, any executive **agency** or unit thereof the principal function of which is the conduct of foreign intelligence or counterintelligence activities, provided that the determination be made prior to a **personnel action**; or

(iii) the Government Accountability Office; and

(D) “**disclosure**” means a formal or informal communication or transmission, but does not include a communication concerning policy decisions that lawfully exercise discretionary authority unless the employee or applicant providing the **disclosure** reasonably believes that the **disclosure** evidences—

(i) any violation of any law, rule, or regulation; or

(ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(b) Any employee who has authority to take, direct others to take, recommend, or approve any [personnel action](#), shall not, with respect to such authority—

(1) discriminate for or against any employee or applicant for employment—

(A) on the basis of race, color, religion, sex, or national origin, as prohibited under section 717 of the [Civil Rights Act of 1964](#) ([42 U.S.C. 2000e–16](#));

(B) on the basis of age, as prohibited under sections 12 and 15 of the [Age Discrimination in Employment Act of 1967](#) ([29 U.S.C. 631, 633a](#));

(C) on the basis of sex, as prohibited under section 6(d) of the [Fair Labor Standards Act of 1938](#) ([29 U.S.C. 206\(d\)](#));

(D) on the basis of handicapping condition, as prohibited under section 501 of the [Rehabilitation Act of 1973](#) ([29 U.S.C. 791](#)); or

(E) on the basis of marital status or political affiliation, as prohibited under any law, rule, or regulation;

(2) 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—

(A) an evaluation of the work performance, ability, aptitude, or general qualifications of such individual; or

(B) an evaluation of the character, loyalty, or suitability of such individual;

(3) 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;

(4) deceive or willfully obstruct any person with respect to such person's right to compete for employment;

(5) 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;

(6) 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;

(7) appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in [section 3110\(a\)\(3\) of this title](#)) of such employee if such position is in the [agency](#) in which such employee is serving as a public official (as defined in [section 3110\(a\)\(2\) of this title](#)) or over which such employee exercises jurisdiction or control as such an official;

(8) 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 because of—

(A) any [disclosure](#) of information by an employee or applicant which the employee or applicant reasonably believes evidences—

(i) any violation of any law, rule, or regulation, or

(ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, if such [disclosure](#) is not specifically prohibited by law 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;

(B) any [disclosure](#) to the Special Counsel, 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—

(i) any violation (other than a violation of this section) of any law, rule, or regulation, or

(ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety; or

(C) any [disclosure](#) to Congress (including any committee of Congress) by any employee of an [agency](#) or applicant for employment at an [agency](#) of information described in subparagraph (B) that is—

(i) not classified; or

(ii) if classified—

(I) has been classified by the head of an [agency](#) that is not an element of the intelligence community (as defined by section 3 of the [National Security Act of 1947 \(50 U.S.C. 3003\)](#)); and

(II) does not reveal intelligence sources and methods.^[1]

(9) take or fail to take, or threaten to take or fail to take, any [personnel action](#) against any employee or applicant for employment because of—

(A) the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation—

(i) with regard to remedying a violation of paragraph (8); or

(ii) other than with regard to remedying a violation of paragraph (8);

(B) testifying for or otherwise lawfully assisting any individual in the exercise of any right referred to in subparagraph (A)(i) or (ii);

(C) cooperating with or disclosing information to the Inspector General (or any other component responsible for internal investigation or review) of an [agency](#), or the Special Counsel, in accordance with applicable provisions of law; or

(D) refusing to obey an order that would require the individual to violate a law, rule, or regulation;

(10) discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others; except that nothing in this paragraph shall prohibit an [agency](#) from taking into account in determining suitability or fitness any conviction of the employee or applicant for any crime under the laws of any State, of the District of Columbia, or of the United States;

(11)

(A) knowingly take, recommend, or approve any [personnel action](#) if the taking of such action would violate a [veterans' preference requirement](#); or

(B) knowingly fail to take, recommend, or approve any [personnel action](#) if the failure to take such action would violate a [veterans' preference requirement](#);

(12) take or fail to take any other [personnel action](#) if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in [section 2301 of this title](#);

(13) implement or enforce any nondisclosure policy, form, or agreement, if such policy, form, or agreement does not contain the following statement: “These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.”; or

(14) access the medical record of another employee or an applicant for employment as a part of, or otherwise in furtherance of, any conduct described in paragraphs (1) through (13).

This subsection shall not be construed to authorize the withholding of information from Congress or the taking of any [personnel action](#) against an employee who discloses information to Congress. For purposes of paragraph (8), (i) any presumption relating to the performance of a duty by an employee whose conduct is the subject of a [disclosure](#) as defined under subsection (a)(2)(D) may be rebutted by substantial evidence, and (ii) a determination as to whether an employee or applicant reasonably believes that such employee or applicant has disclosed information that evidences any violation of law, rule, regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety shall be made by determining whether a disinterested observer with knowledge of the essential facts known to and readily ascertainable by the employee or applicant could reasonably conclude that the actions of the Government evidence such violations, mismanagement, waste, abuse, or danger.

(c)

(1) In this subsection—

(A) the term “[new employee](#)” means an individual—

(i) appointed to a position as an employee on or after the date of enactment of this subsection; and

(ii) who has not previously served as an employee; and

(B) the term “[whistleblower protections](#)” means the protections against and remedies for a [prohibited personnel practice](#) described in paragraph (8) or subparagraph (A)(i), (B), (C), or (D) of paragraph (9) of subsection (b).

(2) The head of each [agency](#) shall be responsible for—

(A) preventing **prohibited personnel practices**;

(B) complying with and enforcing applicable civil service laws, rules, and regulations and other aspects of personnel management; and

(C) ensuring, in consultation with the Special Counsel and the Inspector General of the **agency**, that employees of the **agency** are informed of the rights and remedies available to the employees under this chapter and chapter 12, including—

(i) information with respect to **whistleblower protections** available to **new employees** during a probationary period;

(ii) the role of the Office of Special Counsel and the Merit Systems Protection Board with respect to **whistleblower protections**; and

(iii) the means by which, with respect to information that is otherwise required by law or Executive order to be kept classified in the interest of national defense or the conduct of foreign affairs, an employee may make a lawful **disclosure** of the information to—

(I) the Special Counsel;

(II) the Inspector General of an **agency**;

(III) Congress (including any committee of Congress with respect to information that is not classified or, if classified, has been classified by the head of an **agency** that is not an element of the intelligence community and does not reveal intelligence sources and methods); or

(IV) another employee of the **agency** who is designated to receive such a **disclosure**.

(3) The head of each **agency** shall ensure that the information described in paragraph (2) is provided to each **new employee** of the **agency** not later than 180 days after the date on which the **new employee** is appointed.

(4) The head of each **agency** shall make available information regarding **whistleblower protections** applicable to employees of the **agency** on the public website of the **agency** and on any online portal that is made available only to employees of the **agency**, if such portal exists.

(5) Any employee to whom the head of an **agency** delegates authority for any aspect of personnel management shall, within the limits of the scope of the delegation, be responsible for the activities described in paragraph (2).

(d) This section shall not be construed to extinguish or lessen any effort to achieve equal employment opportunity through affirmative action or any right or remedy available to any employee or applicant for employment in the civil service under—

(1) section 717 of the [Civil Rights Act of 1964 \(42 U.S.C. 2000e–16\)](#), prohibiting discrimination on the basis of race, color, religion, sex, or national origin;

(2) sections 12 and 15 of the [Age Discrimination in Employment Act of 1967 \(29 U.S.C. 631, 633a\)](#), prohibiting discrimination on the basis of age;

(3) under section 6(d) of the [Fair Labor Standards Act of 1938 \(29 U.S.C. 206\(d\)\)](#), prohibiting discrimination on the basis of sex;

(4) section 501 of the [Rehabilitation Act of 1973 \(29 U.S.C. 791\)](#), prohibiting discrimination on the basis of handicapping condition; or

(5) the provisions of any law, rule, or regulation prohibiting discrimination on the basis of marital status or political affiliation.

(e)

(1) For the purpose of this section, the term “[veterans’ preference requirement](#)” means any of the following provisions of law:

(A) Sections 2108, 3305(b), 3309, 3310, 3311, 3312, 3313, 3314, 3315, 3316, 3317(b), 3318, 3320, 3351, 3352, 3363, 3501, 3502(b), 3504, and 4303(e) and (with respect to a preference eligible referred to in section 7511(a)(1)(B)) subchapter II of chapter 75 and section 7701.

(B) Sections 943(c)(2) and 1784(c) of title 10.

(C) Section 1308(b) of the [Alaska National Interest Lands Conservation Act](#).

(D) Section 301(c) of the [Foreign Service Act of 1980](#).

(E) Sections 106(f),^[1] 7281(e), and 7802(5) [1] of title 38.

(F) [Section 1005\(a\) of title 39](#).

(G) Any other provision of law that the Director of the Office of Personnel Management designates in regulations as being a [veterans’ preference requirement](#) for the purposes of this subsection.

(H) Any regulation prescribed under subsection (b) or (c) of section 1302 and any other regulation that implements a provision of law referred to in any of the preceding subparagraphs.

(2) Notwithstanding any other provision of this title, no authority to order corrective action shall be available in connection with a **prohibited personnel practice** described in subsection (b)(11). Nothing in this paragraph shall be considered to affect any authority under section 1215 (relating to disciplinary action).

(f)

(1) A **disclosure** shall not be excluded from subsection (b)(8) because—

(A) the **disclosure** was made to a supervisor or to a person who participated in an activity that the employee or applicant reasonably believed to be covered by subsection (b)(8)(A)(i) and (ii);

(B) the **disclosure** revealed information that had been previously disclosed;

(C) of the employee's or applicant's motive for making the **disclosure**;

(D) the **disclosure** was not made in writing;

(E) the **disclosure** was made while the employee was off duty;

(F) the **disclosure** was made before the date on which the individual was appointed or applied for appointment to a position; or

(G) of the amount of time which has passed since the occurrence of the events described in the **disclosure**.

(2) If a **disclosure** is made during the normal course of duties of an employee, the principal job function of whom is to regularly investigate and disclose wrongdoing (referred to in this paragraph as the "disclosing employee"), the **disclosure** shall not be excluded from subsection (b)(8) if the disclosing employee demonstrates that an employee who has the authority to take, direct other individuals to take, recommend, or approve any **personnel action** with respect to the disclosing employee took, failed to take, or threatened to take or fail to take a **personnel action** with respect to the disclosing employee in reprisal for the **disclosure** made by the disclosing employee.

(Added Pub. L. 95-454, title I, § 101(a), Oct. 13, 1978, 92 Stat. 1114; amended Pub. L. 101-12, § 4, Apr. 10, 1989, 103 Stat. 32; Pub. L. 101-474, § 5(d), Oct. 30, 1990, 104 Stat. 1099; Pub. L. 102-378, § 2(5), Oct. 2, 1992, 106 Stat. 1346; Pub. L. 103-94, § 8(c), Oct. 6, 1993, 107 Stat. 1007; Pub. L. 103-359, title V, § 501(c), Oct. 14, 1994,

[108 Stat. 3429](#); [Pub. L. 103–424, § 5](#), Oct. 29, 1994, [108 Stat. 4363](#); [Pub. L. 104–197, title III, § 315\(b\)\(2\)](#), Sept. 16, 1996, [110 Stat. 2416](#), [Pub. L. 104–201, div. A, title XI, § 1122\(a\)\(1\)](#), title XVI, § 1615(b), Sept. 23, 1996, [110 Stat. 2687](#), 2741; [Pub. L. 105–339, § 6\(a\)](#), (b), (c)(2), Oct. 31, 1998, [112 Stat. 3187](#), 3188; [Pub. L. 108–271, § 8\(b\)](#), July 7, 2004, [118 Stat. 814](#); [Pub. L. 110–417, \[div. A\], title IX, § 931\(a\)\(1\)](#), Oct. 14, 2008, [122 Stat. 4575](#); [Pub. L. 112–199, title I, §§ 101\(a\), \(b\)\(1\)\(B\), \(2\)\(B\), \(C\), 102–104\(b\)\(1\)](#), 105, 112, Nov. 27, 2012, [126 Stat. 1465–1468](#), 1472; [Pub. L. 112–277, title V, § 505\(a\)](#), Jan. 14, 2013, [126 Stat. 2478](#); [Pub. L. 113–235, div. H, title I, § 1301\(b\)](#), Dec. 16, 2014, [128 Stat. 2537](#); [Pub. L. 114–113, div. J, title II, § 238](#), Dec. 18, 2015, [129 Stat. 2700](#); [Pub. L. 115–40, § 2](#), June 14, 2017, [131 Stat. 861](#); [Pub. L. 115–73, title I, §§ 103, 107\(a\)\(1\)](#), Oct. 26, 2017, [131 Stat. 1236](#), 1238; [Pub. L. 115–91, div. A, title X, § 1097\(b\)\(1\)\(B\)](#), (c)(1), Dec. 12, 2017, [131 Stat. 1616](#), 1618; [Pub. L. 116–92, div. E, title LVII, § 5721](#), Dec. 20, 2019, [133 Stat. 2175](#).)

5 U.S. Code Chapter 43 - PERFORMANCE APPRAISALS

5 U.S.C. 4301 - Definitions

Except as otherwise expressly provided, for the purpose of this subchapter—

(1) “[agency](#)” means—

(A) an Executive [agency](#); and

(B) the Government Publishing Office;

but does not include—

a Government corporation;

(ii) the Central Intelligence Agency, the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, the National Security [Agency](#), or any Executive [agency](#) or unit thereof which is designated by the President and the principal function of which is the conduct of foreign intelligence or counterintelligence activities; or

(iii) the Government Accountability Office;

(2) “[employee](#)” means an individual employed in or under an [agency](#), but does not include—

(A) an [employee](#) outside the United States who is paid in accordance with local native prevailing wage rates for the area in which employed;

(B) an individual in the Foreign Service of the United States;

(C) a physician, dentist, nurse, or other [employee](#) in the Veterans Health Administration of the Department of Veterans Affairs whose pay is fixed under chapter 73 of title 38;

(D) an administrative law judge appointed under [section 3105 of this title](#);

(E) an individual in the Senior Executive Service or the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service;

(F) an individual appointed by the President;

(G) an individual occupying a position not in the competitive service excluded from coverage of this subchapter by regulations of the Office of Personnel Management; or

(H) an individual who (i) is serving in a position under a temporary appointment for less than one year, (ii) agrees to serve without a performance evaluation, and (iii) will not be considered for a reappointment or for an increase in pay based in whole or in part on performance; and

(3) “[unacceptable performance](#)” means performance of an [employee](#) which fails to meet established performance standards in one or more critical elements of such [employee](#)’s position.

([Pub. L. 89–554](#), Sept. 6, 1966, [80 Stat. 440](#); [Pub. L. 91–375, § 6\(c\)\(8\)](#), Aug. 12, 1970, [84 Stat. 776](#); [Pub. L. 95–251, § 2\(a\)\(1\)](#), Mar. 27, 1978, [92 Stat. 183](#); [Pub. L. 95–454, title II, § 203\(a\)](#), Oct. 13, 1978, [92 Stat. 1131](#); [Pub. L. 100–325, § 2\(f\)](#), May 30, 1988, [102 Stat. 581](#); [Pub. L. 101–474, § 5\(e\)](#), Oct. 30, 1990, [104 Stat. 1100](#); [Pub. L. 101–510, div. A, title XII, § 1206\(e\)](#), Nov. 5, 1990, [104 Stat. 1661](#); [Pub. L. 102–54, § 13\(b\)\(2\)](#), June 13, 1991, [105 Stat. 274](#); [Pub. L. 103–359, title V, § 501\(e\)](#), Oct. 14, 1994, [108 Stat. 3429](#); [Pub. L. 104–201, div. A, title XI, § 1122\(a\)\(1\)](#), Sept. 23, 1996, [110 Stat. 2687](#); [Pub. L. 108–271, § 8\(b\)](#), July 7, 2004, [118 Stat. 814](#); [Pub. L. 110–417](#), [div. A], title IX, § 931(a)(1), Oct. 14, 2008, [122 Stat. 4575](#); [Pub. L. 113–235, div. H, title I, § 1301\(b\)](#), Dec. 16, 2014, [128 Stat. 2537](#); [Pub. L. 115–91, div. A, title X, § 1097\(d\)\(4\)](#), Dec. 12, 2017, [131 Stat. 1621](#).)

5 U.S. Code § 4302 - Establishment of performance appraisal systems

(a) Each [agency](#) shall develop one or more performance appraisal systems which—

- (1) provide for periodic appraisals of job performance of [employees](#);
- (2) encourage [employee](#) participation in establishing performance standards; and
- (3) use the results of performance appraisals as a basis for training, rewarding, reassigning, promoting, reducing in grade, retaining, and removing [employees](#).

(b) (1) The head of each [agency](#), in consultation with the Director of the Office of Personnel Management and the Special Counsel, shall develop criteria that—

(A) the head of the [agency](#) shall use as a critical element for establishing the job requirements of a [supervisory employee](#); and

(B) promote the protection of [whistleblowers](#).

(2) The criteria required under paragraph (1) shall include—

(A) principles for the protection of [whistleblowers](#), such as the degree to which [supervisory employees](#)—

- (i) respond constructively when [employees](#) of the [agency](#) make disclosures described in subparagraph (A) or (B) of section 2302(b)(8);
- (ii) take responsible actions to resolve the disclosures described in clause (i); and
- (iii) foster an environment in which [employees](#) of the [agency](#) feel comfortable making disclosures described in clause (i) to [supervisory employees](#) or other appropriate authorities; and

(B) for each [supervisory employee](#)—

- (i) whether the [agency](#) entered into an agreement with an individual who alleged that the [supervisory employee](#) committed a [prohibited personnel practice](#); and
- (ii) if the [agency](#) entered into an agreement described in clause (i), the number of instances in which the [agency](#) entered into such an agreement with respect to the [supervisory employee](#).

(3)In this subsection—

(A) the term “[agency](#)” means any entity the [employees](#) of which are covered under paragraphs (8) and (9) of section 2302(b), without regard to whether any other provision of this section is applicable to the entity;

(B) the term “[prohibited personnel practice](#)” has the meaning given the term in section 2302(a)(1);

(C) the term “[supervisory employee](#)” means an [employee](#) who would be a supervisor, as defined in section 7103(a), if the [agency](#) employing the [employee](#) was an [agency](#) for purposes of chapter 71; and

(D) the term “[whistleblower](#)” means an [employee](#) who makes a disclosure described in section 2302(b)(8).

(c)Under regulations which the Office of Personnel Management shall prescribe, each performance appraisal system shall provide for—

(1) establishing performance standards which will, to the maximum extent feasible, permit the accurate evaluation of job performance on the basis of objective criteria (which may include the extent of courtesy demonstrated to the public) related to the job in question for each [employee](#) or position under the system;

(2) as soon as practicable, but not later than October 1, 1981, with respect to initial appraisal periods, and thereafter at the beginning of each following appraisal period, communicating to each [employee](#) the performance standards and the critical elements of the [employee](#)’s position;

(3) evaluating each [employee](#) during the appraisal period on such standards;

(4) recognizing and rewarding [employees](#) whose performance so warrants;

(5) assisting [employees](#) in improving [unacceptable performance](#); and

(6) reassigning, reducing in grade, or removing [employees](#) who continue to have [unacceptable performance](#) but only after an opportunity to demonstrate acceptable performance.

(d) In accordance with regulations which the Office shall prescribe, the head of an [agency](#) may administer and maintain a performance appraisal system electronically.

([Pub. L. 89-554](#), Sept. 6, 1966, [80 Stat. 440](#); [Pub. L. 95-454](#), title II, [§ 203\(a\)](#), Oct. 13, 1978, [92 Stat. 1132](#); [Pub. L. 102-378](#), [§ 2\(18\)](#), Oct. 2, 1992, [106 Stat. 1347](#); [Pub. L. 106-398](#), [§ 1](#) [[div. A](#)], title XI, [§ 1104](#)], Oct. 30, 2000, [114 Stat. 1654](#), 1654A-311; [Pub. L. 115-91](#), div. A, title X, [§ 1097\(d\)\(1\)](#), Dec. 12, 2017, [131 Stat. 1619](#).)

5 U.S. Code 4303 - Actions based on unacceptable performance

(a) Subject to the provisions of this section, an [agency](#) may reduce in grade or remove an [employee](#) for [unacceptable performance](#).

(b) (1) An [employee](#) whose reduction in grade or removal is proposed under this section is entitled to—

(A) 30 days' advance written notice of the proposed action which identifies—

(i) specific instances of [unacceptable performance](#) by the [employee](#) on which the proposed action is based; and

(ii) the critical elements of the [employee's](#) position involved in each instance of [unacceptable performance](#);

(B) be represented by an attorney or other representative;

(C) a reasonable time to answer orally and in writing; and

(D) a written decision which—

(i) in the case of a reduction in grade or removal under this section, specifies the instances of [unacceptable performance](#) by the [employee](#) on which the reduction in grade or removal is based, and

(ii) unless proposed by the head of the [agency](#), has been concurred in by an [employee](#) who is in a higher position than the [employee](#) who proposed the action.

(2) An [agency](#) may, under regulations prescribed by the head of such [agency](#), extend the notice period under subsection (b)(1)(A) of this section for not more than 30 days. An [agency](#) may extend the notice period for more than 30 days only in accordance with regulations issued by the Office of Personnel Management.

(c) The decision to retain, reduce in grade, or remove an [employee](#)—

(1) shall be made within 30 days after the date of expiration of the notice period, and

(2) in the case of a reduction in grade or removal, may be based only on those instances of [unacceptable performance](#) by the [employee](#)—

(A) which occurred during the 1-year period ending on the date of the notice under subsection (b)(1)(A) of this section in connection with the decision; and

(B) for which the notice and other requirements of this section are complied with.

(d) 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 1 year from the date of the advance

written notice provided under subsection (b)(1)(A) of this section, any entry or other notation of the [unacceptable performance](#) for which the action was proposed under this section shall be removed from any [agency](#) record relating to the [employee](#).

(e) Any [employee](#) who is—

(1) a preference eligible;

(2) in the competitive service; or

(3) in the excepted service and covered by subchapter II of chapter 75,

and who has been reduced in grade or removed under this section is entitled to appeal the action to the Merit Systems Protection Board under section 7701.

(f) This section does not apply to—

(1) the reduction to the grade previously held of a supervisor or manager who has not completed the probationary period under [section 3321\(a\)\(2\) of this title](#),

(2) the reduction in grade or removal of an [employee](#) in the competitive service who is serving a probationary or trial period under an initial appointment or who has not completed 1 year of current continuous employment under other than a temporary appointment limited to 1 year or less,

(3) the reduction in grade or removal of an [employee](#) in the excepted service who has not completed 1 year of current continuous employment in the same or similar positions, or

(4) any removal or demotion under [section 714 of title 38](#).

([Pub. L. 89-554](#), Sept. 6, 1966, [80 Stat. 440](#); [Pub. L. 95-454](#), title II, [§ 203\(a\)](#), Oct. 13, 1978, [92 Stat. 1133](#); [Pub. L. 101-376](#), [§ 2\(b\)](#), Aug. 17, 1990, [104 Stat. 462](#); [Pub. L. 115-41](#), title II, [§ 202\(b\)\(2\)](#), June 23, 2017, [131 Stat. 873](#).)

5 U.S. Code § 4304 - Responsibilities of the Office of Personnel Management

(a) The Office of Personnel Management shall make technical assistance available to agencies in the development of performance appraisal systems.

(b)

(1) The Office shall review each performance appraisal system developed by any [agency](#) under this section and determine whether the performance appraisal system meets the requirements of this subchapter.

(2) The Comptroller General shall from time to time review on a selected basis performance appraisal systems established under this subchapter to determine the extent to which any such system meets the requirements of this subchapter and shall periodically report its findings to the Office and to the Congress.

(3) If the Office determines that a system does not meet the requirements of this subchapter (including regulations prescribed under [section 4305](#)), the Office shall direct the [agency](#) to implement an appropriate system or to correct operations under the system, and any such [agency](#) shall take any action so required.

([Pub. L. 89-554](#), Sept. 6, 1966, [80 Stat. 440](#); [Pub. L. 95-454, title II, § 203\(a\)](#), Oct. 13, 1978, [92 Stat. 1134](#).)

5 U.S. Code § 4305 - Regulations

The Office of Personnel Management may prescribe regulations to carry out the purpose of this subchapter.

([Pub. L. 89-554](#), Sept. 6, 1966, [80 Stat. 441](#); [Pub. L. 95-454, title II, § 203\(a\)](#), Oct. 13, 1978, [92 Stat. 1134](#).)

5 USC 5335. Periodic step-increases

(a) An employee paid on an annual basis, and occupying a permanent position within the scope of the General Schedule, who has not reached the maximum rate of pay for the grade in which his position is placed, shall be advanced in pay successively to the next higher rate within the grade at the beginning of the next pay period following the completion of-

- (1) each 52 calendar weeks of service in pay rates 1, 2, and 3;
- (2) each 104 calendar weeks of service in pay rates 4, 5, and 6; or
- (3) each 156 calendar weeks of service in pay rates 7, 8, and 9;

subject to the following conditions:

- (A) the employee did not receive an equivalent increase in pay from any cause during that period; and
- (B) the work of the employee is of an acceptable level of competence as determined by the head of the agency.

(b) Under regulations prescribed by the Office of Personnel Management, the benefit of successive step-increases shall be preserved for employees whose continuous service is interrupted in the public interest by service with the armed forces or by service in essential non-Government civilian employment during a period of war or national emergency.

(c) When a determination is made under subsection (a) of this section that the work of an employee is not of an acceptable level of competence, the employee is entitled to prompt written notice of that determination and an opportunity for reconsideration of the determination within his agency under uniform procedures prescribed by the Office of Personnel Management. If the determination is affirmed on reconsideration, the employee is entitled to appeal to the Merit Systems Protection Board. If the reconsideration or appeal results in a reversal of the earlier determination, the new determination supersedes the earlier determination and is deemed to have been made as of the date of the earlier determination. The authority of the Office to prescribe procedures and the entitlement of the employee to appeal to the Board do not apply to a determination of acceptable level of competence made by the Librarian of Congress.

(d) An increase in pay granted by statute is not an equivalent increase in pay within the meaning of subsection (a) of this section.

(e) This section does not apply to the pay of an individual appointed by the President, by and with the advice and consent of the Senate.

(f) In computing periods of service under subsection (a) in the case of an employee who moves without a break in service of more than 3 days from a position under a nonappropriated fund instrumentality of

the Department of Defense or the Coast Guard described in section 2105(c) to a position under the Department of Defense or the Coast Guard, respectively, that is subject to this subchapter, service under such instrumentality shall, under regulations prescribed by the Office, be deemed service in a position subject to this subchapter.

([Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 469](#) ; [Pub. L. 90–83, §1\(20\), Sept. 11, 1967, 81 Stat. 199](#) ; [Pub. L. 95–251, §2\(a\)\(1\), Mar. 27, 1978, 92 Stat. 183](#) ; [Pub. L. 95–454, title V, §503\(g\), title IX, §906\(a\)\(2\), \(8\), Oct. 13, 1978, 92 Stat. 1184](#) , [1224](#) , [1225](#) ; [Pub. L. 96–54, §2\(a\)\(28\), Aug. 14, 1979, 93 Stat. 383](#) ; [Pub. L. 98–615, title II, §§203, 204\(a\)\(1\), Nov. 8, 1984, 98 Stat. 3216](#) ; [Pub. L. 101–508, title VII, §7202\(e\), Nov. 5, 1990, 104 Stat. 1388–336](#) ; [Pub. L. 101–509, title V, §529 \[title I, §104\(d\)\(2\)\], Nov. 5, 1990, 104 Stat. 1427](#) , [1447](#) ; [Pub. L. 103–89, §3\(b\)\(1\)\(H\), Sept. 30, 1993, 107 Stat. 982](#) .)

Historical and Revision Notes

1966 Act

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(a)–(c)	5 U.S.C. 1121.	Oct. 11, 1962, Pub. L. 87–793, §603 "Sec. 701", 76 Stat. 847 .
(d)	5 U.S.C. 1123 (as applicable to 5 U.S.C. 1121).	Oct. 11, 1962, Pub. L. 87–793, §603 "Sec. 703 (as applicable to §701)", 76 Stat. 847 .

In subsection (a), the words "General Schedule" are substituted for "compensation schedules fixed by this chapter" since the General Schedule is now the only compensation schedule in that chapter. The word "scheduled" is omitted since section 603 of the Act of Oct. 11, 1962, [Pub. L. 87–793, 76 Stat. 847](#) , eliminated the necessity of referring to rates as scheduled or longevity.

In subsection (a)(B), the words "except a hearing examiner appointed under section 3105 of this title" are added on authority of the third sentence of former section 1010 and the fifth sentence of former section 1011, which are carried into sections 5362 and 559, respectively, and of section 1106(a) of the Act of [Oct. 28, 1949, ch. 782, 63 Stat. 972](#) .

Title VII (sections 701–705) of the Act of [Oct. 28, 1949, ch. 782, 63 Stat. 967–969](#) , as amended by the following Acts is omitted from the derivation and repealed (see Table II) as superseded by the Act of Oct. 11, 1962, [Pub. L. 87–793, §603, 76 Stat. 847](#) , which is carried into this section and section 5336:

[June 28, 1950, ch. 382, §2, 64 Stat. 262](#) .

[Sept. 30, 1950, ch. 1123, §§9, 10, 64 Stat. 1100](#) .

[Oct. 24, 1951, ch. 554, §1\(e\), 65 Stat. 613](#) .

[Sept. 1, 1954, ch. 1208, §§102\(a\), 103\(a\), 112 \(less applicability to §802\(b\)\), 305\(a\), 68 Stat. 1105](#) , [1108](#) , [1113](#) .

[June 28, 1955, ch. 189, §2\(e\), 69 Stat. 175.](#)

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 Act

Section of title 5 Source (U.S. Code)

Source (Statutes at Large)

5335(c)	5 App.: 1121(c).	Oct. 29, 1965, Pub. L. 89-301, §3, 79 Stat. 1112 .

The word "officer" is omitted as included in "employee", and the word "agency" is substituted for "department" to conform to the definition in 5 U.S.C. 5331.

Editorial Notes

References in Text

The General Schedule, referred to in subsec. (a), is set out under section 5332 of this title.

Amendments

1993-Subsec. (e). Pub. L. 103-89, §3(b)(1)(H)(i), struck out "covered by the performance management and recognition system established under chapter 54 of this title, or," after "individual".

Subsecs. (f), (g). Pub. L. 103-89, §3(b)(1)(H)(ii), redesignated subsec. (g) as (f) and struck out former subsec. (f) which read as follows: "Notwithstanding subsection (b) or (e) of this section, an increase in pay granted under section 5404 of this title is an equivalent increase in pay within the meaning of subsection (a) of this section and shall be taken into account in the case of any employee who, before becoming subject to this section, was granted such an increase while covered by the performance management and recognition system established under chapter 54 of this title."

1990-Subsec. (a)(B). Pub. L. 101-509 struck out ", except an administrative law judge appointed under section 3105 of this title," after "work of the employee".

Subsec. (g). Pub. L. 101-508 added subsec. (g).

1984-Subsec. (e). Pub. L. 98-615, §204(a)(1), substituted "the performance management and recognition system established under chapter 54" for "the merit pay system established under section 5402".

Subsec. (f). Pub. L. 98-615, §203, added subsec. (f).

1979-Subsec. (a)(3)(B). Pub. L. 96-54 substituted "an administrative law judge" for "a administrative law judge".

1978-Subsec. (a). Pub. L. 95-251 substituted "administrative law judge" for "hearing examiner".

Subsec. (b). Pub. L. 95–454, §906(a)(2), substituted "Office of Personnel Management" for "Civil Service Commission".

Subsec. (c). Pub. L. 95–454, §906(a)(8), substituted references to Office of Personnel Management and Merit Systems Protection Board and Office and Board, respectively, for references to Civil Service Commission wherever appearing in text.

Subsec. (e). Pub. L. 95–454, §503(g), inserted reference to merit pay system established under section 5402 of this title.

Statutory Notes and Related Subsidiaries

Effective Date of 1993 Amendment

Amendment by Pub. L. 103–89 effective Nov. 1, 1993, see section 3(c) of Pub. L. 103–89, set out as a note under section 3372 of this title.

Effective Date of 1990 Amendments

Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, §305] of Pub. L. 101–509, set out as a note under section 5301 of this title.

Amendment by Pub. L. 101–508 applicable with respect to any individual who, on or after Jan. 1, 1987, moves from employment in nonappropriated fund instrumentality of Department of Defense or Coast Guard, that is described in section 2105(c) of this title, to employment in Department or Coast Guard, that is not described in section 2105(c), or who moves from employment in Department or Coast Guard, that is not described in section 2105(c), to employment in nonappropriated fund instrumentality of Department or Coast Guard, that is described in section 2105(c), see section 7202(m)(1) of Pub. L. 101–508, set out as a note under section 2105 of this title.

Effective Date of 1984 Amendment

[Pub. L. 98–615, title II, §205, Nov. 8, 1984, 98 Stat. 3217](#), provided that amendment by Pub. L. 98–615 was effective Oct. 1, 1984, and applicable with respect to pay periods commencing on or after that date, with certain exceptions and qualifications.

Effective Date of 1979 Amendment

Amendment by Pub. L. 96–54 effective July 12, 1979, see section 2(b) of Pub. L. 96–54, set out as a note under section 305 of this title.

Effective Date of 1978 Amendment

[Pub. L. 95–454, title V, §504\(a\), Oct. 13, 1978, 92 Stat. 1184](#), provided that amendment by section 503(g) of Pub. L. 95–454 was effective on first day of first applicable pay period which began on or after Oct. 1, 1981, except it could take effect with respect to any category or categories of positions before such day to extent prescribed by Director of Office of Personnel Management.

Amendment by section 906(a)(2), (8) of Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

Transfer of Functions

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Delay of Periodic Step Increase for Civilian Employees of the Department of Defense Based Upon Unacceptable Performance

[Pub. L. 114–92, div. A, title XI, §1106, Nov. 25, 2015, 129 Stat. 1024](#), provided that:

"(a) Delay.-Under procedures established by the Secretary of Defense, upon a determination by the Secretary that the work of an employee is not at an acceptable level of competence, the period of time during which the work of the employee is not at an acceptable level of competence shall not count toward completion of the period of service required for purposes of subsection (a) of section 5335 of title 5, United States Code, or subsection (e)(1) or (e)(2) of section 5343 of such title.

"(b) Applicability to Periods of Service.-Subsection (a) shall not apply with respect to any period of service performed before the date of the enactment of this Act [Nov. 25, 2015]."

Pay Increases Deemed Equivalent Increases in Pay

[Pub. L. 103–89, §5\(a\), Sept. 30, 1993, 107 Stat. 984](#), provided that: "Notwithstanding the amendment made by section 3(b)(1)(H)(ii) [amending this section], an increase in pay granted under section 5404 of title 5, United States Code, before November 1, 1993, shall be deemed to be an equivalent increase in pay within the meaning of section 5335(a) of such title."

5 USC CHAPTER 47—PERSONNEL RESEARCH PROGRAMS AND DEMONSTRATION PROJECTS

Sec.

4701. Definitions.

4702. Research programs.

4703. Demonstration projects.

4704. Allocation of funds.

4705. Regulations.

[4706. Renumbered.]

EDITORIAL NOTES

AMENDMENTS

1998—[Pub. L. 105–362, title XIII, §1302\(b\)\(2\)\(B\)\(ii\), Nov. 10, 1998, 112 Stat. 3293](#), added item 4705 and struck out former items 4705 "Reports" and 4706 "Regulations".

§4701. Definitions

(a) For the purpose of this chapter—

(1) "agency" means an Executive agency and the Government Publishing Office, but does not include—

(A) a Government corporation;

(B) the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, the National Security Agency, and, as determined by the President, any Executive agency or unit thereof which is designated by the President and which has as its principal function the conduct of foreign intelligence or counterintelligence activities; or

(C) the Government Accountability Office;

(2) "employee" means an individual employed in or under an agency;

(3) "eligible" means an individual who has qualified for appointment in an agency and whose name has been entered on the appropriate register or list of eligibles;

(4) "demonstration project" means a project conducted by the Office of Personnel Management, or under its supervision, to determine whether a specified change in personnel management policies or procedures would result in improved Federal personnel management; and

(5) "research program" means a planned study of the manner in which public management policies and systems are operating, the effects of those policies and systems, the possibilities for change, and comparisons among policies and systems.

(b) This chapter shall not apply to any position in the Drug Enforcement Administration which is excluded from the competitive service under section 201 of the Crime Control Act of 1976 (28 U.S.C. 509 note; 90 Stat. 2425).

(Added [Pub. L. 95–454, title VI, §601\(a\), Oct. 13, 1978, 92 Stat. 1185](#); amended [Pub. L. 96–54, §2\(a\)\(21\), Aug. 14, 1979, 93 Stat. 382](#); [Pub. L. 101–474, §5\(g\), Oct. 30, 1990, 104 Stat. 1100](#); [Pub. L. 103–359, title V, §501\(f\), Oct. 14, 1994, 108 Stat. 3429](#); [Pub. L. 104–201, div. A, title XI, §1122\(a\)\(1\), Sept. 23, 1996, 110 Stat. 2687](#); [Pub. L. 108–271, §8\(b\), July 7, 2004, 118](#)

[Stat. 814; Pub. L. 110–417, \[div. A\], title IX, §931\(a\)\(1\), Oct. 14, 2008, 122 Stat. 4575; Pub. L. 113–235, div. H, title I, §1301\(b\), Dec. 16, 2014, 128 Stat. 2537.\)](#)

EDITORIAL NOTES

AMENDMENTS

2008—Subsec. (a)(1)(B). Pub. L. 110–417 substituted "National Geospatial-Intelligence Agency" for "National Imagery and Mapping Agency".

2004—Subsec. (a)(1)(C). Pub. L. 108–271 substituted "Government Accountability Office" for "General Accounting Office".

1996—Subsec. (a)(1)(B). Pub. L. 104–201 substituted "National Imagery and Mapping Agency" for "Central Imagery Office".

1994—Subsec. (a)(1)(B). Pub. L. 103–359 inserted "the Central Imagery Office," after "Defense Intelligence Agency,".

1990—Subsec. (a)(1). Pub. L. 101–474 struck out ", the Administrative Office of the United States Courts," after "means an Executive agency".

1979—Subsec. (b). Pub. L. 96–54 substituted "chapter" for "subchapter" and "28 U.S.C. 509" for "5 U.S.C. 5108".

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

"Government Publishing Office" substituted for "Government Printing Office" in subsec. (a)(1) on authority of section 1301(b) of Pub. L. 113–235, set out as a note preceding section 301 of Title 44, Public Printing and Documents.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective Oct. 1, 1996, see section 1124 of Pub. L. 104–201, set out as a note under section 193 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–54 effective July 12, 1979, see section 2(b) of Pub. L. 96–54, set out as a note under section 305 of this title.

EFFECTIVE DATE

Section effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

DESIGN ELEMENTS OF PAY-FOR-PERFORMANCE SYSTEMS IN DEMONSTRATION PROJECTS

[Pub. L. 108–136, div. A, title XI, §1126, Nov. 24, 2003, 117 Stat. 1640](#), provided that: "A pay-for-performance system may not be initiated under chapter 47 of title 5, United States Code,

after the date of the enactment of this Act [Nov. 24, 2003], unless it incorporates the following elements:

"(1) Adherence to merit principles set forth in section 2301 of such title.

"(2) A fair, credible, and transparent employee performance appraisal system.

"(3) A link between elements of the pay-for-performance system, the employee performance appraisal system, and the agency's strategic plan.

"(4) A means for ensuring employee involvement in the design and implementation of the system.

"(5) Adequate training and retraining for supervisors, managers, and employees in the implementation and operation of the pay-for-performance system.

"(6) A process for ensuring ongoing performance feedback and dialogue between supervisors, managers, and employees throughout the appraisal period, and setting timetables for review.

"(7) Effective safeguards to ensure that the management of the system is fair and equitable and based on employee performance.

"(8) A means for ensuring that adequate agency resources are allocated for the design, implementation, and administration of the pay-for-performance system."

§4702. Research programs

The Office of Personnel Management shall—

(1) establish and maintain (and assist in the establishment and maintenance of) research programs to study improved methods and technologies in Federal personnel management;

(2) evaluate the research programs established under paragraph (1) of this section;

(3) establish and maintain a program for the collection and public dissemination of information relating to personnel management research and for encouraging and facilitating the exchange of information among interested persons and entities; and

(4) carry out the preceding functions directly or through agreement or contract.

(Added [Pub. L. 95–454, title VI, §601\(a\), Oct. 13, 1978, 92 Stat. 1185.](#))

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§4703. Demonstration projects

(a) Except as provided in this section, the Office of Personnel Management may, directly or through agreement or contract with one or more agencies and other public and private organizations, conduct and evaluate demonstration projects. Subject to the provisions of this section, the conducting of demonstration projects shall not be limited by any lack of specific authority under this title to take the action contemplated, or by any provision of this title or any

rule or regulation prescribed under this title which is inconsistent with the action, including any law or regulation relating to—

- (1) the methods of establishing qualification requirements for, recruitment for, and appointment to positions;
- (2) the methods of classifying positions and compensating employees;
- (3) the methods of assigning, reassigning, or promoting employees;
- (4) the methods of disciplining employees;
- (5) the methods of providing incentives to employees, including the provision of group or individual incentive bonuses or pay;
- (6) the hours of work per day or per week;
- (7) the methods of involving employees, labor organizations, and employee organizations in personnel decisions; and
- (8) the methods of reducing overall agency staff and grade levels.

(b) Before conducting or entering into any agreement or contract to conduct a demonstration project, the Office shall—

- (1) develop a plan for such project which identifies—
 - (A) the purposes of the project;
 - (B) the types of employees or eligibles, categorized by occupational series, grade, or organizational unit;
 - (C) the number of employees or eligibles to be included, in the aggregate and by category;
 - (D) the methodology;
 - (E) the duration;
 - (F) the training to be provided;
 - (G) the anticipated costs;
 - (H) the methodology and criteria for evaluation;
 - (I) a specific description of any aspect of the project for which there is a lack of specific authority; and
 - (J) a specific citation to any provision of law, rule, or regulation which, if not waived under this section, would prohibit the conducting of the project, or any part of the project as proposed;

- (2) publish the plan in the Federal Register;
- (3) submit the plan so published to public hearing;
- (4) provide notification of the proposed project, at least 180 days in advance of the date any project proposed under this section is to take effect—
 - (A) to employees who are likely to be affected by the project; and
 - (B) to each House of the Congress;

- (5) obtain approval from each agency involved of the final version of the plan; and
- (6) provide each House of the Congress with a report at least 90 days in advance of the date the project is to take effect setting forth the final version of the plan as so approved.

(c) No demonstration project under this section may provide for a waiver of—

- (1) any provision of chapter 63 or subpart G of this title;

(2)(A) any provision of law referred to in section 2302(b)(1) of this title; or
 (B) any provision of law implementing any provision of law referred to in section 2302(b)(1) of this title by—

- (i) providing for equal employment opportunity through affirmative action; or
- (ii) providing any right or remedy available to any employee or applicant for employment in the civil service;

(3) any provision of chapter 15 or subchapter III of chapter 73 of this title;

(4) any rule or regulation prescribed under any provision of law referred to in paragraph (1), (2), or (3) of this subsection; or

(5) any provision of chapter 23 of this title, or any rule or regulation prescribed under this title, if such waiver is inconsistent with any merit system principle or any provision thereof relating to prohibited personnel practices.

(d)(1) Each demonstration project shall—

(A) involve not more than 5,000 individuals other than individuals in any control groups necessary to validate the results of the project; and

(B) terminate before the end of the 5-year period beginning on the date on which the project takes effect, except that the project may continue beyond the date to the extent necessary to validate the results of the project.

(2)(A) Except as provided in subparagraph (B), not more than 10 active demonstration projects may be in effect at any time.

(B) Any demonstration project authorized under this section that is active for a period greater than 10 years shall not count for purposes of applying the limitation in subparagraph (A).

(e) Subject to the terms of any written agreement or contract between the Office and an agency, a demonstration project involving the agency may be terminated by the Office, or the agency, if either determines that the project creates a substantial hardship on, or is not in the best interests of, the public, the Federal Government, employees, or eligibles.

(f) Employees within a unit with respect to which a labor organization is accorded exclusive recognition under chapter 71 of this title shall not be included within any project under subsection (a) of this section—

(1) if the project would violate a collective bargaining agreement (as defined in section 7103(8) of this title) between the agency and the labor organization, unless there is another written agreement with respect to the project between the agency and the organization permitting the inclusion; or

(2) if the project is not covered by such a collective bargaining agreement, until there has been consultation or negotiation, as appropriate, by the agency with the labor organization.

(g) Employees within any unit with respect to which a labor organization has not been accorded exclusive recognition under chapter 71 of this title shall not be included within any project under subsection (a) of this section unless there has been agency consultation regarding the project with the employees in the unit.

(h) The Office shall provide for an evaluation of the results of each demonstration project and its impact on improving public management.

(i) Upon request of the Director of the Office of Personnel Management, agencies shall cooperate with and assist the Office, to the extent practicable, in any evaluation undertaken under subsection (h) of this section and provide the Office with requested information and reports relating to the conducting of demonstration projects in their respective agencies.

(j) Each agency at which a demonstration project authorized by this section is ongoing shall submit an annual report to the Office of Personnel Management, the Office and ¹ Management and Budget, the Committee on Homeland Security and Governmental Affairs of the United States Senate, and the Committee on Oversight and Government Reform of the United States House of Representatives that includes—

(1) the aggregate performance appraisal ratings and compensation costs for employees under a demonstration project;

(2) an assessment of the results of the demonstration project, including its impact on mission goals, employee recruitment, retention, and satisfaction, and which may include the results of the survey authorized under section 1128 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 5 U.S.C. 7101 note), commonly referred to as the Federal Employee Viewpoint Survey, and performance management for employees; and

(3) a comparison of the items listed in (1) and (2) with employees not covered by the demonstration project.

(Added [Pub. L. 95–454, title VI, §601\(a\), Oct. 13, 1978, 92 Stat. 1186](#); amended [Pub. L. 115–232, div. A, title XI, §1106, Aug. 13, 2018, 132 Stat. 2001](#).)

EDITORIAL NOTES

AMENDMENTS

2018—Subsec. (d)(2). Pub. L. 115–232, §1106(1), added par. (2) and struck out former par. (2) which read as follows: "Not more than 10 active demonstration projects may be in effect at any time."

Subsec. (j). Pub. L. 115–232, §1106(2), added subsec. (j).

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Oversight and Government Reform of House of Representatives changed to Committee on Oversight and Reform of House of Representatives by House Resolution No. 6, One Hundred Sixteenth Congress, Jan. 9, 2019. Committee on Oversight and Reform of House of Representatives changed to Committee on Oversight and Accountability of House of Representatives by House Resolution No. 5, One Hundred Eighteenth Congress, Jan. 9, 2023.

EFFECTIVE DATE

Section effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

AUTHORITY OF EXPORT-IMPORT BANK TO CONDUCT DEMONSTRATION PROGRAM

[Pub. L. 104–97, §2, Jan. 11, 1996, 109 Stat. 984](#), provided that: "Notwithstanding section 4701(a)(1)(A) of title 5, United States Code, the Export-Import Bank of the United States may conduct a demonstration project in accordance with section 4703 of such title."

¹ *So in original. Probably should be "of".*

§4704. Allocation of funds

Funds appropriated to the Office of Personnel Management for the purpose of this chapter may be allocated by the Office to any agency conducting demonstration projects or assisting the Office in conducting such projects. Funds so allocated shall remain available for such period as may be specified in appropriation Acts. No contract shall be entered into under this chapter unless the contract has been provided for in advance in appropriation Acts.

(Added [Pub. L. 95–454, title VI, §601\(a\), Oct. 13, 1978, 92 Stat. 1188](#).)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§4705. Regulations

The Office of Personnel Management shall prescribe regulations to carry out the purpose of this chapter.

(Added [Pub. L. 95–454, title VI, §601\(a\), Oct. 13, 1978, 92 Stat. 1188](#), §4706; renumbered §4705, [Pub. L. 105–362, title XIII, §1302\(b\)\(2\)\(B\)\(i\), Nov. 10, 1998, 112 Stat. 3293](#).)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 4705, added [Pub. L. 95–454, title VI, §601\(a\), Oct. 13, 1978, 92 Stat. 1188](#), required annual report on research programs and demonstration projects, prior to repeal by [Pub. L. 105–362, title XIII, §1302\(b\)\(2\)\(B\)\(i\), Nov. 10, 1998, 112 Stat. 3293](#).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

5 USC 552. Public information; agency rules, opinions, orders, records, and proceedings

(a) Each agency shall make available to the public information as follows:

(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public-

(A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(E) each amendment, revision, or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

(2) Each agency, in accordance with published rules, shall make available for public inspection and copying-

(A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register;

(C) administrative staff manuals and instructions to staff that affect a member of the public;

(D) copies of all records, regardless of form or format, which have been released to any person under paragraph (3) and which, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records; and

(E) a general index of the records referred to under subparagraph (D);

unless the materials are promptly published and copies offered for sale. For records created on or after November 1, 1996, within one year after such date, each agency shall make such records available, including by computer telecommunications or, if computer telecommunications means have not been established by the agency, by other electronic means. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion,

statement of policy, interpretation, staff manual, instruction, or copies of records referred to in subparagraph (D). However, in each case the justification for the deletion shall be explained fully in writing, and the extent of such deletion shall be indicated on the portion of the record which is made available or published, unless including that indication would harm an interest protected by the exemption in subsection (b) under which the deletion is made. If technically feasible, the extent of the deletion shall be indicated at the place in the record where the deletion was made. Each agency shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available or published. Each agency shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the Federal Register that the publication would be unnecessary and impracticable, in which case the agency shall nonetheless provide copies of such index on request at a cost not to exceed the direct cost of duplication. Each agency shall make the index referred to in subparagraph (E) available by computer telecommunications by December 31, 1999. A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent by an agency against a party other than an agency only if-

- (i) it has been indexed and either made available or published as provided by this paragraph; or
- (ii) the party has actual and timely notice of the terms thereof.

(3)(A) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, and except as provided in subparagraph (E), each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.

(B) In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format. Each agency shall make reasonable efforts to maintain its records in forms or formats that are reproducible for purposes of this section.

(C) In responding under this paragraph to a request for records, an agency shall make reasonable efforts to search for the records in electronic form or format, except when such efforts would significantly interfere with the operation of the agency's automated information system.

(D) For purposes of this paragraph, the term "search" means to review, manually or by automated means, agency records for the purpose of locating those records which are responsive to a request.

(E) An agency, or part of an agency, that is an element of the intelligence community (as that term is defined in section 3(4) of the National Security Act of 1947 ([50 U.S.C. 401a\(4\)](#))) shall not make any record available under this paragraph to-

- (i) any government entity, other than a State, territory, commonwealth, or district of the United States, or any subdivision thereof; or
- (ii) a representative of a government entity described in clause (i).

(4)(A)(i) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under this section and establishing procedures and guidelines for determining when such fees should be waived or reduced. Such schedule shall

conform to the guidelines which shall be promulgated, pursuant to notice and receipt of public comment, by the Director of the Office of Management and Budget and which shall provide for a uniform schedule of fees for all agencies.

(ii) Such agency regulations shall provide that-

(I) fees shall be limited to reasonable standard charges for document search, duplication, and review, when records are requested for commercial use;

(II) fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media; and

(III) for any request not described in (I) or (II), fees shall be limited to reasonable standard charges for document search and duplication.

In this clause, the term "a representative of the news media" means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. In this clause, the term "news" means information that is about current events or that would be of current interest to the public. Examples of news-media entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of "news") who make their products available for purchase by or subscription by or free distribution to the general public. These examples are not all-inclusive. Moreover, as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news-media entities. A freelance journalist shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would present a solid basis for such an expectation; the Government may also consider the past publication record of the requester in making such a determination.

(iii) Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(iv) Fee schedules shall provide for the recovery of only the direct costs of search, duplication, or review. Review costs shall include only the direct costs incurred during the initial examination of a document for the purposes of determining whether the documents must be disclosed under this section and for the purposes of withholding any portions exempt from disclosure under this section. Review costs may not include any costs incurred in resolving issues of law or policy that may be raised in the course of processing a request under this section. No fee may be charged by any agency under this section-

(I) if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee; or

(II) for any request described in clause (ii) (II) or (III) of this subparagraph for the first two hours of search time or for the first one hundred pages of duplication.

(v) No agency may require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed \$250.

(vi) Nothing in this subparagraph shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records.

(vii) In any action by a requester regarding the waiver of fees under this section, the court shall determine the matter de novo: *Provided*, That the court's review of the matter shall be limited to the record before the agency.

(viii) An agency shall not assess search fees (or in the case of a requester described under clause (ii)(II), duplication fees) under this subparagraph if the agency fails to comply with any time limit under paragraph (6), if no unusual or exceptional circumstances (as those terms are defined for purposes of paragraphs (6)(B) and (C), respectively) apply to the processing of the request.

(B) On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action. In addition to any other matters to which a court accords substantial weight, a court shall accord substantial weight to an affidavit of an agency concerning the agency's determination as to technical feasibility under paragraph (2)(C) and subsection (b) and reproducibility under paragraph (3)(B).

(C) Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within thirty days after service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause shown.

[(D) Repealed. [Pub. L. 98-620, title IV, §402\(2\), Nov. 8, 1984, 98 Stat. 3357 .](#)]

(E)(i) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

(ii) For purposes of this subparagraph, a complainant has substantially prevailed if the complainant has obtained relief through either-

(I) a judicial order, or an enforceable written agreement or consent decree; or

(II) a voluntary or unilateral change in position by the agency, if the complainant's claim is not insubstantial.

(F)(i) Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Special Counsel, after investigation and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Special Counsel recommends.

(ii) The Attorney General shall-

(I) notify the Special Counsel of each civil action described under the first sentence of clause (i); and

(II) annually submit a report to Congress on the number of such civil actions in the preceding year.

(iii) The Special Counsel shall annually submit a report to Congress on the actions taken by the Special Counsel under clause (i).

(G) In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member.

(5) Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding.

(6)(A) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall-

(i) determine within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination; and

(ii) make a determination with respect to any appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. If on appeal the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under paragraph (4) of this subsection.

The 20-day period under clause (i) shall commence on the date on which the request is first received by the appropriate component of the agency, but in any event not later than ten days after the request is first received by any component of the agency that is designated in the agency's regulations under this section to receive requests under this section. The 20-day period shall not be tolled by the agency except-

(I) that the agency may make one request to the requester for information and toll the 20-day period while it is awaiting such information that it has reasonably requested from the requester under this section; or

(II) if necessary to clarify with the requester issues regarding fee assessment. In either case, the agency's receipt of the requester's response to the agency's request for information or clarification ends the tolling period.

(B)(i) In unusual circumstances as specified in this subparagraph, the time limits prescribed in either clause (i) or clause (ii) of subparagraph (A) may be extended by written notice to the person making such request setting forth the unusual circumstances for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days, except as provided in clause (ii) of this subparagraph.

(ii) With respect to a request for which a written notice under clause (i) extends the time limits prescribed under clause (i) of subparagraph (A), the agency shall notify the person making the request if the request cannot be processed within the time limit specified in that clause and shall provide the person an opportunity to limit the scope of the request so that it may be processed within that time limit or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request. To aid the requester, each agency shall make available its FOIA Public Liaison, who shall assist in the resolution of any disputes between the requester and the agency. Refusal by the person to reasonably modify the request or arrange

such an alternative time frame shall be considered as a factor in determining whether exceptional circumstances exist for purposes of subparagraph (C).

(iii) As used in this subparagraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular requests-

(I) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(II) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(III) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(iv) Each agency may promulgate regulations, pursuant to notice and receipt of public comment, providing for the aggregation of certain requests by the same requestor, or by a group of requestors acting in concert, if the agency reasonably believes that such requests actually constitute a single request, which would otherwise satisfy the unusual circumstances specified in this subparagraph, and the requests involve clearly related matters. Multiple requests involving unrelated matters shall not be aggregated.

(C)(i) Any person making a request to any agency for records under paragraph (1), (2), or (3) of this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph. If the Government can show exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records. Upon any determination by an agency to comply with a request for records, the records shall be made promptly available to such person making such request. Any notification of denial of any request for records under this subsection shall set forth the names and titles or positions of each person responsible for the denial of such request.

(ii) For purposes of this subparagraph, the term "exceptional circumstances" does not include a delay that results from a predictable agency workload of requests under this section, unless the agency demonstrates reasonable progress in reducing its backlog of pending requests.

(iii) Refusal by a person to reasonably modify the scope of a request or arrange an alternative time frame for processing a request (or a modified request) under clause (ii) after being given an opportunity to do so by the agency to whom the person made the request shall be considered as a factor in determining whether exceptional circumstances exist for purposes of this subparagraph.

(D)(i) Each agency may promulgate regulations, pursuant to notice and receipt of public comment, providing for multitrack processing of requests for records based on the amount of work or time (or both) involved in processing requests.

(ii) Regulations under this subparagraph may provide a person making a request that does not qualify for the fastest multitrack processing an opportunity to limit the scope of the request in order to qualify for faster processing.

(iii) This subparagraph shall not be considered to affect the requirement under subparagraph (C) to exercise due diligence.

(E)(i) Each agency shall promulgate regulations, pursuant to notice and receipt of public comment, providing for expedited processing of requests for records-

(I) in cases in which the person requesting the records demonstrates a compelling need; and

(II) in other cases determined by the agency.

(ii) Notwithstanding clause (i), regulations under this subparagraph must ensure-

(I) that a determination of whether to provide expedited processing shall be made, and notice of the determination shall be provided to the person making the request, within 10 days after the date of the request; and

(II) expeditious consideration of administrative appeals of such determinations of whether to provide expedited processing.

(iii) An agency shall process as soon as practicable any request for records to which the agency has granted expedited processing under this subparagraph. Agency action to deny or affirm denial of a request for expedited processing pursuant to this subparagraph, and failure by an agency to respond in a timely manner to such a request shall be subject to judicial review under paragraph (4), except that the judicial review shall be based on the record before the agency at the time of the determination.

(iv) A district court of the United States shall not have jurisdiction to review an agency denial of expedited processing of a request for records after the agency has provided a complete response to the request.

(v) For purposes of this subparagraph, the term "compelling need" means-

(I) that a failure to obtain requested records on an expedited basis under this paragraph could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(II) with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.

(vi) A demonstration of a compelling need by a person making a request for expedited processing shall be made by a statement certified by such person to be true and correct to the best of such person's knowledge and belief.

(F) In denying a request for records, in whole or in part, an agency shall make a reasonable effort to estimate the volume of any requested matter the provision of which is denied, and shall provide any such estimate to the person making the request, unless providing such estimate would harm an interest protected by the exemption in subsection (b) pursuant to which the denial is made.

(7) Each agency shall-

(A) establish a system to assign an individualized tracking number for each request received that will take longer than ten days to process and provide to each person making a request the tracking number assigned to the request; and

(B) establish a telephone line or Internet service that provides information about the status of a request to the person making the request using the assigned tracking number, including-

(i) the date on which the agency originally received the request; and

(ii) an estimated date on which the agency will complete action on the request.

(b) This section does not apply to matters that are-

(1)(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

(2) related solely to the internal personnel rules and practices of an agency;
 (3) specifically exempted from disclosure by statute (other than [section 552b of this title](#)), if that statute-

(A)(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld; and

(B) if enacted after the date of enactment of the OPEN FOIA Act of 2009, specifically cites to this paragraph.

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;

(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) geological and geophysical information and data, including maps, concerning wells.

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection. The amount of information deleted, and the exemption under which the deletion is made, shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption in this subsection under which the deletion is made. If technically feasible, the amount of the information deleted, and the exemption under which the deletion is made, shall be indicated at the place in the record where such deletion is made.

(c)(1) Whenever a request is made which involves access to records described in subsection (b)(7)(A) and-

(A) the investigation or proceeding involves a possible violation of criminal law; and

(B) there is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, and (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings,

the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

(2) Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

(3) Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, or international terrorism, and the existence of the records is classified information as provided in subsection (b)(1), the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of this section.

(d) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

(e)(1) On or before February 1 of each year, each agency shall submit to the Attorney General of the United States a report which shall cover the preceding fiscal year and which shall include-

(A) the number of determinations made by the agency not to comply with requests for records made to such agency under subsection (a) and the reasons for each such determination;

(B)(i) the number of appeals made by persons under subsection (a)(6), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information; and

(ii) a complete list of all statutes that the agency relies upon to authorize the agency to withhold information under subsection (b)(3), the number of occasions on which each statute was relied upon, a description of whether a court has upheld the decision of the agency to withhold information under each such statute, and a concise description of the scope of any information withheld;

(C) the number of requests for records pending before the agency as of September 30 of the preceding year, and the median and average number of days that such requests had been pending before the agency as of that date;

(D) the number of requests for records received by the agency and the number of requests which the agency processed;

(E) the median number of days taken by the agency to process different types of requests, based on the date on which the requests were received by the agency;

(F) the average number of days for the agency to respond to a request beginning on the date on which the request was received by the agency, the median number of days for the agency to respond to such requests, and the range in number of days for the agency to respond to such requests;

(G) based on the number of business days that have elapsed since each request was originally received by the agency-

(i) the number of requests for records to which the agency has responded with a determination within a period up to and including 20 days, and in 20-day increments up to and including 200 days;

(ii) the number of requests for records to which the agency has responded with a determination within a period greater than 200 days and less than 301 days;

(iii) the number of requests for records to which the agency has responded with a determination within a period greater than 300 days and less than 401 days; and

(iv) the number of requests for records to which the agency has responded with a determination within a period greater than 400 days;

(H) the average number of days for the agency to provide the granted information beginning on the date on which the request was originally filed, the median number of days for the agency to provide the granted information, and the range in number of days for the agency to provide the granted information;

(I) the median and average number of days for the agency to respond to administrative appeals based on the date on which the appeals originally were received by the agency, the highest number of business days taken by the agency to respond to an administrative appeal, and the lowest number of business days taken by the agency to respond to an administrative appeal;

(J) data on the 10 active requests with the earliest filing dates pending at each agency, including the amount of time that has elapsed since each request was originally received by the agency;

(K) data on the 10 active administrative appeals with the earliest filing dates pending before the agency as of September 30 of the preceding year, including the number of business days that have elapsed since the requests were originally received by the agency;

(L) the number of expedited review requests that are granted and denied, the average and median number of days for adjudicating expedited review requests, and the number adjudicated within the required 10 days;

(M) the number of fee waiver requests that are granted and denied, and the average and median number of days for adjudicating fee waiver determinations;

(N) the total amount of fees collected by the agency for processing requests; and

(O) the number of full-time staff of the agency devoted to processing requests for records under this section, and the total amount expended by the agency for processing such requests.

(2) Information in each report submitted under paragraph (1) shall be expressed in terms of each principal component of the agency and for the agency overall.

(3) Each agency shall make each such report available to the public including by computer telecommunications, or if computer telecommunications means have not been established by the agency, by other electronic means. In addition, each agency shall make the raw statistical data used in its reports available electronically to the public upon request.

(4) The Attorney General of the United States shall make each report which has been made available by electronic means available at a single electronic access point. The Attorney General of the United States shall notify the Chairman and ranking minority member of the Committee on Government Reform and Oversight of the House of Representatives and the Chairman and ranking minority member of the Committees on Governmental Affairs and the Judiciary of the Senate, no later than April 1 of the year in which each such report is issued, that such reports are available by electronic means.

(5) The Attorney General of the United States, in consultation with the Director of the Office of Management and Budget, shall develop reporting and performance guidelines in connection with reports required by this subsection by October 1, 1997, and may establish additional requirements for such reports as the Attorney General determines may be useful.

(6) The Attorney General of the United States shall submit an annual report on or before April 1 of each calendar year which shall include for the prior calendar year a listing of the number of cases arising under this section, the exemption involved in each case, the disposition of such case, and the cost, fees, and penalties assessed under subparagraphs (E), (F), and (G) of

subsection (a)(4). Such report shall also include a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section.

(f) For purposes of this section, the term-

(1) "agency" as defined in [section 551\(1\) of this title](#) includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency; and

(2) "record" and any other term used in this section in reference to information includes-

(A) any information that would be an agency record subject to the requirements of this section when maintained by an agency in any format, including an electronic format; and

(B) any information described under subparagraph (A) that is maintained for an agency by an entity under Government contract, for the purposes of records management.

(g) The head of each agency shall prepare and make publicly available upon request, reference material or a guide for requesting records or information from the agency, subject to the exemptions in subsection (b), including-

(1) an index of all major information systems of the agency;

(2) a description of major information and record locator systems maintained by the agency; and

(3) a handbook for obtaining various types and categories of public information from the agency pursuant to [chapter 35 of title 44](#), and under this section.

(h)(1) There is established the Office of Government Information Services within the National Archives and Records Administration.

(2) The Office of Government Information Services shall-

(A) review policies and procedures of administrative agencies under this section;

(B) review compliance with this section by administrative agencies; and

(C) recommend policy changes to Congress and the President to improve the administration of this section.

(3) The Office of Government Information Services shall offer mediation services to resolve disputes between persons making requests under this section and administrative agencies as a non-exclusive alternative to litigation and, at the discretion of the Office, may issue advisory opinions if mediation has not resolved the dispute.

(i) The Government Accountability Office shall conduct audits of administrative agencies on the implementation of this section and issue reports detailing the results of such audits.

(j) Each agency shall designate a Chief FOIA Officer who shall be a senior official of such agency (at the Assistant Secretary or equivalent level).

(k) The Chief FOIA Officer of each agency shall, subject to the authority of the head of the agency-

(1) have agency-wide responsibility for efficient and appropriate compliance with this section;

(2) monitor implementation of this section throughout the agency and keep the head of the agency, the chief legal officer of the agency, and the Attorney General appropriately informed of the agency's performance in implementing this section;

(3) recommend to the head of the agency such adjustments to agency practices, policies, personnel, and funding as may be necessary to improve its implementation of this section;

(4) review and report to the Attorney General, through the head of the agency, at such times and in such formats as the Attorney General may direct, on the agency's performance in implementing this section;

(5) facilitate public understanding of the purposes of the statutory exemptions of this section by including concise descriptions of the exemptions in both the agency's handbook issued under subsection (g), and the agency's annual report on this section, and by providing an overview, where appropriate, of certain general categories of agency records to which those exemptions apply; and

(6) designate one or more FOIA Public Liaisons.

(l) FOIA Public Liaisons shall report to the agency Chief FOIA Officer and shall serve as supervisory officials to whom a requester under this section can raise concerns about the service the requester has received from the FOIA Requester Center, following an initial response from the FOIA Requester Center Staff. FOIA Public Liaisons shall be responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.

([Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 383](#) ; [Pub. L. 90-23, §1, June 5, 1967, 81 Stat. 54](#) ; [Pub. L. 93-502, §§1-3, Nov. 21, 1974, 88 Stat. 1561-1564](#) ; [Pub. L. 94-409, §5\(b\), Sept. 13, 1976, 90 Stat. 1247](#) ; [Pub. L. 95-454, title IX, §906\(a\)\(10\), Oct. 13, 1978, 92 Stat. 1225](#) ; [Pub. L. 98-620, title IV, §402\(2\), Nov. 8, 1984, 98 Stat. 3357](#) ; [Pub. L. 99-570, title I, §§1802, 1803, Oct. 27, 1986, 100 Stat. 3207-48, 3207-49](#) ; [Pub. L. 104-231, §§3-11, Oct. 2, 1996, 110 Stat. 3049-3054](#) ; [Pub. L. 107-306, title III, §312, Nov. 27, 2002, 116 Stat. 2390](#) ; [Pub. L. 110-175, §§3, 4\(a\), 5, 6\(a\)\(1\), \(b\)\(1\), 7\(a\), 8-10\(a\), 12, Dec. 31, 2007, 121 Stat. 2525-2530](#) ; [Pub. L. 111-83, title V, §564\(b\), Oct. 28, 2009, 123 Stat. 2184 .\)](#)

Historical and Revision Notes 1966 Act

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
	5 U.S.C. 1002.	June 11, 1946, ch. 324, §3, 60 Stat. 238 .

In subsection (b)(3), the words "formulated and" are omitted as surplusage. In the last sentence of subsection (b), the words "in any manner" are omitted as surplusage since the prohibition is all inclusive.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 Act

Section 1 [of Pub. L. 90-23] amends [section 552 of title 5, United States Code](#), to reflect Public Law 89-487.

In subsection (a)(1)(A), the words "employees (and in the case of a uniformed service, the member)" are substituted for "officer" to retain the coverage of Public Law 89-487 and to conform to the definitions in [5 U.S.C. 2101, 2104, and 2105](#).

In the last sentence of subsection (a)(2), the words "A final order * * * may be relied on * * * only if" are substituted for "No final order * * * may be relied upon * * * unless"; and the words "a

party other than an agency" and "the party" are substituted for "a private party" and "the private party", respectively, on authority of the definition of "private party" in 5 App. U.S.C. 1002(g).

In subsection (a)(3), the words "the responsible employee, and in the case of a uniformed service, the responsible member" are substituted for "the responsible officers" to retain the coverage of Public Law 89–487 and to conform to the definitions in [5 U.S.C. 2101, 2104, and 2105](#).

In subsection (a)(4), the words "shall maintain and make available for public inspection a record" are substituted for "shall keep a record * * * and that record shall be available for public inspection".

In subsection (b)(5) and (7), the words "a party other than an agency" are substituted for "a private party" on authority of the definition of "private party" in 5 App. U.S.C. 1002(g).

In subsection (c), the words "This section does not authorize" and "This section is not authority" are substituted for "Nothing in this section authorizes" and "nor shall this section be authority", respectively.

5 App. U.S.C. 1002(g), defining "private party" to mean a party other than an agency, is omitted since the words "party other than an agency" are substituted for the words "private party" wherever they appear in revised [5 U.S.C. 552](#).

5 App. U.S.C. 1002(h), prescribing the effective date, is omitted as unnecessary. That effective date is prescribed by section 4 of this bill.

REFERENCES IN TEXT

The date of enactment of the OPEN FOIA Act of 2009, referred to in subsec. (b)(3)(B), is the date of enactment of Pub. L. 111–83, which was approved Oct. 28, 2009.

CODIFICATION

Section 552 of former Title 5, Executive Departments and Government Officers and Employees, was transferred to [section 2243 of Title 7, Agriculture](#).

AMENDMENTS

2009-Subsec. (b)(3). Pub. L. 111–83 added par. (3) and struck out former par. (3), which read as follows: "specifically exempted from disclosure by statute (other than [section 552b of this title](#)), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;".

2007-Subsec. (a)(4)(A)(ii). Pub. L. 110–175, §3, inserted concluding provisions.

Subsec. (a)(4)(A)(viii). Pub. L. 110–175, §6(b)(1)(A), added cl. (viii).

Subsec. (a)(4)(E). Pub. L. 110–175, §4(a), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (a)(4)(F). Pub. L. 110–175, §5, designated existing provisions as cl. (i) and added cls. (ii) and (iii).

Subsec. (a)(6)(A). Pub. L. 110–175, §6(a)(1), inserted concluding provisions.

Subsec. (a)(6)(B)(ii). Pub. L. 110–175, §6(b)(1)(B), inserted after the first sentence "To aid the requester, each agency shall make available its FOIA Public Liaison, who shall assist in the resolution of any disputes between the requester and the agency."

Subsec. (a)(7). Pub. L. 110–175, §7(a), added par. (7).

Subsec. (b). Pub. L. 110–175, §12, in concluding provisions, inserted ", and the exemption under which the deletion is made," after "The amount of information deleted" in second sentence and after "the amount of the information deleted" in third sentence.

Subsec. (e)(1)(B)(ii). Pub. L. 110–175, §8(a)(1), inserted "the number of occasions on which each statute was relied upon," after "subsection (b)(3),".

Subsec. (e)(1)(C). Pub. L. 110–175, §8(a)(2), inserted "and average" after "median".

Subsec. (e)(1)(E). Pub. L. 110–175, §8(a)(3), inserted before semicolon ", based on the date on which the requests were received by the agency".

Subsec. (e)(1)(F) to (O). Pub. L. 110–175, §8(a)(4), (5), added subpars. (F) to (M) and redesignated former subpars. (F) and (G) as (N) and (O), respectively.

Subsec. (e)(2). Pub. L. 110–175, §8(b)(2), added par. (2). Former par. (2) redesignated (3).

Subsec. (e)(3). Pub. L. 110–175, §8(b)(1), (c), redesignated par. (2) as (3) and inserted at end "In addition, each agency shall make the raw statistical data used in its reports available electronically to the public upon request." Former par. (3) redesignated (4).

Subsec. (e)(4) to (6). Pub. L. 110–175, §8(b)(1), redesignated pars. (3) to (5) as (4) to (6), respectively.

Subsec. (f)(2). Pub. L. 110–175, §9, added par. (2) and struck out former par. (2) which read as follows: " 'record' and any other term used in this section in reference to information includes any information that would be an agency record subject to the requirements of this section when maintained by an agency in any format, including an electronic format."

Subsecs. (h) to (l). Pub. L. 110–175, §10(a), added subsecs. (h) to (l).

2002-Subsec. (a)(3)(A). Pub. L. 107–306, §312(1), inserted "and except as provided in subparagraph (E)," after "of this subsection,".

Subsec. (a)(3)(E). Pub. L. 107–306, §312(2), added subpar. (E).

1996-Subsec. (a)(2). Pub. L. 104–231, §4(4), (5), in first sentence struck out "and" at end of subpar. (B) and inserted subpars. (D) and (E).

Pub. L. 104–231, §4(7), inserted after first sentence "For records created on or after November 1, 1996, within one year after such date, each agency shall make such records available, including by computer telecommunications or, if computer telecommunications means have not been established by the agency, by other electronic means."

Pub. L. 104–231, §4(1), in second sentence substituted "staff manual, instruction, or copies of records referred to in subparagraph (D)" for "or staff manual or instruction".

Pub. L. 104–231, §4(2), inserted before period at end of third sentence ", and the extent of such deletion shall be indicated on the portion of the record which is made available or

published, unless including that indication would harm an interest protected by the exemption in subsection (b) under which the deletion is made".

Pub. L. 104–231, §4(3), inserted after third sentence "If technically feasible, the extent of the deletion shall be indicated at the place in the record where the deletion was made."

Pub. L. 104–231, §4(6), which directed the insertion of the following new sentence after the fifth sentence "Each agency shall make the index referred to in subparagraph (E) available by computer telecommunications by December 31, 1999.", was executed by making the insertion after the sixth sentence, to reflect the probable intent of Congress and the addition of a new sentence by section 4(3) of Pub. L. 104–231.

Subsec. (a)(3). Pub. L. 104–231, §5, inserted subpar. (A) designation after "(3)", redesignated subpars. (A) and (B) as cls. (i) and (ii), respectively, and added subpars. (B) to (D).

Subsec. (a)(4)(B). Pub. L. 104–231, §6, inserted at end "In addition to any other matters to which a court accords substantial weight, a court shall accord substantial weight to an affidavit of an agency concerning the agency's determination as to technical feasibility under paragraph (2)(C) and subsection (b) and reproducibility under paragraph (3)(B)."

Subsec. (a)(6)(A)(i). Pub. L. 104–231, §8(b), substituted "20 days" for "ten days".

Subsec. (a)(6)(B). Pub. L. 104–231, §7(b), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "In unusual circumstances as specified in this subparagraph, the time limits prescribed in either clause (i) or clause (ii) of subparagraph (A) may be extended by written notice to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days. As used in this subparagraph, 'unusual circumstances' means, but only to the extent reasonably necessary to the proper processing of the particular request-

"(i) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

"(ii) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

"(iii) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein."

Subsec. (a)(6)(C). Pub. L. 104–231, §7(c), designated existing provisions as cl. (i) and added cls. (ii) and (iii).

Subsec. (a)(6)(D). Pub. L. 104–231, §7(a), added subpar. (D).

Subsec. (a)(6)(E), (F). Pub. L. 104–231, §8(a), (c), added subpars. (E) and (F).

Subsec. (b). Pub. L. 104–231, §9, inserted at end of closing provisions "The amount of information deleted shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption in this subsection under which the deletion is made. If technically feasible, the amount of the information deleted shall be indicated at the place in the record where such deletion is made."

Subsec. (e). Pub. L. 104–231, §10, amended subsec. (e) generally, revising and restating provisions relating to reports to Congress.

Subsec. (f). Pub. L. 104–231, §3, amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: "For purposes of this section, the term 'agency' as defined in [section 551\(1\) of this title](#) includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency."

Subsec. (g). Pub. L. 104–231, §11, added subsec. (g).

1986-Subsec. (a)(4)(A). Pub. L. 99–570, §1803, amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying a uniform schedule of fees applicable to all constituent units of such agency. Such fees shall be limited to reasonable standard charges for document search and duplication and provide for recovery of only the direct costs of such search and duplication. Documents shall be furnished without charge or at a reduced charge where the agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public."

Subsec. (b)(7). Pub. L. 99–570, §1802(a), amended par. (7) generally. Prior to amendment, par. (7) read as follows: "investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel;".

Subsecs. (c) to (f). Pub. L. 99–570, §1802(b), added subsec. (c) and redesignated former subsecs. (c) to (e) as (d) to (f), respectively.

1984-Subsec. (a)(4)(D). Pub. L. 98–620 repealed subpar. (D) which provided for precedence on the docket and expeditious disposition of district court proceedings authorized by subsec. (a).

1978-Subsec. (a)(4)(F). Pub. L. 95–454 substituted references to the Special Counsel for references to the Civil Service Commission wherever appearing and reference to his findings for reference to its findings.

1976-Subsec. (b)(3). Pub. L. 94–409 inserted provision excluding [section 552b of this title](#) from applicability of exemption from disclosure and provision setting forth conditions for statute specifically exempting disclosure.

1974-Subsec. (a)(2). Pub. L. 93–502, §1(a), substituted provisions relating to maintenance and availability of current indexes, for provisions relating to maintenance and availability of a current index, and inserted provisions relating to publication and distribution of copies of indexes or supplements thereto.

Subsec. (a)(3). Pub. L. 93–502, §1(b)(1), substituted provisions requiring requests to reasonably describe records for provisions requiring requests, for identifiable records, and struck out provisions setting forth procedures to enjoin agencies from withholding the requested records and ordering their production.

Subsec. (a)(4), (5). Pub. L. 93–502, §1(b)(2), added par. (4) and redesignated former par. (4) as (5).

Subsec. (a)(6). Pub. L. 93–502, §1(c), added par. (6).

Subsec. (b)(1). Pub. L. 93–502, §2(a), designated existing provisions as cl. (A), substituted "authorized under criteria established by an" for "required by", and added cl. (B).

Subsec. (b)(7). Pub. L. 93–502, §2(b), substituted provisions relating to exemption for investigatory records compiled for law enforcement purposes, for provisions relating to exemption for investigatory files compiled for law enforcement purposes.

Subsec. (b), foll. par. (9). Pub. L. 93–502, §2(c), inserted provision relating to availability of segregable portion of records.

Subsecs. (d), (e). Pub. L. 93–502, §3, added subsecs. (d) and (e).

1967-Subsec. (a). Pub. L. 90–23 substituted introductory statement requiring every agency to make available to the public certain information for former introductory provision excepting from disclosure (1) any function of the United States requiring secrecy in the public interest or (2) any matter relating to internal management of an agency, covered in subsec. (b)(1) and (2) of this section.

Subsec. (a)(1). Pub. L. 90–23 incorporated provisions of: former subsec. (b)(1) in (A), inserting requirement of publication of names of officers as sources of information and provision for public to obtain decisions, and striking out publication requirement for delegations by the agency of final authority; former subsec. (b)(2), introductory part, in (B); former subsec. (b)(2), concluding part, in (C), inserting publication requirement for rules of procedure and descriptions of forms available or the places at which forms may be obtained; former subsec. (b)(3), introductory part, in (D), inserting requirement of general applicability of substantive rules and interpretations, added clause (E), substituted exemption of any person from failure to resort to any matter or from being adversely affected by any matter required to be published in the Federal Register but not so published for former subsec. (b)(3), concluding part, excepting from publication rules addressed to and served upon named persons in accordance with laws and final sentence reading "A person may not be required to resort to organization or procedure not so published" and inserted provision deeming matter, which is reasonably available, as published in the Federal Register when such matter is incorporated by reference in the Federal Register with the approval of its Director.

Subsec. (a)(2). Pub. L. 90–23 incorporated provisions of former subsec. (c), provided for public copying of records, struck out requirement of agency publication of final opinions or orders and authority for secrecy and withholding of opinions and orders required for good cause to be held confidential and not cited as precedents, latter provision now superseded by subsec. (b) of this section, designated existing subsec. (c) as clause (A), including provision for availability of concurring and dissenting opinions, inserted provisions for availability of policy statements and interpretations in clause (B) and staff manuals and instructions in clause (C), deletion of personal identifications from records to protect personal privacy with written justification therefor, and provision for indexing and prohibition of use of records not indexed against any private party without actual and timely notice of the terms thereof.

Subsec. (a)(3). Pub. L. 90–23 incorporated provisions of former subsec. (d) and substituted provisions requiring identifiable agency records to be made available to any person upon request and compliance with rules as to time, place, and procedure for inspection, and payment of fees and provisions for Federal district court proceedings de novo for enforcement by contempt of noncompliance with court's orders with the burden on the agency and docket precedence for such proceedings for former provisions requiring matters of official record to be made available to persons properly and directly concerned except information held confidential for good cause shown, the latter provision superseded by subsec. (b) of this section.

Subsec. (a)(4). Pub. L. 90–23 added par. (4).

Subsec. (b). Pub. L. 90–23 added subsec. (b) which superseded provisions excepting from disclosure any function of the United States requiring secrecy in the public interest or any matter relating to internal management of an agency, formerly contained in former subsec. (a), final opinions or orders required for good cause to be held confidential and not cited as precedents, formerly contained in subsec. (c), and information held confidential for good cause found, contained in former subsec. (d) of this section.

Subsec. (c). Pub. L. 90–23 added subsec. (c).

CHANGE OF NAME

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

Committee on Government Reform and Oversight of House of Representatives changed to Committee on Government Reform of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999. Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

EFFECTIVE DATE OF 2007 AMENDMENT

[Pub. L. 110–175, §6\(a\)\(2\), Dec. 31, 2007, 121 Stat. 2526](#), provided that: "The amendment made by this subsection [amending this section] shall take effect 1 year after the date of enactment of this Act [Dec. 31, 2007]."

[Pub. L. 110–175, §6\(b\)\(2\), Dec. 31, 2007, 121 Stat. 2526](#), provided that: "The amendment made by this subsection [amending this section] shall take effect 1 year after the date of enactment of this Act [Dec. 31, 2007] and apply to requests for information under [section 552 of title 5, United States Code](#), filed on or after that effective date."

[Pub. L. 110–175, §7\(b\), Dec. 31, 2007, 121 Stat. 2527](#), provided that: "The amendment made by this section [amending this section] shall take effect 1 year after the date of enactment of this Act [Dec. 31, 2007] and apply to requests for information under [section 552 of title 5, United States Code](#), filed on or after that effective date."

[Pub. L. 110–175, §10\(b\), Dec. 31, 2007, 121 Stat. 2530](#), provided that: "The amendments made by this section [amending this section] shall take effect on the date of enactment of this Act [Dec. 31, 2007]."

EFFECTIVE DATE OF 1996 AMENDMENT

[Pub. L. 104–231, §12, Oct. 2, 1996, 110 Stat. 3054](#), provided that:

"(a) In General.-Except as provided in subsection (b), this Act [amending this section and enacting provisions set out as notes below] shall take effect 180 days after the date of the enactment of this Act [Oct. 2, 1996].

"(b) Provisions Effective on Enactment [sic].-Sections 7 and 8 [amending this section] shall take effect one year after the date of the enactment of this Act [Oct. 2, 1996]."

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-570, title I, §1804, Oct. 27, 1986, 100 Stat. 3207-50, provided that:

"(a) The amendments made by section 1802 [amending this section] shall be effective on the date of enactment of this Act [Oct. 27, 1986], and shall apply with respect to any requests for records, whether or not the request was made prior to such date, and shall apply to any civil action pending on such date.

"(b)(1) The amendments made by section 1803 [amending this section] shall be effective 180 days after the date of enactment of this Act [Oct. 27, 1986], except that regulations to implement such amendments shall be promulgated by such 180th day.

"(2) The amendments made by section 1803 [amending this section] shall apply with respect to any requests for records, whether or not the request was made prior to such date, and shall apply to any civil action pending on such date, except that review charges applicable to records requested for commercial use shall not be applied by an agency to requests made before the effective date specified in paragraph (1) of this subsection or before the agency has finally issued its regulations."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under [section 1657 of Title 28](#), Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under [section 1101 of this title](#).

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-409 effective 180 days after Sept. 13, 1976, see section 6 of Pub. L. 94-409, set out as an Effective Date note under [section 552b of this title](#).

EFFECTIVE DATE OF 1974 AMENDMENT

Pub. L. 93-502, §4, Nov. 21, 1974, 88 Stat. 1564, provided that: "The amendments made by this Act [amending this section] shall take effect on the ninetieth day beginning after the date of enactment of this Act [Nov. 21, 1974]."

EFFECTIVE DATE OF 1967 AMENDMENT

Pub. L. 90-23, §4, June 5, 1967, 81 Stat. 56, provided that: "This Act [amending this section] shall be effective July 4, 1967, or on the date of enactment [June 5, 1967], whichever is later."

SHORT TITLE OF 1996 AMENDMENT

[Pub. L. 104-231, §1, Oct. 2, 1996, 110 Stat. 3048](#), provided that: "This Act [amending this section and enacting provisions set out as notes under this section] may be cited as the 'Electronic Freedom of Information Act Amendments of 1996'."

SHORT TITLE OF 1986 AMENDMENT

[Pub. L. 99-570, title I, §1801, Oct. 27, 1986, 100 Stat. 3207-48](#), provided that: "This subtitle [subtitle N (§§1801-1804) of title I of Pub. L. 99-570, amending this section and enacting provisions set out as a note under this section] may be cited as the 'Freedom of Information Reform Act of 1986'."

SHORT TITLE

This section is popularly known as the "Freedom of Information Act".

PROTECTED NATIONAL SECURITY DOCUMENTS

[Pub. L. 111-83, title V, §565, Oct. 28, 2009, 123 Stat. 2184](#), provided that:

"(a) Short Title.-This section may be cited as the 'Protected National Security Documents Act of 2009'.

"(b) Notwithstanding any other provision of the law to the contrary, no protected document, as defined in subsection (c), shall be subject to disclosure under [section 552 of title 5, United States Code](#)[,] or any proceeding under that section.

"(c) Definitions.-In this section:

"(1) Protected document.-The term 'protected document' means any record-

"(A) for which the Secretary of Defense has issued a certification, as described in subsection (d), stating that disclosure of that record would endanger citizens of the United States, members of the United States Armed Forces, or employees of the United States Government deployed outside the United States; and

"(B) that is a photograph that-

"(i) was taken during the period beginning on September 11, 2001, through January 22, 2009; and

"(ii) relates to the treatment of individuals engaged, captured, or detained after September 11, 2001, by the Armed Forces of the United States in operations outside of the United States.

"(2) Photograph.-The term 'photograph' encompasses all photographic images, whether originals or copies, including still photographs, negatives, digital images, films, video tapes, and motion pictures.

"(d) Certification.-

"(1) In general.-For any photograph described under subsection (c)(1), the Secretary of Defense shall issue a certification if the Secretary of Defense determines that disclosure of that photograph would endanger citizens of the United States, members of the United States Armed Forces, or employees of the United States Government deployed outside the United States.

"(2) Certification expiration.-A certification and a renewal of a certification issued pursuant to subsection (d)(3) shall expire 3 years after the date on which the certification or renewal, [sic] is issued by the Secretary of Defense.

"(3) Certification renewal.-The Secretary of Defense may issue-

"(A) a renewal of a certification at any time; and

"(B) more than 1 renewal of a certification.

"(4) Notice to congress.-The Secretary of Defense shall provide Congress a timely notice of the Secretary's issuance of a certification and of a renewal of a certification.

"(e) Rule of Construction.-Nothing in this section shall be construed to preclude the voluntary disclosure of a protected document.

"(f) Effective Date.-This section shall take effect on the date of enactment of this Act [Oct. 28, 2009] and apply to any protected document."

FINDINGS

Pub. L. 110-175, §2, Dec. 31, 2007, 121 Stat. 2524, provided that: "Congress finds that-

"(1) the Freedom of Information Act [probably means Pub. L. 89-487 which amended section 1002 of former Title 5, Executive Departments and Government Officers and Employees, see Historical and Revision notes above] was signed into law on July 4, 1966, because the American people believe that-

"(A) our constitutional democracy, our system of self-government, and our commitment to popular sovereignty depends upon the consent of the governed;

"(B) such consent is not meaningful unless it is informed consent; and

"(C) as Justice Black noted in his concurring opinion in *Barr v. Matteo* (360 U.S. 564 (1959)), 'The effective functioning of a free government like ours depends largely on the force of an informed public opinion. This calls for the widest possible understanding of the quality of government service rendered by all elective or appointed public officials or employees.';

"(2) the American people firmly believe that our system of government must itself be governed by a presumption of openness;

"(3) the Freedom of Information Act establishes a 'strong presumption in favor of disclosure' as noted by the United States Supreme Court in *United States Department of State v. Ray* (502 U.S. 164 (1991)), a presumption that applies to all agencies governed by that Act;

"(4) 'disclosure, not secrecy, is the dominant objective of the Act,' as noted by the United States Supreme Court in *Department of Air Force v. Rose* (425 U.S. 352 (1976));

"(5) in practice, the Freedom of Information Act has not always lived up to the ideals of that Act; and

"(6) Congress should regularly review [section 552 of title 5, United States Code](#) (commonly referred to as the Freedom of Information Act), in order to determine whether further changes and improvements are necessary to ensure that the Government remains open and accessible to the American people and is always based not upon the 'need to know' but upon the fundamental 'right to know'."

LIMITATION ON AMOUNTS OBLIGATED OR EXPENDED FROM CLAIMS AND JUDGMENT FUND

Pub. L. 110-175, §4(b), Dec. 31, 2007, 121 Stat. 2525, provided that:

"Notwithstanding [section 1304 of title 31, United States Code](#), no amounts may be obligated or expended from the Claims and Judgment Fund of the United States Treasury to pay the costs

resulting from fees assessed under [section 552\(a\)\(4\)\(E\) of title 5, United States Code](#). Any such amounts shall be paid only from funds annually appropriated for any authorized purpose for the Federal agency against which a claim or judgment has been rendered."

NONDISCLOSURE OF CERTAIN PRODUCTS OF COMMERCIAL SATELLITE OPERATIONS

[Pub. L. 108-375, div. A, title IX, §914, Oct. 28, 2004, 118 Stat. 2029](#), provided that:

"(a) Mandatory Disclosure Requirements Inapplicable.-The requirements to make information available under [section 552 of title 5, United States Code](#), shall not apply to land remote sensing information.

"(b) Land Remote Sensing Information Defined.-In this section, the term 'land remote sensing information'-

"(1) means any data that-

"(A) are collected by land remote sensing; and

"(B) are prohibited from sale to customers other than the United States Government and United States Government-approved customers for reasons of national security pursuant to the terms of an operating license issued pursuant to the Land Remote Sensing Policy Act of 1992 ([former] 15 U.S.C. 5601 et seq.) [now [51 U.S.C. 60101 et seq.](#)]; and

"(2) includes any imagery and other product that is derived from such data and which is prohibited from sale to customers other than the United States Government and United States Government-approved customers for reasons of national security pursuant to the terms of an operating license described in paragraph (1)(B).

"(c) State or Local Government Disclosures.-Land remote sensing information provided by the head of a department or agency of the United States to a State, local, or tribal government may not be made available to the general public under any State, local, or tribal law relating to the disclosure of information or records.

"(d) Safeguarding Information.-The head of each department or agency of the United States having land remote sensing information within that department or agency or providing such information to a State, local, or tribal government shall take such actions, commensurate with the sensitivity of that information, as are necessary to protect that information from disclosure other than in accordance with this section and other applicable law.

"(e) Additional Definition.-In this section, the term 'land remote sensing' has the meaning given such term in section 3 of the Land Remote Sensing Policy Act of 1992 ([former] 15 U.S.C. 5602) [now [51 U.S.C. 60101](#)].

"(f) Disclosure to Congress.-Nothing in this section shall be construed to authorize the withholding of information from the appropriate committees of Congress."

DISCLOSURE OF ARSON, EXPLOSIVE, OR FIREARM RECORDS

[Pub. L. 108-7, div. J, title VI, §644, Feb. 20, 2003, 117 Stat. 473](#), provided that: "No funds appropriated under this Act or any other Act with respect to any fiscal year shall be available to take any action based upon any provision of [5 U.S.C. 552](#) with respect to records collected or maintained pursuant to [18 U.S.C. 846\(b\)](#), [923\(g\)\(3\)](#) or [923\(g\)\(7\)](#), or provided by Federal, State, local, or foreign law enforcement agencies in connection with arson or explosives incidents or the tracing of a firearm, except that such records may continue to be disclosed to the extent and

in the manner that records so collected, maintained, or obtained have been disclosed under 5 U.S.C. 552 prior to the date of the enactment of this Act [Feb. 20, 2003]."

DISCLOSURE OF INFORMATION ON JAPANESE IMPERIAL GOVERNMENT

Pub. L. 106–567, title VIII, Dec. 27, 2000, 114 Stat. 2864, as amended by Pub. L. 108–199, div. H, §163, Jan. 23, 2004, 118 Stat. 452; Pub. L. 109–5, §1, Mar. 25, 2005, 119 Stat. 19, provided that:

"SEC. 801. SHORT TITLE.

"This title may be cited as the 'Japanese Imperial Government Disclosure Act of 2000'.

"SEC. 802. DESIGNATION.

"(a) Definitions.-In this section:

"(1) Agency.-The term 'agency' has the meaning given such term under [section 551 of title 5, United States Code](#).

"(2) Interagency group.-The term 'Interagency Group' means the Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group established under subsection (b).

"(3) Japanese imperial government records.-The term 'Japanese Imperial Government records' means classified records or portions of records that pertain to any person with respect to whom the United States Government, in its sole discretion, has grounds to believe ordered, incited, assisted, or otherwise participated in the experimentation on, and persecution of, any person because of race, religion, national origin, or political opinion, during the period beginning September 18, 1931, and ending on December 31, 1948, under the direction of, or in association with-

"(A) the Japanese Imperial Government;

"(B) any government in any area occupied by the military forces of the Japanese Imperial Government;

"(C) any government established with the assistance or cooperation of the Japanese Imperial Government; or

"(D) any government which was an ally of the Japanese Imperial Government.

"(4) Record.-The term 'record' means a Japanese Imperial Government record.

"(b) Establishment of Interagency Group.-

"(1) In general.-Not later than 60 days after the date of the enactment of this Act [Dec. 27, 2000], the President shall designate the Working Group established under the Nazi War Crimes Disclosure Act (Public Law 105–246; [5 U.S.C. 552 note](#)) to also carry out the purposes of this title with respect to Japanese Imperial Government records, and that Working Group shall remain in existence for 6 years after the date on which this title takes effect. Such Working Group is redesignated as the 'Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group'.

"(2) Membership.-[Amended Pub. L. 105–246, set out as a note below.]

"(c) Functions.-Not later than 1 year after the date of the enactment of this Act [Dec. 27, 2000], the Interagency Group shall, to the greatest extent possible consistent with section 803-

"(1) locate, identify, inventory, recommend for declassification, and make available to the public at the National Archives and Records Administration, all classified Japanese Imperial Government records of the United States;

"(2) coordinate with agencies and take such actions as necessary to expedite the release of such records to the public; and

"(3) submit a report to Congress, including the Committee on Government Reform [now Committee on Oversight and Government Reform] and the Permanent Select Committee on Intelligence of the House of Representatives, and the Committee on the Judiciary and the Select Committee on Intelligence of the Senate, describing all such records, the disposition of such records, and the activities of the Interagency Group and agencies under this section.

"(d) Funding.-There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this title.

"SEC. 803. REQUIREMENT OF DISCLOSURE OF RECORDS.

"(a) Release of Records.-Subject to subsections (b), (c), and (d), the Japanese Imperial Government Records Interagency Working Group shall release in their entirety Japanese Imperial Government records.

"(b) Exemptions.-An agency head may exempt from release under subsection (a) specific information, that would-

"(1) constitute an unwarranted invasion of personal privacy;

"(2) reveal the identity of a confidential human source, or reveal information about an intelligence source or method when the unauthorized disclosure of that source or method would damage the national security interests of the United States;

"(3) reveal information that would assist in the development or use of weapons of mass destruction;

"(4) reveal information that would impair United States cryptologic systems or activities;

"(5) reveal information that would impair the application of state-of-the-art technology within a United States weapon system;

"(6) reveal United States military war plans that remain in effect;

"(7) reveal information that would impair relations between the United States and a foreign government, or undermine ongoing diplomatic activities of the United States;

"(8) reveal information that would impair the current ability of United States Government officials to protect the President, Vice President, and other officials for whom protection services are authorized in the interest of national security;

"(9) reveal information that would impair current national security emergency preparedness plans; or

"(10) violate a treaty or other international agreement.

"(c) Applications of Exemptions.-

"(1) In general.-In applying the exemptions provided in paragraphs (2) through (10) of subsection (b), there shall be a presumption that the public interest will be served by

disclosure and release of the records of the Japanese Imperial Government. The exemption may be asserted only when the head of the agency that maintains the records determines that disclosure and release would be harmful to a specific interest identified in the exemption. An agency head who makes such a determination shall promptly report it to the committees of Congress with appropriate jurisdiction, including the Committee on the Judiciary and the Select Committee on Intelligence of the Senate and the Committee on Government Reform [now Committee on Oversight and Government Reform] and the Permanent Select Committee on Intelligence of the House of Representatives.

"(2) Application of title 5.-A determination by an agency head to apply an exemption provided in paragraphs (2) through (9) of subsection (b) shall be subject to the same standard of review that applies in the case of records withheld under [section 552\(b\)\(1\) of title 5, United States Code](#).

"(d) Records Related to Investigations or Prosecutions.-This section shall not apply to records-

"(1) related to or supporting any active or inactive investigation, inquiry, or prosecution by the Office of Special Investigations of the Department of Justice; or

"(2) solely in the possession, custody, or control of the Office of Special Investigations.

"SEC. 804. EXPEDITED PROCESSING OF REQUESTS FOR JAPANESE IMPERIAL GOVERNMENT RECORDS.

"For purposes of expedited processing under [section 552\(a\)\(6\)\(E\) of title 5, United States Code](#), any person who was persecuted in the manner described in section 802(a)(3) and who requests a Japanese Imperial Government record shall be deemed to have a compelling need for such record.

"SEC. 805. EFFECTIVE DATE.

"The provisions of this title shall take effect on the date that is 90 days after the date of the enactment of this Act [Dec. 27, 2000]."

NAZI WAR CRIMES DISCLOSURE

[Pub. L. 105-246, Oct. 8, 1998, 112 Stat. 1859](#), as amended by [Pub. L. 106-567, §802\(b\)\(2\), Dec. 27, 2000, 114 Stat. 2865](#), provided that:

"SECTION 1. SHORT TITLE.

"This Act may be cited as the 'Nazi War Crimes Disclosure Act'.

"SEC. 2. ESTABLISHMENT OF NAZI WAR CRIMINAL RECORDS INTERAGENCY WORKING GROUP.

"(a) Definitions.-In this section the term-

"(1) 'agency' has the meaning given such term under [section 551 of title 5, United States Code](#);

"(2) 'Interagency Group' means the Nazi War Criminal Records Interagency Working Group [redesignated Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group, see section 802(b)(1) of Pub. L. 106-567, set out above] established under subsection (b);

"(3) 'Nazi war criminal records' has the meaning given such term under section 3 of this Act; and

"(4) 'record' means a Nazi war criminal record.

"(b) Establishment of Interagency Group.-

"(1) In general.-Not later than 60 days after the date of enactment of this Act [Oct. 8, 1998], the President shall establish the Nazi War Criminal Records Interagency Working Group, which shall remain in existence for 3 years after the date the Interagency Group is established.

"(2) Membership.-The President shall appoint to the Interagency Group individuals whom the President determines will most completely and effectively carry out the functions of the Interagency Group within the time limitations provided in this section, including the Director of the Holocaust Museum, the Historian of the Department of State, the Archivist of the United States, the head of any other agency the President considers appropriate, and no more than 4 other persons who shall be members of the public, of whom 3 shall be persons appointed under the provisions of this Act in effect on October 8, 1998..[sic] The head of an agency appointed by the President may designate an appropriate officer to serve on the Interagency Group in lieu of the head of such agency.

"(3) Initial meeting.-Not later than 90 days after the date of enactment of this Act, the Interagency Group shall hold an initial meeting and begin the functions required under this section.

"(c) Functions.-Not later than 1 year after the date of enactment of this Act [Oct. 8, 1998], the Interagency Group shall, to the greatest extent possible consistent with section 3 of this Act-

"(1) locate, identify, inventory, recommend for declassification, and make available to the public at the National Archives and Records Administration, all classified Nazi war criminal records of the United States;

"(2) coordinate with agencies and take such actions as necessary to expedite the release of such records to the public; and

"(3) submit a report to Congress, including the Committee on the Judiciary of the Senate and the Committee on Government Reform and Oversight [now Committee on Oversight and Government Reform] of the House of Representatives, describing all such records, the disposition of such records, and the activities of the Interagency Group and agencies under this section.

"(d) Funding.-There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

"SEC. 3. REQUIREMENT OF DISCLOSURE OF RECORDS REGARDING PERSONS WHO COMMITTED NAZI WAR CRIMES.

"(a) Nazi War Criminal Records.-For purposes of this Act, the term 'Nazi war criminal records' means classified records or portions of records that-

"(1) pertain to any person with respect to whom the United States Government, in its sole discretion, has grounds to believe ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion, during the period beginning on March 23, 1933, and ending on May 8, 1945, under the direction of, or in association with-

"(A) the Nazi government of Germany;

"(B) any government in any area occupied by the military forces of the Nazi government of Germany;

"(C) any government established with the assistance or cooperation of the Nazi government of Germany; or

"(D) any government which was an ally of the Nazi government of Germany; or

"(2) pertain to any transaction as to which the United States Government, in its sole discretion, has grounds to believe-

"(A) involved assets taken from persecuted persons during the period beginning on March 23, 1933, and ending on May 8, 1945, by, under the direction of, on behalf of, or under authority granted by the Nazi government of Germany or any nation then allied with that government; and

"(B) such transaction was completed without the assent of the owners of those assets or their heirs or assigns or other legitimate representatives.

"(b) Release of Records.-

"(1) In general.-Subject to paragraphs (2), (3), and (4), the Nazi War Criminal Records Interagency Working Group shall release in their entirety Nazi war criminal records that are described in subsection (a).

"(2) Exception for privacy, etc.-An agency head may exempt from release under paragraph (1) specific information, that would-

"(A) constitute a clearly unwarranted invasion of personal privacy;

"(B) reveal the identity of a confidential human source, or reveal information about the application of an intelligence source or method, or reveal the identity of a human intelligence source when the unauthorized disclosure of that source would clearly and demonstrably damage the national security interests of the United States;

"(C) reveal information that would assist in the development or use of weapons of mass destruction;

"(D) reveal information that would impair United States cryptologic systems or activities;

"(E) reveal information that would impair the application of state-of-the-art technology within a United States weapon system;

"(F) reveal actual United States military war plans that remain in effect;

"(G) reveal information that would seriously and demonstrably impair relations between the United States and a foreign government, or seriously and demonstrably undermine ongoing diplomatic activities of the United States;

"(H) reveal information that would clearly and demonstrably impair the current ability of United States Government officials to protect the President, Vice President, and other officials for whom protection services, in the interest of national security, are authorized;

"(I) reveal information that would seriously and demonstrably impair current national security emergency preparedness plans; or

"(J) violate a treaty or international agreement.

"(3) Application of exemptions.-

"(A) In general.-In applying the exemptions listed in subparagraphs (B) through (J) of paragraph (2), there shall be a presumption that the public interest in the release of Nazi war criminal records will be served by disclosure and release of the records. Assertion of such exemption may only be made when the agency head determines that disclosure and release would be harmful to a specific interest identified in the exemption. An agency head

who makes such a determination shall promptly report it to the committees of Congress with appropriate jurisdiction, including the Committee on the Judiciary of the Senate and the Committee on Government Reform and Oversight [now Committee on Oversight and Government Reform] of the House of Representatives. The exemptions set forth in paragraph (2) shall constitute the only authority pursuant to which an agency head may exempt records otherwise subject to release under paragraph (1).

"(B) Application of title 5.-A determination by an agency head to apply an exemption listed in subparagraphs (B) through (I) of paragraph (2) shall be subject to the same standard of review that applies in the case of records withheld under [section 552\(b\)\(1\) of title 5, United States Code](#).

"(4) Limitation on application.-This subsection shall not apply to records-

"(A) related to or supporting any active or inactive investigation, inquiry, or prosecution by the Office of Special Investigations of the Department of Justice; or

"(B) solely in the possession, custody, or control of that office.

"(c) Inapplicability of National Security Act of 1947 Exemption.-Section 701(a) of the National Security Act of 1947 ([50 U.S.C. 431\(a\)](#)) shall not apply to any operational file, or any portion of any operational file, that constitutes a Nazi war criminal record under section 3 of this Act.

"SEC. 4. EXPEDITED PROCESSING OF FOIA REQUESTS FOR NAZI WAR CRIMINAL RECORDS.

"(a) Expedited Processing.-For purposes of expedited processing under [section 552\(a\)\(6\)\(E\) of title 5, United States Code](#), any requester of a Nazi war criminal record shall be deemed to have a compelling need for such record.

"(b) Requester.-For purposes of this section, the term 'requester' means any person who was persecuted in the manner described under section 3(a)(1) of this Act who requests a Nazi war criminal record.

"SEC. 5. EFFECTIVE DATE.

"This Act and the amendments made by this Act shall take effect on the date that is 90 days after the date of enactment of this Act [Oct. 8, 1998]."

CONGRESSIONAL STATEMENT OF FINDINGS AND PURPOSE; PUBLIC ACCESS TO INFORMATION IN ELECTRONIC FORMAT

Section 2 of Pub. L. 104-231 provided that:

"(a) Findings.-The Congress finds that-

"(1) the purpose of [section 552 of title 5, United States Code](#), popularly known as the Freedom of Information Act, is to require agencies of the Federal Government to make certain agency information available for public inspection and copying and to establish and enable enforcement of the right of any person to obtain access to the records of such agencies, subject to statutory exemptions, for any public or private purpose;

"(2) since the enactment of the Freedom of Information Act in 1966, and the amendments enacted in 1974 and 1986, the Freedom of Information Act has been a valuable means through which any person can learn how the Federal Government operates;

"(3) the Freedom of Information Act has led to the disclosure of waste, fraud, abuse, and wrongdoing in the Federal Government;

"(4) the Freedom of Information Act has led to the identification of unsafe consumer products, harmful drugs, and serious health hazards;

"(5) Government agencies increasingly use computers to conduct agency business and to store publicly valuable agency records and information; and

"(6) Government agencies should use new technology to enhance public access to agency records and information.

"(b) Purposes.-The purposes of this Act [see Short Title of 1996 Amendment note above] are to-

"(1) foster democracy by ensuring public access to agency records and information;

"(2) improve public access to agency records and information;

"(3) ensure agency compliance with statutory time limits; and

"(4) maximize the usefulness of agency records and information collected, maintained, used, retained, and disseminated by the Federal Government."

FREEDOM OF INFORMATION ACT EXEMPTION FOR CERTAIN OPEN SKIES TREATY DATA

Pub. L. 103-236, title V, §533, Apr. 30, 1994, 108 Stat. 480, provided that:

"(a) In General.-Data with respect to a foreign country collected by sensors during observation flights conducted in connection with the Treaty on Open Skies, including flights conducted prior to entry into force of the treaty, shall be exempt from disclosure under the Freedom of Information Act-

"(1) if the country has not disclosed the data to the public; and

"(2) if the country has not, acting through the Open Skies Consultative Commission or any other diplomatic channel, authorized the United States to disclose the data to the public.

"(b) Statutory Construction.-This section constitutes a specific exemption within the meaning of section 552(b)(3) of title 5, United States Code.

"(c) Definitions.-For the purposes of this section-

"(1) the term 'Freedom of Information Act' means the provisions of section 552 of title 5, United States Code;

"(2) the term 'Open Skies Consultative Commission' means the commission established pursuant to Article X of the Treaty on Open Skies; and

"(3) the term 'Treaty on Open Skies' means the Treaty on Open Skies, signed at Helsinki on March 24, 1992."

CLASSIFIED NATIONAL SECURITY INFORMATION

For provisions relating to a response to a request for information under this section when the fact of its existence or nonexistence is itself classified or when it was originally classified by another agency, see Ex. Ord. No. 13526, §3.6, Dec. 29, 2009, 75 F.R. 718, set out as a note under section 435 of Title 50, War and National Defense.

EXECUTIVE ORDER No. 12174

Ex. Ord. No. 12174, Nov. 30, 1979, 44 F.R. 69609, which related to minimizing Federal paperwork, was revoked by Ex. Ord. No. 12291, Feb. 17, 1981, 46 F.R. 13193, formerly set out as a note under [section 601 of this title](#).

EX. ORD. NO. 12600. PREDISCLOSURE NOTIFICATION PROCEDURES FOR CONFIDENTIAL COMMERCIAL INFORMATION

Ex. Ord. No. 12600, June 23, 1987, 52 F.R. 23781, provided:

By the authority vested in me as President by the Constitution and statutes of the United States of America, and in order to provide predisclosure notification procedures under the Freedom of Information Act [5 U.S.C. 552] concerning confidential commercial information, and to make existing agency notification provisions more uniform, it is hereby ordered as follows:

Section 1. The head of each Executive department and agency subject to the Freedom of Information Act [5 U.S.C. 552] shall, to the extent permitted by law, establish procedures to notify submitters of records containing confidential commercial information as described in section 3 of this Order, when those records are requested under the Freedom of Information Act [FOIA], 5 U.S.C. 552, as amended, if after reviewing the request, the responsive records, and any appeal by the requester, the department or agency determines that it may be required to disclose the records. Such notice requires that an agency use good-faith efforts to advise submitters of confidential commercial information of the procedures established under this Order. Further, where notification of a voluminous number of submitters is required, such notification may be accomplished by posting or publishing the notice in a place reasonably calculated to accomplish notification.

Sec. 2. For purposes of this Order, the following definitions apply:

(a) "Confidential commercial information" means records provided to the government by a submitter that arguably contain material exempt from release under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(b) "Submitter" means any person or entity who provides confidential commercial information to the government. The term "submitter" includes, but is not limited to, corporations, state governments, and foreign governments.

Sec. 3. (a) For confidential commercial information submitted prior to January 1, 1988, the head of each Executive department or agency shall, to the extent permitted by law, provide a submitter with notice pursuant to section 1 whenever:

(i) the records are less than 10 years old and the information has been designated by the submitter as confidential commercial information; or

(ii) the department or agency has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm.

(b) For confidential commercial information submitted on or after January 1, 1988, the head of each Executive department or agency shall, to the extent permitted by law, establish procedures to permit submitters of confidential commercial information to designate, at the time the information is submitted to the Federal government or a reasonable time thereafter, any information the disclosure of which the submitter claims could reasonably be expected to cause substantial competitive harm. Such agency procedures may provide for the expiration, after a

specified period of time or changes in circumstances, of designations of competitive harm made by submitters. Additionally, such procedures may permit the agency to designate specific classes of information that will be treated by the agency as if the information had been so designated by the submitter. The head of each Executive department or agency shall, to the extent permitted by law, provide the submitter notice in accordance with section 1 of this Order whenever the department or agency determines that it may be required to disclose records:

- (i) designated pursuant to this subsection; or
- (ii) the disclosure of which the department or agency has reason to believe could reasonably be expected to cause substantial competitive harm.

Sec. 4. When notification is made pursuant to section 1, each agency's procedures shall, to the extent permitted by law, afford the submitter a reasonable period of time in which the submitter or its designee may object to the disclosure of any specified portion of the information and to state all grounds upon which disclosure is opposed.

Sec. 5. Each agency shall give careful consideration to all such specified grounds for nondisclosure prior to making an administrative determination of the issue. In all instances when the agency determines to disclose the requested records, its procedures shall provide that the agency give the submitter a written statement briefly explaining why the submitter's objections are not sustained. Such statement shall, to the extent permitted by law, be provided a reasonable number of days prior to a specified disclosure date.

Sec. 6. Whenever a FOIA requester brings suit seeking to compel disclosure of confidential commercial information, each agency's procedures shall require that the submitter be promptly notified.

Sec. 7. The designation and notification procedures required by this Order shall be established by regulations, after notice and public comment. If similar procedures or regulations already exist, they should be reviewed for conformity and revised where necessary. Existing procedures or regulations need not be modified if they are in compliance with this Order.

Sec. 8. The notice requirements of this Order need not be followed if:

- (a) The agency determines that the information should not be disclosed;
- (b) The information has been published or has been officially made available to the public;
- (c) Disclosure of the information is required by law (other than [5 U.S.C. 552](#));
- (d) The disclosure is required by an agency rule that (1) was adopted pursuant to notice and public comment, (2) specifies narrow classes of records submitted to the agency that are to be released under the Freedom of Information Act [[5 U.S.C. 552](#)], and (3) provides in exceptional circumstances for notice when the submitter provides written justification, at the time the information is submitted or a reasonable time thereafter, that disclosure of the information could reasonably be expected to cause substantial competitive harm;
- (e) The information requested is not designated by the submitter as exempt from disclosure in accordance with agency regulations promulgated pursuant to section 7, when the submitter had an opportunity to do so at the time of submission of the information or a reasonable time thereafter, unless the agency has substantial reason to believe that disclosure of the information would result in competitive harm; or

(f) The designation made by the submitter in accordance with agency regulations promulgated pursuant to section 7 appears obviously frivolous; except that, in such case, the agency must provide the submitter with written notice of any final administrative disclosure determination within a reasonable number of days prior to the specified disclosure date.

Sec. 9. Whenever an agency notifies a submitter that it may be required to disclose information pursuant to section 1 of this Order, the agency shall also notify the requester that notice and an opportunity to comment are being provided the submitter. Whenever an agency notifies a submitter of a final decision pursuant to section 5 of this Order, the agency shall also notify the requester.

Sec. 10. This Order is intended only to improve the internal management of the Federal government, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

RONALD REAGAN.

**EX. ORD. NO. 13110. NAZI WAR CRIMES AND JAPANESE IMPERIAL GOVERNMENT RECORDS
INTERAGENCY WORKING GROUP**

Ex. Ord. No. 13110, Jan. 11, 1999, 64 F.R. 2419, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Nazi War Crimes Disclosure Act (Public Law 105–246) (the "Act") [5 U.S.C. 552 note], it is hereby ordered as follows:

Section 1. *Establishment of Working Group.* There is hereby established the Nazi War Criminal Records Interagency Working Group [now Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group] (Working Group). The function of the Group shall be to locate, inventory, recommend for declassification, and make available to the public at the National Archives and Records Administration all classified Nazi war criminal records of the United States, subject to certain designated exceptions as provided in the Act. The Working Group shall coordinate with agencies and take such actions as necessary to expedite the release of such records to the public.

Sec. 2. *Schedule.* The Working Group should complete its work to the greatest extent possible and report to the Congress within 1 year.

Sec. 3. *Membership.* (a) The Working Group shall be composed of the following members:

- (1) Archivist of the United States (who shall serve as Chair of the Working Group);
- (2) Secretary of Defense;
- (3) Attorney General;
- (4) Director of Central Intelligence;
- (5) Director of the Federal Bureau of Investigation;
- (6) Director of the United States Holocaust Memorial Museum;
- (7) Historian of the Department of State; and
- (8) Three other persons appointed by the President.

(b) The Senior Director for Records and Access Management of the National Security Council will serve as the liaison to and attend the meetings of the Working Group. Members of the Working Group who are full-time Federal officials may serve on the Working Group through designees.

Sec. 4. *Administration.* (a) To the extent permitted by law and subject to the availability of appropriations, the National Archives and Records Administration shall provide the Working Group with funding, administrative services, facilities, staff, and other support services necessary for the performance of the functions of the Working Group.

(b) The Working Group shall terminate 3 years from the date of this Executive order.

WILLIAM J. CLINTON.

EX. ORD. NO. 13392. IMPROVING AGENCY DISCLOSURE OF INFORMATION

Ex. Ord. No. 13392, Dec. 14, 2005, 70 F.R. 75373, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to ensure appropriate agency disclosure of information, and consistent with the goals of [section 552 of title 5, United States Code](#), it is hereby ordered as follows:

Section 1. Policy.

(a) The effective functioning of our constitutional democracy depends upon the participation in public life of a citizenry that is well informed. For nearly four decades, the Freedom of Information Act (FOIA) [5 U.S.C. 552] has provided an important means through which the public can obtain information regarding the activities of Federal agencies. Under the FOIA, the public can obtain records from any Federal agency, subject to the exemptions enacted by the Congress to protect information that must be held in confidence for the Government to function effectively or for other purposes.

(b) FOIA requesters are seeking a service from the Federal Government and should be treated as such. Accordingly, in responding to a FOIA request, agencies shall respond courteously and appropriately. Moreover, agencies shall provide FOIA requesters, and the public in general, with citizen-centered ways to learn about the FOIA process, about agency records that are publicly available (e.g., on the agency's website), and about the status of a person's FOIA request and appropriate information about the agency's response.

(c) Agency FOIA operations shall be both results-oriented and produce results. Accordingly, agencies shall process requests under the FOIA in an efficient and appropriate manner and achieve tangible, measurable improvements in FOIA processing. When an agency's FOIA program does not produce such results, it should be reformed, consistent with available resources appropriated by the Congress and applicable law, to increase efficiency and better reflect the policy goals and objectives of this order.

(d) A citizen-centered and results-oriented approach will improve service and performance, thereby strengthening compliance with the FOIA, and will help avoid disputes and related litigation.

Sec. 2. Agency Chief FOIA Officers.

(a) *Designation.* The head of each agency shall designate within 30 days of the date of this order a senior official of such agency (at the Assistant Secretary or equivalent level), to serve as the Chief FOIA Officer of that agency. The head of the agency shall promptly notify the Director

of the Office of Management and Budget (OMB Director) and the Attorney General of such designation and of any changes thereafter in such designation.

(b) *General Duties.* The Chief FOIA Officer of each agency shall, subject to the authority of the head of the agency:

(i) have agency-wide responsibility for efficient and appropriate compliance with the FOIA;

(ii) monitor FOIA implementation throughout the agency, including through the use of meetings with the public to the extent deemed appropriate by the agency's Chief FOIA Officer, and keep the head of the agency, the chief legal officer of the agency, and the Attorney General appropriately informed of the agency's performance in implementing the FOIA, including the extent to which the agency meets the milestones in the agency's plan under section 3(b) of this order and training and reporting standards established consistent with applicable law and this order;

(iii) recommend to the head of the agency such adjustments to agency practices, policies, personnel, and funding as may be necessary to carry out the policy set forth in section 1 of this order;

(iv) review and report, through the head of the agency, at such times and in such formats as the Attorney General may direct, on the agency's performance in implementing the FOIA; and

(v) facilitate public understanding of the purposes of the FOIA's statutory exemptions by including concise descriptions of the exemptions in both the agency's FOIA handbook issued under [section 552\(g\) of title 5, United States Code](#), and the agency's annual FOIA report, and by providing an overview, where appropriate, of certain general categories of agency records to which those exemptions apply.

(c) *FOIA Requester Service Center and FOIA Public Liaisons.* In order to ensure appropriate communication with FOIA requesters:

(i) Each agency shall establish one or more FOIA Requester Service Centers (Center), as appropriate, which shall serve as the first place that a FOIA requester can contact to seek information concerning the status of the person's FOIA request and appropriate information about the agency's FOIA response. The Center shall include appropriate staff to receive and respond to inquiries from FOIA requesters;

(ii) The agency Chief FOIA Officer shall designate one or more agency officials, as appropriate, as FOIA Public Liaisons, who may serve in the Center or who may serve in a separate office. FOIA Public Liaisons shall serve as supervisory officials to whom a FOIA requester can raise concerns about the service the FOIA requester has received from the Center, following an initial response from the Center staff. FOIA Public Liaisons shall seek to ensure a service-oriented response to FOIA requests and FOIA-related inquiries. For example, the FOIA Public Liaison shall assist, as appropriate, in reducing delays, increasing transparency and understanding of the status of requests, and resolving disputes. FOIA Public Liaisons shall report to the agency Chief FOIA Officer on their activities and shall perform their duties consistent with applicable law and agency regulations;

(iii) In addition to the services to FOIA requesters provided by the Center and FOIA Public Liaisons, the agency Chief FOIA Officer shall also consider what other FOIA-related assistance to the public should appropriately be provided by the agency;

(iv) In establishing the Centers and designating FOIA Public Liaisons, the agency shall use, as appropriate, existing agency staff and resources. A Center shall have appropriate staff to receive and respond to inquiries from FOIA requesters;

(v) As determined by the agency Chief FOIA Officer, in consultation with the FOIA Public Liaisons, each agency shall post appropriate information about its Center or Centers on the agency's website, including contact information for its FOIA Public Liaisons. In the case of an agency without a website, the agency shall publish the information on the Firstgov.gov website or, in the case of any agency with neither a website nor the capability to post on the Firstgov.gov website, in the Federal Register; and

(vi) The agency Chief FOIA Officer shall ensure that the agency has in place a method (or methods), including through the use of the Center, to receive and respond promptly and appropriately to inquiries from FOIA requesters about the status of their requests. The Chief FOIA Officer shall also consider, in consultation with the FOIA Public Liaisons, as appropriate, whether the agency's implementation of other means (such as tracking numbers for requests, or an agency telephone or Internet hotline) would be appropriate for responding to status inquiries.

Sec. 3. Review, Plan, and Report.

(a) *Review.* Each agency's Chief FOIA Officer shall conduct a review of the agency's FOIA operations to determine whether agency practices are consistent with the policies set forth in section 1 of this order. In conducting this review, the Chief FOIA Officer shall:

(i) evaluate, with reference to numerical and statistical benchmarks where appropriate, the agency's administration of the FOIA, including the agency's expenditure of resources on FOIA compliance and the extent to which, if any, requests for records have not been responded to within the statutory time limit (backlog);

(ii) review the processes and practices by which the agency assists and informs the public regarding the FOIA process;

(iii) examine the agency's:

(A) use of information technology in responding to FOIA requests, including without limitation the tracking of FOIA requests and communication with requesters;

(B) practices with respect to requests for expedited processing; and

(C) implementation of multi-track processing if used by such agency;

(iv) review the agency's policies and practices relating to the availability of public information through websites and other means, including the use of websites to make available the records described in [section 552\(a\)\(2\) of title 5, United States Code](#); and

(v) identify ways to eliminate or reduce its FOIA backlog, consistent with available resources and taking into consideration the volume and complexity of the FOIA requests pending with the agency.

(b) *Plan.*

(i) Each agency's Chief FOIA Officer shall develop, in consultation as appropriate with the staff of the agency (including the FOIA Public Liaisons), the Attorney General, and the OMB Director, an agency-specific plan to ensure that the agency's administration of the FOIA is in accordance with applicable law and the policies set forth in section 1 of this order. The plan,

which shall be submitted to the head of the agency for approval, shall address the agency's implementation of the FOIA during fiscal years 2006 and 2007.

(ii) The plan shall include specific activities that the agency will implement to eliminate or reduce the agency's FOIA backlog, including (as applicable) changes that will make the processing of FOIA requests more streamlined and effective, as well as increased reliance on the dissemination of records that can be made available to the public through a website or other means that do not require the public to make a request for the records under the FOIA.

(iii) The plan shall also include activities to increase public awareness of FOIA processing, including as appropriate, expanded use of the agency's Center and its FOIA Public Liaisons.

(iv) The plan shall also include, taking appropriate account of the resources available to the agency and the mission of the agency, concrete milestones, with specific timetables and outcomes to be achieved, by which the head of the agency, after consultation with the OMB Director, shall measure and evaluate the agency's success in the implementation of the plan.

(c) Agency Reports to the Attorney General and OMB Director.

(i) The head of each agency shall submit a report, no later than 6 months from the date of this order, to the Attorney General and the OMB Director that summarizes the results of the review under section 3(a) of this order and encloses a copy of the agency's plan under section 3(b) of this order. The agency shall publish a copy of the agency's report on the agency's website or, in the case of an agency without a website, on the Firstgov.gov website, or, in the case of any agency with neither a website nor the capability to publish on the Firstgov.gov website, in the Federal Register.

(ii) The head of each agency shall include in the agency's annual FOIA reports for fiscal years 2006 and 2007 a report on the agency's development and implementation of its plan under section 3(b) of this order and on the agency's performance in meeting the milestones set forth in that plan, consistent with any related guidelines the Attorney General may issue under [section 552\(e\) of title 5, United States Code](#).

(iii) If the agency does not meet a milestone in its plan, the head of the agency shall:

(A) identify this deficiency in the annual FOIA report to the Attorney General;

(B) explain in the annual report the reasons for the agency's failure to meet the milestone;

(C) outline in the annual report the steps that the agency has already taken, and will be taking, to address the deficiency; and

(D) report this deficiency to the President's Management Council.

Sec. 4. Attorney General.

(a) *Report.* The Attorney General, using the reports submitted by the agencies under subsection 3(c)(i) of this order and the information submitted by agencies in their annual FOIA reports for fiscal year 2005, shall submit to the President, no later than 10 months from the date of this order, a report on agency FOIA implementation. The Attorney General shall consult the OMB Director in the preparation of the report and shall include in the report appropriate recommendations on administrative or other agency actions for continued agency dissemination and release of public information. The Attorney General shall thereafter submit two further

annual reports, by June 1, 2007, and June 1, 2008, that provide the President with an update on the agencies' implementation of the FOIA and of their plans under section 3(b) of this order.

(b) *Guidance.* The Attorney General shall issue such instructions and guidance to the heads of departments and agencies as may be appropriate to implement sections 3(b) and 3(c) of this order.

Sec. 5. *OMB Director.* The OMB Director may issue such instructions to the heads of agencies as are necessary to implement this order, other than sections 3(b) and 3(c) of this order.

Sec. 6. *Definitions.* As used in this order:

(a) the term "agency" has the same meaning as the term "agency" under [section 552\(f\)\(1\) of title 5, United States Code](#); and

(b) the term "record" has the same meaning as the term "record" under [section 552\(f\)\(2\) of title 5, United States Code](#).

Sec. 7. *General Provisions.*

(a) The agency reviews under section 3(a) of this order and agency plans under section 3(b) of this order shall be conducted and developed in accordance with applicable law and applicable guidance issued by the President, the Attorney General, and the OMB Director, including the laws and guidance regarding information technology and the dissemination of information.

(b) This order:

(i) shall be implemented in a manner consistent with applicable law and subject to the availability of appropriations;

(ii) shall not be construed to impair or otherwise affect the functions of the OMB Director relating to budget, legislative, or administrative proposals; and

(iii) is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

GEORGE W. BUSH.

FREEDOM OF INFORMATION ACT

Memorandum of President of the United States, Jan. 21, 2009, 74 F.R. 4683, provided:

Memorandum for the Heads of Executive Departments and Agencies

A democracy requires accountability, and accountability requires transparency. As Justice Louis Brandeis wrote, "sunlight is said to be the best of disinfectants." In our democracy, the Freedom of Information Act (FOIA), which encourages accountability through transparency, is the most prominent expression of a profound national commitment to ensuring an open Government. At the heart of that commitment is the idea that accountability is in the interest of the Government and the citizenry alike.

The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve. In responding to requests under the FOIA, executive branch agencies (agencies) should act promptly and in a spirit of cooperation, recognizing that such agencies are servants of the public.

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA.

The presumption of disclosure also means that agencies should take affirmative steps to make information public. They should not wait for specific requests from the public. All agencies should use modern technology to inform citizens about what is known and done by their Government. Disclosure should be timely.

I direct the Attorney General to issue new guidelines governing the FOIA to the heads of executive departments and agencies, reaffirming the commitment to accountability and transparency, and to publish such guidelines in the Federal Register. In doing so, the Attorney General should review FOIA reports produced by the agencies under Executive Order 13392 of December 14, 2005. I also direct the Director of the Office of Management and Budget to update guidance to the agencies to increase and improve information dissemination to the public, including through the use of new technologies, and to publish such guidance in the Federal Register.

This memorandum does not create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

The Director of the Office of Management and Budget is hereby authorized and directed to publish this memorandum in the Federal Register.

5 CFR PART 630—ABSENCE AND LEAVE

Subpart P—Weather and Safety Leave

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Source: 83 FR 15297, Apr. 10, 2018, unless otherwise noted.

§630.1601 Purpose and applicability.

(a) This subpart implements 5 U.S.C. 6329c, which allows an agency to provide a separate type of paid leave when weather or other safety-related conditions prevent employees from safely traveling to or safely performing work at an approved location due to an act of God, terrorist attack, or other applicable condition. Section 6329c(d) directs OPM to prescribe regulations to carry out the statutory provisions on weather and safety leave, including regulations on the appropriate uses and the proper recording of this leave.

(b) This subpart applies to an employee as defined in 5 U.S.C. 2105 who is employed in an agency, but does not apply to an intermittent employee who, by definition, does not have an established regular tour of duty during the administrative workweek.

(c) As provided in 5 U.S.C. 6329c(e), this subpart applies to employees described in subsection (b) of 38 U.S.C. 7421, notwithstanding subsection (a) of that section.

§630.1602 Definitions.

In this subpart:

Act of God means an act of nature, including hurricanes, tornadoes, floods, wildfires, earthquakes, landslides, snowstorms, and avalanches.

Agency means an Executive agency as defined in 5 U.S.C. 105, excluding the Government Accountability Office. When the term “agency” is used in the context of an agency making determinations or taking actions, it means the agency heads or management officials who are authorized (including by delegation) to make the given determination or take the given action.

Employee means an individual who is covered by this subpart, as described in §630.1601(b) and (c).

OPM means the Office of Personnel Management.

Participating in a telework program means an employee is eligible to telework and has an established arrangement with his or her agency under which the employee is approved to participate in the agency telework program, including on a routine or situational basis. Such an employee who teleworks on a situational basis is considered to be continuously participating in a telework program even if there are extended periods during which the employee does not perform telework.

Telework site means a location where an employee is authorized to perform telework, as described in 5 U.S.C. chapter 65, such as an employee's home.

Weather and safety leave means paid leave provided under the authority of 5 U.S.C. 6329c.

§630.1603 Authorization.

Subject to other provisions of this subpart, an agency may grant weather and safety leave to employees only if they are prevented from safely traveling to or safely performing work at a location approved by the agency due to—

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

§630.1604 OPM and agency responsibilities.

(a) OPM is responsible for prescribing regulations and guidance related to the appropriate use of leave under this subpart and the proper recording of such leave, including OPM guidance on Governmentwide dismissal and closure policies and procedures that provides for use of consistent terminology in describing various operating status scenarios. In issuing any operating status announcements for the Washington, DC, area, OPM must make the specific policies and procedures related to those announcements consistent with the regulations in this subpart and with OPM's Governmentwide guidance.

(b) Employing agencies are responsible for—

- (1) Establishing and applying policies and procedures related to use of leave under this subpart that are consistent with OPM regulations and guidance described in paragraph (a) of this section; and
- (2) Using terminology required by OPM-issued Governmentwide guidance in any agency-specific operating status announcements they issue (for a specific geographic location or area).

§630.1605 Telework and emergency employees.

(a) Telework employees. (1) Except as provided under paragraph (a)(2) of this section, employees who are participating in a telework program and are able to safely travel to and work at an approved telework site may not be granted leave under §630.1603. Employees who are eligible to telework and participating in a telework program under applicable agency policies are typically able to safely perform work at their approved telework site (e.g., home), since they are not required to work at their regular worksite.

(2)(i) If, in the agency's judgment, the conditions in §630.1603 could not reasonably be anticipated, an agency may provide leave under this subpart to the extent an employee was not able to prepare for telework as described in paragraph (a)(3) of this section and is otherwise unable to perform productive work at the telework site.

(ii) If an employee is prevented from safely working at the approved telework site due to circumstances, arising from one or more of the conditions in §630.1603, applicable to the telework site, an agency may, at its discretion, provide leave under this subpart to the employee.

(iii) Notwithstanding paragraphs (a)(2)(i) and (ii) of this section, an agency may decide not to provide leave under this subpart when the conditions in §630.1603 do not prevent the employee from safely traveling to or safely performing work at a regular worksite, even if the affected day is a scheduled telework day.

(3) In making a determination under paragraph (a)(2) of this section, an agency must evaluate whether any of the conditions in §630.1603 could be reasonably anticipated and whether the employee took reasonable steps (within the employee's control) to prepare to perform telework at the approved telework site. For example, if a significant snowstorm is predicted, the employee may need to prepare by taking home any equipment (e.g., laptop computer) and work needed for teleworking. To the extent that an employee is unable to perform work at a telework site because of failure to make necessary preparations for reasonably anticipated conditions, an agency may not provide weather and safety leave, and the employee would need to use other appropriate paid leave, paid time off, or leave without pay.

(b) Emergency employees. An agency may designate emergency employees who are critical to agency operations and for whom weather and safety leave may not be applicable. To the extent practicable, an agency should inform employees of their designation as emergency employees well in advance in anticipation of the possible occurrence of the conditions set forth in §630.1603. If the agency wishes to provide for the possibility that an emergency employee could work from an approved telework site in lieu of traveling to the regular worksite in appropriate circumstances, an agency should encourage the employee to enter into a telework agreement providing for that contingency. An agency may designate different emergency employees for the different circumstances expected to arise from these conditions. Emergency employees must report to work at their regular worksite or another approved location as directed by the agency, unless—

- (1) The agency determines that travel to or performing work at the worksite is unsafe for emergency employees, in which case the agency may require the employees to work at another location, including a telework site as provided in paragraph (a) of this section, as appropriate; or
- (2) The agency determines that circumstances justify granting leave under this subpart to emergency employees.

§630.1606 Administration of weather and safety leave.

- (a) An agency must use the same minimum charge increments for weather and safety leave as it does for annual and sick leave under §630.206.
- (b) Employees may be granted weather and safety leave only for hours within the tour of duty established for purposes of charging annual and sick leave when absent. For full-time employees, that tour is the 40-hour basic workweek as defined in 5 CFR 610.102, the basic work requirement established for employees on a flexible or compressed work schedule as defined in 5 U.S.C. 6121(3), or an uncommon tour of duty under §630.210.
- (c) Employees may not receive weather and safety leave for hours during which they are on other preapproved leave (paid or unpaid) or paid time off. Agencies should not provide weather and safety leave to an employee who, in the agency's judgment, is cancelling preapproved leave or paid time off, or changing a regular day off in a flexible or compressed work schedule, for the primary purpose of obtaining weather and safety leave.

§630.1607 Records and reporting.

- (a) Record of placement on leave. An agency must maintain an accurate record of the placement of an employee on weather and safety leave.
- (b) Reporting. In agency data systems (including timekeeping systems) and in data reports submitted to OPM, an agency must record weather and safety leave under section 6329c and this subpart as a category of leave separate from other types of leave.

5 U.S. Code § 6329c - Weather and safety leave

(a)Definitions.—In this section—

(1) the term “[agency](#)”—

(A) means an Executive [agency](#) (as defined in [section 105 of this title](#));

(B) includes the Department of [Veterans](#) Affairs; and

(C) does not include the Government Accountability Office; and

(2) the term “[employee](#)”—

(A) has the meaning given the term in section 2105; and

(B) does not include an intermittent [employee](#) who does not have an established regular tour of duty during the administrative workweek.

(b)Leave for Weather and Safety Issues.—An [agency](#) may approve the provision of leave under this section to an [employee](#) or a group of [employees](#) without loss of or reduction in the pay of the [employee](#) or [employees](#), leave to which the [employee](#) or [employees](#) are otherwise entitled, or credit to the [employee](#) or [employees](#) for time or service only if the [employee](#) or group of [employees](#) is prevented from safely traveling to or performing work at an approved location due to—

(1) an act of God;

(2) a terrorist attack; or

(3) another condition that prevents the [employee](#) or group of [employees](#) from safely traveling to or performing work at an approved location.

(c)Records.—

An [agency](#) shall record leave provided under this section separately from leave authorized under any other provision of law.

(d)Regulations.—Not later than 270 days after the date of enactment of this section, the Director of the Office of Personnel Management shall prescribe regulations to carry out this section, including—

(1) guidance to agencies regarding the appropriate purposes for providing leave under this section; and

(2) the proper recording of leave provided under this section.

(e)Relation to Other Laws.—

Notwithstanding subsection (a) of [section 7421 of title 38](#), this section shall apply to an [employee](#) described in subsection (b) of that section.

(Added [Pub. L. 114–328, div. A, title XI](#), § 1138(e)(1), Dec. 23, 2016, [130 Stat. 2469](#).)

5 U.S. Code § 6327. Absence in connection with serving as a bone-marrow or organ donor

(a) An [employee](#) in or under an [Executive agency](#) is entitled to leave without loss of or reduction in pay, leave to which otherwise entitled, credit for time or service, or performance or efficiency rating, for the time necessary to permit such [employee](#) to serve as a bone-marrow or organ donor.

(b) An [employee](#) may, in any calendar year, use—

- (1) not to exceed 7 days of leave under this section to serve as a bone-marrow donor; and
- (2) not to exceed 30 days of leave under this section to serve as an organ donor.

(c) The Office of Personnel Management may prescribe regulations for the administration of this section.

(Added [Pub. L. 103-329, title VI, § 629\(a\)\(1\)](#), Sept. 30, 1994, [108 Stat. 2423](#); amended [Pub. L. 106-56, § 1\(b\)](#), Sept. 24, 1999, [113 Stat. 407](#).)

5 USC PART 734—POLITICAL ACTIVITIES OF FEDERAL EMPLOYEES

Authority: [5 U.S.C. 1103](#), [1104](#), [7325](#); Reorganization Plan No. 2 of 1978, 92 Stat. 3783, [3 CFR](#) 1978 Comp. p. 323; and [E.O. 12107](#), [3 CFR](#) 1978 Comp. p. 264.

Source: [59 FR 48769](#), Sept. 23, 1994, unless otherwise noted.

Subpart A—General Provisions

§ 734.101 Definitions.

For the purposes of this part:

Accept means to come into possession of something from a person officially on behalf of a candidate, a campaign, a political party, or a partisan political group, but does not include ministerial activities which precede or follow this official act.

Candidate means an individual who seeks nomination or election to any elective office whether or not the person is elected. An individual is deemed to be a candidate if the individual has received political contributions or made expenditures or has consented to another person receiving contributions or making expenditures with a view to bringing about the individual's nomination or election.

Campaign means all acts done by a candidate and his or her adherents to obtain a majority or plurality of the votes to be cast toward a nomination or in an election.

Election includes a primary, special, runoff, or general election.

Employee means any individual (other than the President, Vice President, or a member of the uniformed services) employed or holding office in—

- (1) An Executive agency other than the General Accounting Office;
- (2) A position within the competitive service which is not in an Executive agency; or
- (3) The United States Postal Service or the Postal Rate Commission.

Employing office shall have the meaning given by the head of each agency or instrumentality of the United States Government covered by this part. Each agency or instrumentality shall provide notice identifying the appropriate employing offices within it through internal agency notice procedures.

Federal employee organization means any lawful nonprofit organization, association, society, or club composed of Federal employees.

Federal labor organization means an organization defined in [5 U.S.C. 7103\(a\)\(4\)](#).

Multicandidate political committee means an organization defined in [2 U.S.C. 441a\(a\)\(4\)](#).

Nonpartisan election means—

(1) An election in which none of the candidates is to be nominated or elected as representing a political party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected; or

(2) An election involving a question or issue which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance, or any question or issue of a similar character.

Occasional means occurring infrequently, at irregular intervals, and according to no fixed or certain scheme; acting or serving for the occasion or only on particular occasions.

Office means the U.S. Office of Personnel Management.

On Duty means the time period when an employee is:

(1) In a pay status other than paid leave, compensatory time off, credit hours, time off as an incentive award, or excused or authorized absence (including leave without pay); or

(2) Representing any agency or instrumentality of the United States Government in an official capacity.

Partisan when used as an adjective means related to a political party.

Partisan political group means any committee, club, or other organization which is affiliated with a political party or candidate for public office in a partisan election, or organized for a partisan purpose, or which engages in partisan political activity.

Partisan political office means any office for which any candidate is nominated or elected as representing a party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected, but does not include any office or position within a political party or affiliated organization.

Person means an individual; a State, local, or foreign government; or a corporation and subsidiaries it controls, company, association, firm, partnership, society, joint stock company, or any other organization or institution, including any officer, employee, or agent of such person or entity.

Political Action Committee means any committee, association, or organization (whether or not incorporated) which accepts contributions or makes expenditures for the purpose of influencing, or attempting to influence, the nomination or election of one or more individuals to Federal, State, or local elective public office.

Political activity means an activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group.

Political contribution means any gift, subscription, loan, advance, or deposit of money or anything of value, made for any political purpose.

(a) A political contribution includes:

(1) Any contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for any political purpose;

(2) Any payment by any person, other than a candidate or a political party or affiliated organization, of compensation for the personal services of another person which are rendered to any candidate or political party or affiliated organization without charge for any political purpose; and

(3) The provision of personal services, paid or unpaid, for any political purpose.

(b) A political contribution does not include the value of services provided without compensation by any individual who volunteers on behalf of any candidate, campaign, political party, or partisan political group.

Political management means the direction or supervision of a partisan political group or campaign for partisan political office.

Political party means a national political party, a State political party, or an affiliated organization.

Political purpose means an objective of promoting or opposing a political party, candidate for partisan political office, or partisan political group.

Receive means to come into possession of something from a person officially on behalf of a candidate, a campaign, a political party, or a partisan political group, but does not include ministerial activities which precede or follow this official act.

Recurrent means occurring frequently, or periodically on a regular basis.

Room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency thereof includes, but is not limited to:

(1) Any Federally owned space (including, but not limited to, “public buildings” as defined in [40 U.S.C. 612\(1\)](#)) or Federally leased space in which Federal employees perform official duties on a regular basis;

(2) Public areas as defined in [40 U.S.C. 490\(a\)\(17\)](#) and [41 CFR 101-20.003](#) of buildings under the custody and control of the General Services Administration.

(3) A room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency thereof does not include rooms in the White House, or in the residence of the Vice President, which are part of the Residence area or which are not regularly used solely in the discharge of official duties.

Solicit means to request expressly of another person that he or she contribute something to a candidate, a campaign, a political party, or partisan political group.

Subordinate refers to the relationship between two employees when one employee is under the supervisory authority, control or administrative direction of the other employee.

Uniformed services means uniformed services as defined in [5 U.S.C. 2101\(3\)](#).

[[59 FR 48769](#), Sept. 23, 1994, as amended at [61 FR 35099](#), July 5, 1996; [79 FR 25485](#), May 5, 2014]

§ 734.102 Jurisdiction.

(a) The United States Office of Special Counsel has exclusive authority to investigate allegations of political activity prohibited by the Hatch Act Reform Amendments of 1993, as implemented by [5 CFR](#)

[part 734](#), prosecute alleged violations before the United States Merit Systems Protection Board, and render advisory opinions concerning the applicability of [5 CFR part 734](#) to the political activity of Federal employees. ([5 U.S.C. 1212](#) and [1216](#)). Advice concerning the Hatch Act Reform Amendments may be requested from the Office of Special Counsel:

(1) By letter addressed to the Office of Special Counsel at 1730 M Street NW., Suite 218, Washington, DC 20036-4505;

(2) By telephone on (202) 254-3650, or (1-800) 854-2824;

(3) By fax on (202) 254-3700; or

(4) By email at Hatchact@osc.gov.

(b) The Merit Systems Protection Board has exclusive authority to determine whether a violation of the Hatch Act Reform Amendments of 1993, as implemented by [5 CFR part 734](#), has occurred and to impose a penalty of removal, reduction-in-grade, debarment from Federal employment for a period not to exceed 5 years, suspension, reprimand, or an assessment of a civil penalty not to exceed \$1,000, for violation of the political activity restrictions regulated by this part. ([5 U.S.C. 1204](#) and [7326](#)).

(c) The Office of Personnel Management is authorized to issue regulations describing the political activities which are permitted and prohibited under the Hatch Act Reform Amendments of 1993. ([5 U.S.C. 1103](#), [1104](#), [7325](#); Reorganization Plan No. 2 of 1978, 92 Stat. 3783, [3 CFR](#) 1978 Comp. p. 323; and E.O. 12107, [3 CFR](#) 1978 Comp. p. 264.)

[[59 FR 48769](#), Sept. 23, 1994, as amended at [61 FR 35100](#), July 5, 1996; [79 FR 25485](#), May 5, 2014]

§ 734.103 Multicandidate political committees of Federal labor organizations and Federal employee organizations.

(a) In order to qualify under this part, each multicandidate political committee of a Federal labor organization must provide to the Office the following:

(1) Information verifying that the multicandidate political committee is a multicandidate political committee as defined by [2 U.S.C. 441a\(a\)\(4\)](#);

(2) Information identifying the Federal labor organization to which the multicandidate political committee is connected; and

(3) Information that identifies the Federal labor organization as a labor organization defined at [5 U.S.C. 7103\(4\)](#).

(b) In order to qualify under this part, each multicandidate political committee of a Federal employee organization must provide to the Office the following:

(1) Information verifying that the multicandidate political committee is a multicandidate political committee as defined in [2 U.S.C. 441a\(a\)\(4\)](#);

(2) Information identifying the Federal employee organization to which the multicandidate political committee is connected; and

(3) Information indicating that the multicandidate political committee was in existence as of October 6, 1993.

§ 734.104 Restriction of political activity.

No further proscriptions or restrictions may be imposed upon employees covered under this regulation except:

- (a) Employees who are appointed by the President by and with the advice and consent of the Senate;
- (b) Employees who are appointed by the President;
- (c) Non-career senior executive service members;
- (d) Schedule C employees, [5 CFR 213.3301](#), [213.3302](#); and
- (e) Any other employees who serve at the pleasure of the President.

Subpart B—Permitted Activities

§ 734.201 Exclusion from coverage.

This subpart does not apply to employees in the agencies and positions described in [subpart D of this part](#).

§ 734.202 Permitted activities.

Employees may take an active part in political activities, including political management and political campaigns, to the extent not expressly prohibited by law and this part.

§ 734.203 Participation in nonpartisan activities.

An employee may:

- (a) Express his or her opinion privately and publicly on political subjects;
- (b) Be politically active in connection with a question which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance or any other question or issue of a similar character;
- (c) Participate in the nonpartisan activities of a civic, community, social, labor, or professional organization, or of a similar organization; and
- (d) Participate fully in public affairs, except as prohibited by other Federal law, in a manner which does not compromise his or her efficiency or integrity as an employee or the neutrality, efficiency, or integrity of the agency or instrumentality of the United States Government in which he or she is employed.

[[59 FR 48769](#), Sept. 23, 1994, as amended at [61 FR 35100](#), July 5, 1996; [79 FR 25485](#), May 5, 2014]

§ 734.204 Participation in political organizations.

An employee may:

- (a) Be a member of a political party or other political group and participate in its activities;

- (b) Serve as an officer of a political party or other political group, a member of a national, State, or local committee of a political party, an officer or member of a committee of a political group, or be a candidate for any of these positions;
- (c) Attend and participate fully in the business of nominating caucuses of political parties;
- (d) Organize or reorganize a political party organization or political group; and
- (e) Participate in a political convention, rally, or other political gathering.
- (f) Serve as a delegate, alternate, or proxy to a political party convention.

Example 1:

An employee of the Department of Education may serve as a delegate, alternate, or proxy to a State or national party convention.

Example 2:

A noncareer member of the Senior Executive Service, or other employee covered under this subpart, may serve as a vice-president of a political action committee, as long as the duties of the office do not involve personal solicitation, acceptance, or receipt of political contributions. Ministerial activities which precede or follow the official acceptance and receipt, such as handling, disbursing, or accounting for contributions are not covered under the definitions of *accept* and *receive* in [§ 734.101](#). Sections 734.208 and 734.303 describe in detail permitted and prohibited activities which are related to fundraising.

Example 3:

An employee of the Federal Communications Commission may make motions or place a name in nomination at a nominating caucus.

Example 4:

An employee of the Department of the Interior may serve as an officer of a candidate's campaign committee as long as he does not personally solicit, accept, or receive political contributions. Sections 734.208 and 734.303 of this part describe in detail permitted and prohibited activities which are related to fundraising.

[[59 FR 48769](#), Sept. 23, 1994, as amended at [61 FR 35100](#), July 5, 1996]

§ 734.205 Participation in political campaigns.

Subject to the prohibitions in [§ 734.306](#), an employee may:

- (a) Display pictures, signs, stickers, badges, or buttons associated with political parties, candidates for partisan political office, or partisan political groups, as long as these items are displayed in accordance with the provisions of [§ 734.306](#) of [subpart C of this part](#);
- (b) Initiate or circulate a nominating petition for a candidate for partisan political office;
- (c) Canvass for votes in support of or in opposition to a partisan political candidate or a candidate for political party office;

(d) Endorse or oppose a partisan political candidate or a candidate for political party office in a political advertisement, broadcast, campaign literature, or similar material;

(e) Address a convention, caucus, rally, or similar gathering of a political party or political group in support of or in opposition to a partisan political candidate or a candidate for political party office; and

(f) Take an active part in managing the political campaign of a partisan political candidate or a candidate for political party office.

Example 1:

An employee of the Environmental Protection Agency may broadcast endorsements for a partisan political candidate via a public address system attached to his or her private automobile.

Example 2:

An employee of the Department of Interior may canvass voters by telephone on behalf of a political party or partisan political candidate.

Example 3:

An employee of the Department of Agriculture may stand outside of polling places on election day and hand out brochures on behalf of a partisan political candidate or political party.

Example 4:

An employee may appear in a television or radio broadcast which endorses a partisan political candidate and is sponsored by the candidate's campaign committee, a political party, or a partisan political group.

Example 5:

An independent contractor is not covered by this part and may display a political button while performing the duties for which he or she is contracted.

Example 6:

An employee of the Department of Commerce who is on official travel may take annual leave in the morning to give an address at a breakfast for a candidate for partisan political office.

Example 7:

An employee may manage the political campaign of a candidate for public office including supervising paid and unpaid campaign workers.

Example 8:

While not on duty, a Federal employee may distribute campaign leaflets by hand to homes or parked cars even though the leaflet may contain information concerning where to send contributions among other factual material about a partisan political candidate. However, should a member of the public stop the employee and request further information about contributions, the employee should refer that request to another campaign worker who is not a Federal employee.

Example 9:

An employee may place in his or her front yard a sign or banner supporting a partisan political candidate.

[[59 FR 48769](#), Sept. 23, 1994, as amended at [61 FR 35100](#), July 5, 1996]

§ 734.206 Participation in elections.

An employee may:

- (a) Register and vote in any election;
- (b) Act as recorder, watcher, challenger, or similar officer at polling places;
- (c) Serve as an election judge or clerk, or in a similar position; and
- (d) Drive voters to polling places for a partisan political candidate, partisan political group, or political party.

Example:

An employee may drive voters to polling places in a privately owned vehicle, but not in a Government-owned or leased vehicle.

§ 734.207 Candidacy for public office.

An employee may:

- (a) Run as an independent candidate in a partisan election covered by [5 CFR part 733](#); and
- (b) Run as a candidate in a nonpartisan election.

Example 1:

An employee who is a candidate for public office in a nonpartisan election is not barred by the Hatch Act from soliciting, accepting, or receiving political contributions for his or her own campaign; however, such solicitation, acceptance, or receipt must comply with [part 2635 of this title](#) as well as any other directives that may apply, e.g., The Federal Property Management Regulations in [41 CFR chapter 101](#).

§ 734.208 Participation in fundraising.

- (a) An employee may make a political contribution to a political party, political group, campaign committee of a candidate for public office in a partisan election and multicandidate political committee of a Federal labor or Federal employee organization.
- (b) Subject to the prohibitions stated in [section 734.303](#), an employee may—
 - (1) Attend a political fundraiser;
 - (2) Accept and receive political contributions in a partisan election described in [5 CFR part 733](#);
 - (3) Solicit, accept, or receive uncompensated volunteer services from any individual; and
 - (4) Solicit, accept, or receive political contributions, as long as:
 - (i) The person who is solicited for a political contribution belongs to the same Federal labor organization, or Federal employee organization, as the employee who solicits, accepts, or receives the contribution;

- (ii) The person who is solicited for a political contribution is not a subordinate employee; and
- (iii) The request is for a contribution to the multicandidate political committee of a Federal labor organization or to the multicandidate political committee of a Federal employee organization in existence on October 6, 1993.
- (c) Subject to the provisions of [§ 734.306](#), an employee may make a financial contribution to a political action committee through a voluntary allotment made under [§ 550.311\(b\) of this chapter](#), if the head of the employee's agency permits agency employees to make such allotments to political action committees.
- (d) An employee who is covered under this subpart and is a payroll official in an agency where employees are permitted to make allotments to political action committees may process the completed direct deposit forms for voluntary allotments which have been made to such committees under [section 550.311\(b\) of this title](#).

Example 1:

An GS-12 employee of the Department of Treasury who belongs to the same Federal employee organization as a GS-5 employee of the Department of Treasury may solicit a contribution for the multicandidate political committee when she is not on duty as long as the GS-5 employee is not under the supervisory authority of the GS-12 employee.

Example 2:

An employee of the National Park Service may give a speech or keynote address at a political fundraiser when he is not on duty, as long as the employee does not solicit political contributions, as prohibited in [§ 734.303\(b\) of this part](#).

Example 3:

An employee's name may appear on an invitation to a political fundraiser as a guest speaker as long as the reference in no way suggests that the employee solicits or encourages contributions, as prohibited in [§ 734.303 of this part](#) and described in example 2 thereunder. However, the employee's official title may not appear on invitations to any political fundraiser, except that an employee who is ordinarily addressed using a general term of address, such as "The Honorable," may use or permit the use of that term of address for such purposes.

Example 4:

When an employee of the Department of Transportation is not on duty, he or she may engage in activities which do not require personal solicitations of contributions, such as organizing mail or phone solicitations for political contributions. Activities such as stuffing envelopes with requests for political contributions also are permitted. However, he or she may not sign the solicitation letter unless the solicitation is for the contribution of uncompensated volunteer services of individuals who are not subordinate employees. An employee may not knowingly send to his or her subordinate employees a letter soliciting the contribution of their uncompensated services. However, he or she may sign a letter that solicits contributions of uncompensated volunteer services as part of a general mass mailing that

might reach a subordinate employee, as long as the mass mailing is not specifically targeted to his or her subordinate employees.

Example 5:

An employee who is not on duty may participate in a phone bank soliciting the uncompensated services of individuals. However, an employee may not make phone solicitations for political contributions even anonymously.

Example 6:

An employee of the Department of Agriculture who is on official travel and is not in a pay status nor officially representing the Department may write invitations in his hotel room to a meet-the-candidate reception which he plans to hold in his home.

Example 7:

An employee may serve as an officer or chairperson of a political fundraising organization or committee as long as he or she does not personally solicit, accept, or receive political contributions. For example, the employee may organize or manage fundraising activities as long as he or she does not violate the above prohibition.

Example 8:

The head of a cabinet-level department may contribute one of her worn-out cowboy boots to the campaign committee of a Senatorial candidate to be auctioned off in a fundraising raffle for the benefit of the candidate's campaign.

Example 9:

An employee may help organize a fundraiser including supplying names for the invitation list as long as he or she does not personally solicit, accept, or receive contributions.

Example 10:

An employee on travel may engage in political activity when he or she is not on duty without taking annual leave.

Example 11:

A Federal employee may solicit, accept, or receive the uncompensated volunteer services of any individual, except a subordinate employee, to work on behalf of a partisan political candidate or organization. However, such solicitation, acceptance, or receipt must comply with [part 2635 of this title](#) as well as any other directives that may apply, e.g., the Federal Property Management Regulations in [41 CFR chapter 101](#). Further, Federal employees are subject to criminal anti-coercion provisions found at [18 U.S.C. 610](#).

Example 12:

An employee who desires to make a financial contribution to a political action committee through a voluntary allotment personally may obtain blank direct deposit forms from his or her payroll office.

However, he or she may not complete the form while he or she is on duty, on Federal property, or in a Federally owned or leased vehicle. Moreover, he or she may not personally deliver his or her completed form, or the completed form of another employee, to the payroll office. However, the employee may mail his or her direct deposit form to his or her agency payroll office.

Example 13:

Employees who are permitted to solicit, accept, or receive political contributions under the circumstances described in [§ 734.208\(b\)\(4\)](#) may not solicit, accept, or receive such contributions either while they are on duty, or while they are on Federal premises, or both.

[[59 FR 48769](#), Sept. 23, 1994, as amended at [61 FR 35100](#), July 5, 1996]

Subpart C—Prohibited Activities

§ 734.301 Exclusion from coverage.

This subpart does not apply to employees in the agencies and positions described in [subpart D of this part](#).

§ 734.302 Use of official authority; prohibition.

(a) An employee may not use his or her official authority or influence for the purpose of interfering with or affecting the result of an election.

(b) Activities prohibited by [paragraph \(a\)](#) of this section include, but are not limited to:

- (1) Using his or her official title while participating in political activity;
- (2) Using his or her authority to coerce any person to participate in political activity; and
- (3) Soliciting, accepting, or receiving uncompensated individual volunteer services from a subordinate for any political purpose.

Example 1:

An employee who signs a letter seeking uncompensated volunteer services from individuals may not identify himself or herself by using his or her official title. However, the employee may use a general form of address, such as “The Honorable.”

Example 2:

A noncareer member of the Senior Executive Service, or another employee covered by this subpart, may not ask his or her subordinate employees to provide uncompensated individual volunteer services for a political party, partisan political group, or candidate for partisan political office. Moreover, he or she may not accept or receive such services from a subordinate employee who offers to donate them.

Example 3:

An employee may not require any person to contribute to a partisan political campaign in order to win a Federal contract:

[[61 FR 35100](#), July 5, 1996]

§ 734.303 Fundraising.

An employee may not knowingly:

- (a) Personally solicit, accept or receive a political contribution from another person, except under the circumstances specified in [§ 734.208\(b\)](#);
- (b) Personally solicit political contributions in a speech or keynote address given at a fundraiser;
- (c) Allow his or her official title to be used in connection with fundraising activities; or
- (d) Solicit, accept, or receive uncompensated volunteer services from an individual who is a subordinate.

Example 1:

An employee may not host a fundraiser at his or her home. However, a spouse who is not covered under this part may host such a fundraiser and the employee may attend. The employee may not personally solicit contributions to the fundraiser. Moreover, the employee may not accept, or receive political contributions, except under the circumstances stated in [§ 734.208\(b\)](#).

Example 2:

An employee's name may not appear on an invitation to a fundraiser as a sponsor of the fundraiser, or as a point of contact for the fundraiser.

Example 3:

An employee may not ask a subordinate employee to volunteer on behalf of a partisan political campaign.

Example 4:

An employee may not call the personnel office of a business or corporation and request that the corporation or business provide volunteers or services for a campaign. However, an employee may call an individual who works for a business or corporation and request that specific individual's services for a campaign.

§ 734.304 Candidacy for public office.

An employee may not run for the nomination or as a candidate for election to partisan political office, except as specified in [§ 734.207](#).

§ 734.305 Soliciting or discouraging the political participation of certain persons.

- (a) An employee may not knowingly solicit or discourage the participation in any political activity of any person who has an application for any compensation grant, contract, ruling, license, permit, or certificate pending before the employee's employing office.
- (b) An employee may not knowingly solicit or discourage the participation in any political activity of any person who is the subject of, or a participant in, an ongoing audit, investigation, or enforcement action being carried out by the employee's employing office.

(c) Each agency or instrumentality of the United States shall determine when a matter is pending and ongoing within employing offices of the agency or instrumentality for the purposes of this part.

[[59 FR 48769](#), Sept. 23, 1994, as amended at [79 FR 25486](#), May 5, 2014]

§ 734.306 Participation in political activities while on duty, in uniform, in any room or building occupied in the discharge of official duties, or using a Federal vehicle.

(a) An employee may not participate in political activities subject to the provisions of [subpart E of this part](#):

(1) While he or she is on duty;

(2) While he or she is wearing a uniform, badge, insignia, or other similar item that identifies the employing agency or instrumentality or the position of the employee;

(3) While he or she is in any room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency or instrumentality thereof; or

(4) While using a Government-owned or leased vehicle or while using a privately-owned vehicle in the discharge of official duties.

(b) The prohibitions in [paragraph \(a\)](#) of this section do not apply to employees covered under [subpart E of this part](#).

Example 1:

While on leave without pay, an employee is not subject to the prohibition in [§ 734.306\(a\)\(1\)](#) because he or she is not on duty. However, while on leave without pay, the employee remains subject to the other prohibitions in subpart C.

Example 2:

A Postal Service employee who uses her private vehicle to deliver mail may place a political bumper sticker on the vehicle, as long as she covers the bumper sticker while she is on duty.

Example 3:

An employee who uses his or her privately owned vehicle on a recurrent basis for official business may place a partisan political bumper sticker on the vehicle, as long as he or she covers the bumper sticker while the vehicle is being used for official duties.

Example 4:

An employee who uses his or her privately owned vehicle on official business, must cover any partisan political bumper sticker while the vehicle is being used for official duties, if the vehicle is clearly identified as being on official business.

Example 5:

A noncareer member of the Senior Executive Service, or any other employee covered by this subpart, who uses his or her privately owned vehicle only on an occasional basis to drive to another Federal agency for a meeting, or to take a training course, is not required to cover a partisan political bumper sticker on his or her vehicle.

Example 6:

An employee may not place a partisan political bumper sticker on any Government owned or Government leased vehicle.

Example 7:

An employee may place a bumper sticker on his or her privately owned vehicle and park his or her vehicle in a parking lot of an agency or instrumentality of the United States Government or in a non-Federal facility for which the employee receives a subsidy from his or her employing agency or instrumentality.

Example 8:

When an agency or instrumentality of the United States Government leases offices in a commercial building and that building includes the headquarters of a candidate for partisan political office, an employee of that agency or instrumentality may do volunteer work, when he or she is not on duty, at the candidate's headquarters and in other areas of the building that have not been leased by the Government.

Example 9:

A Government agency or instrumentality leases all of the space in a commercial building; employees may not participate in political activity in the public areas of the leased building.

Example 10:

An employee of the National Aeronautics and Space Administration (NASA) may not engage in political activities while wearing a NASA flight patch, NASA twenty-year pin or anything with an official NASA insignia.

Example 11:

If a political event begins while an employee is on duty and continues into the time when he or she is not on duty, the employee must wait until he or she is not on duty to attend the event. Alternatively, an employee may request annual leave to attend the political event when it begins.

Example 12:

Officials of labor organizations who have been given official time to perform representational duties are on duty.

Example 13:

An employee may stuff envelopes for a mailing on behalf of a candidate for partisan political office while the employee is sitting in the park during his or her lunch period if he or she is not considered to be on duty during his or her lunch period.

Example 14:

An employee who works at home may engage in political activities at home when he or she is not in a pay status or representing the Government in an official capacity.

Example 15:

An employee who is appointed by the President by and with the advice and consent of the Senate (PAS) may attend a political event with any non-PAS employee whose official duties do not require accompanying the PAS as long as the non-PAS employee is not on duty.

Example 16:

A noncareer member of the Senior Executive Service, or any other employee covered by this subpart, may not wear partisan political buttons or display partisan political pictures, signs, stickers, or badges while he or she is on duty or at his or her place of work.

Example 17:

An employee may not engage in political activity in the cafeteria of a Federal building, even if the cafeteria is in space leased by a contractor.

Example 18:

An employee who contributes financially to a political action committee through a voluntary allotment made under [§ 550.311\(b\) of this title](#) may not complete the direct deposit forms while he or she is on duty, in a “room or building” defined in [§ 734.101](#) or in a Federally owned or leased vehicle.

Example 19:

An employee who contributes financially to a political action committee through a voluntary allotment may not personally deliver his or her completed direct deposit form, or the completed direct deposit form of another employee, to the payroll employees who would process or administer such forms. However, the employee may mail his or her direct deposit form to his or her agency payroll office.

[[59 FR 48769](#), Sept. 23, 1994, as amended at [61 FR 35101](#), July 5, 1996]

§ 734.307 Campaigning for a spouse or family member.

An employee covered under this subpart who is the spouse or family member of either a candidate for partisan political office, candidate for political party office, or candidate for public office in a nonpartisan election, is subject to the same prohibitions as other employees covered under this subpart.

Example 1:

An employee who is married to a candidate for partisan political office may attend a fundraiser for his or her spouse, stand in the receiving line, sit at the head table, and urge others to vote for his or her spouse. However, the employee may not personally solicit, accept, or receive contributions of money or

the paid or unpaid services of a business or corporation, or sell or collect money for tickets to the fundraiser.

Example 2:

An employee who is the daughter of a candidate for partisan political office may appear in a family photograph which is printed in a campaign flier. She may distribute fliers at a campaign rally as long as she does not personally solicit contributions.

Example 3:

An employee who is married to a candidate for political partisan political office may appear with her spouse in a political advertisement or a broadcast, and urge others to vote for her spouse, as long as the employee does not personally solicit political contributions.

[[59 FR 48769](#), Sept. 23, 1994, as amended at [61 FR 35101](#), July 5, 1996]

Subpart D—Employees in Certain Agencies and Positions

§ 734.401 Coverage.

(a) This subpart applies to employees in the following agencies and positions:

- (1) The Federal Election Commission;
- (2) The Election Assistance Commission;
- (3) The Federal Bureau of Investigation;
- (4) The Secret Service;
- (5) The Central Intelligence Agency;
- (6) The National Security Council;
- (7) The National Security Agency;
- (8) The Defense Intelligence Agency;
- (9) The Merit Systems Protection Board;
- (10) The Office of Special Counsel;
- (11) The Office of Criminal Investigation of the Internal Revenue Service.
- (12) The Office of Investigative Programs of the United States Customs Service;
- (13) The Office of Law Enforcement of the Bureau of Alcohol, Tobacco, and Firearms;
- (14) The Criminal Division of the Department of Justice;
- (15) The National Security Division of the Department of Justice;
- (16) The National Geospatial-Intelligence Agency;

- (17) The Office of the Director of National Intelligence;
- (18) Career Senior Executive Service positions described in [5 U.S.C. 3132\(a\)\(4\)](#);
- (19) Administrative Law Judge positions described in [5 U.S.C. 5372](#);
- (20) Contract Appeals Board Member positions described in [5 U.S.C. 5372a](#); or
- (21) Administrative Appeals Judge positions described in [5 U.S.C. 5732b](#).

(b) Employees appointed by the President by and with the advice and consent of the Senate in the agencies and positions described in [paragraph \(a\)](#) of this section are excluded from coverage under this subpart.

(c) All employees covered under this subpart are free to engage in political activity to the widest extent consistent with the restrictions imposed by law and this subpart.

[[59 FR 48769](#), Sept. 23, 1994, as amended at [61 FR 35101](#), July 5, 1996; [79 FR 25486](#), May 5, 2014]

§ 734.402 Expression of an employee's individual opinion.

Each employee covered under this subpart retains the right to participate in any of the following political activities, as long as such activity is not performed in concert with a political party, partisan political group, or a candidate for partisan political office:

- (a) Express his or her opinion as an individual privately and publicly on political subjects and candidates;
- (b) Display a political picture, sign, sticker, badge, or button, as long as these items are displayed in accordance with the provisions of [§ 734.406](#);
- (c) Sign a political petition as an individual;
- (d) Be politically active in connection with a question which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance, or any other question or issue of a similar character; and
- (e) Otherwise participate fully in public affairs, except as prohibited by other Federal law, in a manner which does not compromise his or her efficiency or integrity as an employee or the neutrality, efficiency, or integrity of the agency or instrumentality of the United States Government in which he or she is employed.

Example 1:

An employee may purchase air time on a radio or television station to endorse a partisan political candidate. However, he or she may not endorse such a candidate in a commercial or program which is sponsored by the candidate's campaign committee, a political party, or a partisan political group.

Example 2:

An employee may address a political convention or rally but not on behalf, or at the request of, a political party, partisan political group, or an individual who is running for the nomination or as a candidate for election to partisan political office.

Example 3:

An employee may print at her own expense one thousand fliers which state her personal opinion that a partisan political candidate is the best suited for the job. She may distribute the fliers at a shopping mall on the weekend. However, she may not distribute fliers printed by the candidate's campaign committee, a political party, or a partisan political group.

Example 4:

An employee may place in his or her yard a sign supporting a candidate for partisan political office.

Example 5:

An employee may stand outside of a political party convention with a homemade sign which states his or her individual opinion that one of the candidates for nomination is the best qualified candidate.

Example 6:

An employee, including a career SES employee, may wear a button with a partisan political theme when the employee is not on duty or at his or her place of work.

[[59 FR 48769](#), Sept. 23, 1994, as amended at [61 FR 35101](#), July 5, 1996]

§ 734.403 Participation in elections.

Each employee covered under this subpart retains the right to:

- (a) Register and vote in any election;
- (b) Take an active part, as a candidate or in support of a candidate, in a nonpartisan election; and
- (c) Serve as an election judge or clerk, or in a similar position, to perform nonpartisan duties as prescribed by State or local law.

§ 734.404 Participation in political organizations.

(a) Each employee covered under this subpart retains the right to:

- (1) Participate in the nonpartisan activities of a civic, community, social, labor, or professional organization, or of a similar organization;
 - (2) Be a member of a political party or other partisan political group and participate in its activities to the extent consistent with other Federal law;
 - (3) Attend a political convention, rally, fund-raising function, or other political gathering; and
 - (4) Make a financial contribution to a political party, partisan political group, or to the campaign committee of a candidate for partisan political office.
- (b) Subject to the provisions in [§ 734.406](#), an employee covered under this subpart may make a financial contribution to a political action committee through a voluntary allotment made under [§ 550.311\(b\) of this chapter](#) if the head of the employee's agency permits agency employees to make such allotments to political action committees.

(c) An employee who is covered under this subpart and is a payroll official in an agency where employees are permitted to make allotments to political action committees may process the completed direct deposit forms for voluntary allotments which have been made to such committees under [§ 550.311\(b\) of this chapter](#).

Example 1:

An employee, or a noncareer SES employee who is subject to subpart D of part 734, may attend a political convention or rally solely as a spectator. However, the employee and noncareer SES employee may not participate in demonstrations or parades which are sponsored by a political party, a partisan political group, or an individual who is running for nomination to be a candidate for partisan political office.

Example 2:

An employee may attend a political party's annual barbecue, but he or she may not organize, distribute invitations to, or sell tickets to the barbecue.

Example 3:

An employee who desires to contribute to a political action committee through an allotment personally may obtain blank direct deposit forms from his or her payroll office. The employee may not complete the direct deposit form while he or she is on duty, on Federal property, or in a Federally owned or leased vehicle. The employee also may not personally deliver his or her completed direct deposit form, or the completed direct deposit form of another employee, to his or her payroll office. However, the employee may mail the completed form to his or her agency payroll office.

[\[61 FR 35101\]](#), July 5, 1996]

§ 734.405 Campaigning for a spouse or family member.

An employee covered under this subpart who is the spouse or family member of either a candidate for partisan political office, or a candidate for political party office, may appear in photographs of the candidate's family which might appear in a political advertisement, a broadcast, campaign literature, or similar material. A spouse or a family member who is covered by the Hatch Act Reform Amendments also may attend political functions with the candidate. However, the spouse or family member may not distribute campaign literature or solicit, accept, or receive political contributions.

Example 1:

An employee who is the spouse of a candidate for partisan political office may stand in the receiving line and sit at the head table during a political dinner honoring the spouse.

Example 2:

An employee who is the daughter of a candidate for partisan political office may appear in a family photograph which is printed in a campaign flier, but she may not distribute the flier at a campaign rally.

§ 734.406 Participation in political activities while on duty, in uniform, in any room or building occupied in the discharge of official duties, or using a Federal vehicle; prohibition.

(a) An employee covered under this subpart may not participate in political activities:

(1) While he or she is on duty;

(2) While he or she is wearing a uniform, badge, or insignia that identifies the employing agency or instrumentality or the position of the employee;

(3) While he or she is in any room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency or instrumentality thereof; or

(4) While using a Government-owned or leased vehicle or while using a privately owned vehicle in the discharge of official duties.

Example 1:

An employee who uses his or her privately owned vehicle on a recurrent basis for official business may place a bumper sticker on the vehicle, as long as he or she covers the bumper sticker while the vehicle is being used for official duties.

Example 2:

An employee who uses his or her privately owned vehicle on official business, must cover any partisan political bumper sticker while the vehicle is being used for official duties, if the vehicle is clearly identified as being on official business.

Example 3:

An employee or career SES employee who uses his or her privately owned vehicle only on an occasional basis to drive to another Federal agency for a meeting, or to take a training course, if not required to cover a partisan political bumper sticker on his or her vehicle.

Example 4:

An employee may not place a partisan political bumper sticker on any Government owned or Government leased vehicle.

Example 5:

An employee may place a bumper sticker on his or her privately owned vehicle and park the vehicle in a parking lot of an agency or instrumentality of the United States Government or in a non-Federal facility for which the employee receives a subsidy from his or her employing agency or instrumentality.

Example 6:

An employee, or noncareer SES employee who is subject to [subpart D of this part](#) 734, may not wear partisan political buttons or display partisan political pictures, signs, stickers, or badges while he or she is on duty or at his or her place of work.

Example 7:

An employee who contributes financially to a political action committee through a voluntary allotment made under [§ 550.311\(b\) of this title](#) may not complete the direct deposit forms while he or she is on duty, in a “room or building” defined in [§ 734.101](#), or in a Federally owned or leased vehicle.

Example 8:

An employee who contributes financially to a political action committee may not personally deliver his or her completed direct deposit form, or the completed direct deposit form of another employee, to the payroll employees who would process or administer such forms. However, the employee may mail his or her direct deposit form to his or her agency payroll office.

(b) [Reserved]

[[59 FR 48769](#), Sept. 23, 1994, as amended at [61 FR 35102](#), July 5, 1996]

§ 734.407 Use of official authority; prohibition.

An employee covered under this subpart may not use his or her official authority or influence for the purpose of interfering with or affecting the result of an election.

§ 734.408 Participation in political management and political campaigning; prohibitions.

An employee covered under this subpart may not take an active part in political management or in a political campaign, except as permitted by [subpart D of this part](#).

[[61 FR 35102](#), July 5, 1996]

§ 734.409 Participation in political organizations; prohibitions.

An employee covered under this subpart may not:

- (a) Serve as an officer of a political party, a member of a national, State, or local committee of a political party, an officer or member of a committee of a partisan political group, or be a candidate for any of these positions;
- (b) Organize or reorganize a political party organization or partisan political group;
- (c) Serve as a delegate, alternate, or proxy to a political party convention; and
- (d) Address a convention, caucus, rally, or similar gathering of a political party or partisan political group in support of or in opposition to a candidate for partisan political office or political party office, if such address is done in concert with such a candidate, political party, or partisan political group.

§ 734.410 Participation in political fundraising; prohibitions.

An employee covered under this subpart may not:

- (a) Solicit, accept, or receive political contributions; or
- (b) Organize, sell tickets to, promote, or actively participate in a fundraising activity of a candidate for partisan political office or of a political party, or partisan political group.

§ 734.411 Participation in political campaigning; prohibitions.

An employee covered under this subpart may not:

- (a) Take an active part in managing the political campaign of a candidate for partisan political office or a candidate for political party office;
- (b) Campaign for partisan political office;
- (c) Canvass for votes in support of or in opposition to a candidate for partisan political office or a candidate for political party office, if such canvassing is done in concert with such a candidate, or of a political party, or partisan political group;
- (d) Endorse or oppose a candidate for partisan political office or a candidate for political party office in a political advertisement, broadcast, campaign literature, or similar material if such endorsement or opposition is done in concert with such a candidate, political party, or partisan political group;
- (e) Initiate or circulate a partisan nominating petition.

§ 734.412 Participation in elections; prohibitions.

An employee covered under this subpart may not:

- (a) Be a candidate for partisan political office;
- (b) Act as recorder, watcher, challenger, or similar officer at polling places in concert with a political party, partisan political group, or a candidate for partisan political office;
- (c) Drive voters to polling places in concert with a political party, partisan political group, or a candidate for partisan political office.

[[59 FR 48769](#), Sept. 23, 1994, as amended at [61 FR 35102](#), July 5, 1996]

§ 734.413 Employees of the Federal Election Commission; prohibitions.

- (a) An employee of the Federal Election Commission may not request or receive from, or give to, an employee, a Member of Congress, or an officer of a uniformed service a political contribution.
- (b) This section does not cover employee of the Federal Election Commission who are appointed by the President by and with the advice and consent of the Senate.

Subpart E—Special Provisions for Certain Presidential Appointees and Employees Paid from the Appropriation for the Executive Office of the President

§ 734.501 Permitted and prohibited activities.

Except as otherwise specified in this part 734, employees who are appointed by the President by and with the advice and consent of the Senate are subject to the provisions of [subparts B](#) and [C of this part](#).

§ 734.502 Participation in political activity while on duty, in uniform, in any room or building occupied in the discharge of official duties, or using a Federal vehicle.

- (a) This section applies to an employee:

(1) The duties and responsibilities of whose position continue outside normal duty hours and while away from the normal duty post; and

(2) Who is—

(i) An employee paid from an appropriation for the Executive Office of President; or

(ii) An employee appointed by the President by and with the advice and consent of the Senate whose position is located within the United States, who determines policies to be pursued by the United States in relations with foreign powers or in the nationwide administration of Federal laws;

(b) For the purposes of this subpart, normal duty hours and normal duty post will be determined by the head of each agency or instrumentality of the United States.

(c) An employee described in [paragraph \(a\)](#) of this section may participate, subject to any restrictions that may be imposed in accordance with [§ 734.104](#), in political activities:

(1) While he or she is on duty;

(2) While he or she is wearing a uniform, badge, or insignia that identifies the agency or instrumentality of the United States Government or the position of the employee;

(3) While he or she is in any room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency or instrumentality thereof; or

(4) While using a Government-owned or leased vehicle or while using a privately-owned vehicle in the discharge of official duties.

(d) An employee, to whom [subpart E of this part](#) does not apply, who is not on duty may participate in political activities in rooms of the White House or the Residence of the Vice President which are part of the Residence area or which are not regularly used solely in the discharge of official duties.

Example 1:

An Inspector General is appointed under the Inspector General Act of 1978, as amended. According to section 3(c) of that Act, he or she does not qualify as an employee who determines policies to be pursued by the United States in the nationwide administration of Federal laws. therefore, he or she may not participate in political activities while on duty, while wearing a uniform, badge, or insignia that identifies his or her office or position, while in any room or building occupied in the discharge of official duties, or while using a Government-owned or leased vehicle or while using a privately-owned vehicle in the discharge of official duties.

Example 2:

An employee who is covered by this subpart and wears a uniform as an incident of her office may wear the uniform while she is giving a speech at a political fundraiser.

Example 3:

The head of an executive department may hold a partisan political meeting or host a reception which is not a fundraiser in his conference room during normal business hours.

Example 4:

An employee accompanies the Secretary of Transportation to a political party convention as part of the Secretary's security or administrative detail. The employee is considered to be on duty while protecting or performing official duties for the Secretary regardless of the nature of the function that the Secretary is attending.

Example 5:

An American Ambassador overseas obtains authorization from the Department of State to depart post in order to take a vacation away from post. During the period she is authorized to be on vacation away from post, she is not considered to be on duty for the purpose of the Hatch Act Reform Amendments and may engage in any political activity permitted under the Hatch Act Reform Amendments of 1993.

[[59 FR 48769](#), Sept. 23, 1994, as amended at [61 FR 35102](#), July 5, 1996; [79 FR 25486](#), May 5, 2014]

§ 734.503 Allocation and reimbursement of costs associated with political activities.

(a) The costs associated with the political activities described in [§ 733.502\(c\) of this chapter](#) may not be paid for by money derived from the Treasury of the United States. Costs associated with a political activity are deemed not to be paid for by money derived from the Treasury of the United States if the Treasury is reimbursed for the costs within a reasonable period of time.

(b) For the purposes of this section, costs associated with a political activity do not include any costs that the Government would have or have incurred regardless of whether the activity was political. Examples of such costs are:

- (1) The compensation of the employee described in [§ 734.502\(a\)](#);
- (2) The value of any office or other real property owned or leased by the Government;
- (3) The compensation and expenses of any Government employee that is required in the performance of his or her duties to accompany or assist the person engaging in the political activity; and
- (4) The cost of special security arrangements for the person engaging in the political activity, including special transportation vehicles or methods.

(c)

(1) An employee covered under this subpart must apportion the costs of mixed travel based on the time spent on political activities and the time spent performing official duties. Prorating the cost of travel involves determining the "total activity time" which is the amount of time actually spent by the employee in meetings, receptions, rallies, and similar activities. Time spent in actual travel, private study, or rest and recreation is not included in the computation of the "total activity time". The proration of the cost then is determined based on how the "total activity time" was spent. The formula is as follows:

Time spent in official meetings, receptions, etc. + Time spent in political meetings, receptions, rallies =
Total activity time

Time spent in official activity ÷ Total activity time = Percentage of trip that is official

Time spent in political activity ÷ Total activity time = Percentage of trip that is political

The percentage figure that represents the political portion of the trip is then multiplied by the amount that would be reimbursed to the Government if all of the travel was political. The product of that calculation represents the amount to be paid by the political entity or organization.

(2) The allocation method must be applied to all of the relevant costs of mixed travel.

(3) Expenses that are associated specifically with a political activity and not with any official activity must be treated as political, and expenses associated specifically with an official activity and not with any political activity must be treated as official.

(4) In allocating the costs of travel other than air travel, the allocation formula should be applied to any Government maximum for that type of expenditure.

(5) The determination of the proper amount of allocation must be based on the facts and circumstances involved.

(6) In the event that a minor, clearly incidental percentage of the activity of a mixed trip is devoted to either official or political activity, e.g. less than 3%, the entire trip should be treated as if it was wholly of the type represented by the substantial figure. The balance should be treated as *de minimis* and need not be reimbursed as political or charged as official.

(d) For any cost of a political activity of an employee that is required to be reported to the Federal Election Commission under the Federal Election Campaign Act (FECA) or the Presidential Election Campaign Fund Act (PECFA), the employee shall use the same method of allocation as used under the FECA or PECFA and regulations thereunder in lieu of the allocation method in [paragraph \(c\)](#) of this section.

Example 1:

The Secretary, an employee described by section 7324(b)(2) of title 5 of the United States Code, holds a catered political activity (other than a fundraiser) in her office. Her security detail attends the reception as part of their duty to provide security for her. The Secretary will not be in violation of the Hatch Act Reform Amendments if the costs of her office, her compensation, and her security detail are not reimbursed to the Treasury. A violation of the Hatch Act Amendments occurs if Government funds, including reception or discretionary funds, are used to cater the political activity, unless the Treasury is reimbursed for the cost of the catering within a reasonable time.

Example 2:

There should be no allocation between official and political funds for a sound system rented for a single event.

Example 3:

If on a mixed trip a Government employee is only entitled to \$26 per diem for food on a wholly official trip and the trip is 50% political and 50% official, the Government share would be 50% of \$26, not 50% of the actual amount spent.

Example 4:

The President is transported by special motorcade to and from the site of the political event. The expense of the motorcade is for special security arrangements. Thus, it would not be a violation of the Hatch Act Reform Amendments if the costs of the security arrangements, including the cost of the motorcade, are not reimbursed to the Treasury.

§ 734.504 Contributions to political action committees through voluntary payroll allotments prohibited.

An employee described in [§ 734.502\(a\)](#) may not financially contribute to a political action committee through a voluntary allotment made under [§ 550.311\(b\) of this title](#).

[[61 FR 35102](#), July 5, 1996]

Subpart F—Employees Who Work on An Irregular or Occasional Basis**§ 734.601 Employees who work on an irregular or occasional basis.**

An employee who works on an irregular or occasional basis or is a special Government employee as defined in [18 U.S.C. 202\(a\)](#) is subject to the provisions of the applicable subpart of this part when he or she is on duty.

Example:

An employee appointed to a special commission or task force who does not have a regular tour of duty may run as a partisan political candidate, but may actively campaign only when he or she is not on duty.

Subpart G—Related Statutes and Executive Orders**§ 734.701 General.**

In addition to the provisions regulating political activity set forth in [subparts A](#) through [G of this part](#), there are a number of statutes and Executive orders that establish standards to which the political activity of an employee, a Federal labor organization, a Federal employee organization, and a multicandidate political committee must conform. The list set forth in [§ 734.702](#) references some of the more significant of those statutes. It is not comprehensive and includes only references to statutes of general applicability.

§ 734.702 Related statutes and Executive orders.

- (a) The prohibition against offering anything of value in consideration of the use or promise of use of influence to procure appointive office ([18 U.S.C. 210](#)).
- (b) The prohibition against solicitation or acceptance of anything of value to obtain public office for another ([18 U.S.C. 211](#)).
- (c) The prohibition against intimidating, threatening, or coercing voters in Federal elections ([18 U.S.C. 594](#)).

- (d) The prohibition against use of official authority to interfere with a Federal election by a person employed in any administrative position by the United States in connection with any activity financed in whole or in part by Federal funds ([18 U.S.C. 595](#)).
- (e) The prohibition against the promise of employment, compensation, or benefits from Federal funds in exchange for political activity ([18 U.S.C. 600](#)).
- (f) The prohibition against the deprivation of or threat of deprivation of employment in exchange for political contributions ([18 U.S.C. 601](#)).
- (g) The prohibition against soliciting political contributions ([18 U.S.C. 602](#)).
- (h) The prohibition against making certain political contributions ([18 U.S.C. 603](#)).
- (i) The prohibition against soliciting or receiving assessments, subscriptions, or contributions for political purposes from persons on Federal relief or work relief ([18 U.S.C. 604](#)).
- (j) The prohibition against disclosing and receiving lists or names of persons on relief for political purposes ([18 U.S.C. 605](#)).
- (k) The prohibition against intimidating employees to give or withhold a political contribution ([18 U.S.C. 606](#)).
- (l) The prohibition against soliciting political contributions in navy yards, forts, or arsenals ([18 U.S.C. 607](#)).
- (m) The prohibition against coercing employees of the Federal Government to engage in, or not to engage in, any political activity ([18 U.S.C. 610](#)).
- (n) The prohibition against certain personnel practices ([5 U.S.C. 2302](#)).
- (o) The prohibition against making, requesting, considering, or accepting political recommendations ([5 U.S.C. 3303](#)).
- (p) The prohibitions against misuse of a Government vehicle ([31 U.S.C. 1344](#)).
- (q) The requirements and prohibitions stated in the Federal Election Campaign Act ([2 U.S.C. 431-455](#)).
- (r) The prohibitions against soliciting for gifts to superiors, giving donations for such gifts, and accepting gifts from employees who receive a lower rate of pay ([5 U.S.C. 7351](#)).
- (s) The prohibitions against soliciting or accepting things of value from specified persons ([5 U.S.C. 7353](#)).
- (t) The prohibitions and requirements stated in the Ethics in Government Act of 1978 (5 U.S.C. App.) and Executive Order 12674 ([54 FR 15159-15162](#); [3 CFR](#) 1989 Comp. 215-218) as modified by Executive Order 12731 ([55 FR 42547-42550](#); [3 CFR](#) 1990 Comp. 306-311).

5 USC CHAPTER 75—ADVERSE ACTIONS

SUBCHAPTER I—SUSPENSION OF ¹ 14 DAYS OR LESS

Sec.

- 7501. Definitions.
- 7502. Actions covered.
- 7503. Cause and procedure.
- 7504. Regulations.

SUBCHAPTER II—REMOVAL, SUSPENSION FOR MORE THAN 14 DAYS, REDUCTION IN GRADE OR PAY, OR FURLOUGH FOR 30 DAYS OR LESS

- 7511. Definitions; application.
- 7512. Actions covered.
- 7513. Cause and procedure.
- 7514. Regulations.
- 7515. Discipline of supervisors based on retaliation against whistleblowers.

SUBCHAPTER III—ADMINISTRATIVE LAW JUDGES

- 7521. Actions against administrative law judges.

SUBCHAPTER IV—NATIONAL SECURITY

- 7531. Definitions.
- 7532. Suspension and removal.
- 7533. Effect on other statutes.

SUBCHAPTER V—SENIOR EXECUTIVE SERVICE

- 7541. Definitions.
- 7542. Actions covered.
- 7543. Cause and procedure.

EDITORIAL NOTES

AMENDMENTS

2017—Pub. L. 115–91, div. A, title X, §1097(e)(2), Dec. 12, 2017, 131 Stat. 1622, added item 7515 and struck out former item 7515 "Discipline of supervisors based on retaliation against whistleblowers". Item was added to and stricken from analysis for this chapter, notwithstanding directory language adding item to, and striking item from, analysis for subchapter II of this chapter.

Pub. L. 115–73, title I, §104(b), Oct. 26, 2017, 131 Stat. 1238, added item 7515. Item was added to analysis for this chapter, notwithstanding directory language adding item to analysis for subchapter II of this chapter.

1978—Pub. L. 95–454, title II, §204(b), title IV, §411(1), Oct. 13, 1978, 92 Stat. 1137, 1173, substituted "SUSPENSION OF 14 DAYS OR LESS" for "COMPETITIVE SERVICE" in subchapter I heading, substituted "Definitions" for "Cause; procedure; exception" in item 7501,

added items 7502 to 7504, substituted "REMOVAL, SUSPENSION FOR MORE THAN 14 DAYS, REDUCTION IN GRADE OR PAY, OR FURLOUGH FOR 30 DAYS OR LESS" for "PREFERENCE ELIGIBLES" in subchapter II heading, inserted "; application" in item 7511, substituted "Actions covered" for "Cause; procedure; exception" in item 7512, added items 7513 and 7514, substituted "ADMINISTRATIVE LAW JUDGES" for "HEARING EXAMINERS" in subchapter III heading, substituted "Actions against administrative law judges" for "Removal" in item 7521, and added subchapter V heading and items 7541 to 7543.

EXECUTIVE DOCUMENTS

EXECUTIVE ORDER NO. 13839

Ex. Ord. No. 13839, May 25, 2018, 83 F.R. 25343, which related to removal of employees from Federal service for misconduct or unacceptable performance, was revoked by Ex. Ord. No. 14003, §3(c), Jan. 22, 2021, 86 F.R. 7231, set out in a note under section 3301 of this title.

[Ex. Ord. No. 13839, formerly set out above, construed to be amended to the extent necessary, by Memorandum of President of the United States, Oct. 11, 2019, 84 F.R. 56095, set out as a note under section 7101 of this title.]

¹ So in original. Does not conform to subchapter heading.

SUBCHAPTER I—SUSPENSION FOR 14 DAYS OR LESS

EDITORIAL NOTES

AMENDMENTS

1978—Pub. L. 95–454, title II, §204(a), Oct. 13, 1978, 92 Stat. 1134, substituted "SUSPENSION FOR 14 DAYS OR LESS" for "COMPETITIVE SERVICE" in subchapter heading.

§7501. Definitions

For the purpose of this subchapter—

(1) "employee" means an individual in the competitive service who is not serving a probationary or trial period under an initial appointment or who has completed 1 year of current continuous employment in the same or similar positions under other than a temporary appointment limited to 1 year or less; and

(2) "suspension" means the placing of an employee, for disciplinary reasons, in a temporary status without duties and pay.

(Added Pub. L. 95–454, title II, §204(a), Oct. 13, 1978, 92 Stat. 1134; amended Pub. L. 114–92, div. A, title XI, §1105(c)(3), Nov. 25, 2015, 129 Stat. 1024; Pub. L. 117–81, div. A, title XI, §1106(b)(2)(C), Dec. 27, 2021, 135 Stat. 1950.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 7501, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 527, related to removal or suspension without pay of an individual in the competitive service and procedures applicable to such removal or suspension, prior to repeal by Pub. L. 95–454, §204(a).

AMENDMENTS

2021—Par. (1). Pub. L. 117–81 struck out ", except as provided in section 1599e of title 10," after "initial appointment or,".

2015—Par. (1). Pub. L. 114–92 substituted "or, except as provided in section 1599e of title 10, who" for "or who".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 117–81 applied as if effective Dec. 31, 2022, to correspond to the effective date of the repeal of section 1599e of Title 10, Armed Forces, to reflect the probable intent of Congress. See Effective Date of Repeal note under section 1599e of Title 10.

EFFECTIVE DATE

Section effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101–376, §1, Aug. 17, 1990, 104 Stat. 461, provided that: "This Act [amending sections 4303, 7511, and 7701 of this title and enacting provisions set out as notes under section 4303 of this title] may be cited as the 'Civil Service Due Process Amendments'."

§7502. Actions covered

This subchapter applies to a suspension for 14 days or less, but does not apply to a suspension under section 7521 or 7532 of this title or any action initiated under section 1215 of this title.

(Added Pub. L. 95–454, title II, §204(a), Oct. 13, 1978, 92 Stat. 1135; amended Pub. L. 101–12, §9(a)(2), Apr. 10, 1989, 103 Stat. 35.)

EDITORIAL NOTES

AMENDMENTS

1989—Pub. L. 101–12 substituted "1215" for "1206".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–12 effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101–12, set out as a note under section 1201 of this title.

EFFECTIVE DATE

Section effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§7503. Cause and procedure

(a) Under regulations prescribed by the Office of Personnel Management, an employee may be suspended for 14 days or less for such cause as will promote the efficiency of the service (including discourteous conduct to the public confirmed by an immediate supervisor's report of four such instances within any one-year period or any other pattern of discourteous conduct).

(b) An employee against whom a suspension for 14 days or less is proposed is entitled to—

- (1) an advance written notice stating the specific reasons for the proposed action;
- (2) a reasonable time to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;
- (3) be represented by an attorney or other representative; and
- (4) a written decision and the specific reasons therefor at the earliest practicable date.

(c) Copies of the notice of proposed action, the answer of the employee if written, a summary thereof if made orally, the notice of decision and reasons therefor, and any order effecting ¹ the suspension, together with any supporting material, shall be maintained by the agency and shall be furnished to the Merit Systems Protection Board upon its request and to the employee affected upon the employee's request.

(Added Pub. L. 95–454, title II, §204(a), Oct. 13, 1978, 92 Stat. 1135.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

INFORMATION ON APPEAL RIGHTS

Pub. L. 115–91, div. A, title X, §1097(b)(2), Dec. 12, 2017, 131 Stat. 1617, provided that:

"(A) In general.—Any notice provided to an employee under section 7503(b)(1), section 7513(b)(1), or section 7543(b)(1) of title 5, United States Code, shall include detailed information with respect to—

- "(i) the right of the employee to appeal an action brought under the applicable section;

"(ii) the forums in which the employee may file an appeal described in clause (i); and

"(iii) any limitations on the rights of the employee that would apply because of the forum in which the employee decides to file an appeal.

"(B) Development of information.—The information described in subparagraph (A) shall be developed by the Director of the Office of Personnel Management, in consultation with the Special Counsel, the Merit Systems Protection Board, and the Equal Employment Opportunity Commission."

¹ So in original. Probably should be "affecting".

§7504. Regulations

The Office of Personnel Management may prescribe regulations to carry out the purpose of this subchapter.

(Added Pub. L. 95–454, title II, §204(a), Oct. 13, 1978, 92 Stat. 1135.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SUBCHAPTER II—REMOVAL, SUSPENSION FOR MORE THAN 14 DAYS, REDUCTION IN GRADE OR PAY, OR FURLOUGH FOR 30 DAYS OR LESS

EDITORIAL NOTES

AMENDMENTS

1978—Pub. L. 95–454, title II, §204(a), Oct. 13, 1978, 92 Stat. 1135, substituted "REMOVAL, SUSPENSION FOR MORE THAN 14 DAYS, REDUCTION IN GRADE OR PAY, OR FURLOUGH FOR 30 DAYS OR LESS" for "PREFERENCE ELIGIBLES" in subchapter heading.

§7511. Definitions; application

(a) For the purpose of this subchapter—

(1) "employee" means—

(A) an individual in the competitive service—

(i) who is not serving a probationary or trial period under an initial appointment; or

(ii) who has completed 1 year of current continuous service under other than a temporary appointment limited to 1 year or less;

(B) a preference eligible in the excepted service who has completed 1 year of current continuous service in the same or similar positions—

- (i) in an Executive agency; or
- (ii) in the United States Postal Service or Postal Regulatory Commission; and

(C) an individual in the excepted service (other than a preference eligible)—

- (i) who is not serving a probationary or trial period under an initial appointment pending conversion to the competitive service; or
- (ii) who has completed 2 years of current continuous service in the same or similar positions in an Executive agency under other than a temporary appointment limited to 2 years or less;

(2) "suspension" has the same meaning as set forth in section 7501(2) of this title;

(3) "grade" means a level of classification under a position classification system;

(4) "pay" means the rate of basic pay fixed by law or administrative action for the position held by an employee; and

(5) "furlough" means the placing of an employee in a temporary status without duties and pay because of lack of work or funds or other nondisciplinary reasons.

(b) This subchapter does not apply to an employee—

(1) whose appointment is made by and with the advice and consent of the Senate;

(2) whose position has been determined to be of a confidential, policy-determining, policy-making or policy-advocating character by—

(A) the President for a position that the President has excepted from the competitive service;

(B) the Office of Personnel Management for a position that the Office has excepted from the competitive service; or

(C) the President or the head of an agency for a position excepted from the competitive service by statute;

(3) whose appointment is made by the President;

(4) who is receiving an annuity from the Civil Service Retirement and Disability Fund, or the Foreign Service Retirement and Disability Fund, based on the service of such employee;

[(5) Repealed. [Pub. L. 114–328, div. A, title V, §512\(c\), Dec. 23, 2016, 130 Stat. 2112.](#)]

(6) who is a member of the Foreign Service, as described in section 103 of the Foreign Service Act of 1980;

(7) whose position is within the Central Intelligence Agency or the Government Accountability Office;

(8) whose position is within the United States Postal Service, the Postal Regulatory Commission, the Panama Canal Commission, the Tennessee Valley Authority, the Federal Bureau of Investigation, an intelligence component of the Department of Defense (as defined in section 1614 of title 10), or an intelligence activity of a military department covered under subchapter I of chapter 83 of title 10, unless subsection (a)(1)(B) of this section or section 1005(a) of title 39 is the basis for this subchapter's applicability;

(9) who is described in section 5102(c)(11) of this title; or
 (10) who holds a position within the Veterans Health Administration which has been excluded from the competitive service by or under a provision of title 38, unless such employee was appointed to such position under section 7401(3) of such title.

(c) The Office may provide for the application of this subchapter to any position or group of positions excepted from the competitive service by regulation of the Office which is not otherwise covered by this subchapter.

(Added Pub. L. 95–454, title II, §204(a), Oct. 13, 1978, 92 Stat. 1135; amended Pub. L. 101–376, §2(a), Aug. 17, 1990, 104 Stat. 461; Pub. L. 102–378, §6(a), Oct. 2, 1992, 106 Stat. 1358; Pub. L. 103–359, title V, §501(l), Oct. 14, 1994, 108 Stat. 3430; Pub. L. 104–201, div. A, title XVI, §1634(b), Sept. 23, 1996, 110 Stat. 2752; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814; Pub. L. 109–435, title VI, §604(b), (f), Dec. 20, 2006, 120 Stat. 3241, 3242; Pub. L. 114–92, div. A, title XI, §1105(c)(4), Nov. 25, 2015, 129 Stat. 1024; Pub. L. 114–328, div. A, title V, §512(c), Dec. 23, 2016, 130 Stat. 2112; Pub. L. 117–81, div. A, title XI, §1106(b)(2)(D), Dec. 27, 2021, 135 Stat. 1950.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 103 of the Foreign Service Act of 1980, referred to in subsec. (b)(6), is classified to section 3903 of Title 22, Foreign Relations and Intercourse.

PRIOR PROVISIONS

A prior section 7511, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 528; Pub. L. 94–183, §2(30), Dec. 31, 1975, 89 Stat. 1058, defined "preference eligible employee" and "adverse action" for purposes of this subchapter, prior to repeal by Pub. L. 95–454, §204(a).

AMENDMENTS

2021—Subsec. (a)(1)(A)(ii). Pub. L. 117–81 struck out "except as provided in section 1599e of title 10," before "who has completed 1 year".

2016—Subsec. (b)(5). Pub. L. 114–328 struck out par. (5) which read as follows: "who is described in section 8337(h)(1), relating to technicians in the National Guard;"

2015—Subsec. (a)(1)(A)(ii). Pub. L. 114–92 inserted "except as provided in section 1599e of title 10," before "who".

2006—Subsec. (a)(1)(B)(ii). Pub. L. 109–435, §604(b), substituted "Postal Regulatory Commission" for "Postal Rate Commission".

Subsec. (b)(8). Pub. L. 109–435, §604(f), substituted "Postal Regulatory Commission" for "Postal Rate Commission".

2004—Subsec. (b)(7). Pub. L. 108–271 substituted "Government Accountability Office" for "General Accounting Office".

1996—Subsec. (b)(8). Pub. L. 104–201 substituted "an intelligence component of the Department of Defense (as defined in section 1614 of title 10), or an intelligence activity of a

military department covered under subchapter I of chapter 83 of title 10" for "the National Security Agency, the Defense Intelligence Agency, the Central Imagery Office, or an intelligence activity of a military department covered under section 1590 of title 10".

1994—Subsec. (b)(8). Pub. L. 103–359 inserted "the Central Imagery Office," after "Defense Intelligence Agency,".

1992—Subsec. (b)(7). Pub. L. 102–378, §6(a)(1), amended par. (7) generally. Prior to amendment, par. (7) read as follows: "whose position is with the Central Intelligence Agency, the General Accounting Office, or the Veterans Health Services and Research Administration;".

Subsec. (b)(10). Pub. L. 102–378, §6(a)(2)–(4), added par. (10).

1990—Pub. L. 101–376 amended section generally. Prior to amendment, section read as follows:

"(a) For the purpose of this subchapter—

"(1) 'employee' means—

"(A) an individual in the competitive service who is not serving a probationary or trial period under an initial appointment or who has completed 1 year of current continuous employment under other than a temporary appointment limited to 1 year or less; and

"(B) a preference eligible in an Executive agency in the excepted service, and a preference eligible in the United States Postal Service or the Postal Rate Commission, who has completed 1 year of current continuous service in the same or similar positions;

"(2) 'suspension' has the meaning as set forth in section 7501(2) of this title;

"(3) 'grade' means a level of classification under a position classification system;

"(4) 'pay' means the rate of basic pay fixed by law or administrative action for the position held by an employee; and

"(5) 'furlough' means the placing of an employee in a temporary status without duties and pay because of lack of work or funds or other nondisciplinary reasons.

"(b) This subchapter does not apply to an employee—

"(1) whose appointment is made by and with the advice and consent of the Senate;

"(2) whose position has been determined to be of a confidential, policy-determining, policy-making or policy-advocating character by—

"(A) the Office of Personnel Management for a position that it has excepted from the competitive service; or

"(B) the President or the head of an agency for a position which is excepted from the competitive service by statute.

"(c) The Office may provide for the application of this subchapter to any position or group of positions excepted from the competitive service by regulation of the Office."

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 117–81 applied as if effective Dec. 31, 2022, to correspond to the effective date of the repeal of section 1599e of Title 10, Armed Forces, to reflect the probable intent of Congress. See Effective Date of Repeal note under section 1599e of Title 10.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective Oct. 1, 1996, see section 1635 of Pub. L. 104–201, set out as a note under section 1593 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–378, §6(b), Oct. 2, 1992, 106 Stat. 1359, provided that:

"(1) The amendments made by subsection (a) [amending this section] shall apply with respect to any personnel action taking effect on or after the date of enactment of this Act [Oct. 2, 1992].

"(2) In the case of an employee or former employee of the Veterans Health Administration (or predecessor agency in name)—

"(A) against whom an adverse personnel action was taken before the date of enactment of this Act,

"(B) who, as a result of the enactment of the Civil Service Due Process Amendments (5 U.S.C. 7501 note) [Pub. L. 101–376], became ineligible to appeal such action to the Merit Systems Protection Board,

"(C) as to whom that appeal right is restored as a result of the enactment of subsection (a), or would have been restored but for the passage of time, and

"(D) who is not precluded, by section 7121(e)(1) of title 5, United States Code, from appealing to the Merit Systems Protection Board,

the deadline for bringing an appeal under section 7513(d) or section 4303(e) of such title with respect to such action shall be the latter of—

"(i) the 60th day after the date of enactment of this Act; or

"(ii) the deadline which would otherwise apply if this paragraph had not been enacted."

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–376 applicable with respect to any personnel action taking effect on or after Aug. 17, 1990, see section 2(c) of Pub. L. 101–376, set out as a note under section 4303 of this title.

EFFECTIVE DATE

Section effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§7512. Actions covered

This subchapter applies to—

- (1) a removal;
- (2) a suspension for more than 14 days;
- (3) a reduction in grade;

- (4) a reduction in pay; and
- (5) a furlough of 30 days or less;

but does not apply to—

- (A) a suspension or removal under section 7532 of this title,
- (B) a reduction-in-force action under section 3502 of this title,
- (C) the reduction in grade of a supervisor or manager who has not completed the probationary period under section 3321(a)(2) of this title if such reduction is to the grade held immediately before becoming such a supervisor or manager,
- (D) a reduction in grade or removal under section 4303 of this title,
- (E) an action initiated under section 1215 or 7521 of this title, or
- (F) a suitability action taken by the Office under regulations prescribed by the Office, subject to the rules prescribed by the President under this title for the administration of the competitive service.

(Added Pub. L. 95–454, title II, §204(a), Oct. 13, 1978, 92 Stat. 1136; amended Pub. L. 101–12, §9(a)(2), Apr. 10, 1989, 103 Stat. 35; Pub. L. 114–92, div. A, title X, §1086(f)(9), Nov. 25, 2015, 129 Stat. 1010.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 7512, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 528, related to adverse action against a preference eligible employee and procedures applicable to such adverse action, prior to repeal by Pub. L. 95–454, §204(a).

AMENDMENTS

2015—Par. (F). Pub. L. 114–92 added par. (F).

1989—Par. (E). Pub. L. 101–12 substituted "1215" for "1206".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–12 effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101–12, set out as a note under section 1201 of this title.

EFFECTIVE DATE

Section effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§7513. Cause and procedure

(a) Under regulations prescribed by the Office of Personnel Management, an agency may take an action covered by this subchapter against an employee only for such cause as will promote the efficiency of the service.

- (b) An employee against whom an action is proposed is entitled to—
- (1) at least 30 days' advance written notice, unless there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, stating the specific reasons for the proposed action;
 - (2) a reasonable time, but not less than 7 days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;
 - (3) be represented by an attorney or other representative; and
 - (4) a written decision and the specific reasons therefor at the earliest practicable date.

(c) An agency may provide, by regulation, for a hearing which may be in lieu of or in addition to the opportunity to answer provided under subsection (b)(2) of this section.

(d) An employee against whom an action is taken under this section is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title.

(e) Copies of the notice of proposed action, the answer of the employee when written, a summary thereof when made orally, the notice of decision and reasons therefor, and any order effecting an action covered by this subchapter, together with any supporting material, shall be maintained by the agency and shall be furnished to the Board upon its request and to the employee affected upon the employee's request.

(Added Pub. L. 95–454, title II, §204(a), Oct. 13, 1978, 92 Stat. 1136.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§7514. Regulations

The Office of Personnel Management may prescribe regulations to carry out the purpose of this subchapter, except as it concerns any matter with respect to which the Merit Systems Protection Board may prescribe regulations.

(Added Pub. L. 95–454, title II, §204(a), Oct. 13, 1978, 92 Stat. 1137.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§7515. Discipline of supervisors based on retaliation against whistleblowers

(a) Definitions.—In this section—

(1) the term "agency"—

(A) has the meaning given the term in section 2302(a)(2)(C), without regard to whether any other provision of this chapter is applicable to the entity; and

(B) does not include any entity that is an element of the intelligence community, as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 3003);

(2) the term "prohibited personnel action" means taking or failing to take an action in violation of paragraph (8), (9), or (14) of section 2302(b) against an employee of an agency; and

(3) the term "supervisor" means an employee who would be a supervisor, as defined in section 7103(a), if the entity employing the employee was an agency.

(b) Proposed Disciplinary Actions.—

(1) In general.—Subject to section 1214(f), if the head of the agency in which a supervisor is employed, an administrative law judge, the Merit Systems Protection Board, the Special Counsel, a judge of the United States, or the Inspector General of the agency in which a supervisor is employed has determined that the supervisor committed a prohibited personnel action, the head of the agency in which the supervisor is employed, consistent with the procedures required under paragraph (2)—

(A) for the first prohibited personnel action committed by the supervisor—

(i) shall propose suspending the supervisor for a period that is not less than 3 days; and

(ii) may propose an additional action determined appropriate by the head of the agency, including a reduction in grade or pay; and

(B) for the second prohibited personnel action committed by the supervisor, shall propose removing the supervisor.

(2) Procedures.—

(A) Notice.—A supervisor against whom an action is proposed to be taken under paragraph (1) is entitled to written notice that—

(i) states the specific reasons for the proposed action; and

(ii) informs the supervisor about the right of the supervisor to review the material that is relied on to support the reasons given in the notice for the proposed action.

(B) Answer and evidence.—

(i) In general.—A supervisor who receives notice under subparagraph (A) may, not later than 14 days after the date on which the supervisor receives the notice, submit an answer and furnish evidence in support of that answer.

(ii) No evidence furnished; insufficient evidence furnished.—If, after the end of the 14-day period described in clause (i), a supervisor does not furnish any evidence as described in that clause, or if the head of the agency in which the supervisor is employed determines that the evidence furnished by the supervisor is insufficient, the head of the agency shall carry out the action proposed under subparagraph (A) or (B) of paragraph (1), as applicable.

(C) Scope of procedures.—An action carried out under this section—

(i) except as provided in clause (ii), shall be subject to the same requirements and procedures, including those with respect to an appeal, as an action under section 7503, 7513, or 7543; and

(ii) shall not be subject to—

(I) paragraphs (1) and (2) of section 7503(b);

(II) paragraphs (1) and (2) of subsection (b) and subsection (c) of section 7513; and

(III) paragraphs (1) and (2) of subsection (b) and subsection (c) of section 7543.

(3) Non-delegation.—If the head of an agency is responsible for determining whether a supervisor has committed a prohibited personnel action for purposes of paragraph (1), the head of the agency may not delegate that responsibility.

(Added Pub. L. 115–91, div. A, title X, §1097(e)(1)(B), Dec. 12, 2017, 131 Stat. 1621.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 7515, Pub. L. 115–73, title I, §104(a), Oct. 26, 2017, 131 Stat. 1236, related to discipline of supervisors based on retaliation against whistleblowers, prior to repeal by Pub. L. 115–91, div. A, title X, §1097(e)(1)(A), Dec. 12, 2017, 131 Stat. 1621.

SUBCHAPTER III—ADMINISTRATIVE LAW JUDGES

EDITORIAL NOTES

AMENDMENTS

1978—Pub. L. 95–454, title II, §204(a), Oct. 13, 1978, 92 Stat. 1137, substituted "ADMINISTRATIVE LAW JUDGES" for "HEARING EXAMINERS" in subchapter heading.

§7521. Actions against administrative law judges

(a) An action may be taken against an administrative law judge appointed under section 3105 of this title by the agency in which the administrative law judge is employed only for good cause established and determined by the Merit Systems Protection Board on the record after opportunity for hearing before the Board.

(b) The actions covered by this section are—

(1) a removal;

(2) a suspension;

(3) a reduction in grade;

(4) a reduction in pay; and

(5) a furlough of 30 days or less;

but do not include—

- (A) a suspension or removal under section 7532 of this title;
- (B) a reduction-in-force action under section 3502 of this title; or
- (C) any action initiated under section 1215 of this title.

(Added Pub. L. 95–454, title II, §204(a), Oct. 13, 1978, 92 Stat. 1137; amended Pub. L. 101–12, §9(a)(2), Apr. 10, 1989, 103 Stat. 35.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 7521, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 528; Pub. L. 95–251, §2(a)(1), Mar. 27, 1978, 92 Stat. 183, related to removal of an administrative law judge appointed under section 3105 of this title, prior to repeal by Pub. L. 95–454, §204(a).

AMENDMENTS

1989—Subsec. (b)(C). Pub. L. 101–12 substituted "1215" for "1206".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–12 effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101–12, set out as a note under section 1201 of this title.

EFFECTIVE DATE

Section effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SUBCHAPTER IV—NATIONAL SECURITY

§7531. Definitions

For the purpose of this subchapter, "agency" means—

- (1) the Department of State;
- (2) the Department of Commerce;
- (3) the Department of Justice;
- (4) the Department of Defense;
- (5) a military department;
- (6) the Coast Guard;
- (7) the Atomic Energy Commission;
- (8) the National Aeronautics and Space Administration; and
- (9) such other agency of the Government of the United States as the President designates in the best interests of national security.

The President shall report any designation to the Committees on the Armed Services of the Congress.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 528.)

Historical and Revision Notes

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
	5 U.S.C. 22-3.	Aug. 26, 1950, ch. 823, §3, 64 Stat. 477.

Paragraphs (1)–(8) are supplied on authority of former section 22-1, which is carried in part into section 7532. The references to "the Foreign Service of the United States" and "several field services" are omitted as unnecessary since they are within the agencies concerned. The words "military departments" are substituted for the enumeration of the military departments in view of the definition of "military department" in section 102.

The reference to the National Security Resources Board is omitted as the Board was abolished by 1953 Reorg. Plan No. 3, §6, eff. June 12, 1953, 67 Stat. 636.

Paragraph (9) is restated to conform to the style of this title.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

ABOLITION OF ATOMIC ENERGY COMMISSION

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of Title 42, The Public Health and Welfare. See, also, Transfer of Functions notes set out under those sections.

EXECUTIVE DOCUMENTS

PANAMA CANAL AND PANAMA RAILROAD COMPANY

Ex. Ord. No. 10237, Apr. 27, 1951, 16 F.R. 3627, made the provisions of former sections 22-1 and 22-3 of this title [see Disposition Table preceding section 101 of this title] applicable to the Panama Canal Government and to the Panama Canal Company.

DESIGNATION OF NATIONAL SECURITY AGENCY, DEFENSE INTELLIGENCE AGENCY, AND DEFENSE MAPPING AGENCY AS "AGENCIES"

Memorandum of the President of the United States, May 23, 1988, 53 F.R. 26023, provided:

Memorandum for the Secretary of Defense

I have reviewed the personnel security requirements of the National Security Agency, the Defense Intelligence Agency, and the Defense Mapping Agency and the termination provisions of 5 U.S.C. Section 7532. I have determined that these Agencies are sensitive agencies and that it is in the best interests of national security that they be designated "agencies" within the meaning of that section.

Therefore, pursuant to the authority set forth in 5 U.S.C. Section 7531(9), I hereby designate the National Security Agency, the Defense Intelligence Agency, and the Defense Mapping Agency as "agencies" within the meaning of 5 U.S.C. Section 7532.

You are hereby authorized and directed to report these designations to the Committees on Armed Services of the Congress and to publish this memorandum in the Federal Register.

RONALD REAGAN.

§7532. Suspension and removal

(a) Notwithstanding other statutes, the head of an agency may suspend without pay an employee of his agency when he considers that action necessary in the interests of national security. To the extent that the head of the agency determines that the interests of national security permit, the suspended employee shall be notified of the reasons for the suspension. Within 30 days after the notification, the suspended employee is entitled to submit to the official designated by the head of the agency statements or affidavits to show why he should be restored to duty.

(b) Subject to subsection (c) of this section, the head of an agency may remove an employee suspended under subsection (a) of this section when, after such investigation and review as he considers necessary, he determines that removal is necessary or advisable in the interests of national security. The determination of the head of the agency is final.

(c) An employee suspended under subsection (a) of this section who—

- (1) has a permanent or indefinite appointment;
- (2) has completed his probationary or trial period; and
- (3) is a citizen of the United States;

is entitled, after suspension and before removal, to—

(A) a written statement of the charges against him within 30 days after suspension, which may be amended within 30 days thereafter and which shall be stated as specifically as security considerations permit;

(B) an opportunity within 30 days thereafter, plus an additional 30 days if the charges are amended, to answer the charges and submit affidavits;

(C) a hearing, at the request of the employee, by an agency authority duly constituted for this purpose;

(D) a review of his case by the head of the agency or his designee, before a decision adverse to the employee is made final; and

(E) a written statement of the decision of the head of the agency.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 529.)

Historical and Revision Notes

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
	5 U.S.C. 22–1 (less 3d–5th provisos).	Aug. 26, 1950, ch. 803, §1 (less 3d–5th provisos), 64 Stat. 476. July 29, 1958, Pub. L. 85–568, §301(c), 72 Stat. 432.

The application of this section is covered by the definition in section 7531.

In subsection (a), the words "Notwithstanding the provisions of section 652 of this title" are omitted but are carried into section 7501(c). The words "in his absolute discretion" are omitted as unnecessary in view of the permissive grant of authority. The word "reinstated" is omitted as it is commonly used in other statutes to denote action different from that referred to here.

In subsections (b) and (c), the words "remove" and "removal" are coextensive with and substituted for "terminate the employment", "termination", and "employment is terminated", as appropriate.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§7533. Effect on other statutes

This subchapter does not impair the powers vested in the Atomic Energy Commission by chapter 23 of title 42, or the requirement in section 2201(d) of title 42 that adequate provision be made for administrative review of a determination to dismiss an employee of the Atomic Energy Commission.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 529.)

Historical and Revision Notes

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
	5 U.S.C. 22–2.	Aug. 26, 1950, ch. 803, §2, 64 Stat. 477.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of Title 42, The Public Health and Welfare. See, also, Transfer of Functions notes set out under those sections.

SUBCHAPTER V—SENIOR EXECUTIVE SERVICE

§7541. Definitions

For the purpose of this subchapter—

- (1) "employee" means a career appointee in the Senior Executive Service who—
 - (A) has completed the probationary period prescribed under section 3393(d) of this title; or
 - (B) was covered by the provisions of subchapter II of this chapter immediately before appointment to the Senior Executive Service; and

- (2) "suspension" has the meaning set forth in section 7501(2) of this title.

(Added Pub. L. 95–454, title IV, §411(2), Oct. 13, 1978, 92 Stat. 1174; amended Pub. L. 114–92, div. A, title XI, §1105(c)(5), Nov. 25, 2015, 129 Stat. 1024; Pub. L. 117–81, div. A, title XI, §1106(b)(2)(E), Dec. 27, 2021, 135 Stat. 1950.)

EDITORIAL NOTES

AMENDMENTS

2021—Par. (1)(A). Pub. L. 117–81 struck out "or section 1599e of title 10" after "section 3393(d) of this title".

2015—Par. (1)(A). Pub. L. 114–92 inserted "or section 1599e of title 10" after "this title".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 117–81 applied as if effective Dec. 31, 2022, to correspond to the effective date of the repeal of section 1599e of Title 10, Armed Forces, to reflect the probable intent of Congress. See Effective Date of Repeal note under section 1599e of Title 10.

EFFECTIVE DATE

Section effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95–454, see section 415 of Pub. L. 95–454, set out as a note under section 3131 of this title.

§7542. Actions covered

This subchapter applies to a removal from the civil service or suspension for more than 14 days, but does not apply to an action initiated under section 1215 of this title, to a suspension or removal under section 7532 of this title, or to a removal under section 3592 or 3595 of this title.

(Added Pub. L. 95–454, title IV, §411(2), Oct. 13, 1978, 92 Stat. 1174; amended Pub. L. 97–35, title XVII, §1704(d)(1), Aug. 13, 1981, 95 Stat. 758; Pub. L. 101–12, §9(a)(2), Apr. 10, 1989, 103 Stat. 35.)

EDITORIAL NOTES

AMENDMENTS

1989—Pub. L. 101–12 substituted "1215" for "1206".

1981—Pub. L. 97–35 inserted reference to section 3595 of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–12 effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101–12, set out as a note under section 1201 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective June 1, 1981, with certain exceptions and conditions, see section 1704(e) of Pub. L. 97–35, set out as an Effective Date note under section 3595 of this title.

EFFECTIVE DATE

Section effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95–454, see section 415 of Pub. L. 95–454, set out as a note under section 3131 of this title.

§7543. Cause and procedure

(a) Under regulations prescribed by the Office of Personnel Management, an agency may take an action covered by this subchapter against an employee only for misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function.

(b) An employee against whom an action covered by this subchapter is proposed is entitled to—

- (1) at least 30 days' advance written notice, unless there is reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment can be imposed, stating specific reasons for the proposed action;
- (2) a reasonable time, but not less than 7 days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;
- (3) be represented by an attorney or other representative; and
- (4) a written decision and specific reasons therefor at the earliest practicable date.

(c) An agency may provide, by regulation, for a hearing which may be in lieu of or in addition to the opportunity to answer provided under subsection (b)(2) of this section.

(d) An employee against whom an action is taken under this section is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title.

(e) Copies of the notice of proposed action, the answer of the employee when written, and a summary thereof when made orally, the notice of decision and reasons therefor, and any order effecting an action covered by this subchapter, together with any supporting material, shall be

maintained by the agency and shall be furnished to the Merit Systems Protection Board upon its request and to the employee affected upon the employee's request.

(Added Pub. L. 95–454, title IV, §411(2), Oct. 13, 1978, 92 Stat. 1174; amended Pub. L. 97–35, title XVII, §1704(d)(2), Aug. 13, 1981, 95 Stat. 758; Pub. L. 98–615, title III, §304(c), Nov. 8, 1984, 98 Stat. 3219.)

EDITORIAL NOTES

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–615 inserted reference to failure to accept a directed reassignment or to accompany a position in a transfer of function.

1981—Subsec. (a). Pub. L. 97–35 substituted "misconduct, neglect of duty, or malfeasance" for "such cause as will promote the efficiency of the service".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–615 effective Nov. 8, 1984, see section 307 of Pub. L. 98–615, set out as a note under section 3393 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective June 1, 1981, with certain exceptions and conditions, see section 1704(e) of Pub. L. 97–35, set out as an Effective Date note under section 3595 of this title.

EFFECTIVE DATE

Section effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95–454, see section 415 of Pub. L. 95–454, set out as a note under section 3131 of this title.

18 USC 1114. Protection of officers and employees of the United States

Whoever kills or attempts to kill any judge of the United States, any United States Attorney, any Assistant United States Attorney, or any United States marshal or deputy marshal or person employed to assist such marshal or deputy marshal, any officer or employee of the Federal Bureau of Investigation of the Department of Justice, any officer or employee of the Postal Service, any officer or employee of the Secret Service or of the Drug Enforcement Administration, any officer or member of the United States Capitol Police, any member of the Coast Guard, any employee of the Coast Guard assigned to perform investigative, inspection or law enforcement functions, any officer or employee of the Federal Railroad Administration assigned to perform investigative, inspection, or law enforcement functions, any officer or employee of any United States penal or correctional institution, any officer, employee or agent of the customs or of the internal revenue or any person assisting him in the execution of his duties, any immigration officer, any officer or employee of the Department of Agriculture or of the Department of the Interior designated by the Secretary of Agriculture or the Secretary of the Interior to enforce any Act of Congress for the protection, preservation, or restoration of game and other wild birds and animals, any employee of the Department of Agriculture designated by the Secretary of Agriculture to carry out any law or regulation, or to perform any function in connection with any Federal or State program or any program of Puerto Rico, Guam, the Virgin Islands or any other commonwealth, territory, or possession of the United States, or the District of Columbia, for the control or eradication or prevention of the introduction or dissemination of animal diseases, any officer or employee of the National Park Service, any civilian official or employee of the Army Corps of Engineers assigned to perform investigations, inspections, law or regulatory enforcement functions, or field-level real estate functions, any officer or employee of, or assigned to duty in, the field service of the Bureau of Land Management, or any officer or employee of the Indian field service of the United States, or any officer or employee of the National Aeronautics and Space Administration directed to guard and protect property of the United States under the administration and control of the National Aeronautics and Space Administration, any security officer of the Department of State or the Foreign Service, or any officer or employee of the Department of Education, the Department of Health and Human Services, the Consumer Product Safety Commission, Interstate Commerce Commission, the Department of Commerce, or of the Department of Labor or of the Department of the Interior or of the Department of Agriculture assigned to perform investigative, inspection, or law enforcement functions, or any officer or employee of the Federal Communications Commission performing investigative, inspection, or law enforcement functions, or any officer or employee of the Department of Veterans Affairs assigned to perform investigative or law enforcement functions, or any United States probation or pretrial services officer, or any United States magistrate, or any officer or employee of any department or agency within the Intelligence Community (as defined in section 3.4(F) of Executive Order 12333, December 8, 1981, or successor orders) not already covered under the terms of this section, any attorney, liquidator, examiner, claim agent, or other employee of the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Housing Finance Board, the Resolution Trust Corporation, the Board of Governors of the Federal Reserve System, any Federal Reserve bank, or the National Credit Union Administration, or any other officer or employee of the United States or any agency thereof designated for coverage under this section in regulations issued by the Attorney General engaged in or on account of the performance of his official duties, or any officer or employee of the United States or any agency

thereof designated to collect or compromise a Federal claim in accordance with [sections 3711 and 3716–3718 of title 31](#) or other statutory authority shall be punished, in the case of murder, as provided under section 1111, or, in the case of manslaughter, as provided under section 1112.¹ except that any such person who is found guilty of attempted murder shall be imprisoned for not more than twenty years.

(June 25, 1948, ch. 645, 62 Stat. 756 ; May 24, 1949, ch. 139, §24, 63 Stat. 93 ; Oct. 31, 1951, ch. 655, §28, 65 Stat. 721 ; June 27, 1952, ch. 477, title IV, §402(c), 66 Stat. 276 ; July 29, 1958, Pub. L. 85–568, title III, §304(d), 72 Stat. 434 ; July 2, 1962, Pub. L. 87–518, §10, 76 Stat. 132 ; Aug. 27, 1964, Pub. L. 88–493, §3, 78 Stat. 610 ; July 15, 1965, Pub. L. 89–74, §8(b), 79 Stat. 234 ; Aug. 2, 1968, Pub. L. 90–449, §2, 82 Stat. 611 ; Aug. 12, 1970, Pub. L. 91–375, §6(j)(9), 84 Stat. 777 ; Oct. 27, 1970, Pub. L. 91–513, title II, §701(i)(1), 84 Stat. 1282 ; Dec. 29, 1970, Pub. L. 91–596, §17(h)(1), 84 Stat. 1607 ; Oct. 26, 1974, Pub. L. 93–481, §5, 88 Stat. 1456 ; May 11, 1976, Pub. L. 94–284, §18, 90 Stat. 514 ; Oct. 21, 1976, Pub. L. 94–582, §16, 90 Stat. 2883 ; Aug. 3, 1977, Pub. L. 95–87, title VII, §704, 91 Stat. 520 ; Nov. 8, 1978, Pub. L. 95–616, §3(j)(2), 92 Stat. 3112 ; Nov. 10, 1978, Pub. L. 95–630, title III, §307, 92 Stat. 3677 ; July 1, 1980, Pub. L. 96–296, §26(c), 94 Stat. 819 ; Oct. 17, 1980, Pub. L. 96–466, title VII, §704, 94 Stat. 2216 ; Dec. 29, 1981, Pub. L. 97–143, §1(b), 95 Stat. 1724 ; Sept. 13, 1982, Pub. L. 97–259, title I, §128, 96 Stat. 1099 ; Oct. 25, 1982, Pub. L. 97–365, §6, 96 Stat. 1752 ; Jan. 12, 1983, Pub. L. 97–452, §2(b), 96 Stat. 2478 ; July 30, 1983, Pub. L. 98–63, title I, §101, 97 Stat. 313 ; Oct. 12, 1984, Pub. L. 98–473, title II, §1012, 98 Stat. 2142 ; Oct. 30, 1984, Pub. L. 98–557, §17(c), 98 Stat. 2868 ; Nov. 18, 1988, Pub. L. 100–690, title VII, §7026, 102 Stat. 4397 ; Aug. 9, 1989, Pub. L. 101–73, title IX, §962(a)(6), 103 Stat. 502 ; Nov. 29, 1990, Pub. L. 101–647, title XII, §1205(h), title XVI, §1606, title XXXV, §3535, 104 Stat. 4831 , 4843, 4925 ; June 13, 1991, Pub. L. 102–54, §13(f)(2), 105 Stat. 275 ; Sept. 3, 1992, Pub. L. 102–365, §6, 106 Stat. 975 ; Sept. 13, 1994, Pub. L. 103–322, title VI, §60007, title XXXIII, §§330009(c), 330011(g), 108 Stat. 1971 , 2143, 2145.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., §253 (May 18, 1934, ch. 299, §1, 48 Stat. 780 ; Feb. 8, 1936, ch. 40, 49 Stat. 1105 ; June 26, 1936, ch. 830, title I, §3, 49 Stat. 1940 ; Reorg. Plan No. II, §4(f), eff. July 1, 1939, 4 F.R. 2731, 53 Stat. 1433 ; June 13, 1940, ch. 359, 54 Stat. 391).

The section was extended to include United States judges, attorneys and their assistants, and officers of Federal, penal and correctional institutions in view of the obvious desirability of such protective legislation.

Employees of the Bureau of Animal Industry have been included in this section to complete the revision of [section 118 of title 18](#), U.S.C., 1940 ed., which was consolidated with the assault provisions of section 254 of said title 18 and is now [section 111 of this title](#). There seemed no sound reason for including such officers in the protection against assaults but excluding them from the homicide sections.

For like reasons the section was broadened to include officers or employees of the Secret Service or of the Bureau of Narcotics.

Changes in phraseology were made.

1949 ACT

This section [section 24] amends [section 1114 of title 18](#), U.S.C., to conform more closely with the original statute from which it was derived.

REFERENCES IN TEXT

Executive Order 12333, referred to in text, is set out under [section 401 of Title 50](#), War and National Defense.

CODIFICATION

Section 704 of Pub. L. 95–87, in addition to amending this section, enacted [section 1294 of Title 30](#), Mineral Lands and Mining.

AMENDMENTS

1994-Pub. L. 103–322, §330011(g), repealed Pub. L. 101–647, §1606. See 1990 Amendment notes below.

Pub. L. 103–322, §330009(c), substituted "or any other officer or employee of the United States or any agency thereof" for "or any other officer, agency, or employee of the United States".

Pub. L. 103–322, §60007, substituted "punished, in the case of murder, as provided under section 1111, or, in the case of manslaughter, as provided under section 1112." for "punished as provided under [sections 1111 and 1112 of this title](#),".

1992-Pub. L. 102–365 inserted "any officer or employee of the Federal Railroad Administration assigned to perform investigative, inspection, or law enforcement functions," after "any employee of the Coast Guard assigned to perform investigative, inspection or law enforcement functions,".

1991-Pub. L. 102–54 substituted "Department of Veterans Affairs" for "Veterans' Administration".

1990-Pub. L. 101–647, §3535(3), which directed amendment of section by striking out "the Federal Savings and Loan Insurance Corporation," could not be executed because that language had been struck out by Pub. L. 101–73. See 1989 Amendment note below.

Pub. L. 101–647, §1606(3), which amended this section identically to amendment by Pub. L. 101–647, §3535(3), was repealed by Pub. L. 103–322, §330011(g). See above.

Pub. L. 101–647, §3535(1), (2), substituted "Secret Service" for "secret service" and "any officer or employee of the Department of Education, the Department of Health and Human Services," for "any officer or employee of the Department of Health, Education, and Welfare,".

Pub. L. 101–647, §1606(1), (2), which amended this section identically to amendment by Pub. L. 101–647, §3535(1), (2), was repealed by Pub. L. 103–322, §330011(g). See above.

Pub. L. 101–647, §1205(h), inserted "or any other commonwealth, territory, or possession" after "the Virgin Islands".

1989-Pub. L. 101–73 struck out "the Federal Savings and Loan Insurance Corporation," after "Federal Deposit Insurance Corporation," and substituted "the Office of Thrift Supervision, the Federal Housing Finance Board, the Resolution Trust Corporation" for "the Federal Home Loan Bank Board".

1988-Pub. L. 100–690 struck out second comma after "terms of this section".

1984-Pub. L. 98-557 substituted reference to Coast Guard member, and Coast Guard employee assigned to perform investigative, inspection or law enforcement functions, for reference to any officer or enlisted man of the Coast Guard.

Pub. L. 98-473 inserted "or attempts to kill" after "Whoever kills", substituted "or any United States probation or pretrial services officer, or any United States magistrate, or any officer or employee of any department or agency within the Intelligence Community (as defined in section 3.4(F) of Executive Order 12333, December 8, 1981, or successor orders) not already covered under the terms of this section," for "while engaged in the performance of his official duties or on account of the performance of his official duties", inserted ", or any other officer, agency, or employee of the United States designated for coverage under this section in regulations issued by the Attorney General", and inserted ", except that any such person who is found guilty of attempted murder shall be imprisoned for not more than twenty years".

1983-Pub. L. 98-63 inserted "any civilian official or employee of the Army Corps of Engineers assigned to perform investigations, inspections, law or regulatory enforcement functions, or field-level real estate functions," after "National Park Service,".

1983-Pub. L. 97-452 substituted "[sections 3711 and 3716-3718 of title 31](#)" for "the Federal Claims Collection Act of 1966 ([31 U.S.C. 951 et seq.](#))".

1982-Pub. L. 97-365 struck out "or" before "any attorney, liquidator, examiner, claim agent" and inserted ", or any officer or employee of the United States or any agency thereof designated to collect or compromise a Federal claim in accordance with the Federal Claims Collection Act of 1966 ([31 U.S.C. 951 et seq.](#)) or other statutory authority" before "shall be punished".

Pub. L. 97-259 inserted "or any officer or employee of the Federal Communications Commission performing investigative, inspection, or law enforcement functions," after "or law enforcement functions,".

1981-Pub. L. 97-143 inserted "any officer or member of the United States Capitol Police," after "Drug Enforcement Administration,".

1980-Pub. L. 96-466 inserted "or any officer or employee of the Veterans' Administration assigned to perform investigative or law enforcement functions," after "of the Department of Agriculture assigned to perform investigative, inspection, or law enforcement functions,".

Pub. L. 96-296 inserted "Interstate Commerce Commission," after "Consumer Product Safety Commission,".

1978-Pub. L. 95-630 inserted "or any attorney, liquidator, examiner, claim agent, or other employee of the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, the Comptroller of the Currency, the Federal Home Loan Bank Board, the Board of Governors of the Federal Reserve System, any Federal Reserve bank, or the National Credit Union Administration engaged in or on account of the performance of his official duties" before "shall be punished".

Pub. L. 95-616 inserted "the Department of Commerce,".

1977-Pub. L. 95-87 inserted "or of the Department of the Interior" after "or of the Department of Labor".

1976-Pub. L. 94-582 struck out "any employee of the Bureau of Animal Industry of the Department of Agriculture," after "the field service of the Bureau of Land Management," and inserted "or of the Department of Agriculture" after "or of the Department of Labor".

Pub. L. 94–284 inserted ", the Consumer Product Safety Commission," after "Department of Health, Education, and Welfare".

1974-Pub. L. 93–481 substituted "Drug Enforcement Administration" for "Bureau of Narcotics and Dangerous Drugs".

1970-Pub. L. 91–596 substituted "or of the Department of Labor assigned to perform investigative, inspection, or law enforcement functions", for "designated by the Secretary of Health, Education, and Welfare to conduct investigations, or inspections under the Federal Food, Drug, and Cosmetic Act".

Pub. L. 91–513 substituted "Bureau of Narcotics and Dangerous Drugs" for "Bureau of Narcotics".

Pub. L. 91–375 substituted "officer or employee of the Postal Service", for "postal inspector, any postmaster, officer, or employee in the field service of the Post Office Department" after "Department of Justice,".

1968-Pub. L. 90–449 substituted "any postal inspector, any postmaster, officer, or employee in the field service of the Post Office Department" for "any post-office inspector".

1965-Pub. L. 89–74 included any officer or employee of the Department of Health, Education, and Welfare designated by the Secretary of Health, Education, and Welfare to conduct investigations or inspections under the Federal Food, Drug, and Cosmetic Act.

1964-Pub. L. 88–493 inserted "or any security officer of the Department of State or the Foreign Service".

1962-Pub. L. 87–518 included employees of the Department of Agriculture performing any function connected with any Federal or State program, or program of Puerto Rico, Guam, the Virgin Islands, or the District of Columbia, for control, eradication, or prevention of animal diseases.

1958-Pub. L. 85–568 included officers and employees of the National Aeronautics and Space Administration.

1952-Act June 27, 1952, substituted "any immigration officers" for "any immigrant inspector or any immigration patrol inspector".

1951-Act Oct. 31, 1951, substituted "the field service of the Bureau of Land Management" for "the field service of the Division of Grazing of the Department of the Interior".

1949-Act May 24, 1949, inserted "any officer, employee or agent of the customs or of the internal revenue or any person assisting him in the execution of his duties".

CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101–650, set out as a note under [section 631 of Title 28](#), Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 330011(g) of Pub. L. 103–322 provided that the amendment made by that section is effective as of Nov. 29, 1990.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 330011(g) of Pub. L. 103–322 provided that the amendment made by that section is effective as of Nov. 29, 1990.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 802(g)(3) of Pub. L. 96–466 provided in part that the amendment made by section 704 of Pub. L. 96–466 is effective Oct. 17, 1980.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–630 effective on expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95–630, set out as an Effective Date note under [section 375b of Title 12](#), Banks and Banking.

EFFECTIVE DATE OF 1970 AMENDMENTS

Amendment by Pub. L. 91–513 effective on first day of seventh calendar month that begins after Oct. 26, 1970, see section 704 of Pub. L. 91–513, set out as an Effective Date note under [section 801 of Title 21](#), Food and Drugs.

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding [section 101 of Title 39](#), Postal Service.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–74 effective July 15, 1965, see section 11 of Pub. L. 89–74.

SAVINGS PROVISION

Amendment by Pub. L. 91–513 not to affect or abate any prosecutions for violation of law or any civil seizures or forfeitures and injunctive proceedings commenced prior to the effective date of such amendment, and all administrative proceedings pending before the Bureau of Narcotics and Dangerous Drugs on Oct. 27, 1970, to be continued and brought to final determination in accord with laws and regulations in effect prior to Oct. 27, 1970, see section 702 of Pub. L. 91–513, set out as a note under [section 321 of Title 21](#), Food and Drugs.

TRANSFER OF FUNCTIONS

Functions of all officers of Department of Justice and functions of all agencies and employees of such Department transferred, with a few exceptions, to Attorney General, with power vested in him to authorize their performance or performance of any of his functions by any of such officers, agencies, and employees, by Reorg. Plan No. 2 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3173, 64 Stat. 1261, set out in the Appendix to Title 5, Government Organization and Employees. United States Attorneys, Assistant United States Attorneys, United States marshals, and deputy marshals, referred to in this section, are officers within the Department of Justice, the Federal Bureau of Investigation, also referred to in this section, is a bureau of such Department, and officers and employees of United States penal or correctional institutions and immigration officials, also referred to in the section, are officers and employees within such Department.

Bureau of Narcotics and Dangerous Drugs, including office of Director thereof, in Department of Justice abolished by Reorg. Plan No. 2 of 1973, eff. July 1, 1973, 38 F.R. 15932, 87 Stat. 1091, set out in the Appendix to Title 5, Government Organization and Employees. Reorg. Plan No. 2 of 1973 also created in Department of Justice a single, comprehensive agency for enforcement of drug laws to be known as Drug Enforcement Administration, empowered Attorney General to authorize performance by officers, employees, and agencies of Department of functions transferred to him, and directed Attorney General to coordinate all drug law enforcement functions to assure maximum cooperation between Drug Enforcement Administration, Federal Bureau of Investigation, and other units of Department of Justice involved in drug law enforcement.

Coast Guard transferred to Department of Transportation and all functions, powers, and duties, relating to Coast Guard, of Secretary of the Treasury and of other offices and officers of Department of the Treasury transferred to Secretary of Transportation by [Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931](#) , which created Department of Transportation. See [section 108 of Title 49, Transportation](#).

Functions of all officers of Department of the Treasury and functions of all agencies and employees of such Department transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions, by any of such officers, agencies, and employees. by Reorg. Plan No. 26 of 1950, §§1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. Secret Service is an agency in Department of the Treasury and customs and internal revenue officials, referred to in this section, are officials in such Department.

Functions of all other officers of Department of the Interior and functions of all agencies and employees of such Department transferred, with two exceptions, to Secretary of the Interior, with power vested in him to authorize their performance or performance of any of his functions by any of such officers, agencies, and employees, by Reorg. Plan No. 3 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees. Officers and employees of National Park Service, and of Indian field service, referred to in this section, are officers and employees of Department of the Interior.

LIFE IMPRISONMENT OR LESSER TERM FOR KILLING PERSON IN PERFORMANCE OF INVESTIGATIVE, INSPECTION, OR LAW ENFORCEMENT FUNCTIONS

Section 17(h)(2) of Pub. L. 91-596 provided that: "Notwithstanding the provisions of [sections 1111 and 1114 of title 18, United States Code](#), whoever, in violation of the provisions of section 1114 of such title, kills a person while engaged in or on account of the performance of investigative, inspection, or law enforcement functions added to such section 1114 by paragraph (1) of this subsection, and who would otherwise be subject to the penalty provisions of such section 1111 shall be punished by imprisonment for any term of years or for life."

IMMUNITY FROM CRIMINAL PROSECUTION

Section 5 of Pub. L. 88-493 which provided that nothing in Pub. L. 88-493, which amended this section and [section 112 of this title](#), and enacted former [section 170e-1 of Title 5, Government Organization and Employees](#), shall create immunity from criminal prosecution under the laws of any State, territory, possession, Puerto Rico, or the District of Columbia, is set out as a note under [section 112 of this title](#).

CROSS REFERENCES

Assaulting, resisting, or impeding officers or employees designated in this section, see [section 111 of this title](#).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in [sections 111, 115, 1117, 1201, 2339A of this title](#); title 7 sections 84, 87c, 2146; title 16 section 742l; title 19 section 1629; title 21 sections 461, 675; title 25 section 2804; title 42 section 2000e–13.

¹ *So in original. The period probably should be a comma.*

18 USC 1913. Lobbying with appropriated moneys

No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to Members of Congress on the request of any Member or to Congress, through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business.

Whoever, being an officer or employee of the United States or of any department or agency thereof, violates or attempts to violate this section, shall be fined under this title or imprisoned not more than one year, or both; and after notice and hearing by the superior officer vested with the power of removing him, shall be removed from office or employment.

(June 25, 1948, ch. 645, 62 Stat. 792 ; Pub. L. 103–322, title XXXIII, §330016(1)(G), Sept. 13, 1994, 108 Stat. 2147 .)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §201 (July 11, 1919, ch. 6, §6, 41 Stat. 68).

Reference to "department" and "agency" was added in three instances after the words "United States" to remove doubt as to the scope of the section. (See definitions of "department" and "agency" in [section 6 of this title](#).)

Reference to the offense as a misdemeanor was omitted as unnecessary in view of the definitive [section 1 of this title](#).

Words "on conviction thereof" were omitted as surplusage since punishment can be imposed only after conviction.

Minor changes were made in phraseology.

AMENDMENTS

1994-Pub. L. 103–322 substituted "fined under this title" for "fined not more than \$500" in last par.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 3374.

31 USC 3721. Claims of personnel of agencies and the District of Columbia government for personal property damage or loss

(a) In this section-

(1) "agency" does not include a nonappropriated fund activity or a contractor with the United States Government.

(2) "head of an agency" means-

(A) for a military department, the Secretary of the military department;

(B) for the Department of Defense (except the military departments), the Secretary of Defense; and

(C) for another agency, the head of the agency.

(3) "settle" means consider, determine, adjust, and dispose of a claim by disallowance or by complete or partial allowance.

(b)(1) The head of an agency may settle and pay not more than \$40,000 for a claim against the Government made by a member of the uniformed services under the jurisdiction of the agency or by an officer or employee of the agency for damage to, or loss of, personal property incident to service. If, however, the claim arose from an emergency evacuation or from extraordinary circumstances, the amount settled and paid under the authority of the preceding sentence may exceed \$40,000, but may not exceed \$100,000. A claim allowed under this subsection may be paid in money or the personal property replaced in kind.

(2) The Secretary of State may waive the settlement and payment limitation referred to in paragraph (1) for claims for damage or loss by United States Government personnel under the jurisdiction of a chief of mission in a foreign country if such claims arise in circumstances where there is in effect a departure from the country authorized or ordered under circumstances described in [section 5522\(a\) of title 5](#), if the Secretary determines that there exists exceptional circumstances that warrant such a waiver.

(c) On paying a claim under this section, the Government is subrogated for the amount of the payment to a right or claim that the claimant may have against a foreign country for the damage or loss for which the Government made the payment.

(d) The Mayor of the District of Columbia may settle and pay a claim against the District of Columbia government made by an officer or employee of the District of Columbia government to the same extent the head of an agency may settle and pay a claim under this section.

(e) A claim may not be allowed under this section if the personal property damage or loss occurred at quarters occupied by the claimant in a State or the District of Columbia that were not assigned or provided in kind by the United States Government or the District of Columbia government.

(f) A claim may be allowed under this section only if-

(1) the claim is substantiated;

(2) the head of the agency decides that possession of the property was reasonable or useful under the circumstances; and

(3) no part of the loss was caused by any negligent or wrongful act of the claimant or an agent or employee of the claimant.

(g) A claim may be allowed under this section only if it is presented in writing within 2 years after the claim accrues. However, if a claim under subsection (b) of this section accrues during war or an armed conflict in which an armed force of the United States is involved, or has accrued within 2 years before war or an armed conflict begins, and for cause shown, the claim must be presented within 2 years after the cause no longer exists or after the war or armed conflict ends, whichever is earlier. An armed conflict begins and ends as stated in a concurrent resolution of Congress or a decision of the President.

(h) The head of the agency-

(1) may settle and pay a claim made by the surviving spouse, child, parent, or brother or sister of a dead member, officer, or employee if the claim is otherwise payable under this section; and

(2) may settle and pay the claims by the survivors only in the following order:

(A) the spouse's claim.

(B) a child's claim.

(C) a parent's claim.

(D) a brother's or sister's claim.

(i) Notwithstanding a contract, the representative of a claimant may not receive more than 10 percent of a payment of a claim made under this section for services related to the claim. A person violating this subsection shall be fined not more than \$1,000.

(j) The President may prescribe policies to carry out this section (except subsection (b) to the extent that subsection (b) applies to the military departments, the Department of Defense, and the Coast Guard). Subject to those policies, the head of each agency shall prescribe regulations to carry out this section.

(k) Settlement of a claim under this section is final and conclusive.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 973 ; Pub. L. 97-452, §1(17), Jan. 12, 1983, 96 Stat. 2474 ; Pub. L. 100-565, §1, Oct. 31, 1988, 102 Stat. 2833 ; Pub. L. 103-236, title I, §172(a), Apr. 30, 1994, 108 Stat. 412 ; Pub. L. 104-106, div. A, title X, §1088(a), Feb. 10, 1996, 110 Stat. 458 .)

Historical and Revision Notes 1982 Act

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
3721(a), (b)	31:240(3).	Aug. 31, 1964, Pub. L. 88-558, §§2(3), 4, 78 Stat. 767 , 768.
	31:241(a)(1)(1st sentence words after 3d comma, 2d sentence words after last comma, last sentence).	Aug. 31, 1964, Pub. L. 88-558, §3(a)(1), 78 Stat. 767 ; restated Sept. 15, 1965, Pub. L. 89-185, §3(b), 79 Stat. 789 ; Oct. 18, 1974, Pub. L. 93-455, §1(a), 88 Stat. 1381 .
	31:241(a)(2)(words after 1st comma).	Aug. 31, 1964, Pub. L. 88-558, §3(a)(2), (3), (b)(2)-(d), 78 Stat. 767 ; restated Sept. 15, 1965, Pub. L. 89-185, §3(b)-(d), 79 Stat. 789 , 790.

	31:241(b)(1)(1st sentence words after 5th comma, 2d sentence words after last comma, last sentence).	Aug. 31, 1964, Pub. L. 88–558, §3(b)(1), 78 Stat. 767 ; Sept. 15, 1965, Pub. L. 89–185, §3(b), 79 Stat. 790 ; July 13, 1972, Pub. L. 92–352, §106(a), 86 Stat. 491 ; restated Oct. 18, 1974, Pub. L. 93–455, §1(b), 88 Stat. 1381 .
	31:243a(d)(2d sentence related to payment).	Aug. 31, 1964, Pub. L. 88–558, 78 Stat. 767 , §9; added Dec. 12, 1980, Pub. L. 96–519, §1, 94 Stat. 3031 .
3721(c)(1)	31:243a(a)(words after 1st comma).	
3721(c)(2)	31:243a(e).	
3721(c)(3)	31:243a(note).	Dec. 12, 1980, Pub. L. 96–519, §2, 94 Stat. 3032 .
3721(d)	31:241(f).	Aug. 31, 1964, Pub. L. 88–558, 78 Stat. 767 , §3(f); added Oct. 12, 1968, Pub. L. 90–561, 82 Stat. 998 .
3721(e)	31:241(c)(2).	
3721(f)	31:241(a)(1)(2d sentence words before last comma), (b)(1)(2d sentence words before last comma), (c)(3).	
	31:243a(d)(2d sentence less payment, last sentence).	
3721(g)	31:241(c)(1), (d).	
	31:243a(c).	
3721(h)	31:241(a)(3), (b)(2).	
	31:243a(b).	
3721(i)	31:243.	Aug. 31, 1964, Pub. L. 88–558, 78 Stat. 767 , §8; added Sept. 15, 1965, Pub. L. 89–185, §5, 79 Stat. 791 .
3721(j)	31:241(a)(1)(1st sentence words before 3d comma), (2)(words before 1st comma), (b)(1)(1st sentence words before 5th comma).	
	31:243a(a)(words before 1st comma), (d)(1st sentence).	
3721(k)	31:242.	

In the section, the words "or his designee" are omitted as unnecessary.

In subsections (b) and (c), the word "civilian" is omitted as surplus.

In subsection (b), the words "arising after August 31, 1964" and "arising after October 18, 1974" and 31:241(a)(1)(last sentence) and (b)(1)(last sentence) are omitted as executed.

In subsection (c)(1)(B), the words "mob violence, terrorist attacks, or other" are omitted as surplus. The word "members" is added for consistency.

In subsection (c)(2), the words "in which that damage or loss occurred" are omitted as surplus.

In subsection (c)(3), the text of section 2(last sentence) of the Act of December 12, 1980 ([Pub. L. 96–519, 94 Stat. 3032](#)) is omitted as obsolete.

Subsection (d) is substituted for 31:241(f) because of the restatement.

In subsection (e), the words "assigned to him or otherwise" in 31:241(c)(2) are omitted as surplus. The words "or the District of Columbia government" are added because of the restatement.

In subsection (f), the words "the head of the agency decides" are substituted for "determined to be" in 31:241(b)(1) for clarity.

In subsection (g), the text of 31:243a(c)(words after 1st comma) are omitted as executed. The words "in writing" and "of the United States" in 31:241(c)(1) are omitted as unnecessary.

In subsection (h)(1), the words "the surviving . . . of a dead member, officer, or employee" are substituted for "If a person named in this subsection is dead" and "the decedent's surviving" in 31:241(a)(3) and (b)(2) and "if such person is deceased" and "the decedent's surviving" in 31:243a(b) to omit surplus words. The words "that arose before, concurrently with, or after the decedent's death" in 31:241(a)(3) and (b)(2) and 31:243a(b) are omitted as surplus. The words "child, parent, or brother or sister" are substituted for "(2) children, (3) father or mother, or both, or (4) brothers or sisters, or both" to eliminate surplus words and because of 1:1. The words "otherwise payable" are substituted for "otherwise covered" for clarity.

Subsection (h)(2) is substituted for "Claims of survivors shall be settled and paid in the order named" in 31:241(a)(3) and (b)(2) and "Claims of survivors shall be settled and paid in the order set forth in the preceding sentence" in 31:243a(b) for clarity.

In subsection (i), the words "to the contrary" are omitted as surplus. The words "representative of a claimant" are substituted for "agent or attorney" for clarity and consistency. The words "be paid or delivered to or" are omitted as surplus. The word "payment" is substituted for "amount paid in settlement" to eliminate unnecessary words. The words "individual . . . submitted and settled . . . the authority of" are omitted as surplus. The words "and the same shall be unlawful" are omitted because of the restatement. The words "shall be deemed guilty of a misdemeanor and upon conviction thereof . . . in any sum" are omitted as surplus.

In subsection (j), the words "the purposes of" in 31:241(b)(1)(1st sentence words before 5th comma) are omitted as surplus. The words "(except subsection (b) to the extent that subsection (b) applies to the military departments, the Department of Defense, and the Coast Guard)" are substituted for the source provisions because of the restatement. The words "to carry out this section" after "regulations" are added for clarity.

In subsection (k), the words "Notwithstanding any other provision of law" are omitted as unnecessary.

1983 Act

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
3721(b)	31 App.:241(a)(1), (b)(1).	July 28, 1982, Pub. L. 97–226, §1(a) , 96 Stat. 245 .

EDITORIAL NOTES

AMENDMENTS

1996-Subsec. (b)(1). Pub. L. 104–106 inserted after first sentence "If, however, the claim arose from an emergency evacuation or from extraordinary circumstances, the amount settled and paid under the authority of the preceding sentence may exceed \$40,000, but may not exceed \$100,000."

1994-Subsec. (b). Pub. L. 103–236 designated existing provisions as par. (1) and added par. (2).

1988-Subsec. (b). Pub. L. 100–565, §1(1), substituted "\$40,000" for "\$25,000".

Subsec. (c). Pub. L. 100–565, §1(2), in amending subsec. (c) generally, redesignated former subsec. (c)(2) as (c) and substituted "section" for "subsection", struck out par. (1) which authorized agency head to pay claim against Government for not more than \$40,000 to member of uniformed services, or officer or employee of agency, for damage to, or loss of, personal property in foreign country, incurred after December 30, 1978, incident to service, after evacuation from foreign country, and struck out par. (3) which limited amounts to be obligated or expended for claims to extent provided in advance in appropriation laws.

1983-Subsec. (b). Pub. L. 97–452 substituted "\$25,000" for "\$15,000".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–106, div. A, title X, §1088(b), Feb. 10, 1996, 110 Stat. 459 , provided that: "The amendment made by subsection (a) [amending this section] shall apply to claims arising before, on, or after the date of the enactment of this Act [Feb. 10, 1996]."

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–236, title I, §172(b), Apr. 30, 1994, 108 Stat. 412 , provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to claims arising on or after October 31, 1988."

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–565, §2, Oct. 31, 1988, 102 Stat. 2833 , provided that: "The amendments made by this Act [amending this section] shall apply only to claims arising on or after the date of the enactment of this Act [Oct. 31, 1988]."

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 97–452, §2(g), Jan. 12, 1983, 96 Stat. 2479 , provided that: "The amendment made by section 1(17) of this Act [amending this section] applies only to claims arising after July 27, 1982."

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see [sections 468\(b\), 551\(d\), 552\(d\), and 557 of Title 6](#), Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under [section 542 of Title 6](#).

REPRESENTMENTS OF PREVIOUSLY PRESENTED CLAIMS

[Pub. L. 104–106](#), div. A, title X, §1088(c), [Feb. 10, 1996](#), [110 Stat. 459](#) , provided that:

"(1) A claim under subsection (b) of [section 3721 of title 31, United States Code](#), that was settled under such section before the date of the enactment of this Act [[Feb. 10, 1996](#)] may be represented under such section, as amended by subsection (a), to the head of the agency concerned to recover the amount equal to the difference between the actual amount of the damage or loss and the amount settled and paid under the authority of such section before the date of the enactment of this Act, except that-

"(A) the claim shall be represented in writing within two years after the date of the enactment of this Act;

"(B) a determination of the actual amount of the damage or loss shall have been made by the head of the agency concerned pursuant to settlement of the claim under the authority of such section before the date of the enactment of this Act;

"(C) the claimant shall have proof of the determination referred to in subparagraph (B); and

"(D) the total of all amounts paid in settlement of the claim under the authority of such section may not exceed \$100,000.

"(2) Subsection (k) of such section shall not apply to bar representment of a claim described in paragraph (1), but shall apply to such a claim that is represented and settled under that section after the date of the enactment of this Act."

40 USC 590. Child care

(a) Guidance, Assistance, and Oversight.-Through the General Services Administration's licensing agreements, the Administrator of General Services shall provide guidance, assistance, and oversight to federal agencies for the development of child care centers to provide economical and effective child care for federal workers.

(b) Allotment of Space in Federal Buildings.-

(1) Definitions.-In this subsection, the following definitions apply:

(A) Child care provider.-The term "child care provider" means an individual or entity that provides or proposes to provide child care services for federal employees.

(B) Allotment officer.-The term "allotment officer" means an officer or agency of the Federal Government charged with the allotment of space in federal buildings.

(2) Allotment.-A child care provider may be allotted space in a federal building by an allotment officer if-

(A) the child care provider applies to the allotment officer in the community or district in which child care services are to be provided;

(B) the space is available; and

(C) the allotment officer determines that-

(i) the space will be used to provide child care services to children of whom at least 50 percent have one parent or guardian employed by the Government; and

(ii) the child care provider will give priority to federal employees for available child care services in the space.

(c) Payment for Space and Services.-

(1) Definition.-For purposes of this subsection, the term "services" includes the providing of lighting, heating, cooling, electricity, office furniture, office machines and equipment, classroom furnishings and equipment, kitchen appliances, playground equipment, telephone service (including installation of lines and equipment and other expenses associated with telephone services), and security systems (including installation and other expenses associated with security systems), including replacement equipment, as needed.

(2) No charge.-Space allotted under subsection (b) may be provided without charge for rent or services.

(3) Reimbursement for costs.-For space allotted under subsection (b), if there is an agreement for the payment of costs associated with providing space or services, neither title 31, nor any other law, prohibits or restricts payment by reimbursement to the miscellaneous receipts or other appropriate account of the Treasury.

(d) Payment of Other Costs.-If an agency has a child care facility in its space, or is a sponsoring agency for a child care facility in other federal or leased space, the agency or the Administration may-

(1) pay accreditation fees, including renewal fees, for the child care facility to be accredited by a nationally recognized early-childhood professional organization;

(2) pay travel and per diem expenses for representatives of the child care facility to attend the annual Administration child care conference; and

(3) enter into a consortium with one or more private entities under which the private entities assist in defraying costs associated with the salaries and benefits for personnel providing services at the facility.

(e) Reimbursement for Employee Training.-Notwithstanding [section 1345 of title 31](#), an agency, department, or instrumentality of the Government that provides or proposes to provide child care services for federal employees may reimburse a federal employee or any individual employed to provide child care services for travel, transportation, and subsistence expenses incurred for training classes, conferences, or other meetings in connection with providing the services. A per diem allowance made under this subsection may not exceed the rate specified in regulations prescribed under [section 5707 of title 5](#).

(f) Criminal History Background Checks.-

(1) Definition.-In this subsection, the term "executive facility" means a facility owned or leased by an office or entity within the executive branch of the Government. The term includes a facility owned or leased by the General Services Administration on behalf of an office or entity within the judicial branch of the Government.

(2) In general.-All workers in a child care center located in an executive facility shall undergo a criminal history background check as defined in section 231 of the Crime Control Act of 1990 ([42 U.S.C. 13041](#)).

(3) Nonapplication to legislative branch facilities.-This subsection does not apply to a facility owned by or leased on behalf of an office or entity within the legislative branch of the Government.

(g) Appropriated Amounts for Affordable Child Care.-

(1) Definition.-For purposes of this subsection, the term "Executive agency" has the meaning given that term in [section 105 of title 5](#), but does not include the Government Accountability Office.

(2) In general.-In accordance with regulations the Office of Personnel Management prescribes, an Executive agency that provides or proposes to provide child care services for federal employees may use appropriated amounts that are otherwise available for salaries and expenses to provide child care in a federal or leased facility, or through contract, for civilian employees of the agency.

(3) Affordability.-Amounts used pursuant to paragraph (2) shall be applied to improve the affordability of child care for lower income federal employees using or seeking to use the child care services.

(4) Advances.-Notwithstanding [section 3324 of title 31](#), amounts may be paid in advance to licensed or regulated child care providers for services to be rendered during an agreed period.

(5) Notification.-No amounts made available by law may be used to implement this subsection without advance notice to the Committees on Appropriations of the House of Representatives and the Senate.

([Pub. L. 107–217, Aug. 21, 2002, 116 Stat. 1116](#) ; [Pub. L. 108–271, §8\(b\), July 7, 2004, 118 Stat. 814](#) .)

Historical and Revision Notes

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
590(a)	40:490b(c).	Pub. L. 100–202, §101(m) [title VI, §616(a)–(d)], Dec. 22, 1987, 101 Stat. 1329–423 ; Pub. L. 102–

		393, title V, §528, Oct. 6, 1992, 106 Stat. 1760 .
590(b)	40:490b(a).	
590(c)	40:490b(b)(1), (2), (4).	
590(d)	40:490b(b)(3).	
	40:490b(d).	
590(e)	40:490b note.	Pub. L. 105–277, div. A, §101(h) [title VI, §603], Oct. 21, 1998, 112 Stat. 2681–513 .
590(f)	40:490b(e).	Pub. L. 100–202, §101(m) [title VI, §616(e)], as added Pub. L. 106–554, §1[(j)a)(3) [title VI, §643], Dec. 21, 2000, 114 Stat. 2763 A–169.
590(g)	40:490b–1.	Pub. L. 107–67, title VI, §630, Nov. 12, 2001, 115 Stat. 552 .

In subsection (a), the word "provide" is substituted for "promote the provision of" to eliminate unnecessary words.

In subsection (f)(2), the word "workers" is substituted for "existing and newly hired workers" to eliminate unnecessary words.

In subsection (g)(2), the word "hereafter" is omitted as unnecessary.

In subsection (g)(4), the words "as appropriate" are omitted as unnecessary.

In subsection (g)(5), the words "in this or any other Act" are omitted as unnecessary. The words "of the House of Representatives and the Senate" are added for consistency in the revised title.

AMENDMENTS

2004-Subsec. (g)(1). Pub. L. 108–271 substituted "Government Accountability Office" for "General Accounting Office".

42 USC 1306. Disclosure of information in possession of Social Security Administration or Department of Health and Human Services

(a) Disclosure prohibited; exceptions

(1) No disclosure of any return or portion of a return (including information returns and other written statements) filed with the Commissioner of Internal Revenue under title VIII of the Social Security Act or under subchapter E of [chapter 1](#) or subchapter A of [chapter 9](#) of the Internal Revenue Code [of 1939], or under regulations made under authority thereof, which has been transmitted to the head of the applicable agency by the Commissioner of Internal Revenue, or of any file, record, report, or other paper, or any information, obtained at any time by the head of the applicable agency or by any officer or employee of the applicable agency in the course of discharging the duties of the head of the applicable agency under this chapter, and no disclosure of any such file, record, report, or other paper, or information, obtained at any time by any person from the head of the applicable agency or from any officer or employee of the applicable agency, shall be made except as the head of the applicable agency may by regulations prescribe and except as otherwise provided by Federal law. Any person who shall violate any provision of this section shall be deemed guilty of a felony and, upon conviction thereof, shall be punished by a fine not exceeding \$10,000 for each occurrence of a violation, or by imprisonment not exceeding 5 years, or both.

(2) For purposes of this subsection and subsection (b), the term "applicable agency" means-

(A) the Social Security Administration, with respect to matter transmitted to or obtained by such Administration or matter disclosed by such Administration, or

(B) the Department of Health and Human Services, with respect to matter transmitted to or obtained by such Department or matter disclosed by such Department.

(b) Requests for information and services

Requests for information, disclosure of which is authorized by regulations prescribed pursuant to subsection (a) of this section, and requests for services, may, subject to such limitations as may be prescribed by the head of the applicable agency to avoid undue interference with his functions under this chapter, be complied with if the agency, person, or organization making the request agrees to pay for the information or services requested in such amount, if any (not exceeding the cost of furnishing the information or services), as may be determined by the head of the applicable agency. Payments for information or services furnished pursuant to this section shall be made in advance or by way of reimbursement, as may be requested by the head of the applicable agency, and shall be deposited in the Treasury as a special deposit to be used to reimburse the appropriations (including authorizations to make expenditures from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund) for the unit or units of the applicable agency which furnished the information or services. Notwithstanding the preceding provisions of this subsection, requests for information made pursuant to the provisions of part D of subchapter IV of this chapter for the purpose of using Federal records for locating parents shall be complied with and the cost incurred in providing such information shall be paid for as provided in such part D of subchapter IV.

(c) Cost reimbursement

Notwithstanding [sections 552 and 552a of title 5](#) or any other provision of law, whenever the Commissioner of Social Security or the Secretary determines that a request for information is made in order to assist a party in interest (as defined in [section 1002 of title 29](#)) with respect to the administration of an employee benefit plan (as so defined), or is made for any other purpose not directly related to the administration of the program or programs under this chapter to which such information relates, such Commissioner or Secretary may require the requester to pay the full cost, as determined by such Commissioner or Secretary, of providing such information.

(d) Compliance with requests

Notwithstanding any other provision of this section, in any case in which-

- (1) information regarding whether an individual is shown on the records of the Commissioner of Social Security as being alive or deceased is requested from the Commissioner for purposes of epidemiological or similar research which the Commissioner in consultation with the Secretary of Health and Human Services finds may reasonably be expected to contribute to a national health interest, and
- (2) the requester agrees to reimburse the Commissioner for providing such information and to comply with limitations on safeguarding and rerelease or redisclosure of such information as may be specified by the Commissioner,

the Commissioner shall comply with such request, except to the extent that compliance with such request would constitute a violation of the terms of any contract entered into under [section 405\(r\) of this title](#).

(e) Public inspection

Notwithstanding any other provision of this section the Secretary shall make available to each State agency operating a program under subchapter XIX and shall, subject to the limitations contained in subsection (e),¹ make available for public inspection in readily accessible form and fashion, the following official reports (not including, however, references to any internal tolerance rules and practices that may be contained therein, internal working papers or other informal memoranda) dealing with the operation of the health programs established by subchapters XVIII and XIX-

- (1) individual contractor performance reviews and other formal evaluations of the performance of carriers, intermediaries, and State agencies, including the reports of follow-up reviews;
- (2) comparative evaluations of the performance of such contractors, including comparisons of either overall performance or of any particular aspect of contractor operation; and
- (3) program validation survey reports and other formal evaluations of the performance of providers of services, including the reports of follow-up reviews, except that such reports shall not identify individual patients, individual health care practitioners, or other individuals.

(f) Opportunity for review

No report described in subsection (e) shall be made public by the Secretary or the State subchapter XIX agency until the contractor or provider of services whose performance is being evaluated has had a reasonable opportunity (not exceeding 60 days) to review such report and to offer comments pertinent parts of which may be incorporated in the public report; nor shall the Secretary be required to include in any such report information with respect to any deficiency (or improper practice or procedures) which is known by the Secretary to have been fully corrected, within 60 days of the date such deficiency was first brought to the attention of such contractor or provider of services, as the case may be.

(g) Agreement with Secretary of the Treasury

Notwithstanding any other provision of this section, the Commissioner of Social Security shall enter into an agreement with the Secretary of the Treasury under which-

(1) if the Secretary provides the Commissioner with the information described in section 6103(k)(15) of the Internal Revenue Code of 1986 with respect to any individual, the Commissioner shall indicate to the Secretary as to whether such individual receives disability insurance benefits under [section 423 of this title](#) or supplemental security income benefits under subchapter XVI of this chapter (including State supplementary payments of the type referred to in [section 1382e\(a\) of this title](#) or payments of the type described in section 212(a) of Public Law 93-66 [[42 U.S.C. 1382 note](#)]);

(2) appropriate safeguards are included to assure that the indication described in paragraph (1) will be used solely for the purpose of determining if tax receivables involving such individual are not eligible for collection pursuant to a qualified tax collection contract by reason of section 6306(d)(3)(E) of the Internal Revenue Code of 1986; and

(3) the Secretary shall pay the Commissioner of Social Security the full costs (including systems and administrative costs) of providing the indication described in paragraph (1).

(Aug. 14, 1935, ch. 531, title XI, §1106, as added [Aug. 10, 1939, ch. 666, title VIII, §802, 53 Stat. 1398](#); amended [Aug. 28, 1950, ch. 809, title IV, §403\(d\), 64 Stat. 559](#); [Pub. L. 85-840, title VII, §701, Aug. 28, 1958, 72 Stat. 1055](#); [Pub. L. 89-97, title I, §108\(c\), title III, §340, July 30, 1965, 79 Stat. 339](#), [411](#); [Pub. L. 90-248, title I, §168, title II, §241\(c\)\(1\), Jan. 2, 1968, 81 Stat. 875](#), [917](#); [Pub. L. 92-603, title II, §249C\(a\), Oct. 30, 1972, 86 Stat. 1428](#); [Pub. L. 93-647, §101\(d\), Jan. 4, 1975, 88 Stat. 2360](#); [Pub. L. 97-35, title XXII, §2207, Aug. 13, 1981, 95 Stat. 838](#); [Pub. L. 98-369, div. B, title VI, §2663\(j\)\(2\)\(D\)\(ii\), \(l\), July 18, 1984, 98 Stat. 1170](#), [1171](#); [Pub. L. 103-296, title I, §108\(b\)\(2\)-\(5\), title III, §§311\(a\), 313\(a\), Aug. 15, 1994, 108 Stat. 1481](#), [1482](#), [1525](#), [1530](#); [Pub. L. 116-260, div. N, title II, §283\(a\), div. FF, title I, §102\(a\), Dec. 27, 2020, 134 Stat. 1984](#), [3083](#).)

EDITORIAL NOTES

REFERENCES IN TEXT

Title VIII of the Social Security Act, referred to in subsec. (a)(1), probably refers to former title VIII of the Act, which was classified to subchapter VIII (§1001 et seq.) of this chapter prior to its omission from the Code as superseded by the provisions of the Internal Revenue Code of 1939 and the Internal Revenue Code of 1986.

Subchapter E of [chapter 1](#) and subchapter A of [chapter 9](#) of the Internal Revenue Code of 1939, referred to in subsec. (a), were comprised of sections 480 to 482 and 1400 to 1432, respectively, and were repealed (subject to certain exceptions) by section 7851(a)(1)(A), (3) of the Internal Revenue Code of 1954, Title 26. The Internal Revenue Code of 1954 was redesignated the Internal Revenue Code of 1986 by [Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095](#). For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding [section 1 of Title 26](#), Internal Revenue Code. See also [section 7852\(b\) of Title 26](#) for provision that references in any other law to a provision of the 1939 Code, unless expressly incompatible with the intent thereof, shall be deemed a reference to the corresponding provision of the 1986 Code.

For provision deeming a reference in other laws to a provision of the 1939 Code as a reference to the corresponding provisions of the 1986 Code, see [section 7852\(b\) of the 1986 Code](#). For table of comparisons of the 1939 Code to the 1986 Code, see table

preceding [section 1 of Title 26](#), Internal Revenue Code. The Internal Revenue Code of 1986 is classified generally to Title 26.

Sections 6103(k)(15) and 6306(d)(3)(E) of the Internal Revenue Code of 1986, referred to in subsec. (g)(1) and (2), are classified to sections 6103(k)(15) and 6306(d)(3)(E), respectively, of Title 26, Internal Revenue Code.

AMENDMENTS

2020-Subsec. (g). Pub. L. 116–260, div. N, §283(a), and div. FF, §102(a), made substantially identical amendments, adding subsec. (g). Text is based on amendment by div. N, §283(a).

1994-Subsec. (a). Pub. L. 103–296, §313(a), in par. (1), substituted "felony" for "misdemeanor", "\$10,000 for each occurrence of a violation" for "\$1,000", and "5 years" for "one year".

Pub. L. 103–296, §108(b)(2), designated existing provisions as par. (1), substituted "head of the applicable agency" for "Secretary" wherever appearing and "employee of the applicable agency" for "employee of the Department of Health and Human Services" in two places, and added par. (2).

Subsec. (b). Pub. L. 103–296, §108(b)(3), substituted "head of the applicable agency" for "Secretary" wherever appearing and "applicable agency which" for "Department of Health and Human Services which".

Subsec. (c). Pub. L. 103–296, §108(b)(4), substituted "the Commissioner of Social Security or the Secretary" for "the Secretary" where first appearing and "such Commissioner or Secretary" for "the Secretary" where appearing subsequently in two places.

Subsec. (d). Pub. L. 103–296, §311(a)(3), added subsec. (d). Former subsec. (d) redesignated (e).

Pub. L. 103–296, §108(b)(5) in subsec. (d) as added by Pub. L. 103–296, §311(a)(3), in par. (1) substituted "Commissioner of Social Security" for "Secretary" after "records of the", "Commissioner" for "Secretary" after "from the", "Commissioner in consultation with the Secretary of Health and Human Services" for "Secretary" after "which the", and in par. (2) and closing provisions substituted "Commissioner" for "Secretary" wherever appearing.

Subsec. (e). Pub. L. 103–296, §311(a)(1), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 103–296, §311(a)(1), (2), redesignated subsec. (e) as (f) and substituted "subsection (e)" for "subsection (d)".

1984-Subsec. (a). Pub. L. 98–369, §2663(l), substituted "Secretary" and "Department of Health and Human Services" for "Administrator" and "Federal Security Agency", respectively, wherever appearing.

Subsec. (b). Pub. L. 98–369, §2663(j)(2)(D)(ii), substituted "Health and Human Services" for "Health, Education, and Welfare".

1981-Subsec. (a). Pub. L. 97–35, §2207(1), substituted "as otherwise provided by Federal law" for "as provided in part D of subchapter IV of this chapter".

Subsec. (c). Pub. L. 97–35, §2207(2), added subsec. (c).

1975-Subsec. (a). Pub. L. 93–647, §101(d)(1), inserted "and except as provided in part D of subchapter IV of this chapter" after "may by regulations prescribe".

Subsec. (b). Pub. L. 93–647, §101(d)(2), inserted provision relating to compliance with requests for information made pursuant to part D of subchapter IV of this chapter for purpose of using Federal records to locate parents.

Subsec. (c). Pub. L. 93–647, §101(d)(3), repealed subsec. (c) relating to requests by State or local agencies for most recent address of any individual maintained pursuant to [section 405 of this title](#) and requirements for release of such information.

1972-Subsecs. (d), (e). Pub. L. 92–603 added subsecs. (d) and (e).

1968-Subsec. (c)(1). Pub. L. 90–248, §241(c)(1), struck out "IV," after "I," and inserted "or part A of subchapter IV of this chapter," after "XIX of this chapter,".

Subsec. (c)(1)(A), (B). Pub. L. 90–248, §168(a), designated existing provisions as subpar. (A), redesignated former subpars. (A) to (D) as cls. (i) to (iv) thereof, and added subpar. (B).

Subsec. (c)(2). Pub. L. 90–248, §168(b)(1), substituted "(and, in the case of a request under paragraph (1)(A), shall be accompanied by a certified copy of the order referred to in clauses (i) and (iv) thereof)" for ", and shall be accompanied by a certified copy of the order referred to in paragraph (1)(A) of this subsection".

Subsec. (c)(3). Pub. L. 90–248, §168(b)(2), substituted "authorized by subparagraph (A)(iv) or (B)" for "authorized by subparagraph (D)".

1965-Subsec. (b). Pub. L. 89–97, §108(c), provided for use of special deposit in the Treasury (made up of payments for information and services furnished) to reimburse authorizations to make expenditures from the Federal Hospital Insurance Trust Fund and the Supplementary Medical Insurance Trust Fund.

Subsec. (c). Pub. L. 89–97, §340, added subsec. (c).

1958-Subsec. (b). Pub. L. 85–840 amended subsec. (b) generally, authorizing compliance with requests for services if the agency, person, or organization making the request agrees to pay for the services.

1950-Act Aug. 28, 1950, amended section generally, designating existing provisions as subsec. (a), substituting "under subchapter E of [chapter 1](#) or subchapter A of [chapter 9](#) of the Internal Revenue Code of 1939" for "the Federal Insurance Contributions Act," reflecting the transfer of functions from the Social Security Board to the Federal Security Administrator and the Federal Security Agency, and adding subsec. (b).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2020 AMENDMENT

Amendment by Pub. L. 116–260 applicable to disclosures made on or after Dec. 27, 2020, see section 284(a)(4) of div. N of Pub. L. 116–260 and section 102(c) of div. FF of Pub. L. 116–260, set out as notes under [section 6103 of Title 26](#), Internal Revenue Code.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 108(b)(2)–(5) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under [section 401 of this title](#).

Amendment by section 311(a) of Pub. L. 103–296, applicable with respect to requests for information made after Aug. 15, 1994, see section 311(c) of Pub. L. 103–296, set out as a note under [section 6103 of Title 26](#), Internal Revenue Code.

[Pub. L. 103–296, title III, §313\(c\), Aug. 15, 1994, 108 Stat. 1530](#), provided that: "The amendments made by this section [amending this section and [section 1307 of this title](#)] shall apply to violations occurring on or after the date of the enactment of this Act [Aug. 15, 1994]."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under [section 401 of this title](#).

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–647 effective Aug. 1, 1975, see section 101(f) of Pub. L. 93–647, set out as an Effective Date note under [section 651 of this title](#).

EFFECTIVE DATE OF 1972 AMENDMENT

[Pub. L. 92–603, title II, §249C\(b\), Oct. 30, 1972, 86 Stat. 1428](#), provided that: "The provisions of subsection (a) [amending this section] shall apply with respect to reports which are completed by the Secretary after the third calendar month following the enactment of this Act [Oct. 30, 1972]."

¹ *So in original. Probably should be subsection "(f)."*

5 CFR Part 300, Subpart A—Employment Practices

§ 300.101 Purpose.

The purpose of this subpart is to establish principles to govern, as nearly as is administratively feasible and practical, the employment practices of the Federal Government generally, and of individual agencies, that affect the recruitment, measurement, ranking, and selection of individuals for initial appointment and competitive promotion in the competitive service or in positions in the government of the District of Columbia required to be filled in the same manner that positions in the competitive service are filled. For the purpose of this subpart, the term “employment practices” includes the development and use of examinations, qualification standards, tests, and other measurement instruments.

[[36 FR 15447](#), Aug. 14, 1971]

§ 300.102 Policy.

This subpart is directed to implementation of the policy that competitive employment practices:

- (a) Be practical in character and as far as possible relate to matters that fairly test the relative capacity and fitness of candidates for the jobs to be filled;
- (b) Result in selection from among the best qualified candidates;
- (c) Be developed and used without discrimination on the basis of race, color, religion, sex (including pregnancy and gender identity), national origin, age (as defined by the Age Discrimination in Employment Act of 1967, as amended), disability, genetic information (including family medical history), marital status, political affiliation, sexual orientation, labor organization affiliation or nonaffiliation, status as a parent, or any other non-merit-based factor, or retaliation for exercising rights with respect to the categories enumerated above, where retaliation rights are available.
- (d) Insure to the candidate opportunity for appeal or administrative review, as appropriate.

[[40 FR 15379](#), Apr. 7, 1975, as amended at [79 FR 43922](#), July 29, 2014]

§ 300.103 Basic requirements.

- (a) **Job analysis.** Each employment practice of the Federal Government generally, and of individual agencies, shall be based on a job analysis to identify:
 - (1) The basic duties and responsibilities;
 - (2) The knowledges, skills, and abilities required to perform the duties and responsibilities; and
 - (3) The factors that are important in evaluating candidates. The job analysis may cover a single position or group of positions, or an occupation or group of occupations, having common characteristics.

(b) **Relevance.**

(1) There shall be a rational relationship between performance in the position to be filled (or in the target position in the case of an entry position) and the employment practice used. The demonstration of rational relationship shall include a showing that the employment practice was professionally developed. A minimum educational requirement may not be established except as authorized under [section 3308 of title 5, United States Code](#).

(2) In the case of an entry position the required relevance may be based upon the target position when—

(i) The entry position is a training position or the first of a progressive series of established training and development positions leading to a target position at a higher level; and

(ii) New employees, within a reasonable period of time and in the great majority of cases, can expect to progress to a target position at a higher level.

(c) **Equal employment opportunity and prohibited forms of discrimination.** An employment practice must not discriminate on the basis of race, color, religion, sex (including pregnancy and gender identity), national origin, age (as defined by the Age Discrimination in Employment Act of 1967, as amended), disability, genetic information (including family medical history), marital status, political affiliation, sexual orientation, labor organization affiliation or nonaffiliation, status as a parent, or any other non-merit-based factor, or retaliation for exercising rights with respect to the categories enumerated above, where retaliation rights are available. Employee selection procedures shall meet the standards established by the “Uniform Guidelines on Employee Selection Procedures,” where applicable.

[[40 FR 15380](#), Apr. 7, 1975, as amended at [43 FR 38310](#), Aug. 25, 1978; [79 FR 43922](#), July 29, 2014]

§ 300.104 Appeals, grievances and complaints.

(a) **Employment practices.** A candidate who believes that an employment practice which was applied to him or her by the Office of Personnel Management violates a basic requirement in [§ 300.103](#) is entitled to appeal to the Merit Systems Protection Board under the provisions of its regulations.

(b) **Examination ratings.** A candidate may file an appeal with the Office from his or her examination rating or the rejection of his or her application, except that, where the Office has delegated examining authority to an agency, the candidate should appeal directly to that agency. The appeal and supporting documents shall be filed with the agency office that determined the rating.

(c) **Complaints and grievances to an agency.**

(1) A candidate may file a complaint with an agency when he or she believes that an employment practice that was applied to him or her and that is administered by the agency discriminates against him or her on the basis of race, color, religion, sex (including pregnancy and gender identity), national origin, age (as defined by the Age Discrimination in

Employment Act of 1967, as amended), disability, genetic information (including family medical history), or retaliation for exercising rights with respect to the categories enumerated above, where retaliation rights are available. The complaint must be filed and processed in accordance with the agency EEO procedures, as appropriate.

(2) Except as provided in [paragraph \(c\)\(1\)](#) of this section, an employee may file a grievance with an agency when he or she believes that an employment practice which was applied to him or her and which is administered or required by the agency violates a basic requirement in [§ 300.103](#). The grievance shall be filed and processed under an agency grievance system, if applicable, or a negotiated grievance system as applicable.

[[40 FR 15380](#), Apr. 7, 1975, as amended at [41 FR 51579](#), Nov. 23, 1976; [44 FR 48951](#), Aug. 21, 1979; [60 FR 3057](#), Jan. 13, 1995; [60 FR 47040](#), Sept. 11, 1995; [79 FR 43922](#), July 29, 2014]

5 CFR PART 351—REDUCTION IN FORCE

Authority: [5 U.S.C. 1302](#), [3502](#), [3503](#); sec. 351.801 also issued under [E.O. 12828](#), [58 FR 2965](#).

Source: [51 FR 319](#), Jan. 3, 1986, unless otherwise noted.

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Citation

5 CFR Part 351 Subpart A

Subpart A [Reserved]

Subpart B—General Provisions

§ 351.201 Use of regulations.

(a)

(1) Each agency is responsible for determining the categories within which positions are required, where they are to be located, and when they are to be filled, abolished, or vacated. This includes determining when there is a surplus of employees at a particular location in a particular line of work.

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

(b) This part does not require an agency to fill a vacant position. However, when an agency, at its discretion, chooses to fill a vacancy by an employee who has been reached for release from a competitive level for one of the reasons in [paragraph \(a\)\(2\)](#) of this section, this part shall be followed.

(c) Each agency is responsible for assuring that the provisions in this part are uniformly and consistently applied in any one reduction in force.

(d) An agency authorized to administer foreign national employee programs under section 408 of the Foreign Service Act of 1980 ([22 U.S.C. 3968](#)) may include special plans for reduction in force in its foreign national employee programs. In these special plans an agency may give effect to the labor laws and practices of the locality of employment by supplementing the selection factors in [subparts D](#) and [E of this part](#) to the extent consistent with the public interest. [Subpart I of this part](#) does not apply to actions taken under the special plans authorized by this paragraph.

§ 351.202 Coverage.

(a) **Employees covered.** Except as provided in [paragraph \(b\)](#) of this section, this part applies to each civilian employee in:

- (1) The executive branch of the Federal Government; and
- (2) Those parts of the Federal Government outside the executive branch which are subject by statute to competitive service requirements or are determined by the appropriate legislative or judicial administrative body to be covered hereunder. Coverage includes administrative law judges except as modified by [part 930 of this chapter](#).

(b) **Employees excluded.** This part does not apply to an employee:

- (1) In a position in the Senior Executive Service; or
- (2) Whose appointment is required by Congress to be confirmed by, or made with the advice and consent of, the United States Senate, except a postmaster.

(c) **Actions excluded.** This part does not apply to:

- (1) The termination of a temporary or term promotion or the return of an employee to the position held before the temporary or term promotion or to one of equivalent grade and pay.
- (2) A change to lower grade based on the reclassification of an employee's position due to the application of new classification standards or the correction of a classification error.
- (3) A change to lower grade based on reclassification of an employee's position due to erosion of duties, except that this exclusion does not apply to such reclassification actions that will take effect after an agency has formally announced a reduction in force in the employee's competitive area and when the reduction in force will take effect within 180 days. This exception ends at the completion of the reduction in force.
- (4) The change of an employee from regular to substitute in the same pay level in the U.S. Postal Service field service.
- (5) The release from a competitive level of a National Guard technician under [section 709 of title 32, United States Code](#).
- (6) Placement of an employee serving on an intermittent, part-time, on-call, or seasonal basis in a nonpay and nonduty status in accordance with conditions established at time of appointment.
- (7) A change in an employee's work schedule from other-than-full-time to full-time. (A change from full-time to other than full-time for a reason covered in [§ 351.201\(A\)\(2\)](#) is covered by this part.)

[[51 FR 319](#), Jan. 3, 1986, as amended at [60 FR 3062](#), Jan. 13, 1995]

§ 351.203 Definitions.

In this part:

Competing employee means an employee in tenure group I, II, or III.

Current rating of record is the rating of record for the most recently completed appraisal period as provided in [§ 351.504\(b\)\(3\)](#).

Days means calendar days.

Function means all or a clearly identifiable segment of an agency's mission (including all integral parts of that mission), regardless of how it is performed.

Furlough under this part means the placement of an employee in a temporary nonduty and nonpay status for more than 30 consecutive calendar days, or more than 22 workdays if done on a discontinuous basis, but not more than 1 year.

Local commuting area means the geographic area that usually constitutes one area for employment purposes. It includes any population center (or two or more neighboring ones) and the surrounding localities in which people live and can reasonably be expected to travel back and forth daily to their usual employment.

Modal rating is the summary rating level assigned most frequently among the actual ratings of record that are:

- (1) Assigned under the summary level pattern that applies to the employee's position of record on the date of the reduction in force;
- (2) Given within the same competitive area, or at the agency's option within a larger subdivision of the agency or agencywide; and
- (3) On record for the most recently completed appraisal period prior to the date of issuance of reduction in force notices or the cutoff date the agency specifies prior to the issuance of reduction in force notices after which no new ratings will be put on record.

Rating of record has the meaning given that term in [§ 430.203 of this chapter](#). For an employee not subject to [5 U.S.C. Chapter 43](#), or [part 430 of this chapter](#), it means the officially designated performance rating, as provided for in the agency's appraisal system, that is considered to be an equivalent rating of record under the provisions of [§ 430.201\(c\) of this chapter](#).

Reorganization means the planned elimination, addition, or redistribution of functions or duties in an organization.

Representative rate means:

- (1) The fourth step of the grade for a position covered by the General Schedule, using the locality rate authorized by [5 U.S.C. 5304](#) and [subpart F of part 531 of this chapter](#) for General Schedule positions;
- (2) The prevailing rate for a position covered by a wage-board or similar wage-determining procedure, such as provided in the definition of representative rate for Federal Wage System positions in [5 CFR 532.401](#) of this chapter;
- (3) For positions in a pay band, the rate (or rates) the agency designates as representative of that pay band or competitive levels within the pay band, including (as appropriate) any applicable locality payment authorized by [5 U.S.C. 5304](#) and [subpart F of part 531 of this chapter](#) (or equivalent payment under other legal authority); and

(4) For other positions (e.g., positions in an unclassified pay system), the rate the agency designates as representative of the position, including (as appropriate) any applicable locality payment authorized by subpart F of part 531 (or equivalent payment under other legal authority).

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

Undue interruption means a degree of interruption that would prevent the completion of required work by the employee 90 days after the employee has been placed in a different position under this part. The 90-day standard should be considered within the allowable limits of time and quality, taking into account the pressures of priorities, deadlines, and other demands. However, a work program would generally not be unduly interrupted even if an employee needed more than 90 days after the reduction in force to perform the optimum quality or quantity of work. The 90-day standard may be extended if placement is made under this part to a low priority program or to a vacant position.

[[51 FR 319](#), Jan. 3, 1986, as amended at [58 FR 65533](#), Dec. 15, 1993; [60 FR 3062](#), Jan. 13, 1995; [62 FR 62500](#), Nov. 24, 1997; [73 FR 29388](#), May 21, 2008]

§ 351.204 Responsibility of agency.

Each agency covered by this part is responsible for following and applying the regulations in this part when the agency determines that a reduction force is necessary.

§ 351.205 Authority of OPM.

The Office of Personnel Management may establish further guidance and instructions for the planning, preparation, conduct, and review of reductions in force. OPM may examine an agency's preparations for reduction in force at any stage. When OPM finds that an agency's preparations are contrary to the express provisions or to the spirit and intent of these regulations or that they would result in violation of employee rights or equities, OPM may require appropriate corrective action.

[[51 FR 319](#), Jan. 3, 1986, as amended at [66 FR 66710](#), Dec. 27, 2001]

Subpart C—Transfer of Function

Source:[52 FR 10024](#), Mar. 30, 1987, unless otherwise noted.

§ 351.301 Applicability.

(a) This subpart is applicable when the work of one or more employees is moved from one competitive area to another as a transfer of function regardless of whether or not the movement is made under authority of a statute, Executive order, reorganization plan, or other authority.

(b) In a transfer of function, the function must cease in the losing competitive area and continue in an identical form in the gaining competitive area (*i.e.*, in the gaining competitive area, the function continues to be carried out by competing employees rather than by noncompeting employees).

[[52 FR 10024](#), Mar. 30, 1987, as amended at [60 FR 3062](#), Jan. 13, 1995]

§ 351.302 Transfer of employees.

- (a) Before a reduction in force is made in connection with the transfer of any or all of the functions of a competitive area to another continuing competitive area, each competing employee in a position identified with the transferring function or functions shall be transferred to the continuing competitive area without any change in the tenure of his or her employment.
- (b) An employee whose position is transferred under this subpart solely for liquidation, and who is not identified with an operating function specifically authorized at the time of transfer to continue in operation more than 60 days, is not a competing employee for other positions in the competitive area gaining the function.
- (c) Regardless of an employee's personal preference, an employee has no right to transfer with his or her function, unless the alternative in the competitive area losing the function is separation or demotion.
- (d) Except as permitted in [paragraph \(e\)](#) of this section, the losing competitive area must use the adverse action procedures found in [5 CFR part 752](#) if it chooses to separate an employee who declines to transfer with his or her function.
- (e) The losing competitive area may, at its discretion, include employees who decline to transfer with their function as part of a concurrent reduction in force.
- (f) An agency may not separate an employee who declines to transfer with the function any sooner than it transfers employees who chose to transfer with the function to the gaining competitive area.
- (g) Agencies may ask employees in a canvass letter whether the employee wishes to transfer with the function when the function transfers to a different local commuting area. The canvass letter must give the employee information concerning entitlements available to the employee if the employee accepts the offer to transfer, and if the employee declines the offer to transfer. An employee may later change and initial acceptance offer without penalty. However, an employee may not later change an initial declination of the offer to transfer.

[[52 FR 10024](#), Mar. 30, 1987, as amended at [60 FR 3062](#), Jan. 13, 1995]

§ 351.303 Identification of positions with a transferring function.

- (a) The competitive area losing the function is responsible for identifying the positions of competing employees with the transferring function. A competing employee is identified with the transferring function on the basis of the employee's official position. Two methods are provided to identify employees with the transferring function:
- (1) Identification Method One; and
 - (2) Identification Method Two.
- (b) Identification Method One must be used to identify each position to which it is applicable. Identification Method Two is used only to identify positions to which Identification Method One is not applicable.
- (c) Under Identification Method One, a competing employee is identified with a transferring function if—

- (1) The employee performs the function during at least half of his or her work time; or
- (2) Regardless of the amount of time the employee performs the function during his or her work time, the function performed by the employee includes the duties controlling his or her grade or rate of pay.
- (3) In determining what percentage of time an employee performs a function in the employee's official position, the agency may supplement the employee's official position description by the use of appropriate records (e.g., work reports, organizational time logs, work schedules, etc.).
- (d) Identification Method Two is applicable to employees who perform the function during less than half of their work time and are not otherwise covered by Identification Method One. Under Identification Method Two, the losing competitive area must identify the number of positions it needed to perform the transferring function. To determine which employees are identified for transfer, the losing competitive area must establish a retention register in accordance with this part that includes the name of each competing employee who performed the function. Competing employees listed on the retention register are identified for transfer in the inverse order of their retention standing. If for any retention register this procedure would result in the separation or demotion by reduction in force at the losing competitive area of any employee with higher retention standing, the losing competitive area must identify competing employees on that register for transfer in the order of their retention standing.
- (e)
 - (1) The competitive area losing the function may permit other employees to volunteer for transfer with the function in place of employees identified under Identification Method One or Identification Method Two. However, the competitive area may permit these other employees to volunteer for transfer only if no competing employee who is identified for transfer under Identification Method One or Identification Method Two is separated or demoted solely because a volunteer transferred in place of him or her to the competitive area that is gaining the function.
 - (2) If the total number of employees who volunteer for transfer exceeds the total number of employees required to perform the function in the competitive area that is gaining the function, the losing competitive area may give preference to the volunteers with the highest retention standing, or make selections based on other appropriate criteria.

[[52 FR 10024](#), Mar. 30, 1987, as amended at [60 FR 3062](#), Jan. 13, 1995]

Subpart D—Scope of Competition

§ 351.401 Determining retention standing.

Each agency shall determine the retention standing of each competing employee on the basis of the factors in this subpart and in [subpart E of this part](#).

§ 351.402 Competitive area.

- (a) Each agency shall establish competitive areas in which employees compete for retention under this part.
- (b) A competitive area must be defined solely in terms of the agency's organizational unit(s) and geographical location and, except as provided in [paragraph \(e\)](#) of this section, it must include all

employees within the competitive area so defined. A competitive area may consist of all or part of an agency. The minimum competitive area is a subdivision of the agency under separate administration within the local commuting area.

(c) When a competitive area will be in effect less than 90 days prior to the effective date of a reduction in force, a description of the competitive area shall be submitted to the OPM for approval in advance of the reduction in force. Descriptions of all competitive areas must be made readily available for review.

(d) Each agency shall establish a separate competitive area for each Inspector General activity established under authority of the Inspector General Act of 1978, Public Law 95-452, as amended, in which only employees of that office shall compete for retention under this part.

(e) When an agency finds that a competitive area defined under [paragraph \(b\)](#) of this section includes pay band positions and positions not covered by a pay band, the agency may, at its discretion, define a separate (and additional) competitive area, otherwise consistent with [paragraph \(b\)](#) of this section, to include only pay band positions. The original competitive area would then include only the remaining positions (*i.e.*, those positions not covered by a pay band).

[[51 FR 319](#) Jan. 3, 1986, as amended at [56 FR 65416](#), Dec. 17, 1991; [62 FR 62500](#), Nov. 24, 1997; [73 FR 46532](#), Aug. 11, 2008]

§ 351.403 Competitive level.

(a)

(1) Each agency shall establish competitive levels consisting of all positions in a competitive area which are in the same grade (or occupational level) and classification series, and which are similar enough in duties, qualification requirements, pay schedules, and working conditions so that an agency may reassign the incumbent of one position to any of the other positions in the level without undue interruption.

(2)

(i) Except as provided in [paragraph \(a\)\(2\)\(ii\)](#) of this section for pay band positions, competitive level determinations are based on each employee's official position of record (including the official position description), not the employee's personal qualifications.

(ii) To establish a competitive level comprised of pay band positions, an agency may supplement an employee's official position of record with other applicable records that document the employee's actual duties and responsibilities.

(3) Sex may not be the basis for a competitive level determination, except for a position OPM designates that certification of eligibles by sex is justified.

(4) A probationary period required by [subpart I of part 315 of this chapter](#) for initial appointment to a supervisory or managerial position is not a basis for establishing a separate competitive level.

(5) If a competitive area includes positions in one or more pay bands, each set of interchangeable positions in the pay band under [paragraphs \(a\)\(1\)](#) through [\(4\)](#) of this section is a separate competitive level (e.g., with interchangeable positions under [paragraphs \(a\)\(1\)](#) through [\(4\)](#) of this section, each pay

band is one competitive level; if the positions are not interchangeable under [paragraphs \(a\)\(1\) through \(4\)](#) of this section, the pay band may include multiple competitive levels).

(b) Each agency shall establish separate competitive levels according to the following categories:

(1) **By service.** Separate levels shall be established for positions in the competitive service and in the excepted service.

(2) **By appointment authority.** Separate levels shall be established for excepted service positions filled under different appointment authorities.

(3) **By pay schedule.** Separate levels shall be established for positions under different pay schedules.

(4) **By work schedule.** Separate levels shall be established for positions filled on a full-time, part-time, intermittent, seasonal, or on-call basis. No distinction may be made among employees in the competitive level on the basis of the number of hours or weeks scheduled to be worked.

(5) **By trainee status.** Separate levels shall be established for positions filled by an employee in a formally designated trainee or developmental program having all of the characteristics covered in [§ 351.702\(e\)\(1\)](#) through [\(e\)\(4\) of this part](#).

(c) An agency may not establish a competitive level based solely upon:

(1) A difference in the number of hours or weeks scheduled to be worked by other-than-full-time employees who would otherwise be in the same competitive level;

(2) A requirement to work changing shifts;

(3) The grade promotion potential of the position; or

(4) A difference in the local wage areas when a competitive area includes positions covered by more than one wage-board or similar wage-determining procedure;

(5) A difference in locality payments under [5 U.S.C. 5304](#) and [subpart F of part 531 of this chapter](#) when a competitive level includes more than one locality pay area listed in [§ 531.603 of this chapter](#); or

(6) Representative rates in different local commuting areas when a competitive area includes General Schedule (GS) and Federal Wage System (FWS) positions in multiple GS locality pay areas, and/or FWS local wage areas.

[[51 FR 319](#), Jan. 3, 1986, as amended at [60 FR 3062](#), Jan. 13, 1995; [62 FR 62500](#), Nov. 24, 1997; [73 FR 29388](#), May 21, 2008; [73 FR 46532](#), Aug. 11, 2008]

§ 351.404 Retention register.

(a) When a competing employee is to be released from a competitive level under this part, the agency shall establish a separate retention register for that competitive level. The retention register is prepared from the current retention records of employees. Upon displacing another employee under this part, an employee retains the same status and tenure in the new position. Except for an employee on military duty with a restoration right, the agency shall enter on the retention register, in the order of retention standing, the name of each competing employee who is:

- (1) In the competitive level;
- (2) Temporarily promoted from the competitive level by temporary or term promotion; or
- (3) Detailed from the competitive level under [5 U.S.C. 3341](#) or other appropriate authority.

(b)

(1) The name of each employee serving under a time limited appointment or promotion to a position in a competitive level shall be entered on a list apart from the retention register for that competitive level, along with the expiration date of the action.

(2) The agency shall list, at the bottom of the list prepared under [paragraph \(b\)\(1\)](#) of this section, the name of each employee in the competitive level with a written decision of removal under [part 432](#) or [752 of this chapter](#).

[[51 FR 319](#), Jan. 3, 1986, as amended at [62 FR 62500](#), Nov. 24, 1997]

§ 351.405 Demoted employees.

An employee who has received a written decision under [part 432](#) or [752 of this chapter](#) to demote him or her competes under this part from the position to which he or she will be or has been demoted.

[[62 FR 62500](#), Nov. 24, 1997]

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Citation

5 CFR Part 351 Subpart E

Subpart E—Retention Standing

§ 351.501 Order of retention—competitive service.

(a) Competing employees shall be classified on a retention register on the basis of their tenure of employment, veteran preference, length of service, and performance in descending order as follows:

- (1) By tenure group I, group II, group III; and
- (2) Within each group by veteran preference subgroup AD, subgroup A, subgroup B; and
- (3) Within each subgroup by years of service as augmented by credit for performance under [§ 351.504](#), beginning with the earliest service date.

(b) Groups are defined as follows:

(1) Group I includes each career employee who is not serving a probationary period. (A supervisory or managerial employee serving a probationary period required by [subpart I of part 315 of this title](#) is in

group I if the employee is otherwise eligible to be included in this group.) The following employees are in group I as soon as the employee completes any required probationary period for initial appointment:

- (i) An employee for whom substantial evidence exists of eligibility to immediately acquire status and career tenure, and whose case is pending final resolution by OPM (including cases under Executive Order 10826 to correct certain administrative errors);
- (ii) An employee who acquires competitive status and satisfies the service requirement for career tenure when the employee's position is brought into the competitive service;
- (iii) An administrative law judge;
- (iv) An employee appointed under [5 U.S.C. 3104](#), which provides for the employment of specially qualified scientific or professional personnel, or a similar authority; and
- (v) An employee who acquires status under [5 U.S.C. 3304\(c\)](#) on transfer to the competitive service from the legislative or judicial branches of the Federal Government.

(2) Group II includes each career-conditional employee, and each employee serving a probationary period under [subpart H of part 315 of this chapter](#). (A supervisory or managerial employee serving a probationary period required by [subpart I of part 315 of this title](#) is in group II if the employee has not completed a probationary period under [subpart H of part 315 of this title](#).) Group II also includes an employee when substantial evidence exists of the employee's eligibility to immediately acquire status and career-conditional tenure, and the employee's case is pending final resolution by OPM (including cases under Executive Order 10826 to correct certain administrative errors).

(3) Group III includes all employees serving under indefinite appointments, temporary appointments pending establishment of a register, status quo appointments, term appointments, and any other nonstatus nontemporary appointments which meet the definition of provisional appointments contained in [§§ 316.401](#) and [316.403 of this chapter](#).

(c) Subgroups are defined as follows:

(1) Subgroup AD includes each preference eligible employee who has a compensable service-connected disability of 30 percent or more.

(2) Subgroup A includes each preference eligible employee not included in subgroup AD.

(3) Subgroup B includes each nonpreference eligible employee.

(d) A retired member of a uniformed service is considered a preference eligible under this part only if the member meets at least one of the conditions of the following [paragraphs \(d\)\(1\), \(2\), or \(3\)](#) of this section, except as limited by paragraph (d)(4) or (d)(5):

(1) The employee's military retirement is based on disability that either:

- (i) Resulted from injury or disease received in the line of duty as a direct result of armed conflict; or
- (ii) Was caused by an instrumentality of war incurred in the line of duty during a period of war as defined by sections 101 and 301 of title 38, United States Code.

(2) The employee's retired pay from a uniformed service is not based upon 20 or more years of full-time active service, regardless of when performed but not including periods of active duty for training.

(3) The employee has been continuously employed in a position covered by this part since November 30, 1964, without a break in service of more than 30 days.

(4) An employee retired at the rank of major or above (or equivalent) is considered a preference eligible under this part if such employee is a disabled veteran as defined in section 2108(2) of title 5, United States Code, and meets one of the conditions covered in [paragraph \(d\)\(1\)](#), [\(2\)](#), or [\(3\)](#) of this section.

(5) An employee who is eligible for retired pay under [chapter 67 of title 10, United States Code](#), and who retired at the rank of major or above (or equivalent) is considered a preference eligible under this part at age 60, only if such employee is a disabled veteran as defined in section 2108(2) of title 5, United States Code.

[[51 FR 319](#), Jan. 3, 1986, as amended at [56 FR 10142](#), Mar. 11, 1991; [60 FR 3062](#), Jan. 13, 1995; [62 FR 62500](#), Nov. 24, 1997]

§ 351.502 Order of retention—excepted service.

(a) Competing employees shall be classified on a retention register in tenure groups on the basis of their tenure of employment, veteran preference, length of service, and performance in descending order as set forth under [§ 351.501\(a\)](#) for competing employees in the competitive service.

(b) Groups are defined as follows:

(1) Group I includes each permanent employee whose appointment carries no restriction or condition such as conditional, indefinite, specific time limit, or trial period.

(2) Group II includes each employee:

(i) Serving a trial period; or

(ii) Whose tenure is equivalent to a career-conditional appointment in the competitive service in agencies having such excepted appointments.

(3) Group III includes each employee:

(i) Whose tenure is indefinite (*i.e.*, without specific time limit), but not actually or potentially permanent;

(ii) Whose appointment has a specific time limitation of more than 1 year; or

(iii) Who is currently employed under a temporary appointment limited to 1 year or less, but who has completed 1 year of current continuous service under a temporary appointment with no break in service of 1 workday or more.

[[60 FR 3063](#), Jan. 13, 1995]

§ 351.503 Length of service.

(a) All civilian service as a Federal employee, as defined in [5 U.S.C. 2105\(a\)](#), is creditable for purposes of this part. Civilian service performed in employment that does not meet the definition of *Federal*

employee set forth in [5 U.S.C. 2105\(a\)](#) is creditable for purposes of this part only if specifically authorized by statute as creditable for retention purposes.

(b)

(1) As authorized by [5 U.S.C. 3502\(a\)\(A\)](#), all active duty in a uniformed service, as defined in [5 U.S.C. 2101\(3\)](#), is creditable for purposes of this part, except as provided in [paragraphs \(b\)\(2\)](#) and [\(b\)\(3\)](#) of this section.

(2) As authorized by [5 U.S.C. 3502\(a\)\(B\)](#), a retired member of a uniformed service who is covered by [§ 351.501\(d\)](#) is entitled to credit under this part only for:

(i) The length of time in active service in the Armed Forces during a war, or in a campaign or expedition for which a campaign or expedition badge has been authorized; or

(ii) The total length of time in active service in the Armed Forces if the employee is considered a preference eligible under [5 U.S.C. 2108](#) and [5 U.S.C. 3501\(a\)](#), as implemented in [§ 351.501\(d\)](#).

(3) An employee may not receive dual service credit for purposes of this part for service performed on active duty in the Armed Forces that was performed during concurrent civilian employment as a Federal employee, as defined in [5 U.S.C. 2105\(a\)](#).

(c)

(1) The agency is responsible for establishing both the service computation date, and the adjusted service computation date, applicable to each employee competing for retention under this part. If applicable, the agency is also responsible for adjusting the service computation date and the adjusted service computation date to withhold retention service credit for noncreditable service.

(2) The service computation date includes all actual creditable service under paragraph (a) and [paragraph \(b\)](#) of this section.

(3) The adjusted service computation date includes all actual creditable service under paragraph (a) and [paragraph \(b\)](#) of this section, and additional retention service credit for performance authorized by [§ 351.504 \(d\)](#) and [\(e\)](#).

(d) The service computation date is computed on the following basis:

(1) The effective date of appointment as a Federal employee under [5 U.S.C. 2105\(a\)](#) when the employee has no previous creditable service under [paragraph \(a\)](#) or [\(b\)](#) of this section; or if applicable,

(2) The date calculated by subtracting the employee's total previous creditable service under [paragraph \(a\)](#) or [\(b\)](#) of this section from the most recent effective date of appointment as a Federal employee under [5 U.S.C. 2105\(a\)](#).

(e) The adjusted service computation date is calculated by subtracting from the date in [paragraph \(d\)\(1\)](#) or [\(d\)\(2\)](#) of this section the additional service credit for retention authorized by [§ 351.504\(d\)](#) and [\(e\)](#).

[[64 FR 16800](#), Apr. 7, 1999; [64 FR 23531](#), May 3, 1999]

§ 351.504 Credit for performance.

Note to [§ 351.504](#):

Compliance dates: Subject to the requirements of [5 U.S.C. Section 7116\(a\)\(7\)](#), agencies may implement revised [§ 351.504](#) at any time between December 24, 1997 and October 1, 1998. For reduction in force actions effective between December 24, 1997 and September 30, 1998, agencies may use either [§ 351.504](#) effective December 24, 1997, or the prior [§ 351.504](#) in [5 CFR part 351](#) (January 1, 1997 edition).

(a) ***Ratings used.***

(1) Only ratings of record as defined in [§ 351.203](#) shall be used as the basis for granting additional retention service credit in a reduction in force.

(2) For employees who received ratings of record while covered by part 430, subpart B, of this chapter, those ratings of record shall be used to grant additional retention service credit in a reduction in force.

(3) For employees who received performance ratings while not covered by the provisions of [5 U.S.C. Chapter 43](#) and part 430, subpart B, of this chapter, those performance ratings shall be considered ratings of record for granting additional retention service credit in a reduction in force only when it is determined that those performance ratings are equivalent ratings of record under the provisions of [§ 430.201\(c\) of this chapter](#). The agency conducting the reduction in force shall make that determination.

(b)

(1) An employee's entitlement to additional retention service credit for performance under this subpart shall be based on the employee's three most recent ratings of record received during the 4-year period prior to the date of issuance of reduction in force notices, except as otherwise provided in [paragraphs \(b\)\(2\) and \(c\)](#) of this section.

(2) To provide adequate time to determine employee retention standing, an agency may provide for a cutoff date, a specified number of days prior to the issuance of reduction in force notices after which no new ratings of record will be put on record and used for purposes of this subpart. When a cutoff date is used, an employee will receive performance credit for the three most recent ratings of record received during the 4-year period prior to the cutoff date.

(3) To be creditable for purposes of this subpart, a rating of record must have been issued to the employee, with all appropriate reviews and signatures, and must also be on record (*i.e.*, the rating of record is available for use by the office responsible for establishing retention registers).

(4) The awarding of additional retention service credit based on performance for purposes of this subpart must be uniformly and consistently applied within a competitive area, and must be consistent with the agency's appropriate issuance(s) that implement these policies. Each agency must specify in its appropriate issuance(s):

(i) The conditions under which a rating of record is considered to have been received for purposes of determining whether it is within the 4-year period prior to either the date the agency issues reduction in force notices or the agency-established cutoff date for ratings of record, as appropriate; and

(ii) If the agency elects to use a cutoff date, the number of days prior to the issuance of reduction in force notices after which no new ratings of record will be put on record and used for purposes of this subpart.

(c) **Missing ratings.** Additional retention service credit for employees who do not have three actual ratings of record during the 4-year period prior to the date of issuance of reduction in force notices or the 4-year period prior to the agency-established cutoff date for ratings of record permitted in [paragraph \(b\)\(2\)](#) of this section shall be determined under [paragraphs \(d\)](#) or [\(e\)](#) of this section, as appropriate, and as follows:

(1) An employee who has not received any rating of record during the 4-year period shall receive credit for performance based on the modal rating for the summary level pattern that applies to the employee's official position of record at the time of the reduction in force.

(2) An employee who has received at least one but fewer than three previous ratings of record during the 4-year period shall receive credit for performance on the basis of the value of the actual rating(s) of record divided by the number of actual ratings received. If an employee has received only two actual ratings of record during the period, the value of the ratings is added together and divided by two (and rounded in the case of a fraction to the next higher whole number) to determine the amount of additional retention service credit. If an employee has received only one actual rating of record during the period, its value is the amount of additional retention service credit provided.

(d) **Single rating pattern.** If all employees in a reduction in force competitive area have received ratings of record under a single pattern of summary levels as set forth in [§ 430.208\(d\) of this chapter](#), the additional retention service credit provided to employees shall be expressed in additional years of service and shall consist of the mathematical average (rounded in the case of a fraction to the next higher whole number) of the employee's applicable ratings of record, under [paragraphs \(b\)\(1\)](#) and [\(c\)](#) of this section computed on the following basis:

(1) Twenty additional years of service for each rating of record with a Level 5 (Outstanding or equivalent) summary;

(2) Sixteen additional years of service for each rating of record with a Level 4 summary; and

(3) Twelve additional years of service for each rating of record with a Level 3 (Fully Successful or equivalent) summary.

(e) **Multiple rating patterns.** If an agency has employees in a competitive area who have ratings of record under more than one pattern of summary levels, as set forth in [§ 430.208\(d\) of this chapter](#), it shall consider the mix of patterns and provide additional retention service credit for performance to employees expressed in additional years of service in accordance with the following:

(1) Additional years of service shall consist of the mathematical average (rounded in the case of a fraction to the next higher whole number) of the additional retention service credit that the agency established for the summary levels of the employee's applicable rating(s) of record.

(2) The agency shall establish the amount of additional retention service credit provided for summary levels only in full years; the agency shall not establish additional retention service credit for summary levels below Level 3 (Fully Successful or equivalent).

(3) When establishing additional retention service credit for the summary levels at Level 3 (Fully Successful or equivalent) and above, the agency shall establish at least 12 years, and no more than 20 years, additional retention service credit for a summary level.

(4) The agency may establish the same number of years additional retention service credit for more than one summary level.

(5) The agency shall establish the same number of years additional retention service credit for all ratings of record with the same summary level in the same pattern of summary levels as set forth in [§ 430.208\(d\) of this chapter](#).

(6) The agency may establish a different number of years additional retention service credit for the same summary level in different patterns.

(7) In implementing [paragraph \(e\)](#) of this section, the agency shall specify the number(s) of years additional retention service credit that it will establish for summary levels. This information shall be made readily available for review.

(8) The agency may apply [paragraph \(e\)](#) of this section only to ratings of record put on record on or after October 1, 1997. The agency shall establish the additional retention service credit for ratings of record put on record prior to that date in accordance with [paragraph \(d\)](#) of this section.

[\[62 FR 62501\]](#), Nov. 24, 1997]

§ 351.505 Records.

(a) The agency is responsible for maintaining correct personnel records that are used to determine the retention standing of its employees competing for retention under this part.

(b) The agency must allow its retention registers and related records to be inspected by:

(1) An employee of the agency who has received a specific reduction in force notice, and/or the employee's representative if the representative is acting on behalf of the individual employee; and

(2) An authorized representative of OPM.

(c) An employee who has received a specific notice of reduction in force under authority of [subpart H of this part](#) has the right to review any completed records used by the agency in a reduction in force action that was taken, or will be taken, against the employee, including:

(1) The complete retention register with the released employee's name and other relevant retention information (including the names of all other employees listed on that register, their individual service computation dates calculated under [§ 351.503\(d\)](#), and their adjusted service computation dates calculated under [§ 351.503\(e\)](#)) so that the employee may consider how the agency constructed the competitive level, and how the agency determined the relative retention standing of the competing employees; and

(2) The complete retention registers 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 [§ 351.701\(b\)](#) and [\(c\)](#)).

(d) An employee who has not received a specific reduction in force notice has no right to review the agency's retention registers and related records.

(e) The agency is responsible for ensuring that each employee's access to retention records is consistent with both the Freedom of Information Act ([5 U.S.C. 552](#)), and the Privacy Act ([5 U.S.C. 552a](#)).

(f) The agency must preserve all registers and records relating to a reduction in force for at least 1 year after the date it issues a specific reduction in force notice.

[[64 FR 16800](#), Apr. 7, 1999]

§ 351.506 Effective date of retention standing.

Except for applying the performance factor as provided in [§ 351.504](#):

(a) The retention standing of each employee released from a competitive level in the order prescribed in [§ 351.601](#) is determined as of the date the employee is so released.

(b) The retention standing of each employee retained in a competitive level as an exception under [§ 351.606\(b\)](#), [§ 351.607](#), or [§ 351.608](#), is determined as of the date the employee would have been released had the exception not been used. The retention standing of each employee retained under any of these provisions remains fixed until completion of the reduction in force action which resulted in the temporary retention.

(c) When an agency discovers an error in the determination of an employee's retention standing, it shall correct the error and adjust any erroneous reduction-in-force action to accord with the employee's proper retention standing as of the effective date established by this section.

[[51 FR 319](#), Jan. 3, 1986, as amended at [60 FR 3063](#), Jan. 13, 1995; [62 FR 10682](#), Mar. 10, 1997]

Subpart F—Release From Competitive Level

§ 351.601 Order of release from competitive level.

(a) Each agency must select competing employees for release from a competitive level (including release from a competitive level involving a pay band) under this part in the inverse order of retention standing, beginning with the employee with the lowest retention standing on the retention register. An agency may not release a competing employee from a competitive level while retaining in that level an employee with lower retention standing except:

(1) As required under [§ 351.606](#) when an employee is retained under a mandatory exception or under [§ 351.806](#) when an employee is entitled to a new written notice of reduction in force; or

(2) As permitted under [§ 351.607](#) when an employee is retained under a permissive continuing exception or under [§ 351.608](#) when an employee is retained under a permissive temporary exception.

(b) At its option an agency may provide for intervening displacement within the competitive level before final release of the employee with the lowest-retention standing from the competitive level.

(c) When employees in the same retention subgroup have identical service dates and are tied for release from a competitive level, the agency may select any tied employee for release.

[[73 FR 29388](#), May 21, 2008]

§ 351.602 Prohibitions.

An agency may not release a competing employee from a competitive level while retaining in that level an employee with:

- (a) A specifically limited temporary appointment;
- (b) A specifically limited temporary or term promotion;
- (c) A written decision under [part 432](#) or [752 of this chapter](#) of removal or demotion from the competitive level.

[[51 FR 319](#), Jan. 3, 1986, as amended at [62 FR 62502](#), Nov. 24, 1997]

§ 351.603 Actions subsequent to release from competitive level.

An employee reached for release from a competitive level shall be offered assignment to another position in accordance with [subpart G of this part](#). If the employee accepts, the employee shall be assigned to the position offered. If the employee has no assignment right or does not accept an offer under subpart G, the employee shall be furloughed or separated.

§ 351.604 Use of furlough.

- (a) An agency may furlough a competing employee only when it intends within 1 year to recall the employee to duty in the position from which furloughed.
- (b) An agency may not separate a competing employee under this part while an employee with lower retention standing in the same competitive level is on furlough.
- (c) An agency may not furlough a competing employee for more than 1 year.
- (d) When an agency recalls employees to duty in the competitive level from which furloughed, it shall recall them in the order of their retention standing, beginning with highest standing employee.

§ 351.605 Liquidation provisions.

When an agency will abolish all positions in a competitive area within 180 days, it must release employees in group and subgroup order consistent with [§ 351.601\(a\)](#). At its discretion, the agency may release the employees in group order without regard to retention standing within a subgroup, except as provided in [§ 351.606](#). When an agency releases an employee under this section, the notice to the employee must cite this authority and give the date the liquidation will be completed. An agency may also apply [§§ 351.607](#) and [351.608](#) in a liquidation.

[[60 FR 2678](#), Jan. 11, 1995]

§ 351.606 Mandatory exceptions.

- (a) **Armed Forces restoration rights.** When an agency applies [§ 351.601](#) or [§ 351.605](#), it shall give retention priorities over other employees in the same subgroup to each group I or II employee entitled under [38 U.S.C. 2021](#) or [2024](#) to retention for, as applicable, 6 months or 1 year after restoration, as provided in [part 353 of this chapter](#).
- (b) **Use of annual leave to reach initial eligibility for retirement or continuance of health benefits.**

- (1) An agency shall make a temporary exception under this section to retain an employee who is being involuntarily separated under this part, and who elects to use annual leave to remain on the agency's rolls after the effective date the employee would otherwise have been separated by reduction in force, in order to establish initial eligibility for immediate retirement under [5 U.S.C. 8336](#), [8412](#), or [8414](#), and/or to establish initial eligibility under [5 U.S.C. 8905](#) to continue health benefits coverage into retirement.
- (2) An agency shall make a temporary exception under this section to retain an employee who is being involuntarily separated under authority of [part 752 of this chapter](#) because of the employee's decision to decline relocation (including transfer of function), and who elects to use annual leave to remain on the agency's rolls after the effective date the employee would otherwise have been separated by adverse action, in order to establish initial eligibility for immediate retirement under [5 U.S.C. 8336](#), [8412](#), or [8414](#), and/or to establish initial eligibility under [5 U.S.C. 8905](#) to continue health benefits coverage into retirement.
- (3) An employee retained under paragraph (b) by this section must be covered by [chapter 63 of title 5, United States Code](#).
- (4) An agency may not retain an employee under [paragraph \(b\)](#) of this section past the date that the employee first becomes eligible for immediate retirement, or for continuation of health benefits into retirement, except that an employee may be retained long enough to satisfy both retirement and health benefits requirements.
- (5) Except as permitted by [5 CFR 351.608\(d\)](#), an agency may not approve an employee's use of any other type of leave after the employee has been retained under a temporary exception authorized by [paragraph \(b\)](#) of this section.
- (6) Annual leave for purposes of [paragraph \(b\)](#) of this section is described in [§ 630.212 of this chapter](#).
- (c) **Documentation.** Each agency shall record on the retention register, for inspection by each employee, the reasons for any deviation from the order of release required by [§ 351.601](#) or [§ 351.605](#).

[[62 FR 10682](#), Mar. 10, 1997]

§ 351.607 Permissive continuing exceptions.

An agency may make exception to the order of release in [§ 351.601](#) and to the action provisions of [§ 351.603](#) when needed to retain an employee on duties that cannot be taken over within 90 days and without undue interruption to the activity by an employee with higher retention standing. The agency shall notify in writing each higher-standing employee reached for release from the same competitive level of the reasons for the exception.

§ 351.608 Permissive temporary exceptions.

(a) General.

- (1) In accordance with this section, an agency may make a temporary exception to the order of release in [§ 351.601](#), and to the action provisions of [§ 351.603](#), when needed to retain an employee after the effective date of a reduction in force. Except as otherwise provided in [paragraphs \(c\)](#) and [\(e\)](#) of this section, an agency may not make a temporary exception for more than 90 days.

(2) After the effective date of a reduction in force action, an agency may not amend or cancel the reduction in force notice of an employee retained under a temporary exception so as to avoid completion of the reduction in force action. This does not preclude the employee from receiving or accepting a job offer in the same competitive area in accordance with a Reemployment Priority List established under part 330, subpart B, of this chapter, or under a Career Transition Assistance Plan established under part 330, subpart E, of this chapter, or equivalent programs.

(b) **Undue interruption.** An agency may make a temporary exception for not more than 90 days when needed to continue an activity without undue interruption.

(c) **Government obligation.** An agency may make a temporary exception to satisfy a Government obligation to the retained employee without regard to the 90-day limit set forth under [paragraph \(a\)\(1\)](#) of this section.

(d) **Sick leave.** An agency may make a temporary exception to retain on sick leave a lower standing employee covered by [chapter 63 of title 5, United States Code](#) (or other applicable leave system for Federal employees), who is on approved sick leave on the effective date of the reduction in force, for a period not to exceed the date the employee's sick leave is exhausted. Use of sick leave for this purpose must be in accordance with the requirements in part 630, subpart D, of this chapter (or other applicable leave system for Federal employees). Except as authorized by [§ 351.606\(b\)](#), an agency may not approve an employee's use of any other type of leave after the employee has been retained under this [paragraph \(d\)](#).

(e)

(1) An agency may make a temporary exception to retain on accrued annual leave a lower standing employee who:

(i) Is being involuntarily separated under this part;

(ii) Is covered by a Federal leave system under authority other than [chapter 63 of title 5, United States Code](#); and,

(iii) Will attain first eligibility for an immediate retirement benefit under [5 U.S.C. 8336](#), [8412](#), or [8414](#) (or other authority), and/or establish eligibility under [5 U.S.C. 8905](#) (or other authority) to carry health benefits coverage into retirement during the period represented by the amount of the employee's accrued annual leave.

(2) An agency may not approve an employee's use of any other type of leave after the employee has been retained under this [paragraph \(e\)](#).

(3) This exception may not exceed the date the employee first becomes eligible for immediate retirement or for continuation of health benefits into retirement, except that an employee may be retained long enough to satisfy both retirement and health benefits requirements.

(4) Accrued annual leave includes all accumulated, accrued, and restored annual leave, as applicable, in addition to annual leave earned and available to the employee after the effective date of the reduction in force. When approving a temporary exception under this provision, an agency may not advance

annual leave or consider any annual leave that might be credited to an employee's account after the effective date of the reduction in force other than annual leave earned while in an annual leave status.

(f) **Other exceptions.** An agency may make a temporary exception under this section to extend an employee's separation date beyond the effective date of the reduction in force when the temporary retention of a lower standing employee does not adversely affect the right of any higher standing employee who is released ahead of the lower standing employee. The agency may establish a maximum number of days, up to 90 days, for which an exception may be approved.

(g) **Notice to employees.** When an agency approves an exception for more than 30 days, it must:

- (1) Notify in writing each higher standing employee in the same competitive level reached for release of the reasons for the exception and the date the lower standing employee's retention will end; and
- (2) List opposite the employee's name on the retention register the reasons for the exception and the date the employee's retention will end.

[[62 FR 10682](#), Mar. 10, 1997]

Subpart G—Assignment Rights (Bump and Retreat)

§ 351.701 Assignment involving displacement.

(a) **General.** When a group I or II competitive service employee with a current annual performance rating of record of minimally successful (Level 2) or equivalent, or higher, is released from a competitive level, an agency shall offer assignment, rather than furlough or separate, in accordance with [paragraphs \(b\), \(c\), and \(d\)](#) of this section to another competitive position which requires no reduction, or the least possible reduction, in representative rate. The employee must be qualified for the offered position. The offered position shall be in the same competitive area, last at least 3 months, and have the same type of work schedule (e.g., full-time, part-time, intermittent, or seasonal) as the position from which the employee is released. Upon accepting an offer of assignment, or displacing another employee under this part, an employee retains the same status and tenure in the new position. The promotion potential of the offered position is not a consideration in determining an employee's right of assignment.

(b) **Lower subgroup—bumping.** A released employee shall be assigned in accordance with [paragraph \(a\)](#) of this section and bump to a position that:

- (1) Is held by another employee in a lower tenure group or in a lower subgroup within the same tenure group; and
- (2) Is no more than three grades (or appropriate grade intervals or equivalent) below the position from which the employee was released.

(c) **Same subgroup-retreating.** A released employee shall be assigned in accordance with [paragraphs \(a\) and \(d\)](#) of this section and retreat to a position that:

- (1) Is held by another employee with lower retention standing in the same tenure group and subgroup; and
- (2) Is not more than three grades (or appropriate grade intervals or equivalent) below the position from which the employee was released, except that for a preference eligible employee with a compensable

service-connected disability of 30 percent or more the limit is five grades (or appropriate grade intervals or equivalent). (The agency uses the grade progression of only the released employee's position of record to determine the applicable grades (or appropriate grade intervals or equivalent) of the employee's retreat right. The agency does not consider the grade progression of the position to which the employee has a retreat right.); and

(3) Is the same position, or an essentially identical position, formerly held by the released employee on a permanent basis as a competing employee in a Federal agency (*i.e.*, when held by the released employee in an executive, legislative, or judicial branch agency, the position would have been placed in tenure groups I, II, or III, or equivalent). In determining whether a position is essentially identical, the determination is based on the competitive level criteria found in [§ 351.403](#), but not necessarily in regard to the respective grade, classification series, type of work schedule, or type of service, of the two positions.

(d) **Limitation.** An employee with a current annual performance rating of record of minimally successful (Level 2) or equivalent may be assigned under [paragraph \(c\)](#) of this section only to a position held by another employee with a current annual performance rating of record no higher than minimally successful (Level 2) or equivalent.

(e) **Pay rates.**

(1) The determination of equivalent grade intervals shall be based on a comparison of representative rates.

(2) Each employee's assignment rights shall be determined on the basis of the pay rates in effect on the date of issuance of specific reduction-in-force notices, except that when it is officially known on the date of issuance of notices that new pay rates have been approved and will become effective by the effective date of the reduction in force, assignment rights shall be determined on the basis of the new pay rates.

(f)

(1) In determining applicable grades (or grade intervals) under [§§ 351.701\(b\)\(2\)](#) and [351.701\(c\)\(2\)](#), the agency uses the grade progression of the released employee's position of record to determine the grade (or interval) limits of the employee's assignment rights.

(2) For positions covered by the General Schedule, the agency must determine whether a one-grade, two-grade, or mixed grade interval progression is applicable to the position of the released employee.

(3) For positions not covered by the General Schedule, the agency must determine the normal line of progression for each occupational series and grade level to determine the grade (or interval) limits of the released employee's assignment rights. If the agency determines that there is no normal line of progression for an occupational series and grade level, the agency provides the released employee with assignment rights to positions within three actual grades lower on a one-grade basis. The normal line of progression may include positions in different pay systems.

(4) For positions where no grade structure exists, the agency determines a line of progression for each occupation and pay rate, and provides assignment rights to positions within three grades (or intervals) lower on that basis.

(5) If the released employee holds a position that is less than three grades above the lowest grade in the applicable classification system (e.g., the employee holds a GS-2 position), the agency provides the released employee with assignment rights up to three actual grades lower on a one-grade basis in other pay systems.

(g) If a competitive area includes more than one local commuting area, the agency determines assignment rights under this part on the basis of the representative rates for one local commuting area within the competitive area (*i.e.*, the same local commuting area used to establish competitive levels under [§ 351.403\(c\)\(4\)](#), [\(5\)](#), and [\(6\)](#)).

(h) If a competitive area includes positions under one or more pay bands, a released employee shall be assigned in accordance with [paragraphs \(a\)](#) through [\(d\)](#) of this section to a position in an equivalent pay band or one pay band lower, as determined by the agency, than the pay band from which released. A preference eligible with a service-connected disability of 30 percent or more must be assigned in accordance with [paragraphs \(a\)](#) through [\(d\)](#) of this section to a position in an equivalent pay band or up to two pay bands lower, as determined by the agency, than the pay band from which released.

(i) If a competitive area includes positions under one or more pay bands, and other positions not covered by a pay band (e.g., GS and/or FWS positions), the agency provides assignment rights under this part by:

(1) Determining the representative rate of positions not covered by a pay band, consistent with [§ 351.203](#);

(2) Determining the representative rate of each pay band, or competitive level within the pay band(s), consistent with [§ 351.203](#);

(3) As determined by the agency, providing assignment rights under [paragraph \(b\)](#) of this section (bumping), or [paragraphs \(c\)](#) and [\(d\)](#) of this section (retreating), consistent with the grade intervals covered in [paragraphs \(b\)\(2\)](#) and [\(c\)\(2\)](#) of this section, and the pay band intervals in [paragraph \(h\)](#) of this section.

[[51 FR 319](#), Jan. 3, 1986, as amended at [56 FR 65417](#), Dec. 17, 1991; [60 FR 3063](#), Jan. 13, 1995; [60 FR 44254](#), Aug. 25, 1995; [62 FR 62502](#), Nov. 24, 1997; [63 FR 32594](#), June 15, 1998; [65 FR 62991](#), Oct. 20, 2000; [73 FR 29389](#), May 21, 2008]

§ 351.702 Qualifications for assignment.

(a) Except as provided in [§ 351.703](#), an employee is qualified for assignment under [§ 351.701](#) if the employee:

(1) Meets the OPM standards and requirements for the position, including any minimum educational requirement, and any selective placement factors established by the agency;

(2) Is physically qualified, with reasonable accommodation where appropriate, to perform the duties of the position;

(3) Meets any special qualifying condition which the OPM has approved for the position; and

(4) Has the capacity, adaptability, and special skills needed to satisfactorily perform the duties of the position without undue interruption. This determination includes recency of experience, when appropriate.

(b) The sex of an employee may not be considered in determining whether an employee is qualified for a position, except for positions which OPM has determined certification of eligibles by sex is justified.

(c) An employee who is released from a competitive level during a leave of absence because of a compensable injury may not be denied an assignment right solely because the employee is not physically qualified for the duties of the position if the physical disqualification resulted from the compensable injury. Such an employee must be afforded appropriate assignment rights subject to recovery as provided by [5 U.S.C. 8151](#) and [part 353 of this chapter](#).

(d) If an agency determines, on the basis of evidence before it, that a preference eligible employee who has a compensable service-connected disability of 30 percent or more is not able to fulfill the physical requirements of a position to which the employee would otherwise have been assigned under this part, the agency must notify the OPM of this determination. At the same time, the agency must notify the employee of the reasons for the determination and of the right to respond, within 15 days of the notification, to the OPM which will require the agency to demonstrate that the notification was timely sent to the employee's last known address. The OPM shall make a final determination concerning the physical ability of the employee to perform the duties of the position. This determination must be made before the agency may select any other person for the position. When the OPM has completed its review of the proposed disqualification on the basis of physical disability, it must send its finding to both the agency and the employee. The agency must comply with the findings of the OPM. The functions of the OPM under this paragraph may not be delegated to an agency.

(e) An agency may formally designate as a trainee or developmental position a position in a program with all of the following characteristics:

(1) The program must have been designed to meet the agency's needs and requirements for the development of skilled personnel;

(2) The program must have been formally designated, with its provisions made known to employees and supervisors;

(3) The program must be developmental by design, offering planned growth in duties and responsibilities, and providing advancement in recognized lines of career progression; and

(4) The program must be fully implemented, with the participants chosen through standard selection procedures. To be considered qualified for assignment under [§ 351.701](#) to a formally designated trainee or developmental position in a program having all of the characteristics covered in [paragraphs \(e\)\(1\), \(2\), \(3\), and \(4\)](#) of this section, an employee must meet all of the conditions required for selection and entry into the program.

[[51 FR 319](#), Jan. 3, 1986, as amended at [60 FR 3063](#), Jan. 13, 1995]

§ 351.703 Exception to qualifications.

An agency may assign an employee to a vacant position under [§ 351.201\(b\)](#) or [§ 351.701 of this part](#) without regard to OPM's standards and requirements for the position if:

- (a) The employee meets any minimum education requirement for the position; and
- (b) The agency determines that the employee has the capacity, adaptability, and special skills needed to satisfactorily perform the duties and responsibilities of the position.

[[56 FR 65417](#), Dec. 17, 1991]

§ 351.704 Rights and prohibitions.

(a)

(1) An agency may satisfy an employee's right to assignment under [§ 351.701](#) by assignment to a vacant position under [§ 351.201\(b\)](#), or by assignment under any applicable administrative assignment provisions of [§ 351.705](#), to a position having a representative rate equal to that the employee would be entitled under [§ 351.701](#). An agency may also offer an employee assignment under [§ 351.201\(b\)](#) to a vacant position in lieu of separation by reduction in force under [5 CFR part 351](#). Any offer of assignment under [§ 351.201\(b\)](#) to a vacant position must meet the requirements set forth under [§ 351.701](#).

(2) An agency may, at its discretion, choose to offer a vacant other-than-full-time position to a full-time employee or to offer a vacant full-time position to an other-than-full-time employee in lieu of separation by reduction in force.

(b) Section 351.701 does not:

(1) Authorize or permit an agency to assign an employee to a position having a higher representative rate;

(2) Authorize or permit an agency to displace a full-time employee by an other-than-full-time employee, or to satisfy an other-than-full-time employee's right to assignment by assigning the employee to a vacant full-time position.

(3) Authorize or permit an agency to displace an other-than-full-time employee by a full-time employee, or to satisfy a full-time employee's right to assignment by assigning the employee to a vacant other-than-full-time position.

(4) Authorize or permit an agency to assign a competing employee to a temporary position (*i.e.*, a position under an appointment not to exceed 1 year), except as an offer of assignment in lieu of separation by reduction in force under this part when the employee has no right to a position under [§ 351.701](#) or [§ 351.704\(a\)\(1\) of this part](#). This option does not preclude an agency from, as an alternative, also using a temporary position to reemploy a competing employee following separation by reduction in force under this part.

(5) Authorize or permit an agency to displace an employee or to satisfy a competing employee's right to assignment by assigning the employee to a position with a different type of work schedule (e.g., full-time, part-time, intermittent, or seasonal) than the position from which the employee is released.

[[51 FR 319](#), Jan. 3, 1986, as amended at [56 FR 65417](#), Dec. 17, 1991; [60 FR 3063](#), Jan. 13, 1995; [63 FR 63591](#), Nov. 16, 1998]

§ 351.705 Administrative assignment.

(a) An agency may, at its discretion, adopt provisions which:

- (1) Permit a competing employee to displace an employee with lower retention standing in the same subgroup consistent with [§ 351.701](#) when the agency cannot make an equally reasonable assignment by displacing an employee in a lower subgroup;
- (2) Permit an employee in subgroup III-AD to displace an employee in subgroup III-A or III-B, or permit an employee in subgroup III-A to displace an employee in subgroup III-B consistent with [§ 351.701](#); or
- (3) Provide competing employees in the excepted service with assignment rights to other positions under the same appointing authority on the same basis as assignment rights provided to competitive service employees under [§ 351.701](#) and in [paragraphs \(a\) \(1\)](#) and [\(2\)](#) of this section.

(b) Provisions adopted by an agency under [paragraph \(a\)](#) of this section:

- (1) Shall be consistent with this part;
- (2) Shall be uniformly and consistently applied in any one reduction in force;
- (3) May not provide for the assignment of an other-than-full-time employee to a full-time position;
- (4) May not provide for the assignment of a full-time employee to an other-than-full-time position;
- (5) May not provide for the assignment of an employee in a competitive service position to a position in the excepted service; and
- (6) May not provide for the assignment of an employee in an excepted position to a position in the competitive service.

[\[51 FR 319](#), Jan. 3, 1986, as amended at [62 FR 62502](#), Nov. 24, 1997]

Subpart H—Notice to Employee

Source:[60 FR 2679](#), Jan. 11, 1995, unless otherwise noted.

§ 351.801 Notice period.

(a)

- (1) Each competing employee selected for release from a competitive level under this part is entitled to a specific written notice at least 60 full days before the effective date of release.
- (2) At the same time an agency issues a notice to an employee, it must give a written notice to the exclusive representative(s), as defined in [5 U.S.C. 7103\(a\)\(16\)](#), of each affected employee at the time of the notice. When a significant number of employees will be separated, an agency must also satisfy the notice requirements of [§§ 351.803 \(b\)](#) and [\(c\)](#).

(b) When a reduction in force is caused by circumstances not reasonably foreseeable, the Director of OPM, at the request of an agency head or designee, may approve a notice period of less than 60 days. The shortened notice period must cover at least 30 full days before the effective date of release. An agency request to OPM shall specify:

- (1) The reduction in force to which the request pertains;
 - (2) The number of days by which the agency requests that the period be shortened;
 - (3) The reasons for the request; and
 - (4) Any other additional information that OPM may specify.
- (c) The notice period begins the day after the employee receives the notice.
- (d) When an agency retains an employee under [§ 351.607](#) or [§ 351.608](#), the notice to the employee shall cite the date on which the retention period ends as the effective date of the employee's release from the competitive level.

[[60 FR 2678](#), Jan. 11, 1995, as amended at [60 FR 44254](#), Aug. 25, 1995; [63 FR 32594](#), June 15, 1998; [65 FR 25623](#), May 3, 2000]

§ 351.802 Content of notice.

- (a)
- (1) The action to be taken, the reasons for the action, and its effective date;
 - (2) The employee's competitive area, competitive level, subgroup, service date, and three most recent ratings of record received during the last 4 years;
 - (3) The place where the employee may inspect the regulations and record pertinent to this case;
 - (4) The reasons for retaining a lower-standing employee in the same competitive level under [§ 351.607](#) or [§ 351.608](#);
 - (5) Information on reemployment rights, except as permitted by [§ 351.803\(a\)](#); and
 - (6) The employee's right, as applicable, to appeal to the Merit Systems Protection Board under the provisions of the Board's regulations or to grieve under a negotiated grievance procedure. The agency shall also comply with [§ 1201.21 of this title](#).
- (b) When an agency issues an employee a notice, the agency must, upon the employee's request, provide the employee with a copy of OPM's retention regulations found in [part 351 of this chapter](#).

[[60 FR 2678](#), Jan. 11, 1995, as amended at [60 FR 44254](#), Aug. 25, 1995; [62 FR 62502](#), Nov. 24, 1997; [63 FR 32595](#), June 15, 1998]

§ 351.803 Notice of eligibility for reemployment and other placement assistance.

- (a) An employee who receives a specific notice of separation under this part must be given information concerning the right to reemployment consideration and career transition assistance under subparts B (Reemployment Priority List), F, and G (Career Transition Assistance Programs) of [part 330 of this chapter](#). The employee must also be given a release to authorize, at his or her option, the release of his or her resume and other relevant employment information for employment referral to the State unit or entity established under title I of the Workforce Investment Act of 1998 and potential public or private sector employers. The employee must also be given information concerning how to apply both for

unemployment insurance through the appropriate State program and benefits available under the State's Workforce Investment Act of 1998 programs, and an estimate of severance pay (if eligible).

(b) When 50 or more employees in a competitive area receive separation notices under this part, the agency must provide written notification of the action, at the same time it issues specific notices of separation to employees, to:

(1) The State or the entity designated by the State to carry out rapid response activities under title I of the Workforce Investment Act of 1998;

(2) The chief elected official of local government(s) within which these separations will occur; and

(3) OPM.

(c) The notice required by [paragraph \(b\)](#) of this section must include:

(1) The number of employees to be separated from the agency by reduction in force (broken down by geographic area or other basis specified by OPM);

(2) The effective date of the separations; and

(3) Any other information specified by OPM, including information needs identified from consultation between OPM and the Department of Labor to facilitate delivery of placement and related services.

[[60 FR 2679](#), Jan. 11, 1995, as amended at [62 FR 62502](#), Nov. 24, 1997; [65 FR 64133](#), Oct. 26, 2000]

§ 351.804 Expiration of notice.

(a) A notice expires when followed by the action specified, or by an action less severe than specified, in the notice or in an amendment made to the notice before the agency takes the action.

(b) An agency may not take the action before the effective date in the notice; instead, the agency may cancel the reduction in force notice and issue a new notice subject to this subpart.

[[62 FR 62502](#), Nov. 24, 1997]

§ 351.805 New notice required.

(a) An employee is entitled to a written notice of at least 60 full days if the agency decides to take an action more severe than first specified.

(b) An agency must give an employee an amended written notice if the reduction in force is changed to a later date. A reduction in force action taken after the date specified in the notice given to the employee is not invalid for that reason, except when it is challenged by a higher-standing employee in the competitive level who is reached out of order for a reduction in force action as a result of the change in dates.

(c) An agency must give an employee an amended written notice and allow the employee to decide whether to accept a better offer of assignment under [subpart G of this part](#) that becomes available before or on the effective date of the reduction in force. The agency must give the employee the amended notice regardless of whether the employee has accepted or rejected a previous offer of assignment, provided that the employee has not voluntarily separated from his or her official position.

[[62 FR 62502](#), Nov. 24, 1997, as amended at [65 FR 25623](#), May 3, 2000]

§ 351.806 Status during notice period.

When possible, the agency shall retain the employee on active duty status during the notice period. When in an emergency the agency lacks work or funds for all or part of the notice period, it may place the employee on annual leave with or without his or her consent, or leave without pay with his or her consent, or in a nonpay status without his or her consent.

§ 351.807 Certification of Expected Separation.

(a) For the purpose of enabling otherwise eligible employees to be considered for eligibility to participate in dislocated worker programs under the Workforce Investment Act of 1998 administered by the U.S. Department of Labor, an agency may issue a Certificate of Expected Separation to a competing employee who the agency believes, with a reasonable degree of certainty, will be separated from Federal employment by reduction in force procedures under this part. A certification may be issued up to 6 months prior to the effective date of the reduction in force.

(b) This certification may be issued to a competing employee only when the agency determines:

- (1) There is a good likelihood the employee will be separated under this part;
- (2) Employment opportunities in the same or similar position in the local commuting area are limited or nonexistent;
- (3) Placement opportunities within the employee's own or other Federal agencies in the local commuting area are limited or nonexistent; and
- (4) If eligible for optional retirement, the employee has not filed a retirement application or otherwise indicated in writing an intent to retire.

(c) A certification is to be addressed to each individual eligible employee and must be signed by an appropriate agency official. A certification must contain the expected date of reduction in force, a statement that each factor in [paragraph \(b\)](#) of this section has been satisfied, and a description of Workforce Investment Act of 1998, title I, programs, the Interagency Placement Program, and the Reemployment Priority List.

(d) A certification may not be used to satisfy any of the notice requirements elsewhere in this subpart.

(e) An agency determination of eligibility for certification may not be appealed to OPM or the Merit Systems Protection Board.

(f) An agency may also enroll eligible employees on the agency's Reemployment Priority List up to 6 months in advance of a reduction in force. For requirements and criteria, see [subpart B of part 330 of this chapter](#).

[[60 FR 2678](#), Jan. 11, 1995, as amended at [60 FR 44254](#), Aug. 25, 1995; [65 FR 64134](#), Oct. 26, 2000; [66 FR 29896](#), June 4, 2001]

Subpart I—Appeals and Corrective Action

§ 351.901 Appeals.

An employee who has been furloughed for more than 30 days, separated, or demoted by a reduction in force action may appeal to the Merit Systems Protection Board.

[\[52 FR 46051\]](#), Dec. 4, 1987]

§ 351.902 Correction by agency.

When an agency decides that an action under this part was unjustified or unwarranted and restores an individual to the former grade or rate of pay held or to an intermediate grade or rate of pay, it shall make the restoration retroactively effective to the date of the improper action.

5 CFR PART 432—PERFORMANCE BASED REDUCTION IN GRADE AND REMOVAL ACTIONS

Authority: [5 U.S.C. 4303](#), [4305](#).

Source: [54 FR 26179](#), June 21, 1989, unless otherwise noted.

§ 432.101 Statutory authority.

This part applies to reduction in grade and removal of employees covered by the provisions of this part based solely on performance at the unacceptable level. [5 U.S.C. 4305](#) authorizes the Office of Personnel Management to prescribe regulations to carry out the purposes of title 5, chapter 43, United States Code, including [5 U.S.C. 4303](#), which covers agency actions to reduce in grade or remove employees for unacceptable performance. (The provisions of [5 U.S.C. 7501 et seq.](#), may also be used to reduce in grade or remove employees. See [part 752 of this chapter](#).)

[[58 FR 65533](#), Dec. 15, 1993]

§ 432.102 Coverage.

(a) **Actions covered.** This part covers reduction in grade and removal of employees based on unacceptable performance.

(b) **Actions excluded.** This part does not apply to:

- (1) The reduction in grade of a supervisor or manager who has not completed the probationary period under [5 U.S.C. 3321\(a\)\(2\)](#) if such a reduction is based on supervisory or managerial performance and the reduction is to the grade held immediately before becoming a supervisor or manager in accordance with [5 U.S.C. 3321\(b\)](#);
- (2) The reduction in grade or removal of an employee in the competitive service who is serving a probationary or trial period under an initial appointment;
- (3) The reduction in grade or removal of an employee in the competitive service serving in an appointment that requires no probationary or trial period who has not completed 1 year of current continuous employment in the same or similar position under other than a temporary appointment limited to 1 year or less;
- (4) The reduction in grade or removal of an employee in the excepted service who has not completed 1 year of current continuous employment in the same or similar positions;
- (5) An action imposed by the Merit Systems Protection Board under the authority of [5 U.S.C. 1206](#);
- (6) An action taken under [5 U.S.C. 7521](#) against an administrative law judge;
- (7) An action taken under [5 U.S.C. 7532](#) in the interest of national security;
- (8) An action taken under a provision of statute, other than one codified in title 5 of the U.S. Code, which excepts the action from the provisions of title 5 of the U.S. Code;

- (9) A removal from the Senior Executive Service to a civil service position outside the Senior Executive Service under [part 359 of this chapter](#);
- (10) A reduction-in-force governed by [part 351 of this chapter](#);
- (11) A voluntary action by the employee;
- (12) A performance-based action taken under [part 752 of this chapter](#);
- (13) An action that terminates a temporary or term promotion and returns the employee to the position from which temporarily promoted, or to a different position of equivalent grade and pay if the agency informed the employee that it was to be of limited duration;
- (14) A termination in accordance with terms specified as conditions of employment at the time the appointment was made;
- (15) An involuntary retirement because of disability under [part 831 of this chapter](#); and
- (16) An action against a technician in the National Guard concerning any activity under [32 U.S.C. 709\(f\)\(4\)](#), except as provided by [32 U.S.C. 709\(f\)\(5\)](#).
- (c) **Agencies covered.** This part applies to:
- (1) The executive departments listed at [5 U.S.C. 101](#);
 - (2) The military departments listed at [5 U.S.C. 102](#);
 - (3) Independent establishments in the executive branch as described at [5 U.S.C. 104](#), except for a Government corporation; and
 - (4) The Government Printing Office.
- (d) **Agencies excluded.** This part does not apply to:
- (1) A Government corporation;
 - (2) The Central Intelligence Agency;
 - (3) The Defense Intelligence Agency;
 - (4) The National Security Agency;
 - (5) Any executive agency or unit thereof which is designated by the President and the principal function of which is the conduct of foreign intelligence or counterintelligence activities;
 - (6) The General Accounting Office;
 - (7) The U.S. Postal Service; and
 - (8) The Postal Rate Commission.
- (e) **Employees covered.** This part applies to individuals employed in or under a covered agency as specified at [§ 432.102\(c\)](#) except as listed in [§ 432.102\(f\)](#).
- (f) **Employees excluded.** This part does not apply to:

- (1) An employee in the competitive service who is serving a probationary or trial period under an initial appointment;
- (2) An employee in the competitive service serving in an appointment that requires no probationary or trial period, who has not completed 1 year of current continuous employment in the same or similar positions under other than a temporary appointment limited to 1 year or less;
- (3) An employee in the excepted service who has not completed 1 year of current continuous employment in the same or similar positions;
- (4) An employee outside the United States who is paid in accordance with local native prevailing wage rates for the area in which employed;
- (5) An individual in the Foreign Service of the United States;
- (6) An employee who holds a position with the Veterans Health Administration which has been excluded from the competitive service by or under a provision of title 38, United States Code, unless such employee was appointed to such a position under section 7401(3) of title 38;
- (7) An administrative law judge appointed under [5 U.S.C. 3105](#);
- (8) An individual in the Senior Executive Service;
- (9) An individual appointed by the President;
- (10) An employee whose position has been determined to be of a confidential, policy-determining, policy-making, or policy-advocating character, as defined in [§ 210.102 of this chapter](#) by—
 - (i) The President for a position that the President has excepted from the competitive service;
 - (ii) The Office of Personnel Management for a position that the Office has excepted from the competitive service (Schedule C); or
 - (iii) The President or the head of an agency for a position excepted from the competitive service by statute, unless the incumbent was moved involuntarily to such a position after accruing rights as delineated in [paragraph \(e\)](#) of this section.
- (11) A reemployed annuitant;
- (12) An individual occupying a position in the excepted service for which employment is not reasonably expected to exceed 120 calendar days in a consecutive 12 month period; and
- (13) A manager or supervisor returned to his or her previously held grade pursuant to [5 U.S.C. 3321](#) (a)(2) and (b).

[[54 FR 26179](#), June 21, 1989, as amended at [57 FR 10125](#), Mar. 24, 1992; [57 FR 20042](#), May 11, 1992; [58 FR 13192](#), Mar. 10, 1993; [58 FR 65533](#), Dec. 15, 1993; [87 FR 67782](#), Nov. 10, 2022; [89 FR 25047](#), Apr. 9, 2024]

§ 432.103 Definitions.

For the purpose of this part—

(a) **Acceptable performance** means performance that meets an employee's performance requirement(s) or standard(s) at a level of performance above “unacceptable” in the critical element(s) at issue.

(b) **Critical element** means a work assignment or responsibility of such importance that unacceptable performance on the element would result in a determination that an employee's overall performance is unacceptable.

(c) **Current continuous employment** means a period of employment or service immediately preceding an action under this part in the same or similar positions without a break in Federal civilian employment of a workday.

(d) **Opportunity to demonstrate acceptable performance** means a reasonable chance for the employee whose performance has been determined to be unacceptable in one or more critical elements to demonstrate acceptable performance in the critical element(s) at issue.

(e) **Reduction in grade** means the involuntary assignment of an employee to a position at a lower classification or job grading level.

(f) **Removal** means the involuntary separation of an employee from employment with an agency. P>

(g) **Similar positions** mean positions in which the duties performed are similar in nature and character and require substantially the same or similar qualifications, so that the incumbents could be interchanged without significant training or undue interruption to the work.

(h) **Unacceptable performance** means performance of an employee that fails to meet established performance standards in one or more critical elements of such employee's position.

[[54 FR 26179](#), June 21, 1989, as amended at [54 FR 49076](#), Nov. 29, 1989; [55 FR 25950](#), June 26, 1990; [57 FR 23045](#), June 1, 1992; [57 FR 60717](#), Dec. 22, 1992; [58 FR 65534](#), Dec. 15, 1993; [60 FR 43946](#), Aug. 23, 1995; [85 FR 65982](#), Oct. 16, 2020]

§ 432.104 Addressing unacceptable performance.

At any time during the performance appraisal cycle that an employee's performance is determined to be unacceptable in one or more critical elements, the agency shall notify the employee of the critical element(s) for which performance is unacceptable and inform the employee of the performance requirement(s) or standard(s) that must be attained in order to demonstrate acceptable performance in his or her position. The agency should also inform the employee that unless his or her performance in the critical element(s) improves to and is sustained at an acceptable level, the employee may be reduced in grade or removed. For each critical element in which the employee's performance is unacceptable, the agency shall afford the employee a reasonable opportunity to demonstrate acceptable performance, commensurate with the duties and responsibilities of the employee's position. As part of the employee's opportunity to demonstrate acceptable performance, the agency shall offer assistance to the employee in improving unacceptable performance.

[[87 FR 67782](#), Nov. 10, 2022]

§ 432.105 Proposing and taking action based on unacceptable performance.

(a) **Proposing action based on unacceptable performance.**

- (1) Once an employee has been afforded a reasonable opportunity to demonstrate acceptable performance pursuant to [§ 432.104](#), an agency may propose a reduction-in-grade or removal action if the employee's performance during or following the opportunity to demonstrate acceptable performance is unacceptable in one or more of the critical elements for which the employee was afforded an opportunity to demonstrate acceptable performance.
- (2) 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, the agency shall afford the employee an additional opportunity to demonstrate acceptable performance before determining whether to propose a reduction in grade or removal under this part.
- (3) 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.
- (4) An employee whose reduction in grade or removal is proposed under this part is entitled to:
 - (i) **Advance notice.**
 - (A) The agency shall afford the employee a 30 day advance notice of the proposed action that identifies both the specific instances of unacceptable performance by the employee on which the proposed action is based and the critical element(s) of the employee's position involved in each instance of unacceptable performance.
 - (B) An agency may extend this advance notice period for a period not to exceed 30 days under regulations prescribed by the head of the agency. An agency may extend this notice period further without prior OPM approval for the following reasons:
 - (1) To obtain and/or evaluate medical information when the employee has raised a medical issue in the answer to a proposed reduction in grade or removal;
 - (2) To arrange for the employee's travel to make an oral reply to an appropriate agency official, or the travel of an agency official to hear the employee's oral reply;
 - (3) To consider the employee's answer if an extension to the period for an answer has been granted (e.g., because of the employee's illness or incapacitation);
 - (4) To consider reasonable accommodation of a disability;
 - (5) If agency procedures so require, to consider positions to which the employee might be reassigned or reduced in grade; or
 - (6) To comply with a stay ordered by a member of the Merit Systems Protection Board under [5 U.S.C. 1214\(b\)\(1\)\(A\)](#) or [\(B\)](#).
 - (C) If an agency believes that an extension of the advance notice period is necessary for another reason, it may request prior approval for such extension from the Manager, Employee Accountability, Accountability and Workforce Relations, Employee Services, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415.

(ii) **Opportunity to answer.** The agency shall afford the employee a reasonable time to answer the agency's notice of proposed action orally and in writing.

(iii) **Representation.** The agency shall allow the employee to be represented by an attorney or other representative. An agency may disallow as an employee's representative an individual whose activities as a representative would cause a conflict of interest or position or an employee whose release from his or her official position would give rise to unreasonable costs to the Government or whose priority work assignment precludes his or her release from official duties.

(iv) **Consideration of medical conditions.** The agency shall allow an employee who wishes to raise a medical condition which may have contributed to his or her unacceptable performance to furnish medical documentation (as defined in [§ 339.102 of this chapter](#) of the condition for the agency's consideration. Whenever possible, the employee shall supply this documentation following the agency's notification of unacceptable performance under [§ 432.104](#). If the employee offers such documentation after the agency has proposed a reduction in grade or removal, he or she shall supply this information in accordance with [§ 432.105\(a\)\(4\)\(ii\)](#). In considering documentation submitted in connection with the employee's claim of a medical condition, the agency may require or offer a medical examination in accordance with the criteria and procedures of [part 339 of this chapter](#), and shall be aware of the affirmative obligations of [29 CFR 1613.704](#). If the employee who raises a medical condition has the requisite years of service under the Civil Service Retirement System or the Federal Employees Retirement System, the agency shall provide information concerning application for disability retirement. As provided at [§ 831.501\(d\) of this chapter](#), an employee's application for disability retirement shall not preclude or delay any other appropriate agency decision or personnel action.

(b) **Final written decision.** The agency shall make its final decision within 30 days after expiration of the advance notice period. Unless proposed by the head of the agency, such written decision shall be concurred in by an employee who is in a higher position than the person who proposed the action. In arriving at its decision, the agency shall consider any answer of the employee and/or his or her representative furnished in response to the agency's proposal. A decision to reduce in grade or remove an employee for unacceptable performance may be based only on those instances of unacceptable performance that occurred during the 1 year period ending on the date of issuance of the advance notice of proposed action under [§ 432.105\(a\)\(4\)\(i\)](#). The agency shall issue written notice of its decision to the employee at or before the time the action will be effective. Such notice shall specify the instances of unacceptable performance by the employee on which the action is based and shall inform the employee of any applicable appeal and/or grievance rights.

[[54 FR 26179](#), June 21, 1989. Redesignated and amended at [54 FR 49076](#), Nov. 29, 1989. Redesignated and amended at [58 FR 65534](#), Dec. 15, 1993; [85 FR 65982](#), Oct. 16, 2020; [87 FR 67782](#), Nov. 10, 2022]

§ 432.106 Appeal and grievance rights.

(a) **Appeal rights.** An employee covered under [§ 432.102\(e\)](#) who has been removed or reduced in grade under this part may appeal to the Merit Systems Protection Board if the employee is:

(1) In the competitive service and has completed a probationary or trial period;

(2) In the competitive service serving in an appointment which is not subject to a probationary or trial period, and has completed 1 year of current continuous employment in the same or similar position(s) under other than a temporary appointment limited to 1 year or less;

(3) A preference eligible in the excepted service who has completed 1 year of current continuous employment in the same or similar position(s); or

(4) A nonpreference eligible in the excepted service who is covered by subparts C and D of [part 752 of this chapter](#).

(b) *Grievance rights.*

(1) A bargaining unit employee covered under [§ 432.102\(e\)](#) who has been removed or reduced in grade under this part may file a grievance under an applicable negotiated grievance procedure if the removal or reduction in grade action falls within its coverage (*i.e.*, is not excluded by the parties to the collective bargaining agreement) and the employee is:

(i) In the competitive service and has completed a probationary or trial period.

(ii) In the competitive service, serving in an appointment which is not subject to a probationary or trial period, and has completed 1 year of current continuous employment in the same or similar position(s) under other than a temporary appointment limited to 1 year or less;

(iii) A preference eligible in the excepted service who has completed 1 year of current continuous employment in the same or similar position(s); or

(iv) A nonpreference eligible in the excepted service who is covered by subparts C and D of part 752 of the chapter.

(2) [5 U.S.C. 7114\(a\)\(5\)](#) and [7121\(b\)\(3\)](#), and the terms of an applicable collective bargaining agreement govern representation for employees in an exclusive bargaining unit who grieve a matter under this section through the negotiated grievance process.

(c) ***Election of forum.*** As provided at [5 U.S.C. 7121\(e\)\(1\)](#), a bargaining unit employee who by law may file an appeal or a grievance, and who has exercised his or her option to appeal an action taken under this part to the Merit Systems Protection Board, may not also file a grievance on the matter under a negotiated grievance procedure. Likewise, a bargaining unit employee who has exercised his or her option to grieve an action taken under this part may not also file an appeal on the matter with the Merit Systems Protection Board.

[[54 FR 26179](#), June 21, 1989. Redesignated at [54 FR 49076](#), Nov. 29, 1989; [57 FR 20043](#), May 11, 1992; [58 FR 13192](#), Mar. 10, 1993. Redesignated at [58 FR 65534](#), Dec. 15, 1993; [85 FR 65982](#), Oct. 16, 2020]

§ 432.107 Agency records.

(a) ***When the action is effected.*** The agency shall preserve all relevant documentation concerning a reduction in grade or removal which is based on unacceptable performance and make it available for review by the affected employee or his or her representative. At a minimum, the agency's records shall consist of a copy of the notice of proposed action, the answer of the employee when it is in writing, a summary thereof when the employee makes an oral reply, the written notice of decision and the reasons

therefor, and any supporting material including documentation regarding the opportunity afforded the employee to demonstrate acceptable performance.

(b) ***When the action is not effected.*** As provided at [5 U.S.C. 4303\(d\)](#), 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 year from the date of the advanced written notice provided in accordance with [§ 432.105\(a\)\(4\)\(i\)](#), any entry or other notation of the unacceptable performance for which the action was proposed shall be removed from any agency record relating to the employee.

[[55 FR 25950](#), June 26, 1990, as amended at [58 FR 65534](#), Dec. 15, 1993; [85 FR 65982](#), Oct. 16, 2020]

5 CFR PART 752—ADVERSE ACTIONS

Authority: [5 U.S.C. 7504](#), [7514](#), and [7543](#), [Pub. L. 115-91](#), 131 Stat. 1283, and [Pub. L. 114-328](#), 130 Stat. 2000.

Source: [74 FR 63532](#), Dec. 4, 2009, unless otherwise noted.

Subpart A —Discipline of Supervisors Based on Retaliation Against Whistleblowers

Source: [85 FR 65983](#), Oct. 16, 2020, unless otherwise noted.

§ 752.101 Coverage.

(a) **Adverse actions covered.** This subpart applies to actions taken under [5 U.S.C. 7515](#).

(b) *Definitions. In this subpart—*

Agency—

(1) Has the meaning given the term in [5 U.S.C. 2302\(a\)\(2\)\(C\)](#), without regard to whether any other provision of this chapter is applicable to the entity; and

(2) Does not include any entity that is an element of the intelligence community, as defined in section 3 of the National Security Act of 1947 ([50 U.S.C. 3003](#)).

Day means a calendar day.

Grade means a level of classification under a position classification system.

Insufficient evidence means evidence that fails to meet the substantial evidence standard described in [5 CFR 1201.4\(p\)](#).

Pay means the rate of basic pay fixed by law or administrative action for the position held by the employee, that is, the rate of pay before any deductions and exclusive of additional pay of any kind.

Prohibited personnel action means taking or failing to take an action in violation of paragraph (8), (9), or (14) of [5 U.S.C. 2302\(b\)](#) against an employee of an agency.

Supervisor means an employee who would be a supervisor, as defined in [5 U.S.C. 7103\(a\)\(10\)](#), if the entity employing the employee was an agency.

Suspension means the placing of an employee, for disciplinary reasons, in a temporary status without duties and pay.

[[85 FR 65983](#), Oct. 16, 2020, as amended [87 FR 67782](#), Nov. 10, 2022]

§ 752.102 Standard for action and penalty determination.

(a) Except for actions taken against supervisors covered under subchapter V of title 5, an agency may take an action under this subpart for such cause as will promote the efficiency of the service as described in [5 U.S.C. 7503\(a\)](#) and [7513\(a\)](#). For actions taken under this subpart against supervisors

covered under subchapter V of title 5, an agency may take an action based on the standard described in [5 U.S.C. 7543\(a\)](#).

(b) Subject to [5 U.S.C. 1214\(f\)](#), if the head of the agency in which a supervisor is employed, an administrative law judge, the Merit Systems Protection Board, the Special Counsel, a judge of the United States, or the Inspector General of the agency in which a supervisor is employed has determined that the supervisor committed a prohibited personnel action, the head of the agency in which the supervisor is employed, consistent with the procedures required under this subpart—

(1) For the first prohibited personnel action committed by the supervisor—

(i) Shall propose suspending the supervisor for a period that is not less than 3 days; and

(ii) May propose an additional action determined appropriate by the head of the agency, including a reduction in grade or pay; and

(2) For the second prohibited personnel action committed by the supervisor, shall propose removing the supervisor.

§ 752.103 Procedures.

(a) **Non-delegation.** If the head of an agency is responsible for determining whether a supervisor has committed a prohibited personnel action for purposes of [§ 752.102\(b\)](#), the head of the agency may not delegate that responsibility.

(b) **Scope.** An action carried out under this subpart—

(1) Except as provided in [paragraph \(b\)\(2\)](#) of this section, shall be subject to the same requirements and procedures, including those with respect to an appeal, as an action under [5 U.S.C. 7503](#), [7513](#), or [7543](#); and

(2) Shall not be subject to—

(i) [Paragraphs \(1\)](#) and [\(2\)](#) of [5 U.S.C. 7503\(b\)](#);

(ii) Paragraphs (1) and (2) of subsection (b) and subsection (c) of [5 U.S.C. 7513](#); and

(iii) Paragraphs (1) and (2) of subsection (b) and subsection (c) of [5 U.S.C. 7543](#).

(c) **Notice.** A supervisor against whom an action is proposed to be taken under this subpart is entitled to written notice that—

(1) States the specific reasons for the proposed action;

(2) Informs the supervisor about the right of the supervisor to review the material that is relied on to support the reasons given in the notice for the proposed action; and

(d) **Answer and evidence.**

(1) A supervisor who receives notice under [paragraph \(c\)](#) of this section may, not later than 14 days after the date on which the supervisor receives the notice, submit an answer and furnish evidence in support of that answer.

(2) If, after the end of the 14-day period described in [paragraph \(d\)\(1\)](#) of this section, a supervisor does not furnish any evidence as described in that clause, or if the head of the agency in which the supervisor is employed determines that the evidence furnished by the supervisor is insufficient, the head of the agency shall carry out the action proposed under [§ 752.102 \(b\)](#), as applicable.

[[85 FR 65983](#), Oct. 16, 2020, as amended at [87 FR 67782](#), Nov. 10, 2022]

Subpart B—Regulatory Requirements for Suspension for 14 Days or Less

§ 752.201 Coverage.

(a) **Adverse actions covered.** This subpart covers suspension for 14 days or less.

(b) **Employees covered.** This subpart covers:

(1) An employee in the competitive service who has completed a probationary or trial period, or who has completed 1 year of current continuous employment in the same or similar positions under other than a temporary appointment limited to 1 year or less, including such an employee who is moved involuntarily into the excepted service and still occupies that position or occupies any other position to which the employee is moved involuntarily;

(2) An employee in the competitive service serving in an appointment which requires no probationary or trial period, and who has completed 1 year of current continuous employment in the same or similar positions under other than a temporary appointment limited to 1 year or less, including such an employee who is moved involuntarily into the excepted service and still occupies that position or occupies any other position to which the employee is moved involuntarily;

(3) An employee with competitive status who occupies a position under Schedule B of [part 213 of this chapter](#), including such an employee who is moved involuntarily into a different schedule of the excepted service and still occupies that position or occupies any other position to which the employee is moved involuntarily;

(4) An employee who was in the competitive service and had competitive status as defined in [§ 212.301 of this chapter](#) at the time the employee's position was first listed involuntarily under any schedule of the excepted service and still occupies that position or occupies any other position to which the employee is moved involuntarily;

(5) An employee of the Department of Veterans Affairs appointed under [38 U.S.C. 7401\(3\)](#), including such an employee who is moved involuntarily into a different schedule of the excepted service and still occupies that position or occupies any other position to which the employee is moved involuntarily; and

(6) An employee of the Government Publishing Office, including such an employee who is moved involuntarily into the excepted service and still occupies that position or occupies any other position to which the employee is moved involuntarily.

(c) **Exclusions.** This subpart does not apply to a suspension for 14 days or less:

(1) Of an administrative law judge under [5 U.S.C. 7521](#);

(2) Taken for national security reasons under [5 U.S.C. 7532](#);

(3) Taken under any other provision of law which excepts the action from subchapter I, chapter 75, of title 5, U.S. Code;

(4) Of a re-employed annuitant;

(5) Of a National Guard Technician;

(6) Taken under [5 U.S.C. 7515](#); or

(7) Of an employee whose position has been determined to be of a confidential, policy-determining, policy-making, or policy-advocating character, as defined in [§ 210.102 of this subchapter](#) by—

(i) The President for a position that the President has excepted from the competitive service unless the incumbent was moved involuntarily to such a position after accruing rights as delineated in [paragraph \(b\)](#) of this section;

(ii) The Office of Personnel Management for a position that the Office has excepted from the competitive service unless the incumbent was moved involuntarily to such a position after accruing rights as delineated in [paragraph \(b\)](#) of this section; or

(iii) The President or the head of an agency for a position excepted from the competitive service by statute unless the incumbent was moved involuntarily to such a position after accruing rights as delineated in [paragraph \(b\)](#) of this section.

(d) **Definitions.** In this subpart—

Current continuous employment means a period of employment immediately preceding a suspension action without a break in Federal civilian employment of a workday.

Day means a calendar day.

Similar positions means positions in which the duties performed are similar in nature and character and require substantially the same or similar qualifications, so that the incumbent could be interchanged between the positions without significant training or undue interruption to the work.

Suspension means the placing of an employee, for disciplinary reasons, in a temporary status without duties and pay.

[[74 FR 63532](#), Dec. 4, 2009, as amended at [85 FR 65985](#), Oct. 16, 2020; [89 FR 25047](#), Apr. 9, 2024]

§ 752.202 Standard for action.

(a) An agency may take action under this subpart for such cause as will promote the efficiency of the service as set forth in [5 U.S.C. 7503\(a\)](#).

(b) An agency may not take a suspension against an employee on the basis of any reason prohibited by [5 U.S.C. 2302](#).

[[74 FR 63532](#), Dec. 4, 2009, as amended at [85 FR 65985](#), Oct. 16, 2020; [87 FR 67782](#), Nov. 10, 2022]

§ 752.203 Procedures.

(a) **Statutory entitlements.** An employee under this subpart whose suspension is proposed under this subpart is entitled to the procedures provided in [5 U.S.C. 7503\(b\)](#).

(b) **Notice of proposed action.** The notice must state the specific reason(s) for the proposed action, and inform the employee of his or her right to review the material which is relied on to support the reasons for action given in the notice. The notice must further include detailed information with respect to any right to appeal the action pursuant to section 1097(b)(2)(A) of [Public Law 115-91](#), the forums in which the employee may file an appeal, and any limitations on the rights of the employee that would apply because of the forum in which the employee decides to file.

(c) **Employee's answer.** The employee must be given a reasonable time, but not less than 24 hours, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer.

(d) **Representation.** An employee covered by this subpart is entitled to be represented by an attorney or other representative. An agency may disallow as an employee's representative an individual whose activities as representative would cause a conflict of interest or position, or an employee of the agency whose release from his or her official position would give rise to unreasonable costs or whose priority work assignments preclude his or her release.

(e) **Agency decision.**

(1) In arriving at its decision, the agency will consider only the reasons specified in the notice of proposed action and any answer of the employee or his or her representative, or both, made to a designated official.

(2) The agency must specify in writing the reason(s) for the decision and advise the employee of any grievance rights under [paragraph \(f\)](#) of this section. The agency must deliver the notice of decision to the employee on or before the effective date of the action.

(f) **Grievances.** The employee may file a grievance through an agency administrative grievance system (if applicable) or, if the suspension falls within the coverage of an applicable negotiated grievance procedure, an employee in an exclusive bargaining unit may file a grievance only under that procedure. Sections 7114(a)(5) and 7121(b)(1)(C) of title 5, U.S. Code, and the terms of any collective bargaining agreement, govern representation for employees in an exclusive bargaining unit who grieve a suspension under this subpart through the negotiated grievance procedure.

(g) **Agency records.** The agency must maintain copies of, and will furnish to the Merit Systems Protection Board and to the employee upon their request, the following documents:

- (1) Notice of the proposed action;
- (2) Employee's written reply, if any;
- (3) Summary of the employee's oral reply, if any;
- (4) Notice of decision; and
- (5) Any order effecting the suspension, together with any supporting material.

[[74 FR 63532](#), Dec. 4, 2009, as amended at [85 FR 65985](#), Oct. 16, 2020; [87 FR 67782](#), Nov. 10, 2022]

Subpart C [Reserved]

Subpart D—Regulatory Requirements for Removal, Suspension for More Than 14 Days, Reduction in Grade or Pay, or Furlough for 30 Days or Less

§ 752.401 Coverage.

(a) **Adverse actions covered.** This subpart applies to the following actions:

- (1) Removals;
- (2) Suspensions for more than 14 days, including indefinite suspensions;
- (3) Reductions in grade;
- (4) Reductions in pay; and
- (5) Furloughs of 30 days or less.

(b) **Actions excluded.** This subpart does not apply to:

- (1) An action imposed by the Merit Systems Protection Board under the authority of [5 U.S.C. 1215](#);
- (2) The reduction in grade of a supervisor or manager who has not completed the probationary period under [5 U.S.C. 3321\(a\)\(2\)](#) if such a reduction is to the grade held immediately before becoming a supervisor or manager;
- (3) A reduction-in-force action under [5 U.S.C. 3502](#);
- (4) A reduction in grade or removal under [5 U.S.C. 4303](#);
- (5) An action against an administrative law judge under [5 U.S.C. 7521](#);
- (6) A suspension or removal under [5 U.S.C. 7532](#);
- (7) Actions taken under any other provision of law which excepts the action from [subchapter II of chapter 75 of title 5, United States Code](#);
- (8) Action that entitles an employee to grade retention under [part 536 of this chapter](#), and an action to terminate this entitlement;
- (9) A voluntary action by the employee;
- (10) Action taken or directed by the Office of Personnel Management under [part 731 of this chapter](#);
- (11) Termination of appointment on the expiration date specified as a basic condition of employment at the time the appointment was made;
- (12) Action that terminates a temporary or term promotion and returns the employee to the position from which temporarily promoted, or to a different position of equivalent grade and pay, if the agency informed the employee that it was to be of limited duration;
- (13) Cancellation of a promotion to a position not classified prior to the promotion;

- (14) Placement of an employee serving on an intermittent or seasonal basis in a temporary nonduty, nonpay status in accordance with conditions established at the time of appointment;
- (15) Reduction of an employee's rate of basic pay from a rate that is contrary to law or regulation, including a reduction necessary to comply with the amendments made by [Public Law 108-411](#), regarding pay-setting under the General Schedule and Federal Wage System and regulations in this subchapter implementing those amendments;
- (16) An action taken under [5 U.S.C. 7515](#); or
- (17) An action taken against a technician in the National Guard concerning any activity under [32 U.S.C. 709\(f\)\(4\)](#), except as provided by [32 U.S.C. 709\(f\)\(5\)](#).

(c) **Employees covered.** This subpart covers:

- (1) A career or career conditional employee in the competitive service who is not serving a probationary or trial period, including such an employee who is moved involuntarily into the excepted service;
- (2) An employee in the competitive service—
 - (i) Who is not serving a probationary or trial period under an initial appointment, including such an employee who is moved involuntarily into the excepted service; or
 - (ii) Except as provided in the former section 1599e of title 10, for individuals hired prior to December 31, 2022 (the date that section was otherwise repealed by [Public Law 117-81](#), section 1106), who has completed 1 year of current continuous service under other than a temporary appointment limited to 1 year or less, including such an employee who is moved involuntarily into the excepted service;
- (3) An employee in the excepted service who is a preference eligible in an Executive agency as defined at [section 105 of title 5, United States Code](#), the U.S. Postal Service, or the Postal Regulatory Commission and who has completed 1 year of current continuous service in the same or similar positions, including such an employee who is moved involuntarily into a different schedule of the excepted service and still occupies that position or occupies any other position to which the employee is moved involuntarily;
- (4) A Postal Service employee covered by Public Law 100-90 who has completed 1 year of current continuous service in the same or similar positions and who is either a supervisory or management employee or an employee engaged in personnel work in other than a purely nonconfidential clerical capacity, including such an employee who is moved involuntarily into a different schedule of the excepted service and still occupies that position or occupies any other position to which the employee is moved involuntarily;
- (5) An employee in the excepted service who is a nonpreference eligible in an Executive agency as defined at [5 U.S.C. 105](#), and who has completed 2 years of current continuous service in the same or similar positions under other than a temporary appointment limited to 2 years or less, including such an employee who is moved involuntarily into a different schedule of the excepted service and still occupies that position or occupies any other position to which the employee is moved involuntarily;
- (6) An employee with competitive status who occupies a position in Schedule B of [part 213 of this chapter](#), including such an employee whose position is moved involuntarily into a different schedule of

the excepted service and still occupies that position or occupies any other position to which the employee is moved involuntarily;

(7) An employee who was in the competitive service and had competitive status as defined in [§ 212.301 of this chapter](#) at the time the employee's position was first listed involuntarily under any schedule of the excepted service and who still occupies that position or occupies any other position to which the employee is moved involuntarily;

(8) An employee of the Department of Veterans Affairs appointed under [38 U.S.C. 7401\(3\)](#), including such an employee who is moved involuntarily into a different schedule of the excepted service and still occupies that position or occupies any other position to which the employee is moved involuntarily; and

(9) An employee of the Government Publishing Office, including such an employee who is moved involuntarily into the excepted service.

(d) **Employees excluded.** This subpart does not apply to:

(1) An employee whose appointment is made by and with the advice and consent of the Senate;

(2) An employee whose position has been determined to be of a confidential, policy-determining, policy-making, or policy-advocating character, as defined in [§ 210.102 of this chapter](#) by—

(i) The President for a position that the President has excepted from the competitive service unless the incumbent was moved involuntarily to such a position after accruing rights as delineated in [paragraph \(c\)](#) of this section;

(ii) The Office of Personnel Management for a position that the Office has excepted from the competitive service unless the incumbent was moved involuntarily to such a position after accruing rights as delineated in [paragraph \(c\)](#) of this section; or

(iii) The President or the head of an agency for a position excepted from the competitive service by statute unless the incumbent was moved involuntarily to such a position after accruing rights as delineated in [paragraph \(c\)](#) of this section;

(3) A Presidential appointee;

(4) A reemployed annuitant;

(5) A Foreign Service member as described in section 103 of the Foreign Service Act of 1980;

(6) An employee of the Central Intelligence Agency or the Government Accountability Office;

(7) An employee of the Veterans Health Administration (Department of Veterans Affairs) in a position which has been excluded from the competitive service by or under a provision of title 38, United States Code, unless the employee was appointed to the position under section 7401(3) of title 38, United States Code;

(8) A nonpreference eligible employee with the U.S. Postal Service, the Postal Regulatory Commission, the Panama Canal Commission, the Tennessee Valley Authority, the Federal Bureau of Investigation, the National Security Agency, the Defense Intelligence Agency, or any other intelligence component of the Department of Defense (as defined in [section 1614 of title 10, United States Code](#)), or an intelligence

activity of a military department covered under [subchapter I of chapter 83 of title 10, United States Code](#);

(9) An employee described in section 5102(c)(11) of title 5, United States Code, who is an alien or noncitizen occupying a position outside the United States;

(10) A nonpreference eligible employee serving a probationary or trial period under an initial appointment in the excepted service pending conversion to the competitive service, unless he or she meets the requirements of [paragraph \(c\)\(5\)](#) of this section;

(11) An employee whose agency or position has been excluded from the appointing provisions of title 5, United States Code, by separate statutory authority in the absence of any provision to place the employee within the coverage of [chapter 75 of title 5, United States Code](#); and

(12) An employee in the competitive service serving a probationary or trial period, unless he or she meets the requirements of [paragraph \(c\)\(2\)](#) of this section.

[[74 FR 63532](#), Dec. 4, 2009, as amended at [85 FR 65986](#), Oct. 16, 2020; [87 FR 67783](#), Nov. 10, 2022; [89 FR 25048](#), Apr. 9, 2024]

§ 752.402 Definitions.

In this subpart—

Current continuous employment means a period of employment or service immediately preceding an adverse action without a break in Federal civilian employment of a workday.

Day means a calendar day.

Furlough means the placing of an employee in a temporary status without duties and pay because of lack of work or funds or other nondisciplinary reasons.

Grade means a level of classification under a position classification system.

Indefinite suspension means the placing of an employee in a temporary status without duties and pay pending investigation, inquiry, or further agency action. The indefinite suspension continues for an indeterminate period of time and ends with the occurrence of the pending conditions set forth in the notice of action which may include the completion of any subsequent administrative action.

Pay means the rate of basic pay fixed by law or administrative action for the position held by the employee, that is, the rate of pay before any deductions and exclusive of additional pay of any kind.

Similar positions means positions in which the duties performed are similar in nature and character and require substantially the same or similar qualifications, so that the incumbent could be interchanged between the positions without significant training or undue interruption to the work.

Suspension means the placing of an employee, for disciplinary reasons, in a temporary status without duties and pay for more than 14 days.

[[74 FR 63532](#), Dec. 4, 2009, as amended at [85 FR 65986](#), Oct. 16, 2020; [87 FR 67783](#), Nov. 10, 2022]

§ 752.403 Standard for action.

(a) An agency may take an adverse action, including a performance-based adverse action or an indefinite suspension, under this subpart only for such cause as will promote the efficiency of the service.

(b) An agency may not take an adverse action against an employee on the basis of any reason prohibited by [5 U.S.C. 2302](#).

[[74 FR 63532](#), Dec. 4, 2009, as amended at [85 FR 65986](#), Oct. 16, 2020; [87 FR 67783](#), Nov. 10, 2022]

§ 752.404 Procedures.

(a) **Statutory entitlements.** An employee against whom action is proposed under this subpart is entitled to the procedures provided in [5 U.S.C. 7513\(b\)](#).

(b) Notice of proposed action.

(1) An employee against whom an action is proposed is entitled to at least 30 days' advance written notice unless there is an exception pursuant to [paragraph \(d\)](#) of this section. The notice must state the specific reason(s) for the proposed action and inform the employee of his or her right to review the material which is relied on to support the reasons for action given in the notice. The notice must further include detailed information with respect to any right to appeal the action pursuant to section 1097(b)(2)(A) of [Public Law 115-91](#), the forums in which the employee may file an appeal, and any limitations on the rights of the employee that would apply because of the forum in which the employee decides to file.

(2) When some but not all employees in a given competitive level are being furloughed, the notice of proposed action must state the basis for selecting a particular employee for furlough, as well as the reasons for the furlough.

(3) Under ordinary circumstances, an employee whose removal or suspension, including indefinite suspension, has been proposed will remain in a duty status in his or her regular position during the advance notice period. In those rare circumstances where the agency determines that the employee's continued presence in the workplace during the notice period may pose a threat to the employee or others, result in loss of or damage to Government property, or otherwise jeopardize legitimate Government interests, the agency may elect one or a combination of the following alternatives:

(i) Assigning the employee to duties where he or she is no longer a threat to safety, the agency mission, or to Government property;

(ii) Allowing the employee to take leave, or carrying him or her in an appropriate leave status (annual, sick, leave without pay, or absence without leave) if the employee has absented himself or herself from the worksite without requesting leave;

(iii) Curtailing the notice period when the agency can invoke the provisions of [paragraph \(d\)\(1\)](#) of this section; or

(iv) Placing the employee in a paid, nonduty status for such time as is necessary to effect the action. After publication of regulations for [5 U.S.C. 6329b](#), and the subsequent agency implementation period in accordance with [5 U.S.C. 6329b](#), an agency may place the employee in a notice leave status when applicable.

(c) *Employee's answer.*

(1) An employee may answer orally and in writing except as provided in [paragraph \(c\)\(2\)](#) of this section. The agency must give the employee a reasonable amount of official time to review the material relied on to support its proposed action, to prepare an answer orally and in writing, and to secure affidavits, if the employee is in an active duty status. The agency may require the employee to furnish any answer to the proposed action, and affidavits and other documentary evidence in support of the answer, within such time as would be reasonable, but not less than 7 days.

(2) The agency will designate an official to hear the employee's oral answer who has authority either to make or recommend a final decision on the proposed adverse action. The right to answer orally in person does not include the right to a formal hearing with examination of witnesses unless the agency provides for such hearing in its regulations. Under [5 U.S.C. 7513\(c\)](#), the agency may, in its regulations, provide a hearing in place of or in addition to the opportunity for written and oral answer.

(3) If the employee wishes the agency to consider any medical condition which may contribute to a conduct, performance, or leave problem, the employee must be given a reasonable time to furnish medical documentation (as defined in [§ 339.104 of this chapter](#)) of the condition. Whenever possible, the employee will supply such documentation within the time limits allowed for an answer.

(d) *Exceptions.*

(1) Section 7513(b) of title 5, U.S. Code, authorizes an exception to the 30 days' advance written notice when the agency has reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment may be imposed and is proposing a removal or suspension, including indefinite suspension. This notice exception is commonly referred to as the "crime provision." This provision may be invoked even in the absence of judicial action.

(2) The advance written notice and opportunity to answer are not required for furlough without pay due to unforeseeable circumstances, such as sudden breakdowns in equipment, acts of God, or sudden emergencies requiring immediate curtailment of activities.

(e) *Representation.* Section 7513(b)(3) of title 5, U.S. Code, provides that an employee covered by this part is entitled to be represented by an attorney or other representative. An agency may disallow as an employee's representative an individual whose activities as representative would cause a conflict of interest or position, or an employee of the agency whose release from his or her official position would give rise to unreasonable costs or whose priority work assignments preclude his or her release.

(f) *Agency review of medical information.* When medical information is supplied by the employee pursuant to [paragraph \(c\)\(3\)](#) of this section, the agency may, if authorized, require a medical examination under the criteria of [§ 339.301 of this chapter](#), or otherwise, at its option, offer a medical examination in accordance with the criteria of [§ 339.302 of this chapter](#). If the employee has the requisite years of service under the Civil Service Retirement System or the Federal Employees' Retirement System, the agency must provide information concerning disability retirement. The agency must be aware of the affirmative obligations of the provisions of [29 CFR 1614.203](#), which require reasonable accommodation of a qualified individual with a disability.

(g) *Agency decision.*

(1) In arriving at its decision, the agency will consider only the reasons specified in the notice of proposed action and any answer of the employee or his or her representative, or both, made to a designated official and any medical documentation reviewed under [paragraph \(f\)](#) of this section.

(2) The notice must specify in writing the reasons for the decision and advise the employee of any appeal or grievance rights under [§ 752.405 of this part](#). The agency must deliver the notice of decision to the employee on or before the effective date of the action.

(h) **Applications for disability retirement.** [Section 831.1204\(e\) of this chapter](#) provides that an employee's application for disability retirement need not delay any other appropriate personnel action. [Section 831.1205](#) and [§ 844.202 of this chapter](#) set forth the basis under which an agency must file an application for disability retirement on behalf of an employee.

[[74 FR 63532](#), Dec. 4, 2009, as amended at [85 FR 65986](#), Oct. 16, 2020; [87 FR 67783](#), Nov. 10, 2022]

§ 752.405 Appeal and grievance rights.

(a) **Appeal rights.** Under the provisions of [5 U.S.C. 7513\(d\)](#), an employee against whom an action is taken under this subpart is entitled to appeal to the Merit Systems Protection Board.

(b) **Grievance rights.** As provided at [5 U.S.C. 7121\(e\)\(1\)](#), if a matter covered by this subpart falls within the coverage of an applicable negotiated grievance procedure, an employee may elect to file a grievance under that procedure or appeal to the Merit Systems Protection Board under [5 U.S.C. 7701](#), but not both. Sections 7114(a)(5) and 7121(b)(1)(C) of title 5, U.S. Code, and the terms of an applicable collective bargaining agreement, govern representation for employees in an exclusive bargaining unit who grieve a matter under this subpart through the negotiated grievance procedure.

§ 752.406 Agency records.

The agency must maintain copies of, and will furnish to the Merit Systems Protection Board and to the employee upon his or her request, the following documents:

- (a) Notice of the proposed action;
- (b) Employee's written reply, if any;
- (c) Summary of the employee's oral reply, if any;
- (d) Notice of decision; and
- (e) Any order effecting the action, together with any supporting material.

Subpart E [Reserved]

Subpart F—Regulatory Requirements for Taking Adverse Action Under the Senior Executive Service

§ 752.601 Coverage.

(a) **Adverse actions covered.** This subpart applies to suspensions for more than 14 days and removals from the civil service as set forth in [5 U.S.C. 7542](#).

(b) **Actions excluded.**

- (1) An agency may not take a suspension action of 14 days or less.
- (2) This subpart does not apply to actions taken under [5 U.S.C. 1215](#), [3592](#), [3595](#), [7532](#), or [7515](#).
- (c) **Employees covered.** This subpart covers the following appointees:
 - (1) A career appointee—
 - (i) Who has completed the probationary period in the Senior Executive Service;
 - (ii) Who is not required to serve a probationary period in the Senior Executive Service; or
 - (iii) Who was covered under [5 U.S.C. 7511](#) immediately before appointment to the Senior Executive Service.
 - (2) A limited term or limited emergency appointee—
 - (i) Who received the limited appointment without a break in service in the same agency as the one in which the employee held a career or career-conditional appointment (or an appointment of equivalent tenure as determined by the Office of Personnel Management) in a permanent civil service position outside the Senior Executive Service; and
 - (ii) Who was covered under [5 U.S.C. 7511](#) immediately before appointment to the Senior Executive Service.
- (d) **Employees excluded.** This subpart does not cover an appointee who is serving as a reemployed annuitant.

[[74 FR 63532](#), Dec. 4, 2009, as amended at [85 FR 65987](#), Oct. 16, 2020]

§ 752.602 Definitions.

In this subpart—

Career appointee, *limited term appointee*, and *limited emergency appointee* have the meaning given in [5 U.S.C. 3132\(a\)](#).

Day means calendar day.

Suspension has the meaning given in [5 U.S.C. 7501\(2\)](#).

[[74 FR 63532](#), Dec. 4, 2009, as amended at [85 FR 65987](#), Oct. 16, 2020; [87 FR 67783](#), Nov. 10, 2022]

§ 752.603 Standard for action.

- (a) An agency may take an adverse action under this subpart only for reasons of misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function.
- (b) An agency may not take an adverse action under this subpart on the basis of any reason prohibited by [5 U.S.C. 2302](#).

[[74 FR 63532](#), Dec. 4, 2009, as amended at [85 FR 65987](#), Oct. 16, 2020; [87 FR 67783](#), Nov. 10, 2022]

§ 752.604 Procedures.

(a) **Statutory entitlements.** An appointee against whom action is proposed under this subpart is entitled to the procedures provided in [5 U.S.C. 7543\(b\)](#).

(b) **Notice of proposed action.**

(1) An appointee against whom an action is proposed is entitled to at least 30 days' advance written notice unless there is an exception pursuant to [paragraph \(d\)](#) of this section. The notice must state the specific reason(s) for the proposed action and inform the appointee of his or her right to review the material that is relied on to support the reasons for action given in the notice. The notice must further include detailed information with respect to any right to appeal the action pursuant to section 1097(b)(2)(A) of [Public Law 115-91](#), the forums in which the employee may file an appeal, and any limitations on the rights of the employee that would apply because of the forum in which the employee decides to file.

(2) Under ordinary circumstances, an appointee whose removal has been proposed will remain in a duty status in his or her regular position during the advance notice period. In those rare circumstances where the agency determines that the appointee's continued presence in the work place during the notice period may pose a threat to the appointee or others, result in loss of or damage to Government property, or otherwise jeopardize legitimate Government interests, the agency may elect one or a combination of the following alternatives:

(i) Assigning the appointee to duties where he or she is no longer a threat to safety, the agency mission, or Government property;

(ii) Allowing the appointee to take leave, or carrying him or her in an appropriate leave status (annual, sick, leave without pay, or absence without leave) if the appointee has absented himself or herself from the worksite without requesting leave;

(iii) Curtailing the notice period when the agency can invoke the provisions of [paragraph \(d\)](#) of this section; or

(iv) Placing the appointee in a paid, no duty status for such time as is necessary to effect the action. After publication of regulations for [5 U.S.C. 6329b](#), and the subsequent agency implementation period in accordance with [5 U.S.C. 6329b](#), an agency may place the employee in a notice leave status when applicable.

(c) **Appointee's answer.**

(1) The appointee may answer orally and in writing except as provided in [paragraph \(c\)\(2\)](#) of this section. The agency must give the appointee a reasonable amount of official time to review the material relied on to support its proposed action, to prepare an answer orally and in writing, and to secure affidavits, if the appointee is in an active duty status. The agency may require the appointee to furnish any answer to the proposed action, and affidavits and other documentary evidence in support of the answer, within such time as would be reasonable, but not less than 7 days.

(2) The agency will designate an official to hear the appointee's oral answer who has authority either to make or to recommend a final decision on the proposed adverse action. The right to answer orally in

person does not include the right to a formal hearing with examination of witnesses unless the agency provides for such hearing in its regulations. Under [5 U.S.C. 7543\(c\)](#), the agency may in its regulations provide a hearing in place of or in addition to the opportunity for written and oral answer.

(3) If the appointee wishes the agency to consider any medical condition that may have affected the basis for the adverse action, the appointee must be given reasonable time to furnish medical documentation (as defined in [§ 339.104 of this chapter](#)) of the condition. Whenever possible, the appointee will supply such documentation within the time limits allowed for an answer.

(d) **Exception.** Section 7543(b)(1) of title 5, U.S. Code, authorizes an exception to the 30 days' advance written notice when the agency has reasonable cause to believe that the appointee has committed a crime for which a sentence of imprisonment may be imposed and is proposing a removal or suspension. This notice exception is commonly referred to as the "crime provision." This provision may be invoked even in the absence of judicial action.

(e) **Representation.** Section 7543(b)(3) of title 5, U.S. Code, provides that an appointee covered by this part is entitled to be represented by an attorney or other representative. An agency may disallow as an appointee's representative an individual whose activities as representative would cause a conflict of interest or position, or an employee of the agency whose release from his or her official position would give rise to unreasonable costs or whose priority work assignments preclude his or her release.

(f) **Agency review of medical information.** When medical information is supplied by the appointee pursuant to [paragraph \(c\)\(3\)](#) of this section, the agency may, if authorized, require a medical examination under the criteria of [§ 339.301 of this chapter](#), or otherwise, at its option, offer a medical examination in accordance with the criteria of [§ 339.302 of this chapter](#). If the appointee has the requisite years of service under the Civil Service Retirement System or the Federal Employees' Retirement System, the agency must provide information concerning disability retirement. The agency must be aware of the affirmative obligations of the provisions of [29 CFR 1614.203](#), which require reasonable accommodation of a qualified individual with a disability.

(g) **Agency decision.**

(1) In arriving at its decision, the agency will consider only the reasons specified in the notice of proposed action and any answer of the appointee or the appointee's representative, or both, made to a designated official and any medical documentation reviewed under [paragraph \(f\)](#) of this section.

(2) The notice must specify in writing the reasons for the decision and advise the appointee of any appeal rights under [§ 752.605 of this part](#). The agency must deliver the notice of decision to the appointee on or before the effective date of the action.

(h) **Applications for disability retirement.** [Section 831.1204\(e\) of this chapter](#) provides that an appointee's application for disability retirement need not delay any other appropriate personnel action. [Section 831.1205](#) and [§ 844.202 of this chapter](#) set forth the basis under which an agency must file an application for disability retirement on behalf of an appointee.

[[74 FR 63532](#), Dec. 4, 2009, as amended at [85 FR 65987](#), Oct. 16, 2020; [87 FR 67783](#), Nov. 10, 2022]

§ 752.605 Appeal rights.

(a) Under [5 U.S.C. 7543\(d\)](#), a career appointee against whom an action is taken under this subpart is entitled to appeal to the Merit Systems Protection Board.

(b) A limited term or limited emergency appointee who is covered under [§ 752.601\(c\)\(2\)](#) also may appeal an action taken under this subpart to the Merit Systems Protection Board.

§ 752.606 Agency records.

The agency must maintain copies of, and will furnish to the Merit Systems Protection Board and to the appointee upon his or her request, the following documents:

- (a) Notice of the proposed action;
- (b) Appointee's written reply, if any;
- (c) Summary of the appointee's oral reply, if any;
- (d) Notice of decision; and
- (e) Any order effecting the action, together with any supporting material.

20 CFR PART 401—PRIVACY AND DISCLOSURE OF OFFICIAL RECORDS AND INFORMATION

Authority: Secs. 205, 702(a)(5), 1106, and 1141 of the Social Security Act ([42 U.S.C. 405](#), [902\(a\)\(5\)](#), [1306](#), and [1320b-11](#)); [5 U.S.C. 552](#) and [552a](#); [8 U.S.C. 1360](#); [26 U.S.C. 6103](#); [30 U.S.C. 923](#).

Source: [62 FR 4143](#), Jan. 29, 1997, unless otherwise noted.

Subpart A—General

§ 401.5 Purpose of the regulations.

(a) **General.** The purpose of this part is to describe the Social Security Administration (SSA) policies and procedures for implementing the requirements of the Privacy Act of 1974, [5 U.S.C. 552a](#) and section 1106 of the Social Security Act concerning disclosure of information about individuals, both with and without their consent. This part also complies with other applicable statutes.

(b) **Privacy.** This part implements the Privacy Act by establishing agency policies and procedures for the maintenance of records. This part also establishes agency policies and procedures under which you can ask us whether we maintain records about you or obtain access to your records. Additionally, this part establishes policies and procedures under which you may seek to have your record corrected or amended if you believe that your record is not accurate, timely, complete, or relevant.

(c) **Disclosure.** This part also sets out the general guidelines which we follow in deciding whether to make disclosures. However, we must examine the facts of each case separately to decide if we should disclose the information or keep it confidential.

§ 401.10 Applicability.

(a) **SSA.** All SSA employees and components are governed by this part. SSA employees governed by this part include all regular and special government employees of SSA; experts and consultants whose temporary (not in excess of 1 year) or intermittent services have been procured by SSA by contract pursuant to [5 U.S.C. 3109](#); volunteers where acceptance of their services are authorized by law; those individuals performing gratuitous services as permitted under conditions prescribed by the Office of Personnel Management; and, participants in work-study or training programs.

(b) **Other entities.** This part also applies to advisory committees and councils within the meaning of the Federal Advisory Committee Act which provide advice to: Any official or component of SSA; or the President and for which SSA has been delegated responsibility for providing services.

§ 401.15 Limitations on scope.

The regulations in this part do not—

(a) Make available to an individual records which are not retrieved by that individual's name or other personal identifier.

(b) Make available to the general public records which are retrieved by an individual's name or other personal identifier or make available to the general public records which would otherwise not be

available to the general public under the Freedom of Information Act, [5 U.S.C. 552](#), and [part 402 of this title](#).

(c) Govern the maintenance or disclosure of, notification about or access to, records in the possession of SSA which are subject to the regulations of another agency, such as personnel records which are part of a system of records administered by the Office of Personnel Management.

(d) Apply to grantees, including State and local governments or subdivisions thereof, administering federally funded programs.

(e) Make available records compiled by SSA in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable constitutional principles, rules of discovery, and applicable regulations of the agency.

§ 401.20 Scope.

(a) **Access.** Sections 401.30 through 401.95, which set out SSA's rules for implementing the Privacy Act, apply to records retrieved by an individual's name or personal identifier subject to the Privacy Act. The rules in [§§ 401.30](#) through [401.95](#) also apply to information developed by medical sources for the Social Security program and shall not be accessed except as permitted by this part.

(b) **Disclosure** —

(1) **Program records.** Regulations that apply to the disclosure of information about an individual contained in SSA's program records are set out in [§§ 401.100](#) through [401.200 of this part](#). These regulations also apply to the disclosure of other Federal program information which SSA maintains. That information includes:

(i) Health insurance records which SSA maintains for the Health Care Financing Administration's (HCFA) programs under title XVIII of the Social Security Act. We will disclose these records to HCFA. HCFA may redisclose these records under the regulations applying to records in HCFA's custody;

(ii) Black lung benefit records which SSA maintains for the administration of the Federal Coal Mine Health and Safety Act; (However, this information is not covered by section 1106 of the Social Security Act.) and

(iii) Information retained by medical sources pertaining to a consultative examination performed for the Social Security program shall not be disclosed except as permitted by this part.

(2) **Nonprogram records.** [Section 401.110](#) sets out rules applicable to the disclosure of nonprogram records, e.g., SSA's administrative and personnel records.

[[62 FR 4143](#), Jan. 29, 1997, as amended at [65 FR 16812](#), Mar. 30, 2000; [72 FR 20939](#), Apr. 27, 2007]

§ 401.25 Terms defined.

Access means making a record available to a subject individual.

Act means the Social Security Act.

Agency means the Social Security Administration.

Commissioner means the Commissioner of Social Security.

Disclosure means making a record about an individual available to or releasing it to another party.

FOIA means the Freedom of Information Act.

Individual when used in connection with the Privacy Act or for disclosure of nonprogram records, means a living person who is a citizen of the United States or an alien lawfully admitted for permanent residence. It does not include persons such as sole proprietorships, partnerships, or corporations. A business firm which is identified by the name of one or more persons is not an individual. When used in connection with the rules governing program information, *individual* means a living natural person; this does not include corporations, partnerships, and unincorporated business or professional groups of two or more persons.

Information means information about an individual, and includes, but is not limited to, vital statistics; race, sex, or other physical characteristics; earnings information; professional fees paid to an individual and other financial information; benefit data or other claims information; the social security number, employer identification number, or other individual identifier; address; phone number; medical information, including psychological or psychiatric information or lay information used in a medical determination; and information about marital and family relationships and other personal relationships.

Maintain means to establish, collect, use, or disseminate when used in connection with the term *record*; and, to have control over or responsibility for a system of records when used in connection with the term *system of records*.

Notification means communication to an individual whether he is a subject individual. (*Subject individual* is defined further on in this section.)

Program information means personal information and records collected and compiled by SSA in order to discharge its responsibilities under titles I, II, IV part A, X, XI, XIV, XVI and XVIII of the Act and parts B and C of the Federal Coal Mine Health and Safety Act.

Record means any item, collection, or grouping of information about an individual that is maintained by SSA including, but not limited to, information such as an individual's education, financial transactions, medical history, and criminal or employment history that contains the individual's name, or an identifying number, symbol, or any other means by which an individual can be identified. When used in this part, record means only a record which is in a system of records.

Routine use means the disclosure of a record outside SSA, without the consent of the subject individual, for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statutes other than the Freedom of Information Act, [5 U.S.C. 552](#). It does not include disclosures which the Privacy Act otherwise permits without the consent of the subject individual and without regard to whether they are compatible with the purpose for which the information is collected, such as disclosures to the Bureau of the Census, the General Accounting Office, or to Congress.

Social Security Administration (SSA) means

(1) that Federal agency which has administrative responsibilities under titles, I, II, X, XI, XIV, XVI, and XVIII of the Act; and

(2) units of State governments which make determinations under agreements made under sections 221 and 1633 of the Act.

Social Security program means any program or provision of law which SSA is responsible for administering, including the Freedom of Information Act and Privacy Act. This includes our responsibilities under parts B and C of the Federal Coal Mine Health and Safety Act.

Statistical record means a record maintained for statistical research or reporting purposes only and not maintained to make determinations about a particular subject individual.

Subject individual means the person to whom a record pertains.

System of records means a group of records under our control from which information about an individual is retrieved by the name of the individual or by an identifying number, symbol, or other identifying particular. Single records or groups of records which are not retrieved by a personal identifier are not part of a system of records. Papers maintained by individual Agency employees which are prepared, maintained, or discarded at the discretion of the employee and which are not subject to the Federal Records Act, [44 U.S.C. 2901](#), are not part of a system of records; provided, that such personal papers are not used by the employee or the Agency to determine any rights, benefits, or privileges of individuals.

We and *our* mean the Social Security Administration.

Subpart B—The Privacy Act

§ 401.30 Privacy Act and other responsibilities.

(a) **Policy.** Our policy is to protect the privacy of individuals to the fullest extent possible while nonetheless permitting the exchange of records required to fulfill our administrative and program responsibilities, and responsibilities for disclosing records which the general public is entitled to have under the Freedom of Information Act, [5 U.S.C. 552](#), and [20 CFR part 402](#).

(b) **Maintenance of records.** We will maintain no record unless:

(1) It is relevant and necessary to accomplish an SSA function which is required to be accomplished by statute or Executive Order;

(2) We obtain the information in the record, as much as it is practicable, from the subject individual if we may use the record to determine an individual's rights, benefits or privileges under Federal programs;

(3) We inform the individual providing the record to us of the authority for our asking him or her to provide the record (including whether providing the record is mandatory or voluntary, the principal purpose for maintaining the record, the routine uses for the record, and what effect his or her refusal to provide the record may have on him or her). Further, the individual agrees to provide the record, if the individual is not required by statute or Executive Order to do so.

(c) **First Amendment rights.** We will keep no record which describes how an individual exercises rights guaranteed by the First Amendment unless we are expressly authorized:

- (1) By statute,
- (2) By the subject individual, or
- (3) Unless pertinent to and within the scope of an authorized law enforcement activity.

(d) **Privacy Officer.** The Privacy Officer is an advisor to the Agency on all privacy policy and disclosure matters. The Privacy Officer coordinates the development and implementation of Agency privacy policies and related legal requirements to ensure Privacy Act compliance, and monitors the coordination, collection, maintenance, use and disclosure of personal information. The Privacy Officer also ensures the integration of privacy principles into information technology systems architecture and technical designs, and generally provides to Agency officials policy guidance and directives in carrying out the privacy and disclosure policy.

(e) **Senior Agency Official for Privacy.** The Senior Agency Official for Privacy assumes overall responsibility and accountability for ensuring the agency's implementation of information privacy protections as well as agency compliance with federal laws, regulations, and policies relating to the privacy of information, such as the Privacy Act. The compliance efforts also include reviewing information privacy procedures to ensure that they are comprehensive and up-to-date and, where additional or revised procedures may be called for, working with the relevant agency offices in the consideration, adoption, and implementation of such procedures. The official also ensures that agency employees and contractors receive appropriate training and education programs regarding the information privacy laws, regulations, policies and procedures governing the agency's handling of personal information. In addition to the compliance role, the official has a central policy-making role in the agency's development and evaluation of legislative, regulatory and other policy proposals which might implicate information privacy issues, including those relating to the collection, use, sharing, and disclosure of personal information.

(f) **Privacy Impact Assessment.** In our comprehensive Privacy Impact Assessment (PIA) review process, we incorporate the tenets of privacy law, SSA privacy regulations, and privacy policy directly into the development of certain Information Technology projects. Our review examines the risks and ramifications of collecting, maintaining and disseminating information in identifiable form in an electronic information system and identifies and evaluates protections and alternate processes to reduce the risk of unauthorized disclosures. As we accomplish the PIA review, we ask systems personnel and program personnel to resolve questions on data needs and data protection prior to the development of the electronic system.

[[62 FR 4143](#), Jan. 29, 1997, as amended at [72 FR 20939](#), Apr. 27, 2007]

§ 401.35 Your right to request records.

The Privacy Act gives you the right to direct access to most records about yourself that are in our systems of records. Exceptions to this Privacy Act right include—

- (a) Special procedures for access to certain medical records (see [5 U.S.C. 552a\(f\)\(3\)](#) and [§ 401.55](#));
- (b) Unavailability of certain criminal law enforcement records (see [5 U.S.C. 552a\(k\)](#), and [§ 401.85](#)); and

(c) Unavailability of records compiled in reasonable anticipation of a court action or formal administrative proceeding.

Note to [§ 401.35](#):

The Freedom of Information Act (see [20 CFR part 402](#)) allows you to request information from SSA whether or not it is in a system of records.

§ 401.40 How to get your own records.

(a) ***Your right to notification and access.*** Subject to the provisions governing medical records in [§ 401.55](#), you may ask for notification of or access to any record about yourself that is in an SSA system of records. If you are a minor, you may get information about yourself under the same rules as for an adult. Under the Privacy Act, if you are the parent or guardian of a minor, or the legal guardian of someone who has been declared legally incompetent, and you are acting on his or her behalf, you may ask for information about that individual. You may be accompanied by another individual of your choice when you request access to a record in person, *provided* that you affirmatively authorize the presence of such other individual during any discussion of a record to which you are requesting access.

(b) ***Identifying the records.*** At the time of your request, you must specify which systems of records you wish to have searched and the records to which you wish to have access. You may also request copies of all or any such records. Also, we may ask you to provide sufficient particulars to enable us to distinguish between records on individuals with the same name. The necessary particulars are set forth in the notices of systems of records which are published in the Federal Register.

(c) ***Requesting notification or access.*** To request notification of or access to a record, you may visit your local social security office or write to the manager of the SSA system of records. The name and address of the manager of the system is part of the notice of systems of records. Every local social security office keeps a copy of the Federal Register containing that notice. That office can also help you get access to your record. You do not need to use any special form to ask for a record about you in our files, but your request must give enough identifying information about the record you want to enable us to find your particular record. This identifying information should include the system of records in which the record is located and the name and social security number (or other identifier) under which the record is filed. We do not honor requests for all records, all information, or similar blanket requests. Before granting notification of or access to a record, we may, if you are making your request in person, require you to put your request in writing if you have not already done so.

§ 401.45 Verifying your identity.

(a) ***When required.*** Unless you are making a request for notification of or access to a record in person, and you are personally known to the SSA representative, you must verify your identity in accordance with [paragraph \(b\)](#) of this section if:

(1) You make a request for notification of a record and we determine that the mere notice of the existence of the record would be a clearly unwarranted invasion of privacy if disclosed to someone other than the subject individual; or,

(2) You make a request for access to a record which is not required to be disclosed to the general public under the Freedom of Information Act, [5 U.S.C. 552](#), and [part 402 of this chapter](#).

(b) **Manner of verifying identity** —

(1) **Request in person.** If you make a request to us in person, you must provide at least one piece of tangible identification such as a driver's license, passport, alien or voter registration card, or union card to verify your identity. If you do not have identification papers to verify your identity, you must certify in writing that you are the individual who you claim to be and that you understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense.

(2) **Request by telephone.** If you make a request by telephone, you must verify your identity by providing identifying particulars which parallel the record to which notification or access is being sought. If we determine that the particulars provided by telephone are insufficient, you will be required to submit your request in writing or in person. We will not accept telephone requests where an individual is requesting notification of or access to sensitive records such as medical records.

(3) **Electronic requests.** If you make a request by computer or other electronic means, e.g., over the Internet, we require you to verify your identity by using identity confirmation procedures that are commensurate with the sensitivity of the information that you are requesting. If we cannot confirm your identity using our identity confirmation procedures, we will not process the electronic request. When you cannot verify your identity through our procedures, we will require you to submit your request in writing.

(4) **Electronic disclosures.** When we collect or provide personally identifiable information over open networks such as the Internet, we use encryption in all of our automated online transaction systems to protect the confidentiality of the information. When we provide an online access option, such as a standard e-mail comment form on our Web site, and encryption is not being used, we alert you that personally identifiable information (such as your social security number) should not be included in your message.

(5) **Requests not made in person.** Except as provided in [paragraphs \(b\)\(2\)](#) of this section, if you do not make a request in person, you must submit a written request to SSA to verify your identity or you must certify in your request that you are the individual you claim to be. You must also sign a statement that you understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense.

(6) **Requests on behalf of another.** If you make a request on behalf of a minor or legal incompetent as authorized under [§ 401.40](#), you must verify your relationship to the minor or legal incompetent, in addition to verifying your own identity, by providing a copy of the minor's birth certificate, a court order, or other competent evidence of guardianship to SSA; except that you are not required to verify your relationship to the minor or legal incompetent when you are not required to verify your own identity or when evidence of your relationship to the minor or legal incompetent has been previously given to SSA.

(7) **Medical records—additional verification.** You need to further verify your identity if you are requesting notification of or access to sensitive records such as medical records. Any information for further verification must parallel the information in the record to which notification or access is being sought. Such further verification may include such particulars as the date or place of birth, names of parents, name of employer or the specific times the individual received medical treatment.

[[62 FR 4143](#), Jan. 29, 1997, as amended at [72 FR 20939](#), Apr. 27, 2007]

§ 401.50 Granting notification of or access to a record.

(a) **General.** Subject to the provisions governing medical records in [§ 401.55](#) and the provisions governing exempt systems in [§ 401.85](#), upon receipt of your request for notification of or access to a record and verification of your identity, we will review your request and grant notification or access to a record, if you are the subject of the record.

(b) **Our delay in responding.** If we determine that we will have to delay responding to your request because of the number of requests we are processing, a breakdown of equipment, shortage of personnel, storage of records in other locations, etc., we will so inform you and tell you when notification or access will be granted.

§ 401.55 Access to medical records.

(a) **General.** You have a right to access your medical records, including any psychological information that we maintain.

(b) **Medical records procedures —**

(1) **Notification of or access to medical records.**

(i) You may request notification of or access to a medical record pertaining to you. Unless you are a parent or guardian requesting notification of or access to a minor's medical record, you must make a request for a medical record in accordance with this section and the procedures in [§§ 401.45 through 401.50 of this part](#).

(ii) When you request medical information about yourself, you must also name a representative in writing. The representative may be a physician, other health professional, or other responsible individual who will be willing to review the record and inform you of its contents. Following the discussion, you are entitled to your records. The representative does not have the discretion to withhold any part of your record. If you do not designate a representative, we may decline to release the requested information. In some cases, it may be possible to release medical information directly to you rather than to your representative.

(2) **Utilization of the designated representative.** You will be granted direct access to your medical record if we can determine that direct access is not likely to have an adverse effect on you. If we believe that we are not qualified to determine, or if we do determine, that direct access to you is likely to have an adverse effect, the record will be sent to the designated representative. We will inform you in writing that the record has been sent.

(c) **Medical records of minors —**

(1) **Request by the minor.** You may request access to your own medical records in accordance with [paragraph \(b\)](#) of this section.

(2) **Requests on a minor's behalf; notification of or access to medical records to an individual on a minor's behalf.**

(i) To protect the privacy of a minor, we will not give to a parent or guardian direct notification of or access to a minor's record, even though the parent or guardian who requests such notification or access is authorized to act on a minor's behalf as provided in [§ 401.75 of this part](#).

(ii) A parent or guardian must make all requests for notification of or access to a minor's medical record in accordance with this paragraph and the procedures in [§§ 401.45](#) through [401.50 of this part](#). A parent or guardian must at the time he or she makes a request designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. If the parent or guardian will not designate a representative, we will decline to release the requested information.

(iii) Where a medical record on the minor exists, we will in all cases send it to the physician or health professional designated by the parent or guardian. The representative will review the record, discuss its contents with the parent or legal guardian, then release the entire record to the parent or legal guardian. The representative does not have the discretion to withhold any part of the minor's record. We will respond in the following similar manner to the parent or guardian making the request: "We have completed processing your request for notification of or access to _____'s (Name of minor) medical records. Please be informed that if any medical record was found pertaining to that individual, it has been sent to your designated physician or health professional."

(iv) In each case where we send a minor's medical record to a physician or health professional, we will make reasonable efforts to inform the minor that we have given the record to the representative.

(3) ***Requests on behalf of an incapacitated adult.*** If you are the legal guardian of an adult who has been declared legally incompetent, you may receive his or her records directly.

[[62 FR 4143](#), Jan. 29, 1997, as amended at [72 FR 20939](#), Apr. 27, 2007]

§ 401.60 Access to or notification of program records about more than one individual.

When information about more than one individual is in one record filed under your social security number, you may receive the information about you and the fact of entitlement and the amount of benefits payable to other persons based on your record. You may receive information about yourself or others, which is filed under someone else's social security number, if that information affects your entitlement to social security benefits or the amount of those benefits.

[[62 FR 4143](#), Jan. 29, 1997, as amended at [72 FR 20940](#), Apr. 27, 2007]

§ 401.65 How to correct your record.

(a) ***How to request a correction.*** This section applies to all records kept by SSA (as described in [§ 401.5](#)) except for records of earnings. ([20 CFR 422.125](#) describes how to request correction of your earnings record.) You may request that your record be corrected or amended if you believe that the record is not accurate, timely, complete, relevant, or necessary to the administration of a social security program. To amend or correct your record, you should write to the manager identified in the notice of systems of records which is published in the Federal Register (see [§ 401.40\(c\)](#) on how to locate this information). The staff at any social security office can help you prepare the request. You should submit any available evidence to support your request. Your request should indicate—

(1) The system of records from which the record is retrieved;

- (2) The particular record which you want to correct or amend;
- (3) Whether you want to add, delete or substitute information in the record; and
- (4) Your reasons for believing that your record should be corrected or amended.

(b) **What we will not change.** You cannot use the correction process to alter, delete, or amend information which is part of a determination of fact or which is evidence received in the record of a claim in the administrative appeal process. Disagreements with these determinations are to be resolved through the SSA appeal process. (See subparts I and J of part 404, and subpart N of part 416, of this chapter.) For example, you cannot use the correction process to alter or delete a document showing a birth date used in deciding your social security claim. However, you may submit a statement on why you think certain information should be altered, deleted, or amended, and we will make this statement part of your file.

(c) **Acknowledgment of correction request.** We will acknowledge receipt of a correction request within 10 working days, unless we can review and process the request and give an initial determination of denial or compliance before that time.

(d) **Notice of error.** If the record is wrong, we will correct it promptly. If wrong information was disclosed from the record, we will tell all those of whom we are aware received that information that it was wrong and will give them the correct information. This will not be necessary if the change is not due to an error, e.g., a change of name or address.

(e) **Record found to be correct.** If the record is correct, we will inform you in writing of the reason why we refuse to amend your record and we will also inform you of your right to seek a review of the refusal and the name and address of the official to whom you should send your request for review.

(f) **Record of another government agency.** If you request us to correct or amend a record governed by the regulation of another government agency, e.g., Office of Personnel Management, Federal Bureau of Investigation, we will forward your request to such government agency for processing and we will inform you in writing of the referral.

§ 401.70 Appeals of refusals to correct records or refusals to allow access to records.

(a) **General.** This section describes how to appeal decisions we make under the Privacy Act concerning your request for correction of or access to your records, those of your minor child, or those of a person for whom you are the legal guardian. This section describes how to appeal decisions made by SSA under the Privacy Act concerning your request for correction of or access to your records, those of your minor child, or those of a person for whom you are the legal guardian. We generally handle a denial of your request for information about another person under the provisions of the Freedom of Information Act (see [part 402 of this chapter](#)). To appeal a decision under this section, your request must be in writing.

(b) **Appeal of refusal to correct or amend records.** If we deny your request to correct an SSA record, you may request a review of that decision. As discussed in [§ 401.65\(e\)](#), our letter denying your request will tell you to whom to write.

(1) We will review your request within 30 working days from the date of the receipt. However, for a good reason and with the approval of the Executive Director for the Office of Privacy and Disclosure, we may

extend this time limit up to an additional 30 days. In that case, we will notify you about the delay, the reason for it and the date when the review is expected to be completed.

(2) If, after review, we determine that the record should be corrected, we will do so. However, if we refuse to amend the record as you requested, we will inform you that—

- (i) Your request has been refused and the reason for the refusal;
- (ii) The refusal is our final decision; and
- (iii) You have a right to seek court review of our final decision.

(3) We will also inform you that you have a right to file a statement of disagreement with the decision. Your statement should include the reason you disagree. We will make your statement available to anyone to whom the record is subsequently disclosed, together with a statement of our reasons for refusing to amend the record. Also, we will provide a copy of your statement to individuals whom we are aware received the record previously.

(c) ***Appeals after denial of access.*** If, under the Privacy Act, we deny your request for access to your own record, those of your minor child or those of a person to whom you are the legal guardian, we will advise you in writing of the reason for that denial, the name and title or position of the person responsible for the decision and your right to appeal that decision. You may appeal the denial decision to the Office of the General Counsel, Office of Privacy and Disclosure, Social Security Administration, Attn: Executive Director, 6401 Security Boulevard, Baltimore, MD 21235, within 30 days after you receive notice denying all or part of your request, or, if later, within 30 days after you receive materials sent to you in partial compliance with your request.

(d) ***Filing your appeal.*** If you file an appeal, the Executive Director or his or her designee will review your request and any supporting information submitted and then send you a notice explaining the decision on your appeal. The time limit for making our decision after we receive your appeal is 30 working days. The Executive Director or his or her designee may extend this time limit up to 30 additional working days if one of the circumstances in [20 CFR 402.140](#) is met. We will notify you in writing of any extension, the reason for the extension and the date by which we will decide your appeal. The notice of the decision on your appeal will explain your right to have the matter reviewed in a Federal district court if you disagree with all or part of our decision.

[[72 FR 20940](#), Apr. 27, 2007, as amended at [88 FR 1329](#), Jan. 10, 2023]

§ 401.75 Rights of parents or legal guardians.

For purposes of this part, a parent or guardian of any minor or the legal guardian of any individual who has been declared incompetent due to physical or mental incapacity or age by a court of competent jurisdiction is authorized to act on behalf of a minor or incompetent individual. Except as provided in [§ 401.45](#), governing procedures for verifying an individual's identity, and [§ 401.55\(c\)](#) governing special procedures for notification of or access to a minor's medical records, if you are authorized to act on behalf of a minor or legal incompetent, you will be viewed as if you were the individual or subject individual.

§ 401.80 Accounting for disclosures.

(a) We will maintain an accounting of all disclosures of a record for five years or for the life of the record, whichever is longer; *except that*, we will not make accounting for:

(1) Disclosures under [paragraphs \(a\) and \(b\) of § 401.110](#); and,

(2) Disclosures of your record made with your written consent.

(b) The accounting will include:

(1) The date, nature, and purpose of each disclosure; and

(2) The name and address of the person or entity to whom the disclosure is made.

(c) You may request access to an accounting of disclosures of your record. You must request access to an accounting in accordance with the procedures in [§ 401.40](#). You will be granted access to an accounting of the disclosures of your record in accordance with the procedures of this part which govern access to the related record. We may, at our discretion, grant access to an accounting of a disclosure of a record made under [paragraph \(g\) of § 401.110](#).

§ 401.85 Exempt systems.

(a) **General policy.** The Privacy Act permits certain types of specific systems of records to be exempt from some of its requirements. Our policy is to exercise authority to exempt systems of records only in compelling cases.

(b) **Specific systems of records exempted.**

(1) Those systems of records listed in [paragraph \(b\)\(2\)](#) of this section are exempt from the following provisions of the Act and this part:

(i) [5 U.S.C. 552a\(c\)\(3\)](#) and [paragraph \(c\) of § 401.80 of this part](#) which require that you be granted access to an accounting of disclosures of your record.

(ii) [5 U.S.C. 552a](#) (d) (1) through (4) and (f) and [§§ 401.35](#) through [401.75](#) relating to notification of or access to records and correction or amendment of records.

(iii) [5 U.S.C. 552a\(e\)\(4\)](#) (G) and (H) which require that we include information about SSA procedures for notification, access, and correction or amendment of records in the notice for the systems of records.

(iv) [5 U.S.C. 552a\(e\)\(3\)](#) and [§ 401.30](#) which require that if we ask you to provide a record to us, we must inform you of the authority for our asking you to provide the record (including whether providing the record is mandatory or voluntary, the principal purposes for maintaining the record, the routine uses for the record, and what effect your refusal to provide the record may have on you), and if you are not required by statute or Executive Order to provide the record, that you agree to provide the record. This exemption applies only to an investigatory record compiled by SSA for criminal law enforcement purposes in a system of records exempt under subsection (j)(2) of the Privacy Act to the extent that these requirements would prejudice the conduct of the investigation.

(2) The following systems of records are exempt from those provisions of the Privacy Act and this part listed in [paragraph \(b\)\(1\)](#) of this section:

(i) Pursuant to subsection (j)(2) of the Privacy Act, the Investigatory Material Compiled for Law Enforcement Purposes System, SSA.

(ii) Pursuant to subsection (k)(2) of the Privacy Act:

(A) The General Criminal Investigation Files, SSA;

(B) The Criminal Investigations File, SSA; and,

(C) The Program Integrity Case Files, SSA.

(D) Civil and Administrative Investigative Files of the Inspector General, SSA/OIG.

(E) Complaint Files and Log. SSA/OGC.

(F) Anti-Harassment & Hostile Work Environment Case Tracking and Records System, SSA.

(G) Social Security Administration Violence Evaluation and Reporting System, SSA.

(H) Anti-Fraud System, SSA.

(iii) Pursuant to subsection (k)(5) of the Privacy Act:

(A) Security and Suitability Files.

(B) [Reserved]

(iv) Pursuant to subsection (k)(6) of the Privacy Act, the Personnel Research and Merit Promotion Test Records, SSA/DCHR/OPE.

(c) *Notification of or access to records in exempt systems of records.*

(1) Where a system of records is exempt as provided in [paragraph \(b\)](#) of this section, you may nonetheless request notification of or access to a record in that system. You should make requests for notification of or access to a record in an exempt system of records in accordance with the procedures of [§§ 401.35](#) through [401.55](#).

(2) We will grant you notification of or access to a record in an exempt system but only to the extent such notification or access would not reveal the identity of a source who furnished the record to us under an express promise, and prior to September 27, 1975, an implied promise, that his or her identity would be held in confidence, if:

(i) The record is in a system of records which is exempt under subsection (k)(2) of the Privacy Act and you have been, as a result of the maintenance of the record, denied a right, privilege, or benefit to which you would otherwise be eligible; or,

(ii) The record is in a system of records which is exempt under subsection (k)(5) of the Privacy Act.

(3) If we do not grant you notification of or access to a record in a system of records exempt under subsections (k) (2) and (5) of the Privacy Act in accordance with this paragraph, we will inform you that the identity of a confidential source would be revealed if we granted you notification of or access to the record.

(d) **Discretionary actions by SSA.** Unless disclosure of a record to the general public is otherwise prohibited by law, we may at our discretion grant notification of or access to a record in a system of records which is exempt under [paragraph \(b\)](#) of this section. Discretionary notification of or access to a record in accordance with this paragraph will not be a precedent for discretionary notification of or access to a similar or related record and will not obligate us to exercise discretion to grant notification of or access to any other record in a system of records which is exempt under [paragraph \(b\)](#) of this section.

[[62 FR 4143](#), Jan. 29, 1997, as amended at [82 FR 16510](#), Apr. 5, 2017; [83 FR 63416](#), Dec. 10, 2018; [84 FR 45901](#), Sept. 3, 2019; [87 FR 25141](#), Apr. 28, 2022]

§ 401.90 Contractors.

(a) All contracts which require a contractor to maintain, or on behalf of SSA to maintain, a system of records to accomplish an SSA function must contain a provision requiring the contractor to comply with the Privacy Act and this part.

(b) A contractor and any employee of such contractor will be considered employees of SSA only for the purposes of the criminal penalties of the Privacy Act, [5 U.S.C. 552a\(i\)](#), and the employee standards of conduct (see [appendix A of this part](#)) where the contract contains a provision requiring the contractor to comply with the Privacy Act and this part.

(c) This section does not apply to systems of records maintained by a contractor as a result of his management discretion, e.g., the contractor's personnel records.

§ 401.95 Fees.

(a) **Policy.** Where applicable, we will charge fees for copying records in accordance with the schedule set forth in this section. We may only charge fees where you request that a copy be made of the record to which you are granted access. We will not charge a fee for searching a system of records, whether the search is manual, mechanical, or electronic. Where we must copy the record in order to provide access to the record (e.g., computer printout where no screen reading is available), we will provide the copy to you without cost. Where we make a medical record available to a representative designated by you or to a physician or health professional designated by a parent or guardian under [§ 401.55 of this part](#), we will not charge a fee.

(b) **Fee schedule.** Our Privacy Act fee schedule is as follows:

- (1) Copying of records susceptible to photocopying—\$.10 per page.
- (2) Copying records not susceptible to photocopying (e.g., punch cards or magnetic tapes)—at actual cost to be determined on a case-by-case basis.
- (3) We will not charge if the total amount of copying does not exceed \$25.

(c) **Other fees.** We also follow [§§ 402.155](#) through [402.165 of this chapter](#) to determine the amount of fees, if any, we will charge for providing information under the FOIA and Privacy Act.

Subpart C—Disclosure of Official Records and Information

§ 401.100 Disclosure of records with the written consent of the subject of the record.

(a) **General.** Except as permitted by the Privacy Act and the regulations in this part, or when required by the FOIA, we will not disclose your records without your written consent.

(b) **Disclosure with written consent.** The written consent must clearly specify to whom the information may be disclosed, the information you want us to disclose (e.g., social security number, date and place of birth, monthly Social Security benefit amount, date of entitlement), and, where applicable, during which timeframe the information may be disclosed (e.g., during the school year, while the subject individual is out of the country, whenever the subject individual is receiving specific services).

(c) **Disclosure of the entire record.** We will not disclose your entire record. For example, we will not honor a blanket consent for all information in a system of records or any other record consisting of a variety of data elements. We will disclose only the information you specify in the consent. We will verify your identity and where applicable (e.g., where you consent to disclosure of a record to a specific individual), the identity of the individual to whom the record is to be disclosed.

(d) A parent or guardian of a minor is not authorized to give written consent to a disclosure of a minor's medical record. See [§ 401.55\(c\)\(2\)](#) for the procedures for disclosure of or access to medical records of minors.

[[72 FR 20940](#), Apr. 27, 2007]

§ 401.105 Disclosure of personal information without the consent of the subject of the record.

(a) SSA maintains two categories of records which contain personal information:

(1) Nonprogram records, primarily administrative and personnel records which contain information about SSA's activities as a government agency and employer, and

(2) Program records which contain information about SSA's clients that it keeps to administer benefit programs under Federal law.

(b) We apply different levels of confidentiality to disclosures of information in the categories in [paragraphs \(a\) \(1\)](#) and [\(2\)](#) of this section. For administrative and personnel records, the Privacy Act applies. To the extent that SSA has physical custody of personnel records maintained as part of the Office of Personnel Management's (OPM) Privacy Act government-wide systems of records, these records are subject to OPM's rules on access and disclosure at [5 CFR parts 293](#) and [297](#). For program records, we apply somewhat more strict confidentiality standards than those found in the Privacy Act. The reason for this difference in treatment is that our program records include information about a much greater number of persons than our administrative records, the information we must collect for program purposes is often very sensitive, and claimants are required by statute and regulation to provide us with the information in order to establish entitlement for benefits.

[[62 FR 4143](#), Jan. 29, 1997, as amended at [72 FR 20940](#), Apr. 27, 2007]

§ 401.110 Disclosure of personal information in nonprogram records without the consent of the subject of the record.

The disclosures listed in this section may be made from our nonprogram records, e.g., administrative and personnel records, without your consent. Such disclosures are those:

- (a) To officers and employees of SSA who have a need for the record in the performance of their duties. The SSA official who is responsible for the record may upon request of any officer or employee, or on his own initiative, determine what constitutes legitimate need.
- (b) Required to be disclosed under the Freedom of Information Act, [5 U.S.C. 552](#), and [20 CFR part 402](#).
- (c) For a routine use as defined in [§ 401.25 of this part](#). Routine uses will be listed in any notice of a system of records. SSA publishes notices of systems of records, including all pertinent routine uses, in the Federal Register.
- (d) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13 U.S.C.
- (e) To a recipient who has provided us with advance written assurance that the record will be used solely as a statistical research or reporting record; *Provided*, that, the record is transferred in a form that does not identify the subject individual.
- (f) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value.
- (g) To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of such government agency or instrumentality has submitted a written request to us, specifying the record desired and the law enforcement activity for which the record is sought.
- (h) To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last known address of the subject individual.
- (i) To either House of Congress, or to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee.
- (j) To the Comptroller General, or any of his authorized representatives, in the course of the performance of duties of the Government Accountability Office.
- (k) Pursuant to the order of a court of competent jurisdiction.

[[62 FR 4143](#), Jan. 29, 1997, as amended at [72 FR 20940](#), Apr. 27, 2007]

§ 401.115 Disclosure of personal information in program records without the consent of the subject of the record.

This section describes how various laws control the disclosure of personal information that we keep. We disclose information in the program records only when a legitimate need exists. For example, we disclose information to officers and employees of SSA who have a need for the record in the performance of their duties. We also must consider the laws identified below in the respective order when we disclose program information:

(a) Some laws require us to disclose information ([§ 401.120](#)); some laws require us to withhold information ([§ 401.125](#)). These laws control whenever they apply.

(b) If no law of this type applies in a given case, then we must look to FOIA principles. See [§ 401.130](#).

(c) When FOIA principles do not require disclosure, we may disclose information if both the Privacy Act and section 1106 of the Social Security Act permit the disclosure.

[[62 FR 4143](#), Jan. 29, 1997, as amended at [72 FR 20940](#), Apr. 27, 2007]

§ 401.120 Disclosures required by law.

We disclose information when a law specifically requires it. The Social Security Act requires us to disclose information for certain program purposes. These include disclosures to the SSA Office of Inspector General, the Federal Parent Locator Service, and to States pursuant to an arrangement regarding use of the Blood Donor Locator Service. Also, there are other laws which require that we furnish other agencies information which they need for their programs. These agencies include the Department of Veterans Affairs for its benefit programs, U.S. Citizenship and Immigration Services to carry out its duties regarding aliens, the Railroad Retirement Board for its benefit programs, and to Federal, State and local agencies administering Temporary Assistance for Needy Families, Medicaid, unemployment compensation, food stamps, and other programs.

[[62 FR 4143](#), Jan. 29, 1997, as amended at [72 FR 20941](#), Apr. 27, 2007]

§ 401.125 Disclosures prohibited by law.

We do not disclose information when a law specifically prohibits it. The Internal Revenue Code generally prohibits us from disclosing tax return information which we receive to maintain individual earnings records. This includes, for example, amounts of wages and contributions from employers. Other laws restrict our disclosure of certain information about drug and alcohol abuse which we collect to determine eligibility for social security benefits.

§ 401.130 Freedom of Information Act.

The FOIA requires us to disclose any information in our records upon request from the public, unless one of several exemptions in the FOIA applies. When the FOIA requires disclosure (see [part 402 of this chapter](#)), the Privacy Act permits it. *The public* does not include Federal agencies, courts, or the Congress, but does include State agencies, individuals, corporations, and most other parties. The FOIA does not apply to requests that are not from *the public* (e.g., from a Federal agency). However, we apply FOIA principles to requests from these other sources for disclosure of program information.

§ 401.135 Other laws.

When the FOIA does not apply, we may not disclose any personal information unless both the Privacy Act and section 1106 of the Social Security Act permit the disclosure. Section 1106 of the Social Security Act requires that disclosures which may be made must be set out in statute or regulations; therefore, any disclosure permitted by this part is permitted by section 1106.

§ 401.140 General principles.

When no law specifically requiring or prohibiting disclosure applies to a question of whether to disclose information, we follow FOIA principles to resolve that question. We do this to insure uniform treatment in all situations. The FOIA principle which most often applies to SSA disclosure questions is whether the disclosure would result in a “clearly unwarranted invasion of personal privacy.” To decide whether a disclosure would be a clearly unwarranted invasion of personal privacy we consider—

- (a) The sensitivity of the information (e.g., whether individuals would suffer harm or embarrassment as a result of the disclosure);
- (b) The public interest in the disclosure;
- (c) The rights and expectations of individuals to have their personal information kept confidential;
- (d) The public's interest in maintaining general standards of confidentiality of personal information; and
- (e) The existence of safeguards against unauthorized redisclosure or use.

§ 401.145 Safeguards against unauthorized redisclosure or use.

(a) The FOIA does not authorize us to impose any restrictions on how information is used after we disclose it under that law. In applying FOIA principles, we consider whether the information will be adequately safeguarded against improper use or redisclosure. We must consider all the ways in which the recipient might use the information and how likely the recipient is to redisclose the information to other parties. Thus, before we disclose personal information we may consider such factors as—

- (1) Whether only those individuals who have a need to know the information will obtain it;
 - (2) Whether appropriate measures to safeguard the information to avoid unwarranted use or misuse will be taken; and
 - (3) Whether we would be permitted to conduct on-site inspections to see whether the safeguards are being met.
- (b) We feel that there is a strong public interest in sharing information with other agencies with programs having the same or similar purposes, so we generally share information with those agencies. However, since there is usually little or no public interest in disclosing information for disputes between two private parties or for other private or commercial purposes, we generally do not share information for these purposes.

§ 401.150 Compatible purposes.

(a) **General.** The Privacy Act allows us to disclose information maintained in a system of records without your consent to any other party if such disclosure is pursuant to a routine use published in the system's notice of system of records. A “Routine use” must be compatible with the purpose for which SSA collected the information.

(b) **Notice of routine use disclosures.** A list of permissible routine use disclosures is included in every system of records notice published in the Federal Register.

(c) **Determining compatibility —**

(1) ***Disclosure to carry out SSA programs.*** We disclose information for published routine uses necessary to carry out SSA's programs.

(2) ***Disclosure to carry out programs similar to SSA programs.*** We may disclose information for the administration of other government programs. These disclosures are pursuant to published routine uses where the use is compatible with the purpose for which the information was collected. These programs generally meet the following conditions:

(i) The program is clearly identifiable as a Federal, State, or local government program.

(ii) The information requested concerns eligibility, benefit amounts, or other matters of benefit status in a Social Security program and is relevant to determining the same matters in the other program. For example, we disclose information to the Railroad Retirement Board for pension and unemployment compensation programs, to the Department of Veterans Affairs for its benefit programs, to worker's compensation programs, to State general assistance programs and to other income maintenance programs at all levels of government. We also disclose for health maintenance programs like Medicaid and Medicare.

(iii) The information will be used for appropriate epidemiological or similar research purposes.

[[72 FR 20941](#), Apr. 27, 2007]

§ 401.155 Law enforcement purposes.

(a) ***General.*** The Privacy Act allows us to disclose information for law enforcement purposes under certain conditions. Much of the information in our files is especially sensitive or very personal. Furthermore, participation in social security programs is mandatory, so people cannot limit what information is given to us. Therefore, we generally disclose information for law enforcement purposes only in limited situations. The Privacy Act allows us to disclose information if the head of the law enforcement agency makes a written request giving enough information to show that the conditions in [paragraphs \(b\) or \(c\)](#) of this section are met, what information is needed, and why it is needed. [Paragraphs \(b\) and \(c\)](#) of this section discuss the disclosures we generally make for these purposes.

(b) ***Serious crimes.*** SSA may disclose information for criminal law enforcement purposes where a violent crime such as murder or kidnapping has been committed and the individual about whom the information is being sought has been indicted or convicted of that crime.

(c) ***Criminal activity involving the social security program or another program with the same purposes.*** We disclose information when necessary to investigate or prosecute fraud or other criminal activity involving the social security program. We may also disclose information for investigation or prosecution of criminal activity in other income-maintenance or health-maintenance programs (e.g., other governmental pension programs, unemployment compensation, general assistance, Medicare or Medicaid) if the information concerns eligibility, benefit amounts, or other matters of benefit status in a social security program and is relevant to determining the same matters in the other program.

[[62 FR 4143](#), Jan. 29, 1997, as amended at [72 FR 20941](#), Apr. 27, 2007]

§ 401.160 Health or safety.

The Privacy Act allows us to disclose information in compelling circumstances where an individual's health or safety is affected. For example, if we learn that someone has been exposed to an excessive amount of radiation, we may notify that person and appropriate health officials. If we learn that someone has made a threat against someone else, we may notify that other person and law enforcement officials. When we make these disclosures, the Privacy Act requires us to send a notice of the disclosure to the last known address of the person whose record was disclosed.

§ 401.165 Statistical and research activities.

(a) **General.** Statistical and research activities often do not require information in a format that identifies specific individuals. Therefore, whenever possible, we release information for statistical or research purposes only in the form of aggregates or individual data that cannot be associated with a particular individual. The Privacy Act allows us to release records if there are safeguards that the record will be used solely as a statistical or research record and the individual cannot be identified from any information in the record.

(b) **Safeguards for disclosure with identifiers.** The Privacy Act also allows us to disclose data for statistical and research purposes in a form allowing individual identification, pursuant to published routine use, when the purpose is compatible with the purpose for which the record was collected. We will disclose personally identifiable information for statistical and research purposes if—

- (1) We determine that the requestor needs the information in an identifiable form for a statistical or research activity, will use the information only for that purpose, and will protect individuals from unreasonable and unwanted contacts;
- (2) The activity is designed to increase knowledge about present or alternative Social Security programs or other Federal or State income-maintenance or health-maintenance programs; or is used for research that is of importance to the Social Security program or the Social Security beneficiaries; or an epidemiological research project that relates to the Social Security program or beneficiaries; and
- (3) The recipient will keep the information as a system of statistical records, will follow appropriate safeguards, and agrees to our on-site inspection of those safeguards so we can be sure the information is used or redisclosed only for statistical or research purposes. No redisclosure of the information may be made without SSA's approval.

(c) **Statistical record.** A statistical record is a record in a system of records which is maintained only for statistical and research purposes, and which is not used to make any determination about an individual. We maintain and use statistical records only for statistical and research purposes. We may disclose a statistical record if the conditions in [paragraph \(b\)](#) of this section are met.

(d) **Compiling of records.** Where a request for information for statistical and research purposes would require us to compile records, and doing that would be administratively burdensome to ongoing SSA operations, we may decline to furnish the information.

[[62 FR 4143](#), Jan. 29, 1997, as amended at [72 FR 20941](#), Apr. 27, 2007]

§ 401.170 Congress.

(a) We disclose information to either House of Congress. We also disclose information to any committee or subcommittee of either House, or to any joint committee of Congress or subcommittee of that committee, if the information is on a matter within the committee's or subcommittee's jurisdiction.

(b) We disclose to any member of Congress the information needed to respond to constituents' requests for information about themselves (including requests from parents of minors, or legal guardians). However, these disclosures are subject to the restrictions in [§§ 401.35](#) through [401.60](#).

§ 401.175 Government Accountability Office.

We disclose information to the Government Accountability Office when that agency needs the information to carry out its duties.

[[72 FR 20941](#), Apr. 27, 2007]

§ 401.180 Disclosure under court order or other legal process.

(a) **General.** The Privacy Act permits us to disclose information when we are ordered to do so by a court of competent jurisdiction. When information is used in a court proceeding, it usually becomes part of the public record of the proceeding and its confidentiality often cannot be protected in that record. Much of the information that we collect and maintain in our records on individuals is especially sensitive. Therefore, we follow the rules in [paragraph \(d\)](#) of this section in deciding whether we may disclose information in response to an order from a court of competent jurisdiction. When we disclose pursuant to an order from a court of competent jurisdiction, and the order is a matter of public record, the Privacy Act requires us to send a notice of the disclosure to the last known address of the person whose record was disclosed.

(b) **Court.** For purposes of this section, a court is an institution of the judicial branch of the U.S. Federal government consisting of one or more judges who seek to adjudicate disputes and administer justice. (See 404.2(c)(6) of this chapter). Entities not in the judicial branch of the Federal government are not courts for purposes of this section.

(c) **Court order.** For purposes of this section, a court order is any legal process which satisfies all of the following conditions:

- (1) It is issued under the authority of a Federal court;
- (2) A judge or a magistrate judge of that court signs it;
- (3) It commands SSA to disclose information; and
- (4) The court is a court of competent jurisdiction.

(d) **Court of competent jurisdiction.** It is the view of SSA that under the Privacy Act the Federal Government has not waived sovereign immunity, which precludes state court jurisdiction over a Federal agency or official. Therefore, SSA will not honor state court orders as a basis for disclosure. State court orders will be treated in accordance with the other provisions of this part.

(e) **Conditions for disclosure under a court order of competent jurisdiction.** We disclose information in compliance with an order of a court of competent jurisdiction if—

- (1) another section of this part specifically allows such disclosure, or
- (2) SSA, the Commissioner of Social Security, or any officer or employee of SSA in his or her official capacity is properly a party in the proceeding, or
- (3) disclosure of the information is necessary to ensure that an individual who is accused of criminal activity receives due process of law in a criminal proceeding under the jurisdiction of the judicial branch of the Federal government.

(f) ***In other circumstances.*** We may disclose information to a court of competent jurisdiction in circumstances other than those stated in [paragraph \(e\)](#) of this section. We will make our decision regarding disclosure by balancing the needs of a court while preserving the confidentiality of information. For example, we may disclose information under a court order that restricts the use and redisclosure of the information by the participants in the proceeding; we may offer the information for inspection by the court *in camera* and under seal; or we may arrange for the court to exclude information identifying individuals from that portion of the record of the proceedings that is available to the public. We will make these determinations in accordance with [§ 401.140](#).

(g) ***Other regulations on request for testimony, subpoenas and production of records in legal proceedings.*** See [20 CFR part 403](#) of this chapter for additional rules covering disclosure of information and records governed by this part and requested in connection with legal proceedings.

[[72 FR 20941](#), Apr. 27, 2007]

§ 401.185 Other specific recipients.

In addition to disclosures we make under the routine use provision, we also release information to—

- (a) The Bureau of the Census for purposes of planning or carrying out a census, survey, or related activity; and
- (b) The National Archives of the United States if the record has sufficient historical or other value to warrant its continued preservation by the United States Government. We also disclose a record to the Administrator of General Services for a determination of whether the record has such a value.

§ 401.190 Deceased persons.

We do not consider the disclosure of information about a deceased person to be a clearly unwarranted invasion of that person's privacy. However, in disclosing information about a deceased person, we follow the principles in [§ 401.115](#) to insure that the privacy rights of a living person are not violated.

§ 401.195 Situations not specified in this part.

If no other provision in this part specifically allows SSA to disclose information, the Commissioner or designee may disclose this information if not prohibited by Federal law. For example, the Commissioner or designee may disclose information necessary to respond to life threatening situations.

§ 401.200 Blood donor locator service.

- (a) ***General.*** We will enter into arrangements with State agencies under which we will furnish to them at their request the last known personal mailing addresses (residence or post office box) of blood donors

whose blood donations show that they are or may be infected with the human immunodeficiency virus which causes acquired immune deficiency syndrome. The State agency or other authorized person, as defined in [paragraph \(b\)](#) of this section, will then inform the donors that they may need medical care and treatment. The safeguards that must be used by authorized persons as a condition to receiving address information from the Blood Donor Locator Service are in [paragraph \(g\)](#) of this section, and the requirements for a request for address information are in [paragraph \(d\)](#) of this section.

(b) **Definitions. State** means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of Northern Marianas, and the Trust Territory of the Pacific Islands.

Authorized person means—

(1) Any agency of a State (or of a political subdivision of a State) which has duties or authority under State law relating to the public health or otherwise has the duty or authority under State law to regulate blood donations; and

(2) Any entity engaged in the acceptance of blood donations which is licensed or registered by the Food and Drug Administration in connection with the acceptance of such blood donations, and which provides for—

(i) The confidentiality of any address information received pursuant to the rules in this part and section 1141 of the Social Security Act and related blood donor records;

(ii) Blood donor notification procedures for individuals with respect to whom such information is requested and a finding has been made that they are or may be infected with the human immunodeficiency virus; and

(iii) Counseling services for such individuals who have been found to have such virus. New counseling programs are not required, and an entity may use existing counseling programs or referrals to provide these services.

Related blood donor records means any record, list, or compilation established in connection with a request for address information which indicates, directly or indirectly, the identity of any individual with respect to whom a request for address information has been made pursuant to the rules in this part.

(c) **Use of social security number for identification.** A State or an authorized person in the State may require a blood donor to furnish his or her social security number when donating blood. The number may then be used by an authorized person to identify and locate a donor whose blood donation indicates that he or she is or may be infected with the human immunodeficiency virus.

(d) **Request for address of blood donor.** An authorized person who has been unable to locate a blood donor at the address he or she may have given at the time of the blood donation may request assistance from the State agency which has arranged with us to participate in the Blood Donor Locator Service. The request to the Blood Donor Locator Service must—

(1) Be in writing;

(2) Be from a participating State agency either on its own behalf as an authorized person or on behalf of another authorized person;

(3) Indicate that the authorized person meets the confidentiality safeguards of [paragraph \(g\)](#) of this section; and

(4) Include the donor's name and social security number, the addresses at which the authorized person attempted without success to contact the donor, the date of the blood donation if available, a statement that the donor has tested positive for the human immunodeficiency virus according to the latest Food and Drug Administration standards or that the history of the subsequent use of the donated blood or blood products indicates that the donor has or may have the human immunodeficiency virus, and the name and address of the requesting blood donation facility.

(e) **SSA response to request for address.** After receiving a request that meets the requirements of [paragraph \(d\)](#) of this section, we will search our records for the donor's latest personal mailing address. If we do not find a current address, we will request that the Internal Revenue Service search its tax records and furnish us any personal mailing address information from its files, as required under section 6103(m)(6) of the Internal Revenue Code. After completing these searches, we will provide to the requesting State agency either the latest mailing address available for the donor or a response stating that we do not have this information. We will then destroy the records or delete all identifying donor information related to the request and maintain only the information that we will need to monitor the compliance of authorized persons with the confidentiality safeguards contained in [paragraph \(g\)](#) of this section.

(f) **SSA refusal to furnish address.** If we determine that an authorized person has not met the requirements of [paragraphs \(d\)](#) and [\(g\)](#) of this section, we will not furnish address information to the State agency. In that case, we will notify the State agency of our determination, explain the reasons for our determination, and explain that the State agency may request administrative review of our determination. The Commissioner of Social Security or a delegate of the Commissioner will conduct this review. The review will be based on the information of record and there will not be an opportunity for an oral hearing. A request for administrative review, which may be submitted only by a State agency, must be in writing. The State agency must send its request for administrative review to the Commissioner of Social Security, 6401 Security Boulevard, Baltimore, MD 21235, within 60 days after receiving our notice refusing to give the donor's address. The request for review must include supporting information or evidence that the requirements of the rules in this part have been met. If we do not furnish address information because an authorized person failed to comply with the confidentiality safeguards of [paragraph \(g\)](#) of this section, the State agency will have an opportunity to submit evidence that the authorized person is now in compliance. If we then determine, based on our review of the request for administrative review and the supporting evidence, that the authorized person meets the requirements of the rules in this part, we will respond to the address request as provided in [paragraph \(e\)](#) of this section. If we determine on administrative review that the requirements have not been met, we will notify the State agency in writing of our decision. We will make our determination within 30 days after receiving the request for administrative review, unless we notify the State agency within this 30-day time period that we will need additional time. Our determination on the request for administrative review will give the findings of fact, the reasons for the decision, and what actions the State agency should take to ensure that it or the blood donation facility is in compliance with the rules in this part.

(g) **Safeguards to ensure confidentiality of blood donor records.** We will require assurance that authorized persons have established and continue to maintain adequate safeguards to protect the

confidentiality of both address information received from the Blood Donor Locator Service and related blood donor records. The authorized person must, to the satisfaction of the Secretary—

- (1) Establish and maintain a system for standardizing records which includes the reasons for requesting the addresses of blood donors, dates of the requests, and any disclosures of address information;
 - (2) Store blood donors' addresses received from the Blood Donor Locator Service and all related blood donor records in a secure area or place that is physically safe from access by persons other than those whose duties and responsibilities require access;
 - (3) Restrict access to these records to authorized employees and officials who need them to perform their official duties related to notifying blood donors who are or may be infected with the human immunodeficiency virus that they may need medical care and treatment;
 - (4) Advise all personnel who will have access to the records of the confidential nature of the information, the safeguards required to protect the information, and the civil and criminal sanctions for unauthorized use or disclosure of the information;
 - (5) Destroy the address information received from the Blood Donor Locator Service, as well as any records established in connection with the request which indicate directly or indirectly the identity of the individual, after notifying or attempting to notify the donor at the address obtained from the Blood Donor Locator Service; and
 - (6) Upon request, report to us the procedures established and utilized to ensure the confidentiality of address information and related blood donor records. We reserve the right to make onsite inspections to ensure that these procedures are adequate and are being followed and to request such information as we may need to ensure that the safeguards required in this section are being met.
- (h) **Unauthorized disclosure.** Any official or employee of the Federal Government, a State, or a blood donation facility who discloses blood donor information, except as provided for in this section or under a provision of law, will be subject to the same criminal penalty as provided in section 7213(a) of the Internal Revenue Code of 1986 for the unauthorized disclosure of tax information.

Appendix A to Part 401—Employee Standards of Conduct

(a) **General.** All SSA employees are required to be aware of their responsibilities under the Privacy Act of 1974, [5 U.S.C. 552a](#). Regulations implementing the Privacy Act are set forth in this part. Instruction on the requirements of the Act and regulation shall be provided to all new employees of SSA. In addition, supervisors shall be responsible for assuring that employees who are working with systems of records or who undertake new duties which require the use of systems of records are informed of their responsibilities. Supervisors shall also be responsible for assuring that all employees who work with such systems of records are periodically reminded of the requirements of the Privacy Act and are advised of any new provisions or interpretations of the Act.

(b) Penalties.

(1) All employees must guard against improper disclosure of records which are governed by the Privacy Act. Because of the serious consequences of improper invasions of personal privacy, employees may be subject to disciplinary action and criminal prosecution for knowing and willful violations of the Privacy

Act and regulation. In addition, employees may also be subject to disciplinary action for unknowing or unwillful violations, where the employee had notice of the provisions of the Privacy Act and regulations and failed to inform himself or herself sufficiently or to conduct himself or herself in accordance with the requirements to avoid violations.

(2) SSA may be subjected to civil liability for the following actions undertaken by its employees:

(a) Making a determination under the Privacy Act and §§ 401.65 and 401.70 not to amend an individual's record in accordance with his or her request, or failing to make such review in conformity with those provisions;

(b) Refusing to comply with an individual's request for notification of or access to a record pertaining to him or her;

(c) Failing to maintain any record pertaining to any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such a record, and consequently makes a determination which is adverse to the individual; or

(d) Failing to comply with any other provision of the Act or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual.

(3) An employee may be personally subject to criminal liability as set forth below and in 5 U.S.C. 552a (i):

(a) **Willful disclosure.** Any officer or employee of SSA, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by the Privacy Act or by rules or regulations established thereunder, and who, knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and may be fined not more than \$5,000.

(b) **Notice requirements.** Any officer or employee of SSA who willfully maintains a system of records without meeting the notice requirements [of the Privacy Act] shall be guilty of a misdemeanor and may be fined not more than \$5,000.

(c) **Rules governing employees not working with systems of records.** Employees whose duties do not involve working with systems of records will not generally disclose to any one, without specific authorization from their supervisors, records pertaining to employees or other individuals which by reason of their official duties are available to them. Notwithstanding the above, the following records concerning Federal employees are a matter of public record and no further authorization is necessary for disclosure:

(1) Name and title of individual.

(2) Grade classification or equivalent and annual rate of salary.

(3) Position description.

In addition, employees shall disclose records which are listed in SSA's Freedom of Information Regulation as being available to the public. Requests for other records will be referred to the responsible SSA

Freedom of Information Officer. This does not preclude employees from discussing matters which are known to them personally, and without resort to a record, to official investigators of Federal agencies for official purposes such as suitability checks, Equal Employment Opportunity investigations, adverse action proceedings, grievance proceedings, etc.

(d) **Rules governing employees whose duties require use or reference to systems of records.** Employees whose official duties require that they refer to, maintain, service, or otherwise deal with systems of records (hereinafter referred to as "Systems Employees") are governed by the general provisions. In addition, extra precautions are required and systems employees are held to higher standards of conduct.

(1) Systems Employees shall:

- (a) Be informed with respect to their responsibilities under the Privacy Act;
- (b) Be alert to possible misuses of the system and report to their supervisors any potential or actual use of the system which they believe is not in compliance with the Privacy Act and regulation;
- (c) Disclose records within SSA only to an employee who has a legitimate need to know the record in the course of his or her official duties;
- (d) Maintain records as accurately as practicable.
- (e) Consult with a supervisor prior to taking any action where they are in doubt whether such action is in conformance with the Act and regulation.

(2) Systems employees shall not:

- (a) Disclose in any form records from a system of records except (1) with the consent or at the request of the subject individual; or (2) where its disclosure is permitted under [§ 401.110](#).
- (b) Permit unauthorized individuals to be present in controlled areas. Any unauthorized individuals observed in controlled areas shall be reported to a supervisor or to the guard force.
- (c) Knowingly or willfully take action which might subject SSA to civil liability.
- (d) Make any arrangements for the design, development, or operation of any system of records without making reasonable effort to provide that the system can be maintained in accordance with the Act and regulation.

(e) **Contracting officers.** In addition to any applicable provisions set forth above, those employees whose official duties involve entering into contracts on behalf of SSA shall also be governed by the following provisions:

(1) **Contracts for design, or development of systems and equipment.** The contracting officer shall not enter into any contract for the design or development of a system of records, or for equipment to store, service or maintain a system of records unless the contracting officer has made reasonable effort to ensure that the product to be purchased is capable of being used without violation of the Privacy Act or the regulations in this part. He shall give special attention to provision of physical safeguards.

(2) **Contracts for the operation of systems of records.** The Contracting Officer, in conjunction with other officials whom he feels appropriate, shall review all proposed contracts providing for the operation of

systems of records prior to execution of the contracts to determine whether operation of the system of records is for the purpose of accomplishing a Department function. If it is determined that the operation of the system is to accomplish an SSA function, the contracting officer shall be responsible for including in the contract appropriate provisions to apply the provisions of the Privacy Act and regulation to the system, including prohibitions against improper release by the contractor, his employees, agents, or subcontractors.

(3) **Other service contracts.** Contracting officers entering into general service contracts shall be responsible for determining the appropriateness of including provisions in the contract to prevent potential misuse (inadvertent or otherwise) by employees, agents, or subcontractors of the contractor.

(f) **Rules governing SSA officials responsible for managing systems of records.** In addition to the requirements for Systems Employees, SSA officials responsible for managing systems of records as described in [§ 401.40\(c\)](#) (system managers) shall:

- (1) Respond to all requests for notification of or access, disclosure, or amendment of records in a timely fashion in accordance with the Privacy Act and regulation;
- (2) Make any amendment of records accurately and in a timely fashion;
- (3) Inform all persons whom the accounting records show have received copies of the record prior to the amendments of the correction; and
- (4) Associate any statement of disagreement with the disputed record, and
 - (a) Transmit a copy of the statement to all persons whom the accounting records show have received a copy of the disputed record, and
 - (b) Transmit that statement with any future disclosure.

[[62 FR 4143](#), Jan. 29, 1997, as amended at [72 FR 69617](#), Dec. 10, 2007]

29 CFR 1614.102 Agency program.

(a) Each agency shall maintain a continuing affirmative program to promote equal opportunity and to identify and eliminate discriminatory practices and policies. In support of this program, the agency shall:

- (1) Provide sufficient resources to its equal employment opportunity program to ensure efficient and successful operation;
- (2) Provide for the prompt, fair and impartial processing of complaints in accordance with this part and the instructions contained in the Commission's Management Directives;
- (3) Conduct a continuing campaign to eradicate every form of prejudice or discrimination from the agency's personnel policies, practices and working conditions;
- (4) Communicate the agency's equal employment opportunity policy and program and its employment needs to all sources of job candidates without regard to race; color; religion; sex; national origin; age; disability; genetic information; or pregnancy, childbirth, or related medical conditions; and solicit their recruitment assistance on a continuing basis;
- (5) Review, evaluate and control managerial and supervisory performance in such a manner as to insure a continuing affirmative application and vigorous enforcement of the policy of equal opportunity, and provide orientation, training and advice to managers and supervisors to assure their understanding and implementation of the equal employment opportunity policy and program;
- (6) Take appropriate disciplinary action against employees who engage in discriminatory practices;
- (7) Make reasonable accommodation to the religious needs of applicants and employees when those accommodations can be made without undue hardship on the business of the agency;
- (8) Make reasonable accommodation to the known physical or mental limitations of qualified applicants and employees with handicaps unless the accommodation would impose an undue hardship on the operation of the agency's program;
- (9) Provide recognition to employees, supervisors, managers and units demonstrating superior accomplishment in equal employment opportunity;
- (10) Establish a system for periodically evaluating the effectiveness of the agency's overall equal employment opportunity effort;
- (11) Provide the maximum feasible opportunity to employees to enhance their skills through on-the-job training, work-study programs and other training measures so that they may perform at their highest potential and advance in accordance with their abilities;
- (12) Inform its employees and recognized labor organizations of the affirmative equal employment opportunity policy and program and enlist their cooperation; and

(13) Participate at the community level with other employers, with schools and universities and with other public and private groups in cooperative action to improve employment opportunities and community conditions that affect employability.

(b) In order to implement its program, each agency shall:

- (1) Develop the plans, procedures and regulations necessary to carry out its program;
- (2) Establish or make available an alternative dispute resolution program. Such program must be available for both the pre-complaint process and the formal complaint process.
- (3) Appraise its personnel operations at regular intervals to assure their conformity with its program, this part 1614 and the instructions contained in the Commission's management directives;
- (4) Designate a Director of Equal Employment Opportunity (EEO Director), EEO Officer(s), and such Special Emphasis Program Managers (e.g., People With Disabilities Program, Federal Women's Program and Hispanic Employment Program), clerical and administrative support as may be necessary to carry out the functions described in this part in all organizational units of the agency and at all agency installations. The EEO Director shall be under the immediate supervision of the agency head;
- (5) Make written materials available to all employees and applicants informing them of the variety of equal employment opportunity programs and administrative and judicial remedial procedures available to them and prominently post such written materials in all personnel and EEO offices and throughout the workplace;
- (6) Ensure that full cooperation is provided by all agency employees to EEO Counselors and agency EEO personnel in the processing and resolution of pre-complaint matters and complaints within an agency and that full cooperation is provided to the Commission in the course of appeals, including granting the Commission routine access to personnel records of the agency when required in connection with an investigation; and
- (7) Publicize to all employees and post at all times the names, business telephone numbers and business addresses of the EEO Counselors (unless the counseling function is centralized, in which case only the telephone number and address need be publicized and posted), a notice of the time limits and necessity of contacting a Counselor before filing a complaint and the telephone numbers and addresses of the EEO Director, EEO Officer(s) and Special Emphasis Program Managers.

(c) Under each agency program, the EEO Director shall be responsible for:

- (1) Advising the head of the agency with respect to the preparation of national and regional equal employment opportunity plans, procedures, regulations, reports and other matters pertaining to the policy in [§ 1614.101](#) and the agency program;
- (2) Evaluating from time to time the sufficiency of the total agency program for equal employment opportunity and reporting to the head of the agency with recommendations as to

any improvement or correction needed, including remedial or disciplinary action with respect to managerial, supervisory or other employees who have failed in their responsibilities;

(3) When authorized by the head of the agency, making changes in programs and procedures designed to eliminate discriminatory practices and to improve the agency's program for equal employment opportunity;

(4) Providing for counseling of aggrieved individuals and for the receipt and processing of individual and class complaints of discrimination; and

(5) Assuring that individual complaints are fairly and thoroughly investigated and that final action is taken in a timely manner in accordance with this part.

(d) Directives, instructions, forms and other Commission materials referenced in this part may be obtained in accordance with the provisions of [29 CFR 1610.7](#) of this chapter.

(e) Agency programs shall comply with this part and the Management Directives and Bulletins that the Commission issues. The Commission will review agency programs from time to time to ascertain whether they are in compliance. If an agency program is found not to be in compliance, efforts shall be undertaken to obtain compliance. If those efforts are not successful, the Chair may issue a notice to the head of any federal agency whose programs are not in compliance and publicly identify each non-compliant agency.

(f) Unless prohibited by law or executive order, the Commission, in its discretion and for good cause shown, may grant agencies prospective variances from the complaint processing procedures prescribed in this Part. Variances will permit agencies to conduct pilot projects of proposed changes to the complaint processing requirements of this Part that may later be made permanent through regulatory change. Agencies requesting variances must identify the specific section(s) of this Part from which they wish to deviate and exactly what they propose to do instead, explain the expected benefit and expected effect on the process of the proposed pilot project, indicate the proposed duration of the pilot project, and discuss the method by which they intend to evaluate the success of the pilot project. Variances will not be granted for individual cases and will usually not be granted for more than 24 months. The Director of the Office of Federal Operations for good cause shown may grant requests for extensions of variances for up to an additional 12 months. Pilot projects must require that participants knowingly and voluntarily opt-in to the pilot project. Requests for variances should be addressed to the Director, Office of Federal Operations.

[[57 FR 12646](#), Apr. 10, 1992, as amended at [64 FR 37655](#), July 12, 1999; [67 FR 35735](#), May 21, 2002; [74 FR 63984](#), Dec. 7, 2009; [77 FR 43504](#), July 25, 2012; [89 FR 11171](#), Feb. 14, 2024]

29 CFR 1614.203 Rehabilitation Act.

(a) **Definitions.** The following definitions apply for purposes of this section:

(1) The term *ADA* means title I of the Americans with Disabilities Act of 1990, as amended ([42 U.S.C. 12101](#) through [12117](#)), title V of the Americans with Disabilities Act, as amended ([42 U.S.C. 12201](#) through [12213](#)), as it applies to employment, and the regulations of the Equal Employment Opportunity Commission implementing titles I and V of the ADA at [part 1630 of this chapter](#).

(2) The term *disability* means disability as defined under [§ 1630.2\(g\)](#) through [\(l\) of this chapter](#).

(3) The term *hiring authority that takes disability into account* means a hiring authority that permits an agency to consider disability status during the hiring process, including the hiring authority for individuals with intellectual disabilities, severe physical disabilities, or psychiatric disabilities, as set forth at [5 CFR 213.3102\(u\)](#); the Veterans' Recruitment Appointment authority, as set forth at [5 CFR part 307](#); and the 30% or More Disabled Veteran authority, as set forth at [5 CFR 316.302\(b\)\(4\)](#), [316.402\(b\)\(4\)](#).

(4) The term *personal assistance service provider* means an employee or independent contractor whose primary job functions include provision of personal assistance services.

(5) The term *personal assistance services* means assistance with performing activities of daily living that an individual would typically perform if he or she did not have a disability, and that is not otherwise required as a reasonable accommodation, including, for example, assistance with removing and putting on clothing, eating, and using the restroom.

(6) The term *Plan* means an affirmative action plan for the hiring, placement, and advancement of individuals with disabilities, as required under [29 U.S.C. 791\(b\)](#).

(7) The term *Schedule A hiring authority for persons with certain disabilities* means the hiring authority for individuals with intellectual disabilities, severe physical disabilities, or psychiatric disabilities, as set forth at [5 CFR 213.3102\(u\)](#).

(8) The term *Section 501* means section 501 of the Rehabilitation Act of 1973, as amended ([29 U.S.C. 791](#)).

(9) The term *targeted disability* means a disability that is designated as a “targeted disability or health condition” on the Office of Personnel Management's Standard Form 256 or that falls under one of the first 12 categories of disability listed in Part A of question 5 of the Equal Employment Opportunity Commission's Demographic Information on Applicants form.

(10) The term *undue hardship* has the meaning set forth in [part 1630 of this chapter](#).

(b) **Nondiscrimination.** Federal agencies shall not discriminate on the basis of disability in regard to the hiring, advancement or discharge of employees, employee compensation, job training, or other terms, conditions, and privileges of employment. The standards used to

determine whether Section 501 has been violated in a complaint alleging employment discrimination under this part shall be the standards applied under the ADA.

(c) **Model employer.** The Federal Government shall be a model employer of individuals with disabilities. Agencies shall give full consideration to the hiring, advancement, and retention of qualified individuals with disabilities in the federal workforce. Agencies shall also take affirmative action to promote the recruitment, hiring, and advancement of qualified individuals with disabilities, with the goal of eliminating under-representation of individuals with disabilities in the federal workforce.

(d) **Affirmative action plan.** Pursuant to [29 U.S.C. 791](#), each agency shall adopt and implement a Plan that provides sufficient assurances, procedures, and commitments to provide adequate hiring, placement, and advancement opportunities for individuals with disabilities at all levels of federal employment. An agency fails to satisfy this requirement unless it has adopted and implemented a Plan that meets the following criteria:

(1) **Disability hiring and advancement program** —

(i) **Recruitment.** The Plan shall require the agency to take specific steps to ensure that a broad range of individuals with disabilities, including individuals with targeted disabilities, will be aware of and be encouraged to apply for job vacancies when eligible. Such steps shall include, at a minimum—

(A) Use of programs and resources that identify job applicants with disabilities, including individuals with targeted disabilities, who are eligible to be appointed under a hiring authority that takes disability into account, consistent with applicable OPM regulations, examples of which could include programs that provide the qualifications necessary for particular positions within the agency to individuals with disabilities, databases of individuals with disabilities who previously applied to the agency but were not hired for the positions they applied for, and training and internship programs that lead directly to employment for individuals with disabilities; and

(B) Establishment and maintenance of contacts (which may include formal agreements) with organizations that specialize in providing assistance to individuals with disabilities, including individuals with targeted disabilities, in securing and maintaining employment, such as American Job Centers, State Vocational Rehabilitation Agencies, the Veterans' Vocational Rehabilitation and Employment Program, Centers for Independent Living, and Employment Network service providers.

(ii) **Application process.** The Plan shall ensure that the agency has designated sufficient staff to handle any disability-related issues that arise during the application and selection processes, and shall require the agency to provide such individuals with sufficient training, support, and other resources to carry out their responsibilities under this section. Such responsibilities shall include, at a minimum—

(A) Ensuring that disability-related questions from members of the public regarding the agency's application and selection processes are answered promptly and correctly, including questions about reasonable accommodations needed by job applicants during

the application and selection processes and questions about how individuals may apply for appointment under hiring authorities that take disability into account;

(B) Processing requests for reasonable accommodations needed by job applicants during the application and placement processes, and ensuring that the agency provides such accommodations when required to do so under the standards set forth in [part 1630 of this chapter](#);

(C) Accepting applications for appointment under hiring authorities that take disability into account, consistent with applicable OPM regulations;

(D) If an individual has applied for appointment to a particular position under a hiring authority that takes disability into account, determining whether the individual is eligible for appointment under such authority, and, if so, forwarding the individual's application to the relevant hiring officials with an explanation of how and when the individual may be appointed, consistent with all applicable laws;

(E) Overseeing any other agency programs designed to increase hiring of individuals with disabilities.

(iii) **Advancement program.** The Plan shall require the agency to take specific steps to ensure that current employees with disabilities have sufficient opportunities for advancement. Such steps may include, for example—

(A) Efforts to ensure that employees with disabilities are informed of and have opportunities to enroll in relevant training, including management training when eligible;

(B) Development or maintenance of a mentoring program for employees with disabilities; and

(C) Administration of exit interviews that include questions on how the agency could improve the recruitment, hiring, inclusion, and advancement of individuals with disabilities.

(2) **Disability anti-harassment policy.** The Plan shall require the agency to state specifically in its anti-harassment policy that harassment based on disability is prohibited, and to include in its training materials examples of the types of conduct that would constitute disability-based harassment.

(3) **Reasonable accommodation** —

(i) **Procedures.** The Plan shall require the agency to adopt, post on its public Web site, and make available to all job applicants and employees in written and accessible formats, reasonable accommodation procedures that are easy to understand and that, at a minimum—

(A) Explain relevant terms such as “reasonable accommodation,” “disability,” “interactive process,” “qualified,” and “undue hardship,” consistent with applicable statutory and regulatory definitions, using examples where appropriate;

(B) Explain that reassignment to a vacant position for which an employee is qualified, and not just permission to compete for such position, is a reasonable accommodation, and that the agency must consider providing reassignment to a vacant position as a reasonable accommodation when it determines that no other reasonable accommodation will permit an employee with a disability to perform the essential functions of his or her current position;

(C) Notify supervisors and other relevant agency employees how and where they are to conduct searches for available vacancies when considering reassignment as a reasonable accommodation;

(D) Explain that an individual may request a reasonable accommodation orally or in writing at any time, need not fill out any specific form in order for the interactive process to begin, and need not have a particular accommodation in mind before making a request, and that the request may be made to a supervisor or manager in the individual's chain of command, the office designated by the agency to oversee the reasonable accommodation process, any agency employee connected with the application process, or any other individual designated by the agency to accept such requests;

(E) Include any forms the agency uses in connection with a reasonable accommodation request as attachments, and indicate that such forms are available in alternative formats that are accessible to people with disabilities;

(F) Describe the agency's process for determining whether to provide a reasonable accommodation, including the interactive process, and provide contact information for the individual or program office from whom requesters will receive a final decision;

(G) Provide guidance to supervisors on how to recognize requests for reasonable accommodation;

(H) Require that decision makers communicate, early in the interactive process and periodically throughout the process, with individuals who have requested a reasonable accommodation;

(I) Explain when the agency may require an individual who requests a reasonable accommodation to provide medical information that is sufficient to explain the nature of the individual's disability, his or her need for reasonable accommodation, and how the requested accommodation, if any, will assist the individual to apply for a job, perform the essential functions of a job, or enjoy the benefits and privileges of the workplace;

(J) Explain the agency's right to request relevant supplemental medical information if the information submitted by the requester is insufficient for the purposes specified in [paragraph \(d\)\(3\)\(i\)\(I\)](#) of this section;

(K) Explain the agency's right to have medical information reviewed by a medical expert of the agency's choosing at the agency's expense;

(L) Explain the agency's obligation to keep medical information confidential, in accordance with applicable laws and regulations, and the limited circumstances under which such information may be disclosed;

(M) Designate the maximum amount of time the agency has, absent extenuating circumstances, to either provide a requested accommodation or deny the request, and explain that the time limit begins to run when the accommodation is first requested;

(N) Explain that the agency will not be expected to adhere to its usual timelines if an individual's health professional fails to provide needed documentation in a timely manner;

(O) Explain that, where a particular reasonable accommodation can be provided in less than the maximum amount of time permitted under [paragraph \(d\)\(3\)\(i\)\(M\)](#) of this section, failure to provide the accommodation in a prompt manner may result in a violation of the Rehabilitation Act;

(P) Provide for expedited processing of requests for reasonable accommodations that are needed sooner than the maximum allowable time frame permitted under [paragraph \(d\)\(3\)\(i\)\(M\)](#) of this section;

(Q) Explain that, when all the facts and circumstances known to the agency make it reasonably likely that an individual will be entitled to a reasonable accommodation, but the accommodation cannot be provided immediately, the agency shall provide an interim accommodation that allows the individual to perform some or all of the essential functions of his or her job, if it is possible to do so without imposing undue hardship on the agency;

(R) Inform applicants and employees how they may track the processing of requests for reasonable accommodation;

(S) Explain that, where there is a delay in either processing a request for or providing a reasonable accommodation, the agency must notify the individual of the reason for the delay, including any extenuating circumstances that justify the delay;

(T) Explain that individuals who have been denied reasonable accommodations have the right to file complaints pursuant to [29 CFR 1614.106](#);

(U) Encourage the use of voluntary informal dispute resolution processes that individuals may use to obtain prompt reconsideration of denied requests for reasonable accommodation;

(V) Provide that the agency shall give the requester a notice consistent with the requirements of [paragraph \(d\)\(3\)\(iii\)](#) of this section at the time a request for reasonable accommodation is denied; and

(W) Provide information on how to access additional information regarding reasonable accommodation, including, at a minimum, Commission guidance and technical assistance documents.

(ii) **Cost of accommodations.** The Plan shall require the agency to take specific steps to ensure that requests for reasonable accommodation are not denied for reasons of cost, and that individuals with disabilities are not excluded from employment due to the anticipated cost of a reasonable accommodation, if the resources available to the agency as a whole, excluding those designated by statute for a specific purpose that does not include reasonable accommodation, would enable it to provide an effective reasonable accommodation without undue hardship. Such steps shall be reasonably designed to, at a minimum—

(A) Ensure that anyone who is authorized to grant or deny requests for reasonable accommodation or to make hiring decisions is aware that, pursuant to the regulations implementing the undue hardship defense at [29 CFR part 1630](#), all resources available to the agency as a whole, excluding those designated by statute for a specific purpose that does not include reasonable accommodation, are considered when determining whether a denial of reasonable accommodation based on cost is lawful; and

(B) Ensure that anyone authorized to grant or deny requests for reasonable accommodation or to make hiring decisions is aware of, and knows how to arrange for the use of, agency resources available to provide the accommodation, including any centralized fund the agency may have for that purpose.

(iii) **Notification of basis for denial.** The Plan shall require the agency to provide a job applicant or employee who is denied a reasonable accommodation with a written notice at the time of the denial, in an accessible format when requested, that—

(A) Explains the reasons for the denial and notifies the job applicant or employee of any available internal appeal or informal dispute resolution processes;

(B) Informs the job applicant or employee of the right to challenge the denial by filing a complaint of discrimination under this part;

(C) Provides instructions on how to file such a complaint; and

(D) Explains that, pursuant to [29 CFR 1614.105](#), the right to file a complaint will be lost unless the job applicant or employee initiates contact with an EEO Counselor within 45 days of the denial, regardless of whether the applicant or employee participates in an informal dispute resolution process.

(4) **Accessibility of facilities and technology** —

(i) **Notice of rights.** The Plan shall require the agency to adopt, post on its public Web site, and make available to all employees in written and accessible formats, a notice that—

(A) Explains their rights under Section 508 of the Rehabilitation Act of 1973, [29 U.S.C. 794d](#), concerning the accessibility of agency technology, and the Architectural Barriers Act, [42 U.S.C. 4151](#) through [4157](#), concerning the accessibility of agency building and facilities;

(B) Provides contact information for an agency employee who is responsible for ensuring the physical accessibility of the agency's facilities under the Architectural Barriers Act of 1968, and an agency employee who is responsible for ensuring that the electronic and information technology purchased, maintained, or used by the agency is readily accessible to, and usable by, individuals with disabilities, as required by Section 508 of the Rehabilitation Act of 1973; and

(C) Provides instructions on how to file complaints alleging violations of the accessibility requirements of the Architectural Barriers Act of 1968 and Section 508 of the Rehabilitation Act of 1973.

(ii) **Assistance with filing complaints at other agencies.** If an agency's investigation of a complaint filed under Section 508 of the Rehabilitation Act of 1973 or the Architectural Barriers Act of 1968 shows that a different entity is responsible for the alleged violation, the Plan shall require the agency to inform the individual who filed the complaint where he or she may file a complaint against the other entity, if possible.

(5) **Personal assistance services allowing employees to participate in the workplace —**

(i) **Obligation to provide personal assistance services.** The Plan shall require the agency to provide an employee with, in addition to professional services required as a reasonable accommodation under the standards set forth in [part 1630 of this chapter](#), personal assistance services during work hours and job-related travel if—

(A) The employee requires such services because of a targeted disability;

(B) Provision of such services would, together with any reasonable accommodations required under the standards set forth in [part 1630 of this chapter](#), enable the employee to perform the essential functions of his or her position; and

(C) Provision of such services would not impose undue hardship on the agency.

(ii) **Service providers.** The Plan shall state that personal assistance services required under [paragraph \(d\)\(5\)\(i\)](#) of this section must be performed by a personal assistance service provider. The Plan may permit the agency to require personal assistance service providers to provide personal assistance services to more than one individual. The Plan may also permit the agency to require personal assistance service providers to perform tasks unrelated to personal assistance services, but only to the extent that doing so does not result in failure to provide personal assistance services required under [paragraph \(d\)\(5\)\(i\)](#) of this section in a timely manner.

(iii) **No adverse action.** The Plan shall prohibit the agency from taking adverse actions against job applicants or employees based on their need for, or perceived need for, personal assistance services.

(iv) **Selection of personal assistance service providers.** The Plan shall require the agency, when selecting someone who will provide personal assistance services to a single individual, to give primary consideration to the individual's preferences to the extent permitted by law.

(v) **Written procedures.** The Plan shall require the agency to adopt, post on its public Web site, and make available to all job applicants and employees in written and accessible formats, procedures for processing requests for personal assistance services. An agency may satisfy this requirement by stating, in the procedures required under [paragraph \(d\)\(3\)\(i\)](#) of this section, that the process for requesting personal assistance services, the process for determining whether such services are required, and the agency's right to deny such requests when provision of the services would pose an undue hardship, are the same as for reasonable accommodations.

(6) **Utilization analysis** —

(i) **Current utilization.** The Plan shall require the agency to perform a workforce analysis annually to determine the percentage of its employees at each grade and salary level who have disabilities, and the percentage of its employees at each grade and salary level who have targeted disabilities.

(ii) **Source of data.** For purposes of the analysis required under [paragraph \(d\)\(6\)\(i\)](#) of this section, an employee may be classified as an individual with a disability or an individual with a targeted disability on the basis of—

- (A) The individual's self-identification as an individual with a disability or an individual with a targeted disability on a form, including but not limited to the Office of Personnel Management's Standard Form 256, which states that the information collected will be kept confidential and used only for statistical purposes, and that completion of the form is voluntary;
- (B) Records relating to the individual's appointment under a hiring authority that takes disability into account, if applicable; and
- (C) Records relating to the individual's requests for reasonable accommodation, if any.

(iii) **Data accuracy.** The Plan shall require the agency to take steps to ensure that data collected pursuant to [paragraph \(d\)\(6\)\(i\)](#) of this section are accurate.

(7) **Goals** —

(i) **Adoption.** The Plan shall commit the agency to the goal of ensuring that—

- (A) No less than 12% of employees at the GS-11 level and above, together with employees who are not paid under the General Schedule but who have salaries equal to or greater than employees at the GS-11, step 1 level in the Washington, DC locality, are individuals with disabilities;
- (B) No less than 12% of employees at the GS-10 level and below, together with employees who are not paid under the General Schedule but who have salaries less than employees at the GS-11, step 1 level in the Washington, DC locality, are individuals with disabilities;
- (C) No less than 2% of employees at the GS-11 level and above, together with employees who are not paid under the General Schedule but who have salaries equal to or greater

than employees at the GS-11, step 1 level in the Washington, DC locality, are individuals with targeted disabilities; and

(D) No less than 2% of employees at the GS-10 level and below, together with employees who are not paid under the General Schedule but who have salaries less than employees at the GS-11, step 1 level in the Washington, DC locality, are individuals with targeted disabilities.

(ii) **Progression toward goals.** The Plan shall require the agency to take specific steps that are reasonably designed to gradually increase the number of persons with disabilities or targeted disabilities employed at the agency until it meets the goals established pursuant to [paragraph \(d\)\(7\)\(i\)](#) of this section. Examples of such steps include, but are not limited to—

(A) Increased use of hiring authorities that take disability into account to hire or promote individuals with disabilities or targeted disabilities, as applicable;

(B) To the extent permitted by applicable laws, consideration of disability or targeted disability status as a positive factor in hiring, promotion, or assignment decisions;

(C) Disability-related training and education campaigns for all employees in the agency;

(D) Additional outreach or recruitment efforts;

(E) Increased efforts to hire and retain individuals who require supported employment because of a disability, who have retained the services of a job coach at their own expense or at the expense of a third party, and who may be given permission to use the job coach during work hours as a reasonable accommodation without imposing undue hardship on the agency; and

(F) Adoption of training, mentoring, or internship programs for individuals with disabilities.

(8) **Recordkeeping.** The Plan shall require the agency to keep records that it may use to determine whether it is complying with the nondiscrimination and affirmative action requirements imposed under Section 501, and to make such records available to the Commission upon the Commission's request, including, at a minimum, records of—

(i) The number of job applications received from individuals with disabilities, and the number of individuals with disabilities who were hired by the agency;

(ii) The number of job applications received from individuals with targeted disabilities, and the number of individuals with targeted disabilities who were hired by the agency;

(iii) All rescissions of conditional job offers, demotions, and terminations taken against applicants or employees as a result of medical examinations or inquiries;

(iv) All agency employees hired under the Schedule A hiring authority for persons with certain disabilities, and each such employee's date of hire, entering grade level, probationary status, and current grade level;

(v) The number of employees appointed under the Schedule A hiring authority for persons with certain disabilities who have been converted to career or career-conditional appointments in the competitive service, and the number of such employees who were terminated prior to being converted to a career or career-conditional appointment in the competitive service; and

(vi) Details about each request for reasonable accommodation including, at a minimum—

(A) The specific reasonable accommodation requested, if any;

(B) The job (occupational series, grade level, and agency component) sought by the requesting applicant or held by the requesting employee;

(C) Whether the accommodation was needed to apply for a job, perform the essential functions of a job, or enjoy the benefits and privileges of employment;

(D) Whether the request was granted (which may include an accommodation different from the one requested) or denied;

(E) The identity of the deciding official;

(F) If denied, the basis for such denial; and

(G) The number of days taken to process the request.

(e) **Reporting** —

(1) **Submission to the Commission.** On an annual basis, each federal agency shall submit to the Commission for approval, at such time and in such manner as the Commission deems appropriate—

(i) A copy of its current Plan;

(ii) The results of the two most recent workforce analyses performed pursuant to [paragraph \(d\)\(6\)](#) of this section showing the percentage of employees with disabilities and employees with targeted disabilities in each of the designated pay groups;

(iii) The number of individuals appointed to positions within the agency under the Schedule A hiring authority for persons with certain disabilities during the previous year, and the total number of employees whose employment at the agency began by appointment under the Schedule A hiring authority for persons with certain disabilities; and

(iv) A list of changes made to the Plan since the prior submission, if any, and an explanation of why those changes were made.

(2) **Availability to the public.** Each agency shall make the information submitted to the Commission pursuant to [paragraph \(e\)\(1\)](#) of this section available to the public by, at a minimum, posting a copy of the submission on its public Web site and providing a means by which members of the public may request copies of the submission in accessible formats.

(f) **Commission approval and disapproval** —

(1) ***Basis for approval.*** If the Commission determines that an agency has adopted and implemented a Plan that meets the requirements set forth in [paragraph \(d\)](#) of this section, the Commission shall approve the Plan.

(2) ***Basis for disapproval.*** If the Commission determines that an agency has failed to adopt and implement a Plan that meets the requirements set forth in [paragraph \(d\)](#) of this section, the Commission shall disapprove the Plan as required by [29 U.S.C. 791\(b\)](#). Failure to achieve a goal set forth in [paragraph \(d\)\(7\)\(i\)](#) of this section, by itself, is not grounds for disapproval unless the Plan fails to require the agency to take specific steps that are reasonably designed to achieve the goal.

[[82 FR 677](#), Jan. 3, 2017]

29 CFR 1614.501 Remedies and relief.

(a) When an agency, or the Commission, in an individual case of discrimination, finds that an applicant or an employee has been discriminated against, the agency shall provide full relief which shall include the following elements in appropriate circumstances:

- (1) Notification to all employees of the agency in the affected facility of their right to be free of unlawful discrimination and assurance that the particular types of discrimination found will not recur;
- (2) Commitment that corrective, curative or preventive action will be taken, or measures adopted, to ensure that violations of the law similar to those found will not recur;
- (3) An unconditional offer to each identified victim of discrimination of placement in the position the person would have occupied but for the discrimination suffered by that person, or a substantially equivalent position;
- (4) Payment to each identified victim of discrimination on a make whole basis for any loss of earnings the person may have suffered as a result of the discrimination; and
- (5) Commitment that the agency shall cease from engaging in the specific unlawful employment practice found in the case.

(b) ***Relief for an applicant.***

(1)

(i) When an agency, or the Commission, finds that an applicant for employment has been discriminated against, the agency shall offer the applicant the position that the applicant would have occupied absent discrimination or, if justified by the circumstances, a substantially equivalent position unless clear and convincing evidence indicates that the applicant would not have been selected even absent the discrimination. The offer shall be made in writing. The individual shall have 15 days from receipt of the offer within which to accept or decline the offer. Failure to accept the offer within the 15-day period will be considered a declination of the offer, unless the individual can show that circumstances beyond his or her control prevented a response within the time limit.

(ii) If the offer is accepted, appointment shall be retroactive to the date the applicant would have been hired. Back pay, computed in the manner prescribed by [5 CFR 550.805](#), shall be awarded from the date the individual would have entered on duty until the date the individual actually enters on duty unless clear and convincing evidence indicates that the applicant would not have been selected even absent discrimination. Interest on back pay shall be included in the back pay computation where sovereign immunity has been waived. The individual shall be deemed to have performed service for the agency during this period for all purposes except for meeting service requirements for completion of a required probationary or trial period.

(iii) If the offer of employment is declined, the agency shall award the individual a sum equal to the back pay he or she would have received, computed in the manner prescribed by [5 CFR](#)

[550.805](#), from the date he or she would have been appointed until the date the offer was declined, subject to the limitation of [paragraph \(b\)\(3\)](#) of this section. Interest on back pay shall be included in the back pay computation. The agency shall inform the applicant, in its offer of employment, of the right to this award in the event the offer is declined.

(2) When an agency, or the Commission, finds that discrimination existed at the time the applicant was considered for employment but also finds by clear and convincing evidence that the applicant would not have been hired even absent discrimination, the agency shall nevertheless take all steps necessary to eliminate the discriminatory practice and ensure it does not recur.

(3) Back pay under this [paragraph \(b\)](#) for complaints under title VII or the Rehabilitation Act may not extend from a date earlier than two years prior to the date on which the complaint was initially filed by the applicant.

(c) **Relief for an employee.** When an agency, or the Commission, finds that an employee of the agency was discriminated against, the agency shall provide relief, which shall include, but need not be limited to, one or more of the following actions:

(1) Nondiscriminatory placement, with back pay computed in the manner prescribed by [5 CFR 550.805](#), unless clear and convincing evidence contained in the record demonstrates that the personnel action would have been taken even absent the discrimination. Interest on back pay shall be included in the back pay computation where sovereign immunity has been waived. The back pay liability under title VII or the Rehabilitation Act is limited to two years prior to the date the discrimination complaint was filed.

(2) If clear and convincing evidence indicates that, although discrimination existed at the time the personnel action was taken, the personnel action would have been taken even absent discrimination, the agency shall nevertheless eliminate any discriminatory practice and ensure it does not recur.

(3) Cancellation of an unwarranted personnel action and restoration of the employee.

(4) Expunction from the agency's records of any adverse materials relating to the discriminatory employment practice.

(5) Full opportunity to participate in the employee benefit denied (e.g., training, preferential work assignments, overtime scheduling).

(d) The agency has the burden of proving by a preponderance of the evidence that the complainant has failed to mitigate his or her damages.

(e) **Attorney's fees or costs** —

(1) **Awards of attorney's fees or costs.** The provisions of this paragraph relating to the award of attorney's fees or costs shall apply to allegations of discrimination prohibited by title VII and the Rehabilitation Act. In a decision or final action, the agency, administrative judge, or Commission may award the applicant or employee reasonable attorney's fees (including expert witness fees) and other costs incurred in the processing of the complaint.

(i) A finding of discrimination raises a presumption of entitlement to an award of attorney's fees.

(ii) Any award of attorney's fees or costs shall be paid by the agency.

(iii) Attorney's fees are allowable only for the services of members of the Bar and law clerks, paralegals or law students under the supervision of members of the Bar, except that no award is allowable for the services of any employee of the Federal Government.

(iv) Attorney's fees shall be paid for services performed by an attorney after the filing of a written complaint, provided that the attorney provides reasonable notice of representation to the agency, administrative judge or Commission, except that fees are allowable for a reasonable period of time prior to the notification of representation for any services performed in reaching a determination to represent the complainant. Agencies are not required to pay attorney's fees for services performed during the pre-complaint process, except that fees are allowable when the Commission affirms on appeal an administrative judge's decision finding discrimination after an agency takes final action by not implementing an administrative judge's decision. Written submissions to the agency that are signed by the representative shall be deemed to constitute notice of representation.

(2) *Amount of awards.*

(i) When the agency, administrative judge or the Commission determines an entitlement to attorney's fees or costs, the complainant's attorney shall submit a verified statement of attorney's fees (including expert witness fees) and other costs, as appropriate, to the agency or administrative judge within 30 days of receipt of the decision and shall submit a copy of the statement to the agency. A statement of attorney's fees and costs shall be accompanied by an affidavit executed by the attorney of record itemizing the attorney's charges for legal services. The agency may respond to a statement of attorney's fees and costs within 30 days of its receipt. The verified statement, accompanying affidavit and any agency response shall be made a part of the complaint file.

(ii)

(A) The agency or administrative judge shall issue a decision determining the amount of attorney's fees or costs due within 60 days of receipt of the statement and affidavit. The decision shall include a notice of right to appeal to the EEOC along with EEOC Form 573, Notice of Appeal/Petition and shall include the specific reasons for determining the amount of the award.

(B) The amount of attorney's fees shall be calculated using the following standards: The starting point shall be the number of hours reasonably expended multiplied by a reasonable hourly rate. There is a strong presumption that this amount represents the reasonable fee. In limited circumstances, this amount may be reduced or increased in consideration of the degree of success, quality of representation, and long delay caused by the agency.

(C) The costs that may be awarded are those authorized by [28 U.S.C. 1920](#) to include: Fees of the reporter for all or any of the stenographic transcript necessarily obtained for use in

the case; fees and disbursements for printing and witnesses; and fees for exemplification and copies necessarily obtained for use in the case.

(iii) Witness fees shall be awarded in accordance with the provisions of [28 U.S.C. 1821](#), except that no award shall be made for a Federal employee who is in a duty status when made available as a witness.

[[57 FR 12646](#), Apr. 10, 1992, as amended at [60 FR 43372](#), Aug. 21, 1995; [64 FR 37659](#), July 12, 1999]

29 CFR 1614.605 Representation and official time.

(a) At any stage in the processing of a complaint, including the counseling stage [§ 1614.105](#), the complainant shall have the right to be accompanied, represented, and advised by a representative of complainant's choice.

(b) If the complainant is an employee of the agency, he or she shall have a reasonable amount of official time, if otherwise on duty, to prepare the complaint and to respond to agency and EEOC requests for information. If the complainant is an employee of the agency and he designates another employee of the agency as his or her representative, the representative shall have a reasonable amount of official time, if otherwise on duty, to prepare the complaint and respond to agency and EEOC requests for information. The agency is not obligated to change work schedules, incur overtime wages, or pay travel expenses to facilitate the choice of a specific representative or to allow the complainant and representative to confer. The complainant and representative, if employed by the agency and otherwise in a pay status, shall be on official time, regardless of their tour of duty, when their presence is authorized or required by the agency or the Commission during the investigation, informal adjustment, or hearing on the complaint.

(c) In cases where the representation of a complainant or agency would conflict with the official or collateral duties of the representative, the Commission or the agency may, after giving the representative an opportunity to respond, disqualify the representative.

(d) Unless the complainant states otherwise in writing, after the agency has received written notice of the name, address and telephone number of a representative for the complainant, all official correspondence shall be with the representative with copies to the complainant. When the complainant designates an attorney as representative, service of all official correspondence shall be made on the attorney and the complainant, but time frames for receipt of materials shall be computed from the time of receipt by the attorney. The complainant must serve all official correspondence on the designated representative of the agency.

(e) The Complainant shall at all times be responsible for proceeding with the complaint whether or not he or she has designated a representative.

(f) Witnesses who are Federal employees, regardless of their tour of duty and regardless of whether they are employed by the respondent agency or some other Federal agency, shall be in a duty status when their presence is authorized or required by Commission or agency officials in connection with a complaint.

[[57 FR 12646](#), Apr. 10, 1992, as amended at [64 FR 37661](#), July 12, 1999]

41 CFR 102-74.305 How must Federal agencies assign available parking spaces to their employees?

Federal agencies must assign available parking spaces to their employees using the following order of priority:

- (a) Severely disabled employees (see definition in [§ 102-71.20 of this chapter](#)).
- (b) Executive personnel and persons who work unusual hours.
- (c) Vanpool/carpool vehicles.
- (d) Privately owned vehicles of occupant agency employees that are regularly used for Government business at least 12 days per month and that qualify for reimbursement of mileage and travel expenses under Government travel regulations.
- (e) Other privately owned vehicles of employees, on a space-available basis. (In locations where parking allocations are made on a zonal basis, GSA and affected agencies may cooperate to issue additional rules, as appropriate.)

45 CFR PART 30—CLAIMS COLLECTION

Authority: [31 U.S.C. 3711\(d\)](#).

Source: [72 FR 10409](#), Mar. 8, 2007, unless otherwise noted.

Subpart A—General Provisions

§ 30.1 Purpose, authority, and scope.

(a) **Purpose.** This part prescribes the standards and procedures for the Department's use in the administrative collection, offset, compromise, and suspension or termination of collection activity for claims for funds or property, as defined by [31 U.S.C. 3701\(b\)](#) and this part. Covered activities include the collection of debts in any amount; the compromise and suspension or termination of collection activity of debts that do not exceed \$100,000, or such higher amount as the Attorney General may prescribe, exclusive of interest, penalties, and administrative costs; and the referral of debts to the Department of the Treasury (Treasury), the Treasury-designated debt collection centers, or the Department of Justice (Justice) for collection by further administrative action or litigation, as applicable.

(b) **Authority.** The Secretary is issuing the regulations in this part under the authority contained in [31 U.S.C. 3711\(d\)](#). The standards and procedures prescribed in this part are authorized under the Federal Claims Collection Act, as amended, Public Law No. 89-508, 80 Stat. 308 (July 19, 1966), the Debt Collection Act of 1982, Public Law No. 97-365, 96 Stat. 1749 (October 25, 1982), the Debt Collection Improvement Act of 1996, Public Law No. 104-134, 110 Stat. 1321, 1358 (April 26, 1996) and the Federal Claims Collection Standards at [31 CFR parts 900](#) through [904](#).

(c) **Scope.**

(1) The standards and procedures prescribed in this part apply to all officers and employees of the Department, including officers and employees of the various Operating Divisions and Regional Offices of the Department, charged with the collection and disposition of debts owed to the United States.

(2) The standards and procedures set forth in this part will be applied except where specifically excluded herein or where a statute, regulation or contract prescribes different standards or procedures.

(3) Regulations governing the use of certain debt collection procedures created under the Debt Collection Improvement Act of 1996, including tax refund offset, administrative wage garnishment, and Federal salary offset, are contained in parts 31 through 33 of this chapter.

§ 30.2 Definitions.

In this part—

Administrative offset means withholding funds payable by the United States to, or held by the United States for, a person to satisfy a debt.

Agency means a department, agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of the Government, including Government corporations.

Appropriate official means the Department official who, by statute or delegation of authority, determines the existence and amount of debt.

Business day means Monday through Friday. For purposes of computation, the last day of the period will be included unless it is a Federal holiday, in which case the next business day following the holiday will be considered the last day of the period.

Claim see the definition for the term “debt.” The terms “claim” and “debt” are synonymous and interchangeable.

Creditor agency means an agency to which a debt is owed, including a debt collection center acting on behalf of a creditor agency.

Day means calendar day. For purposes of computation, the last day of the period will be included unless it is a Saturday, Sunday, or a Federal holiday, in which case the next business day will be considered the last day of the period.

Debt or claim means an amount of funds or other property determined by an appropriate official of the Federal Government to be owed to the United States from any person, organization, or entity, except another Federal agency. For the purpose of administrative offset, the term includes an amount owed by an individual to a State, the District of Columbia, American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Commonwealth of Puerto Rico. Debts include, but are not limited to, amounts owed pursuant to: Loans insured or guaranteed by the United States; fees; leases; rents; royalties; services; sales of real or personal property; Federal salary overpayments; overpayments to program beneficiaries, contractors, providers, suppliers, and grantees; audit disallowance determinations; civil penalties and assessments; theft or loss; interest; fines and forfeitures (except those arising under the Uniform Code of Military Justice); and all other similar sources.

Debt collection center means the Department of the Treasury, or other Federal agency, subagency, unit, or division designated by the Secretary of the Treasury to collect debts owed to the United States.

Debtor means an individual, organization, association, partnership, corporation, or State or local government or subdivision indebted to the Government, or the person or entity with legal responsibility for assuming the debtor's obligation.

Debts arising under the Social Security Act are overpayments to, or contributions, reimbursements, penalties or assessments owed by, any entity, individual, or State under the Social Security Act. Such amounts include amounts owed to the Medicare program under section 1862(b) of the Social Security Act. Salary overpayments and other debts that result from the administration of the provisions of the Social Security Act are not deemed to “arise under” the Social Security Act for purposes of this part.

Delinquent debt means a debt which the debtor does not pay or otherwise resolve by the date specified in the initial demand for payment, or in an applicable written repayment agreement or other instrument, including a post-delinquency repayment agreement.

Department means the Department of Health and Human Services, and its Operating Divisions and Regional Offices.

Disbursing official means an officer or employee who has authority to disburse public money pursuant to [31 U.S.C. 3321](#) or another law.

Disposable pay means that part of the debtor's current basic, special, incentive, retired, and retainer pay, or other authorized pay, remaining after deduction of amounts required by law to be withheld. For purposes of calculating disposable pay, legally required deductions that must be applied first include: Tax levies pursuant to the Internal Revenue Code (title 26, United States Code); properly withheld taxes, FICA, Medicare; health and life insurance premiums; and retirement contributions. Amounts deducted under garnishment orders, including child support garnishment orders, are not legally required deductions for calculating disposable pay.

Evidence of service means information retained by the Department indicating the nature of the document to which it pertains, the date of mailing of the document, and the address and name of the debtor to whom it is being sent. A copy of the dated and signed written notice provided to the debtor pursuant to this part may be considered evidence of service for purposes of this part. Evidence of service may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

FMS means the Financial Management Service, a bureau of the Department of the Treasury.

Hearing means a review of the documentary evidence to confirm the existence or amount of a debt or the terms of a repayment schedule. If the Secretary determines that the issues in dispute cannot be resolved by such a review, such as when the validity of the claim turns on the issue of credibility or veracity, the Secretary may provide an oral hearing. (See [45 CFR 33.6\(c\)\(2\)](#) for oral hearing procedures that may be provided by the Secretary).

IRS means the Internal Revenue Service, a bureau of the Department of the Treasury.

Late charges means interest, penalties, and administrative costs required or permitted to be assessed on delinquent debts.

Legally enforceable means that there has been a final agency determination that the debt, in the amount stated, is due and there are no legal bars to collection action.

Local government means a political subdivision, instrumentality, or authority of any State, the District of Columbia, American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Commonwealth of Puerto Rico, or an Indian tribe, band or nation.

Operating Division means each separate component, agency, subagency, and unit within the Department of Health and Human Services, including, but not limited to, the Administration for Children and Families, the Administration on Aging, the Centers for Disease Control and Prevention, the Centers for Medicare & Medicaid Services, the Food and Drug Administration, the National Institutes of Health, Substance Abuse and Mental Health Services Administration, Indian Health Service, Health Resources and Services Administration, Agency for Toxic Substances and Disease Registry, Agency for Healthcare Research and Quality, and the Office of the Secretary.

OPM means the Office of Personnel Management.

Payment authorizing agency means an agency that transmits a voucher to a disbursing official for the disbursement of public money.

Payments made under the Social Security Act means payments by this Department or other agencies to beneficiaries, providers, intermediaries, physicians, suppliers, carriers, States, or other contractors or grantees under a Social Security Act program, including: Title I (Grants to States for Old-Age Assistance for the Aged); Title II (Federal Old-Age, Survivors, and Disability Insurance Benefits); Title III (Grants to States for Unemployment Compensation Administration); Title IV (Grants to States for Aid and Services to Needy Families with Children and for Child-Welfare Services); Title V (Maternal and Child Health Services Block Grant); Title IX (Miscellaneous Provisions Relating to Employment Security); Title X (Grants to States for Aid to the Blind); Title XI, part B (Peer Review of the Utilization and Quality of Health Care Services); Title XII (Advances to State Unemployment Funds); Title XIV (Grants to States for Aid to Permanently and Totally Disabled); Title XVI (Grants to States for Aid to the Aged, Blind, and Disabled); Title XVII (Grants for Planning Comprehensive Action to Combat Mental Retardation); Title XVIII (Health Insurance for the Aged and Disabled); Title XIX (Grants to States for Medical Assistance Programs); Title XX (Block Grants to States for Social Services); and Title XXI (State Children's Health Insurance Program). Federal employee salaries and other payments made by the Department or other agencies in the course of administering the provisions of the Social Security Act are not deemed to be “payable under” the Social Security Act for purposes of this part.

Private collection contractors means private debt collection under contract with the Department to collect a nontax debt or claim owed to the Department. The term includes private debt collectors, collection agencies, and commercial attorneys.

Salary offset means an administrative offset to collect a debt owed by a Federal employee through deductions at one or more officially established pay intervals from the current pay account of the employee without his or her consent.

Secretary means the Secretary of Health and Human Services, or the Secretary's designee.

Taxpayer identification number means the identifying number described under section 6109 of the Internal Revenue Code of 1986 ([26 U.S.C. 6109](#)). For an individual, the taxpayer identifying number is the individual's Social Security Number.

Tax refund offset means withholding or reducing a tax refund payment by an amount necessary to satisfy a debt.

§ 30.3 Antitrust, fraud, exception in the account of an accountable official, and interagency claims excluded.

(a) *Claims involving antitrust violations or fraud.*

(1) The standards in this part relating to compromise, suspension, and termination of collection activity do not apply to any debt based in whole or in part on conduct in violation of antitrust laws, or to any debt involving fraud, presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim, unless the Department of Justice returns a referred claim to the Department for further handling in accordance with parts [31 CFR 900](#) through [904](#) and this part.

(2) Upon identification of a debt suspected of involving an antitrust violation or fraud, a false claim, misrepresentation, or other criminal activity or misconduct, the Secretary shall refer the debt to the Office of the Inspector General for review.

(3) Upon the determination of the Office of the Inspector General that a claim is based in whole or in part on conduct in violation of the antitrust laws, or involves fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim, the Secretary shall promptly refer the case to the Department of Justice for action.

(b) **Exception in the account of an accountable official.** The standards in this part do not apply to compromise of an exception in the account of an accountable official.

(c) **Interagency claims.** This part does not apply to claims between Federal agencies. The Department will attempt to resolve interagency claims by negotiation in accordance with EO 12146.

§ 30.4 Compromise, waiver, or disposition under other statutes not precluded.

Nothing in this part precludes the Department from disposing of any claim under statutes and implementing regulations other than [subchapter II of chapter 37 of Title 31 of the United States Code](#) and the Federal Claims Collection Standards, [31 CFR parts 900 through 904](#). Any statute and implementing regulation specifically applicable to the claims collection activities of the Department will take precedence over this part.

§ 30.5 Other administrative remedies.

The remedies and sanctions available under this part for collecting debts are not intended to be exclusive. Nothing contained in this part precludes using any other administrative remedy which may be available for collecting debts owed to the Department, such as converting the method of payment under a grant from an advancement to a reimbursement method or revoking a grantee's letter-of-credit.

§ 30.6 Form of payment.

Claims may be paid in the form of money or, when a contractual basis exists, the Department may demand the return of specific property or the performance of specific services.

§ 30.7 Subdivision of claims.

Debts may not be subdivided to avoid the monetary ceiling established by [31 U.S.C. 3711\(a\)\(2\)](#). A debtor's liability arising from a particular transaction or contract shall be considered a single debt in determining whether the debt, exclusive of interest, penalties and administrative costs, does not exceed \$100,000, or such higher amount as prescribed by the Attorney General for purposes of compromise, or suspension or termination of collection activity.

§ 30.8 Required administrative proceedings.

This part does not supersede, or require omission or duplication of administrative proceedings required by contract, or other laws or regulations. See for example, [42 CFR part 50](#) (Public Health Service), [45 CFR part 16](#) (Departmental Grant Appeals Board), and [48 CFR part 33](#) (Federal Acquisition Regulation) and part 333 (HHS Acquisition Regulation).

§ 30.9 No private rights created.

The standards in this part do not create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, the Department, its officers, or any other person,

nor shall the failure of the Department to comply with any of the provisions of this part be available to any debtor as a defense.

Subpart B—Standards for the Administrative Collection of Debts

§ 30.10 Collection activities.

(a) **General rule.** The Secretary shall aggressively and timely collect all debts arising out of activities of, or referred or transferred for collection actions to, the Department. Normally, an initial written demand for payment shall be made no later than 30 days after a determination by an appropriate official that a debt exists.

(b) **Cooperation with other agencies.** The Department shall cooperate with other agencies in their debt collection activities.

(c) Transfer of delinquent debts —

(1) **Mandatory transfer.** The Department shall transfer legally enforceable debts 180 days or more delinquent to Treasury in accordance with the requirements of [31 CFR 285.12](#). This requirement does not apply to any debt that:

(i) Is in litigation or foreclosure;

(ii) Will be disposed of under an approved asset sale program within one year of becoming eligible for sale;

(iii) Has been referred to a private collection contractor for a period of time acceptable to the Secretary of the Treasury;

(iv) Is at a debt collection center for a period of time acceptable to the Secretary of the Treasury (see [paragraph \(c\)\(2\)](#) of this section);

(v) Will be collected under internal offset procedures within three years after the debt first became delinquent; or

(vi) Is exempt from this requirement based on a determination by the Secretary of the Treasury that exemption for a certain class of debt is in the best interest of the United States.

(2) **Permissive transfer.** The Secretary may refer debts less than 180 days delinquent, including debts referred to the Department by another agency, to the Treasury in accordance with the requirements of [31 CFR 285.12](#), or with the consent of the Treasury, to a Treasury-designated debt collection center to accomplish efficient, cost effective debt collection. Referrals to debt collection centers shall be at the discretion of, and for a time period acceptable to, the Secretary of the Treasury. Referrals may be for servicing, collection, compromise, suspension, or termination of collection action.

§ 30.11 Demand for payment.

(a) **Written demand for payment.**

(1) Written demand, as described in [paragraph \(b\)](#) of this section, shall be made promptly upon a debtor in terms that inform the debtor of the consequences of failing to cooperate with the Department to resolve the debt.

(2) Normally, the demand letter will be sent no later than 30 days after the appropriate official determines that the debt exists. The demand letter shall be sent by first class mail to the debtor's last known address.

(3) When necessary to protect the Government's interest, for example to prevent the running of a statute of limitations, the written demand for payment may be preceded by other appropriate action under this part, including immediate referral to Justice for litigation.

(b) **Demand letters.** The specific content, timing, and number of demand letters shall depend upon the type and amount of the debt and the debtor's response, if any, to the Department's letters or telephone calls. Generally, one demand letter should suffice; however, more may be used.

(1) The written demand for payment shall include the following information:

(i) The nature and amount of the debt, including the basis for the indebtedness;

(ii) The date by which payment should be made to avoid late charges and enforced collection, which generally shall be no later than 30 days from the date the demand letter is mailed;

(iii) The applicable standards for imposing any interest, penalties, or administrative costs (see [§ 30.18](#));

(iv) The rights, if any, the debtor may have to:

(A) Seek review of the Department's determination of the debt, and for purposes of administrative wage garnishment or salary offset, to request a hearing (see [45 CFR parts 32](#) and [33](#)); and

(B) Enter into a reasonable repayment agreement.

(v) An explanation of how the debtor may exercise any of the rights described in [paragraph \(b\)\(1\)\(iv\)](#) of this section;

(vi) The name, address, and phone number of a contact person or office within the Department to address any debt-related matters; and

(vii) The Department's remedies to enforce payment of the debt, which may include:

(A) Garnishing the debtor's wages through administrative wage garnishment;

(B) Offsetting any Federal payments due the debtor, including income tax refunds, salary, certain benefit payments such as Social Security, retirement, and travel reimbursements and advances;

(C) Referring the debt to a private collection contractor;

(D) Reporting the debt to a credit bureau or other automated database;

(E) Referring the debt to Justice for litigation; and

(F) Referring the debt to Treasury for any of the collection actions described in [paragraphs \(b\)\(1\)\(vii\)\(A\)](#) through [\(E\)](#) of this section, advising the debtor that such referral is mandatory if the debt is 180 or more days delinquent.

(2) The written demand for payment should also include the following information:

(i) The debtor's right to inspect and copy all records of the Department pertaining to the debt, or if the debtor or the debtor's representative cannot personally inspect the records, to request and receive copies of such records;

(ii) The Department's willingness to discuss with the debtor alternative methods of payment;

(iii) A debtor delinquent on a debt is ineligible for Government loans, loan guarantees, or loan insurance until the debtor resolves the debt;

(iv) When seeking to collect statutory penalties, forfeiture or other similar types of claim, the debtor's licenses, permits, or other privileges may be suspended or revoked if failure to pay the debt is inexcusable or willful. Such suspension or revocation shall extend to programs or activities administered by the States on behalf of the Federal Government, to the extent that they affect the Federal Government's ability to collect money or funds owed by debtors;

(v) Knowingly making false statements or bringing frivolous actions may subject the debtor to civil or criminal penalties under [31 U.S.C. 3729-3731](#), [18 U.S.C. 286](#), [287](#), [1001](#), and [1002](#), or any other applicable statutory authority, and, if the debtor is a Federal employee, to disciplinary action under [5 CFR part 752](#) or other applicable authority;

(vi) Any amounts collected and ultimately found not to have been owed by the debtor will be refunded;

(vii) For salary offset, up to 15% of the debtor's current disposable pay may be deducted every pay period until the debt is paid in full; and

(viii) Dependent upon applicable statutory authority, the debtor may be entitled to consideration for a waiver.

(c) The Secretary will retain evidence of service indicating the date of mailing of the demand letter. The evidence of service, which may include a certificate of service, may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

(d) Prior to, during, or after the completion of the demand process, if the Secretary determines to pursue, or is required to pursue offset, the procedures applicable to offset should be followed (see [§ 30.12](#)). The availability of funds for debt satisfaction by offset and the Secretary's determination to pursue collection by offset shall release the Secretary from the necessity of further compliance with [paragraphs \(a\)](#), [\(b\)](#), and [\(c\)](#) of this section.

(e) **Finding debtors.** The Secretary will use every reasonable effort to locate debtors, using such sources as telephone directories, city directories, postmasters, drivers license records, automobile title and license records in State and local government agencies, the IRS, credit reporting agencies and skip locator services. Referral of a confess-judgment note to the appropriate United States Attorney's Office for entry of judgment will not be delayed because the debtor cannot be located.

(f) ***Communications from debtors.*** The Secretary should respond promptly to communications from debtor, within 30 days where feasible, and should advise debtors who dispute debts to furnish available evidence to support their contentions.

(g) ***Exception.*** This section does not require duplication of any notice already contained in a written agreement, letter or other document signed by, or provided to, the debtor.

§ 30.12 Administrative offset.

(a) *Scope.*

(1) Administrative offset is the withholding of funds payable by the United States to, or held by the United States for, a person to satisfy a debt.

(2) This section does not apply to:

(i) Debts arising under the Social Security Act, except as provided in [42 U.S.C. 404](#);

(ii) Payments made under the Social Security Act, except as provided for in [31 U.S.C. 3716\(c\)](#), and implementing regulation at [31 CFR 285.4](#);

(iii) Debts arising under, or payments made under, the Internal Revenue Code or the tariff laws of the United States;

(iv) Offsets against Federal salaries to the extent these standards are inconsistent with regulations published to implement such offsets under [5 U.S.C. 5514](#) and [31 U.S.C. 3716](#) (see [5 CFR part 550, subpart K](#); [31 CFR 285.7](#); and part 33 of this chapter);

(v) Offsets under [31 U.S.C. 3728](#) against a judgment obtained by a debtor against the United States;

(vi) Offsets or recoupments under common law, State law, or Federal statutes specifically prohibiting offsets or recoupments for particular types of debts; or

(vii) Offsets in the course of judicial proceedings, including bankruptcy.

(3) Unless otherwise provided for by contract or law, debts or payments that are not subject to administrative offset under [31 U.S.C. 3716](#) may be collected by administrative offset under the common law or other applicable statutory authority.

(4) Unless otherwise provided by law, collection by administrative offset under the authority of [31 U.S.C. 3716](#) may not be conducted more than 10 years after the Department's right to collect the debt first accrued, unless facts material to the Department's right to collect the debt were not known and could not reasonably have been known by the Secretary. This limitation does not apply to debts reduced to judgment.

(5) Where there is reason to believe that a bankruptcy petition has been filed with respect to a debtor, the Office of the General Counsel should be contacted for legal advice concerning the impact of the Bankruptcy Code, particularly [11 U.S.C. 106](#), [362](#) and [553](#), on pending or contemplated collections by offset.

(b) *Centralized administrative offset.*

(1) Except as provided in the exceptions listed in [§ 30.10\(c\)\(1\)](#), legally enforceable debts which are 180 days delinquent shall be referred to the Secretary of the Treasury for collection by centralized administrative offset pursuant to and in accordance with [31 CFR 901.3\(b\)](#). Debts which are less than 180 days delinquent, including debts referred to the Department by another agency, also may be referred to the Secretary of the Treasury for collection by centralized administrative offset.

(2) When referring delinquent debts to the Secretary of the Treasury for centralized administrative offset, the Department must certify, in a form acceptable to the Secretary of the Treasury, that:

(i) The debt is past due and legally enforceable; and

(ii) The Department has complied with all due process requirements under [31 U.S.C. 3716\(a\)](#) and [paragraph \(c\)\(2\)](#) of this section.

(3) Payments that are prohibited by law from being offset are exempt from centralized administrative offset. The Secretary of the Treasury shall exempt payments under means-tested programs from centralized administrative offset when requested in writing by the head of the payment certifying or authorizing agency. Also, the Secretary of the Treasury may exempt other classes of payments from centralized offset upon the written request of the head of the payment certifying or authorizing agency.

(c) *Non-centralized administrative offset.*

(1) Unless otherwise prohibited by law, when centralized administrative offset under [paragraph \(b\)](#) of this section is not available or appropriate, the Secretary may collect a delinquent debt by conducting non-centralized administrative offset internally or in cooperation with the agency certifying or authorizing payments to the debtor.

(2) Except as provided in [paragraph \(c\)\(3\)](#) of this section, administrative offset may be initiated only after:

(i) The debtor has been sent written notice of the type and amount of the debt, the intention of the Department to initiate administrative offset to collect the debt, and an explanation of the debtor's rights under [31 U.S.C. 3716](#); and

(ii) The debtor has been given:

(A) The opportunity to inspect and copy Department records related to the debt;

(B) The opportunity for a review within the Department of the determination of indebtedness; and

(C) The opportunity to make a written agreement to repay the debt.

(3) The due process requirements under [paragraph \(c\)\(2\)](#) of this section may be omitted when:

(i) Offset is in the nature of a recoupment, i.e., the debt and the payment to be offset arise out of the same transaction or occurrence;

(ii) The debt arises under a contract as set forth in *Cecile Industries, Inc. v. Cheney*, 995 F.2d 1052 (Fed. Cir. 1993) (notice and other procedural protections set forth in [31 U.S.C. 3716\(a\)](#) do not supplant or restrict established procedures for contractual offsets covered by the Contracts Disputes Act); or

(iii) In the case of non-centralized administrative offset conducted under [paragraph \(c\)\(1\)](#) of this section, the Department first learns of the existence of the amount owed by the debtor when there is insufficient time before payment would be made to the debtor/payee to allow for prior notice and an opportunity for review. When prior notice and an opportunity for review are omitted, the Secretary shall give the debtor such notice and an opportunity for review as soon as practical and shall promptly refund any money ultimately found not to have been owed to the Government.

(4) When the debtor previously has been given any of the required notice and review opportunities with respect to a particular debt, such as under [§ 30.11 of this part](#), the Department need not duplicate such notice and review opportunities before administrative offset may be initiated.

(5) Before requesting that a payment authorizing agency to conduct non-centralized administrative offset, the Department shall:

(i) Provide the debtor with due process as set forth in [paragraph \(c\)\(2\)](#) of this section; and

(ii) Provide the payment authorizing agency written certification that the debtor owes the past due, legally enforceable delinquent debt in the amount stated, and that the Department has fully complied with this section.

(6) When a creditor agency requests that the Department, as the payment authorizing agency, conduct non-centralized administrative offset, the Secretary shall comply with the request, unless the offset would not be in the best interest of the United States with respect to the program of the Department, or would otherwise be contrary to law. Appropriate use should be made of the cooperative efforts of other agencies in effecting collection by administrative offset, including salary offset.

(7) When collecting multiple debts by non-centralized administrative offset, the Department will apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, particularly the applicable statute of limitations.

(d) Requests to OPM to offset a debtor's anticipated or future benefit payments under the Civil Service Retirement and Disability Fund and the Federal Employee Retirement System. Upon providing OPM written certification that a debtor has been afforded the procedures provided in [paragraph \(c\)\(2\)](#) of this section, the Department may request OPM to offset a debtor's anticipated or future benefit payments under the Civil Service Retirement and Disability Fund (Fund) in accordance with [5 CFR part 831, subpart R](#), or under the Federal Employee Retirement System (FERS) in accordance with [5 CFR part 845, subpart D](#). Upon receipt of such a request, OPM will identify and “flag” a debtor's account in anticipation of the time when the debtor requests, or becomes eligible to receive, payments from the Fund or under FERS. This will satisfy any requirement that offset be initiated prior to the expiration of the time limitations referenced in [31 CFR 901.3\(b\)\(4\)](#).

(e) Review requirements.

(1) For purposes of this section, whenever the Secretary is required to afford a debtor a review within the Department, the debtor shall be provided with a reasonable opportunity for an oral hearing when the debtor requests reconsideration of the debt and the Secretary determines that the question of the

indebtedness cannot be resolved by review of the documentary evidence, for example, when the validity of the debt turns on an issue of credibility or veracity.

(2) Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary hearing, although the Department will carefully document all significant matters discussed at the hearing.

(3) An oral hearing is not required with respect to debt collection systems where determinations of indebtedness rarely involve issues of credibility or veracity, and the Secretary has determined that a review of the written record is adequate to correct prior mistakes.

(4) In those cases when an oral hearing is not required by this section, the Secretary shall accord the debtor a “paper hearing,” that is, a determination of the request for reconsideration based upon a review of the written record.

§ 30.13 Debt reporting and use of credit reporting agencies.

(a) *Reporting delinquent debts.*

(1) The Secretary will report delinquent debts over \$100 to credit bureaus or other automated databases. Debts arising under the Social Security Act are excluded from paragraph (a).

(2) Debts owed by individuals will be reported to consumer reporting agencies pursuant to [5 U.S.C. 552a\(b\)\(12\)](#).

(3) Once a debt has been referred to Treasury for collection, any subsequent reporting to or updating of a credit bureau or other automated database may be handled by the Treasury.

(4) Where there is reason to believe that a bankruptcy petition has been filed with respect to a debtor, the Office of the General Counsel should be contacted for legal advice concerning the impact of the Bankruptcy Code, particularly with respect to the applicability of the automatic stay, [11 U.S.C. 362](#), and the procedures for obtaining relief from such stay prior to proceeding under [paragraph \(a\)](#) of this section.

(5) If the debtor has not received prior written notice under [§ 30.11\(b\)](#), before reporting a delinquent debt under this section, the Secretary shall provide the debtor at least 60 days written notice of the amount and nature of the debt; that the debt is delinquent and the Department intends to report the debt to a credit bureau (including the specific information that will be disclosed); that the debtor has the right to dispute the accuracy and validity of the information being disclosed; and, if a previous opportunity was not provided, that the debtor may request review within the Department of the debt or rescheduling of payment. The Secretary may disclose only the individual's name, address, and social security number and the nature, amount, status and history of the debt.

(b) *Use of credit reporting agencies.* The Secretary may also use credit reporting agencies to obtain credit reports to evaluate the financial status of loan applicants, potential contractors and grantees; to determine a debtor's ability to repay a debt; and to locate debtors. In the case of an individual, the Secretary may disclose, as a routine use under [5 U.S.C 552a\(b\)\(3\)](#), only the individual's name, address, and Social Security number and the purpose for which the information will be used.

§ 30.14 Contracting with private collection contractors and with entities that locate and recover unclaimed assets.

(a) Subject to the provisions of [paragraph \(b\)](#) of this section, the Secretary may contract with private collection contractors to recover delinquent debts, provided that:

(1) The Secretary retains the authority to resolve disputes, compromise debts, suspend or terminate collection action, and refer debts to Justice for litigation;

(2) The private collection contractor is not allowed to offer the debtor, as an incentive for payment, the opportunity to pay the debt less the private collection contractor's fee unless the Secretary has granted such authority prior to the offer;

(3) The contract provides that the private collection contractor is subject to the Privacy Act of 1974 to the extent specified in [5 U.S.C. 552a\(m\)](#), and to applicable Federal and State laws and regulations pertaining to debt collection practices, including but not limited to the Fair Debt Collection Practices Act, [15 U.S.C. 1692](#); and

(4) The private collection contractor is required to account for all amounts collected.

(b) The Secretary shall use government-wide debt collection contracts to obtain debt collection services provided by private collection contractors. However, the Secretary may refer debts to private collection contractors pursuant to a contract between the Department and the private collection contractor only if such debts are not subject to the requirement to transfer debts to the Department of the Treasury for debt collection under [31 U.S.C. 3711\(g\)](#) and [31 CFR 285.12\(e\)](#).

(c) Debts arising under the Social Security Act (which can be collected by private collection contractors only by Treasury after the debt has been referred to Treasury for collection) are excluded from this section.

(d) The Secretary may fund private collection contractor contracts in accordance with [31 U.S.C. 3718\(d\)](#), or as otherwise permitted by law. A contract under [paragraph \(a\)](#) of this section may provide that the fee a private collection contractor charges the Department for collecting the debt is payable from the amounts collected.

(e) The Department may enter into contracts for locating and recovering assets of the United States including unclaimed assets. However, before entering into a contract to recover assets of the United States that may be held by a State government or financial institution, the Department must establish procedures that are acceptable to the Secretary of Treasury.

(f) The Secretary may enter into contracts for debtor asset and income search reports. In accordance with [31 U.S.C. 3718\(d\)](#), such contracts may provide that the fee a contractor charges the Department for such services may be payable from the amounts recovered, unless otherwise prohibited by statute.

§ 30.15 Suspension or revocation of eligibility for loans and loan guarantees, licenses, permits, or privileges.

(a)

(1) Unless waived by the Secretary, financial assistance in the form of loans, loan guarantees, or loan insurance shall not be extended to any person delinquent on a non-tax debt owed to the United States. This prohibition does not apply to disaster loans. Grants, cooperative agreements, and contracts are not considered to be loans.

(2) The authority to waive the application of this section may be delegated to the Chief Financial Officer and re-delegated only to the Deputy Chief Financial Officer.

(3) States that manage Federal activities, pursuant to approval from the Secretary, should ensure that appropriate steps are taken to safeguard against issuing licenses, permits, or other privileges to debtors who fail to pay their debts to the Federal Government.

(b) The Secretary will report to Treasury any surety that fails to honor its obligations under [31 U.S.C. 9305](#).

(c) In non-bankruptcy cases, when seeking to collect statutory penalties, forfeitures, or other types of claims, the Secretary may suspend or revoke licenses, permits, or other privileges of a delinquent debtor if the failure to pay the debt is found to be inexcusable or willful. Such suspension or revocation will extend to programs or activities administered by the States on behalf of the Federal Government, to the extent that they affect the Federal Government's ability to collect money or funds owed by debtors.

(d) Where there is reason to believe that a bankruptcy petition has been filed with respect to a debtor, before taking any action to suspend or revoke under [paragraph \(c\)](#) of this section, the Office of the General Counsel should be contacted for legal advice concerning the impact of the Bankruptcy Code, particularly [11 U.S.C. 362](#) and [525](#), which may restrict such action.

§ 30.16 Liquidation of collateral.

(a)

(1) The Secretary will liquidate security or collateral through the exercise of a power of sale in the security instrument or a non-judicial foreclosure, and apply the proceeds to the applicable debt(s), if the debtor fails to pay the debt(s) within a reasonable time after demand and if such action is in the best interests of the United States.

(2) Collection from other sources, including liquidation of security or collateral, is not a prerequisite to requiring payment by a surety, insurer, or guarantor unless such action is expressly required by statute or contract.

(3) The Secretary will give the debtor reasonable notice of the sale and an accounting of any surplus proceeds and will comply with other requirements under law or contract.

(b) Where there is reason to believe that a bankruptcy petition has been filed with respect to a debtor, the Office of the General Counsel should be contacted for legal advice concerning the impact of the Bankruptcy Code, particularly with respect to the applicability of the automatic stay, [11 U.S.C. 362](#), and the procedures for obtaining relief from such stay prior to proceeding under [paragraph \(a\)](#) of this section.

§ 30.17 Collection in installments.

(a) Whenever feasible, the total amount of a debt shall be collected in one lump sum payment. If a debtor is financially unable to pay a debt in one lump sum, either by funds or administrative offset, the Secretary may accept payment in regular installments. The Secretary will obtain financial statements from debtors who represent that they are unable to pay in one lump sum and independently verify such representations as described in [§ 30.22\(a\)\(1\)](#).

(b)

(1) When the Secretary agrees to accept payments in regular installments, a legally enforceable written agreement should be obtained from the debtor that specifies all the terms and conditions of the agreement, and that includes a provision accelerating the debt in the event of a default.

(2) The size and frequency of the payments should reasonably relate to the size of the debt and the debtor's ability to pay. Whenever feasible, the installment agreement will provide for full payment of the debt, including interest and charges, in three years or less.

(3) In appropriate cases, the agreement should include a provision identifying security obtained from the debtor for the deferred payments.

§ 30.18 Interest, penalties, and administrative costs.

(a) **Generally.** Except as provided in [paragraphs \(g\), \(h\), and \(i\)](#) of this section, the Department shall charge interest, penalties, and administrative costs on delinquent debts owed to the United States. These charges shall continue to accrue until the debt is paid in full or otherwise resolved through compromise, termination, or waiver of the charges.

(b) **Interest.** The Department shall charge interest on delinquent debts owed the United States as follows:

(1) Interest shall accrue from the date of delinquency, or as otherwise provided by law. For debts not paid by the date specified in the written demand for payment made under [§ 30.11](#), the date of delinquency is the date of mailing of the notice. The date of delinquency for an installment payment is the due date specified in the payment agreement.

(2) Unless a different rate is prescribed by statute, contract, or a repayment agreement, the rate of interest charged shall be the rate established annually by the Secretary of the Treasury pursuant to [31 U.S.C. 3717](#). The Department may charge a higher rate if necessary to protect the rights of the United States and the Secretary has determined and documented a higher rate for delinquent debt is required to protect the Government's interests. Any such higher rate of interest charged will be based on Treasury's quarterly rate certification to the U.S. Public Health Service for delinquencies in the National Research Services Awards and the National Health Services Corps Scholarship Program. The Department publishes this rate in the Federal Register quarterly.

(3) Unless prescribed by statute or contract, the rate of interest, as initially charged, shall remain fixed for the duration of the indebtedness. When a debtor defaults on a repayment agreement and seeks to enter into a new agreement, the Department may require payment of interest at a new rate that reflects the Treasury rate in effect at the time the new agreement is executed. Interest shall not be compounded, that is, interest shall not be charged on interest, penalties, or administrative costs required by this section, unless prescribed by statute or contract. If, however, the debtor defaults on a previous

repayment agreement, charges that accrued but were not collected under the defaulted agreement shall be added to the principal under the new repayment agreement.

(c) **Administrative costs.** The Department shall assess administrative costs incurred for processing and handling delinquent debts. The calculation of administrative costs should be based on actual costs incurred or a valid estimate of the actual costs. Calculation of administrative costs shall include all direct (personnel, supplies, etc.) and indirect collection costs, including the cost of providing a hearing or any other form of administrative review requested by a debtor, and any costs charged by a collection agency under [§ 30.14](#). These charges will be assessed monthly, or per payment period, throughout the period that the debt is overdue. Such costs may also be in addition to other administrative costs if collection is being made for another Federal agency or unit.

(d) **Penalty.** Unless otherwise established by contract, repayment agreement, or statute, the Secretary will charge a penalty of six percent a year on the amount due on a debt that is delinquent for more than 90 days. This charge shall accrue from the date of delinquency.

(e) **Cost of living adjustment.** When there is a legitimate reason to do so, such as when calculating interest and penalties on a debt would be extremely difficult because of the age of the debt, an administrative debt may be increased by the cost of living adjustment in lieu of charging interest and penalties under this section. Administrative debt includes, but is not limited to, a debt based on fines, penalties, and overpayments, but does not include a debt based on the extension of Government credit, such as those arising from loans and loan guaranties. The cost of living adjustment is the percentage by which the Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds the Consumer Price Index for the month of June of the calendar year in which the debt was determined or last adjusted. Such increases to administrative debts shall be computed annually.

(f) **Priority.** When a debt is paid in partial or installment payments, amounts received shall be applied first to outstanding penalties, second to administrative charges, third to interest, and last to principal.

(g) **Waiver.**

(1) The Secretary shall waive the collection of interest and administrative charges imposed pursuant to this section on the portion of the debt that is paid within 30 days after the date on which interest began to accrue. The Secretary may extend this 30-day period on a case-by-case basis if the Secretary determines that such action is in the best interest of the Government, or otherwise warranted by equity and good conscience.

(2) The Secretary also may waive interest, penalties, and administrative charges charged under this section, in whole or in part, without regard to the amount of the debt, based on:

(i) The criteria set forth at [§ 30.22\(a\)\(1\)](#) through [\(4\)](#) for the compromise of debts; or

(ii) A determination by the Secretary that collection of these charges is:

(A) Against equity and good conscience; or

(B) Not in the best interest of the United States.

(h) **Review.**

(1) Except as provided in [paragraph \(h\)\(2\)](#) of this section, administrative review of a debt will not suspend the assessment of interest, penalties, and administrative costs. While agency review of a debt is pending, the debtor either may pay the debt or be liable for interest and related charges on the uncollected debt. When agency review results in a final determination that any amount was properly a debt and the debtor chose to retain the amount in dispute, the Secretary shall collect from the debtor the amount determined to be due, plus interest, penalties and administrative costs on such debt amount, as calculated under this section, starting from the date the debtor was first made aware of the debt and ending when the debt is repaid.

(2) **Exception.** Interest, penalties, and administrative cost charges will not be imposed on a debt for periods during which collection activity has been suspended under [§ 30.29\(c\)\(1\)](#) pending agency review or consideration of waiver if statute prohibits collection of the debt during this period.

(i) **Common law or other statutory authority.** The Department may impose and waive interest and related charges on debts not subject to [31 U.S.C. 3717](#) in accordance with the common law or other statutory authority.

§ 30.19 Review of cost effectiveness of collection.

Periodically, the Secretary will compare costs incurred and amounts collected. Data on costs and corresponding recovery rates for debts of different types and in various dollar ranges will be used to compare the cost effectiveness of alternative collection techniques, establish guidelines with respect to points at which costs of further collection efforts are likely to exceed recoveries, assist in evaluating offers in compromise, and establish minimum debt amounts below which collection efforts need not be taken.

§ 30.20 Taxpayer information.

(a) When attempting to locate a debtor in order to collect or compromise a debt under this part or any other authority, the Secretary may send a request to Treasury in accordance with [31 CFR 901.11](#) to obtain a debtor's mailing address from the records of the IRS.

(b) Mailing addresses obtained under [paragraph \(a\)](#) of this section may be used to enforce collection of a delinquent debt and may be disclosed to other agencies and to collection agencies for collection purposes.

Subpart C—Debt Compromise

§ 30.21 Scope and application.

(a) **Scope.** The standards set forth in this subpart apply to the compromise of debts pursuant to [31 U.S.C. 3711](#). The Secretary may exercise such compromise authority for debts arising out of activities of, or referred or transferred for collection services to, the Department when the amount of the debt then due, exclusive of interest, penalties, and administrative costs, does not exceed \$100,000, or any higher amount authorized by the Attorney General.

(b) **Application.** Unless otherwise provided by law, when the principal balance of a debt, exclusive of interest, penalties, and administrative costs, exceeds \$100,000 or any higher amount authorized by the Attorney General, the authority to accept a compromise rests with Justice. The Secretary shall evaluate

the compromise offer, using the factors set forth in this subpart. If an offer to compromise any debt in excess of \$100,000 is acceptable to the Department, the Secretary shall refer the debt to the Civil Division or other appropriate litigating division in Justice using a Claims Collection Litigation Report (CCLR), which may be obtained from Justice's National Central Intake Facility. The referral shall include appropriate financial information and a recommendation for the acceptance of the compromise offer. Justice approval is not required if the Secretary rejects a compromise offer.

§ 30.22 Bases for compromise.

(a) **Compromise.** The Secretary may compromise a debt if the full amount cannot be collected based upon inability to pay, inability to collect the full debt, cost of collection, or doubt debt can be proven in court.

(1) **Inability to pay.** The debtor is unable to pay the full amount in a reasonable time, as verified through credit reports or other financial information. In determining a debtor's inability to pay the full amount of the debt within a reasonable time, the Secretary will obtain and verify the debtor's claim of inability to pay by using credit reports or a current financial Statement from the debtor, executed under penalty of perjury, showing the debtor's assets, liabilities, income, and expenses. The Secretary may use a Departmental financial information form or may request suitable forms from Justice or the local United States Attorney's Office. The Secretary also may consider other relevant factors such as:

- (i) Age and health of the debtor;
- (ii) Present and potential income;
- (iii) Inheritance prospects;
- (iv) The possibility that assets have been concealed or improperly transferred by the debtor; and
- (v) The availability of assets or income that may be realized by enforced collection proceedings.

(2) **Inability to collect full debt.** The Government is unable to collect the debt in full within a reasonable time by enforced collection proceedings.

(i) In determining the Government's ability to enforce collection, the Secretary will consider the applicable exemptions available to the debtor under State and Federal law, and may also consider uncertainty as to the price the collateral or other property will bring at a forced sale.

(ii) A compromise effected under this section should be for an amount that bears a reasonable relation to the amount that can be recovered by enforced collection procedures, with regard to the exemptions available to the debtor and the time that collection will take.

(3) **Cost of collection.** The cost of collecting the debt does not justify the enforced collection of the full amount.

(i) The Secretary may compromise a debt if the cost of collecting the debt does not justify the enforced collection of the full amount. The amount accepted in compromise of such cases may reflect an appropriate discount for the administrative and litigation costs of collection, with consideration given to the time it will take to effect collection. Collection costs may be a substantial factor in the settlement of small debts.

(ii) In determining whether the costs of collection justify enforced collection of the full amount, the Secretary will consider whether continued collection of the debt, regardless of cost, is necessary to further an enforcement principal, such as the Government's willingness to pursue aggressively defaulting and uncooperative debtors.

(4) ***Doubt debt can be proven in court.*** There is significant doubt concerning the Government's ability to prove its case in court.

(i) If there is significant doubt concerning the Government's ability to prove its case in court for the full amount claimed, either because of the legal issues involved or because of a bona fide dispute as to the facts, then the amount accepted in compromise of such cases should fairly reflect the probabilities of successful prosecution to judgment, with due regard to the availability of witnesses and other evidentiary support for the Government's claim.

(ii) In determining the litigation risks involved, the Secretary will consider the probable amount of court costs and attorney fees pursuant to the Equal Access to Justice Act, [28 U.S.C. 2412](#), that may be imposed against the Government if it is unsuccessful in litigation.

(b) ***Installments.*** The Secretary generally will not accept compromises payable in installments. This is not an advantageous form of compromise in terms of time and administrative expense. If, however, payment of a compromise in installments is necessary, the Secretary shall, except in the case of compromises based on [paragraph \(a\)\(4\)](#) of this section, obtain a legally enforceable written agreement providing that, in the event of default, the full original principal balance of the debt prior to compromise, less sums paid thereon, is reinstated. The Office of the General Counsel should be consulted concerning the appropriateness of including such a requirement in the case of compromises based on [paragraph \(a\)\(4\)](#) of this section. Whenever possible, the Secretary will obtain security for repayment in the manner set forth in [subpart B of this part](#).

§ 30.23 Enforcement policy.

The Secretary may compromise statutory penalties, forfeitures, or claims established as an aid to enforcement and to compel compliance if the Department's enforcement policy, in terms of deterrence and securing compliance, present and future, will be adequately served by the Secretary's acceptance of the sum to be agreed upon.

§ 30.24 Joint and several liability.

(a) When two or more debtors are jointly and severally liable, the Secretary will pursue collection against all debtors, as appropriate. The Secretary will not attempt to allocate the burden of payment between the debtors but will proceed to liquidate the indebtedness as quickly as possible.

(b) The Secretary will ensure that a compromise agreement with one debtor does not automatically release the Department's claim against the remaining debtor(s). The amount of a compromise with one debtor shall not be considered a precedent or binding in determining the amount that will be required from other debtors jointly and severally liable on the claim.

§ 30.25 Further review of compromise offers.

If the Secretary is uncertain whether to accept a firm, written, substantive compromise offer on a debt that is within the Secretary's delegated compromise authority, the Secretary may refer the offer to the Civil Division or other appropriate litigating division in Justice, using a CCLR accompanied by supporting data and particulars concerning the debt. Justice may act upon such an offer or return it to the Secretary with instructions or advice.

§ 30.26 Consideration of tax consequences to the Government.

In negotiating a compromise, the Secretary will consider the tax consequences to the Government. In particular, the Secretary will consider requiring a waiver of tax-loss-carry-forward and tax-loss-carry-back rights of the debtor. For information on discharge of indebtedness reporting requirements see [§ 30.32](#).

§ 30.27 Mutual release of the debtor and the Government.

In all appropriate instances, a compromise that is accepted by the Secretary will be implemented by means of a mutual release. The terms of such mutual release shall provide that the debtor is released from further non-tax liability on the compromised debt in consideration of payment in full of the compromise amount and the Government and its officials, past and present, are released and discharged from any and all claims and causes of action arising from the same transaction that the debtor may have. In the event a mutual release is not executed when a debt is compromised, unless prohibited by law, the debtor is still deemed to have waived any and all claims and causes of action against the Government and its officials related to the transaction giving rise to the compromised debt.

Subpart D—Suspending and Terminating Collection Activities

§ 30.28 Scope and application.

(a) **Scope.** The standards set forth in this subpart apply to the suspension or termination of collection activity pursuant to [31 U.S.C. 3711](#) on debts that do not exceed \$100,000, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs, after deducting the amount of partial payments or collections, if any. Prior to referring a debt to Justice for litigation, the Secretary may suspend or terminate collection under this subpart with respect to debts arising out of activities of, or referred or transferred for collection services to, the Department.

(b) Application.

(1) If, after deducting the amount of partial payments or collections, the principal amount of the debt exceeds \$100,000, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs, the authority to suspend or terminate rests solely with Justice.

(2) If the Secretary believes that suspension or termination of any debt in excess of \$100,000 may be appropriate, the Secretary shall refer the debt to the Civil Division or other appropriate litigating division in Justice, using the CCLR. The referral will specify the reasons for the Secretary's recommendation. If, prior to referral to Justice, the Secretary determines that a debt is plainly erroneous or clearly without merit, the Secretary may terminate collection activity regardless of the amount involved without obtaining Justice concurrence.

§ 30.29 Suspension of collection activity.

(a) **Generally.** The Secretary may suspend collection activity on a debt when:

- (1) The Department cannot locate the debtor;
- (2) The debtor's financial condition is expected to improve; or
- (3) The debtor has requested a waiver or review of the debt.

(b) **Financial condition.** Based on the current financial condition of a debtor, the Secretary may suspend collection activity on a debt when the debtor's future prospects justify retention of the debt for periodic review and collection activity, and:

- (1) The applicable statute of limitations has not expired;
- (2) Future collection can be effected by administrative offset, notwithstanding the expiration of the applicable statute of limitations for litigation of claims, with due regard to the 10-year limitation for administrative offset prescribed by [31 U.S.C. 3716\(e\)\(1\)](#); or
- (3) The debtor agrees to pay interest on the amount of the debt on which collection will be suspended, and such suspension is likely to enhance the debtor's ability to pay the full amount of the principal of the debt with interest at a later date.

(c) **Waiver or review.**

- (1) The Secretary shall suspend collection activity during the time required for consideration of the debtor's request for waiver or administrative review of the debt if the statute under which the request is sought prohibits the Secretary from collecting the debt during that time.
- (2) If the statute under which the waiver or administrative review request is sought does not prohibit collection activity pending consideration of the request, the Secretary may use discretion, on a case-by-case basis, to suspend collection. Collection action ordinarily will be suspended upon a request for waiver or review if the Secretary is prohibited by statute or regulation from issuing a refund of amounts collected prior to agency consideration of the debtor's request. However, collection will not be suspended when the Secretary determines that the request for waiver or review is frivolous or was made primarily to delay collection.

(d) **Bankruptcy.** Upon learning that a bankruptcy petition has been filed with respect to a debtor, in most cases the Secretary must suspend collection activity on the debt, pursuant to the provisions of [11 U.S.C. 362](#), [1201](#), and [1301](#), unless the Secretary can clearly establish that the automatic stay has been lifted or is no longer in effect. The Office of the General Counsel should be contacted immediately for legal advice, and the Secretary will take the necessary legal steps to ensure that no funds or money are paid by the Department to the debtor until relief from the automatic stay is obtained.

§ 30.30 Termination of collection activity.

- (a) The Secretary may terminate collection activity when:
 - (1) The Department is unable to collect any substantial amount through its own efforts or through the efforts of others;
 - (2) The Department is unable to locate the debtor;
 - (3) Costs of collection are anticipated to exceed the amount recoverable;

(4) The debt is legally without merit or enforcement of the debt is barred by any applicable statute of limitations;

(5) The debt cannot be substantiated; or

(6) The debt against the debtor has been discharged in bankruptcy.

(b)

(1) Collection activity will not be terminated before the Secretary has pursued all appropriate means of collection and determined, based upon the results of the collection activity, that the debt is uncollectible.

(2) Termination of collection activity ceases active collection of the debt. The termination of collection activity does not preclude the Secretary from retaining a record of the account for purposes of:

(i) Selling the debt, if the Secretary of the Treasury determines that such sale is in the best interest of the United States;

(ii) Pursuing collection at a subsequent date in the event there is a change in the debtor's status or a new collection tool becomes available;

(iii) Offsetting against future income or assets not available at the time of termination of collection activity; or

(iv) Screening future applicants for prior indebtedness.

(c) Generally, the Secretary shall terminate collection activity on a debt that has been discharged in bankruptcy, regardless of the amount. The Secretary may continue collection activity, however, subject to the provisions of the Bankruptcy Code, for any payments provided under a plan of reorganization. Offset and recoupment rights may survive the discharge of the debtor in bankruptcy and, under some circumstances, claims also may survive the discharge. For example, when the Department is a known creditor of a debtor the claims of the Department may survive a discharge if the Department did not receive formal notice of the bankruptcy proceedings. When the Department believes that it has claims or offsets that may have survived the discharge of the debtor, the Office of the General Counsel should be contacted for legal advice.

§ 30.31 Exception to termination.

When a significant enforcement policy is involved, or recovery of a judgment is a prerequisite to the imposition of administrative sanctions, the Secretary may refer debts to Justice for litigation even though termination of collection activity may otherwise be appropriate.

§ 30.32 Discharge of indebtedness; reporting requirements.

(a)

(1) Before discharging a delinquent debt, also referred to as close out of the debt, the Secretary shall take all appropriate steps to collect the debt in accordance with [31 U.S.C. 3711\(g\)\(9\)](#), and parts 30 through 33 of this chapter, including, as applicable, administrative offset; tax refund offset; Federal salary

offset; credit bureau reporting; administrative wage garnishment; litigation; foreclosure; and referral to Treasury, Treasury-designated debt collection centers, or private collection contractors.

(2) Discharge of indebtedness is distinct from termination or suspension of collection activity under this subpart, and is governed by the Internal Revenue Code. When collection action on a debt is suspended or terminated, the debt remains delinquent and further collection action may be pursued at a later date in accordance with the standards set forth in this part and [31 CFR parts 900](#) through [904](#).

(3) When the Department discharges a debt in full or in part, further collection action is prohibited. Therefore, before discharging a debt, the Secretary must:

(i) Make the determination that collection action is no longer warranted; and

(ii) Terminate debt collection action.

(b) In accordance with [31 U.S.C. 3711\(i\)](#), the Secretary shall use competitive procedures to sell a delinquent debt upon termination of collection action if the Secretary of the Treasury determines such a sale is in the best interests of the United States. Since the discharge of a debt precludes any further collection action, including the sale of a delinquent debt, the Secretary may not discharge a debt until the requirements of [31 U.S.C. 3711\(i\)](#) have been met.

(c) Upon discharge of an indebtedness, the Secretary must report the discharge to the IRS in accordance with the requirements of [26 U.S.C. 6050P](#) and [26 CFR 1.6050P-1](#). The Secretary may request that Treasury or Treasury-designated debt collection centers file such a discharge report to the IRS on the Department's behalf.

(d) When discharging a debt, the Secretary must request that litigation counsel release any liens of record securing the debt.

Subpart E—Referrals to the Department of Justice

§ 30.33 Prompt referral.

(a)

(1) The Secretary promptly shall refer to Justice for litigation debts on which aggressive collection activity has been taken in accordance with [subpart B of this part](#), and that cannot be compromised, or on which collection activity cannot be suspended or terminated, in accordance with [subpart D of this part](#).

(2) The Secretary may refer to Justice for litigation those debts arising out of activities of, or referred or transferred for collection services to, the Department.

(b)

(1) Debts for which the principal amount is over \$1,000,000, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs shall be referred to the Civil Division or other division responsible for litigating such debts at the Department of Justice, Washington DC.

(2) Debts for which the principal amount is \$1,000,000 or less, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs shall be referred to the Nationwide Central Intake Facility at Justice as required by the CCLR instructions.

(c)

(1) Consistent with aggressive agency collection activity and the standards contained in this part and [31 CFR parts 900](#) through [904](#), debts shall be referred to Justice as early as possible, and, in any event, well within the period for initiating timely lawsuits against the debtors.

(2) The Secretary shall make every effort to refer delinquent debts to Justice for litigation within one year of the date such debts last became delinquent. In the case of guaranteed or insured loans, the Secretary will make every effort to refer these delinquent debts to Justice for litigation within one year from the date the loan was presented to the Department for payment or re-insurance.

(d) Justice has exclusive jurisdiction over debts referred to it pursuant to this subpart. Upon referral of a debt to Justice, the Secretary shall:

(1) Immediately terminate the use of any administrative collection activities to collect the debt;

(2) Advise Justice of the collection activities utilized to date, and their result; and

(3) Refrain from having any contact with the debtor and direct all debtor inquiries concerning the debt to Justice.

(e) After referral of a debt under this subpart, the Secretary shall immediately notify the Department of Justice of any payments credited by the Department to the debtor's account. Pursuant to [31 CFR 904.1\(b\)](#), after referral of the debt under this subpart, Justice shall notify the Secretary of any payment received from the debtor.

§ 30.34 Claims Collection Litigation Report.

(a)

(1) Unless excepted by Justice, the Secretary will complete the CCLR, accompanied by a signed Certificate of Indebtedness, to refer all administratively uncollectible claims to the Department of Justice for litigation.

(2) The Secretary shall complete all of the sections of the CCLR appropriate to each debt as required by the CCLR instructions, and furnish such other information as may be required in specific cases.

(b) The Secretary shall indicate clearly on the CCLR the actions that the Department wishes Justice to take with respect to the referred debt. The Secretary may indicate specifically any of a number of litigation activities which Justice may pursue, including enforced collection, judgement lien only, renew judgement lien only, renew judgement lien and enforced collection, program enforcement, foreclosure only, and foreclosure and deficiency judgment.

(c) The Secretary also shall use the CCLR to refer a debt to Justice for the purpose of obtaining approval of a proposal to compromise the debt, or to suspend or terminate administrative collection activity of the debt.

§ 30.35 Preservation of evidence.

The Secretary will maintain and preserve all files and records that may be needed by Justice to prove the Department's claim in court. When referring debts to Justice for litigation, certified copies of the documents that form the basis for the claim should be provided along with the CCLR. Upon its request, the original documents will be provided to Justice.

§ 30.36 Minimum amount of referrals.

(a) Except as in [paragraph \(b\)](#) of this section, claims of less than \$2,500 exclusive of interest, penalties, and administrative costs, or such other amount as the Attorney General may prescribe, shall not be referred for litigation.

(b) The Secretary shall not refer claims of less than the minimum amount unless:

(1) Litigation to collect such smaller amount is important to ensure compliance with the policies and programs of the Department;

(2) The claim is being referred solely for the purpose of securing a judgment against the debtor, which will be filed as a lien against the debtor's property pursuant to [28 U.S.C. 3201](#) and returned to the Department for enforcement; or

(3) The debtor has the clear ability to pay the claim and the Government effectively can enforce payment, with due regard for the exemptions available to the debtor under State and Federal law and the judicial remedies available to the Government.

(c) The Secretary should consult with the Financial Litigation Staff of the Executive Office for United States Attorneys in Justice prior to referring claims valued at less than the minimum amount.

43 FEDERAL REGISTER PART 60-3—UNIFORM GUIDELINES ON EMPLOYEE SELECTION PROCEDURES (1978)

Authority: Secs. 201, 202, 203, 203(a), 205, 206(a), 301, 303(b), and 403(b) of [E.O. 11246](#); as amended by sec. 715 of Civil Rights Act of 1964, as amended ([42 U.S.C. 2000\(e\)-14](#)).

Source: [43 FR 38295](#), [38314](#), August 25, 1978, unless otherwise noted.

General Principles

§ 60-3.1 Statement of purpose.

A. Need for uniformity—Issuing agencies. The Federal government's need for a uniform set of principles on the question of the use of tests and other selection procedures has long been recognized. The Equal Employment Opportunity Commission, the Civil Service Commission, the Department of Labor, and the Department of Justice jointly have adopted these uniform guidelines to meet that need, and to apply the same principles to the Federal Government as are applied to other employers.

B. Purpose of guidelines. These guidelines incorporate a single set of principles which are designed to assist employers, labor organizations, employment agencies, and licensing and certification boards to comply with requirements of Federal law prohibiting employment practices which discriminate on grounds of race, color, religion, sex, and national origin. They are designed to provide a framework for determining the proper use of tests and other selection procedures. These guidelines do not require a user to conduct validity studies of selection procedures where no adverse impact results. However, all users are encouraged to use selection procedures which are valid, especially users operating under merit principles.

C. Relation to prior guidelines. These guidelines are based upon and supersede previously issued guidelines on employee selection procedures. These guidelines have been built upon court decisions, the previously issued guidelines of the agencies, and the practical experience of the agencies, as well as the standards of the psychological profession. These guidelines are intended to be consistent with existing law.

§ 60-3.2 Scope.

A. Application of guidelines. These guidelines will be applied by the Equal Employment Opportunity Commission in the enforcement of title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 (hereinafter “Title VII”); by the Department of Labor, and the contract compliance agencies until the transfer of authority contemplated by the President's Reorganization Plan No. 1 of 1978, in the administration and enforcement of Executive Order 11246, as amended by Executive Order 11375 (hereinafter “Executive Order 11246”); by the Civil Service Commission and other Federal agencies subject to section 717 of Title VII; by the Civil Service Commission in exercising its responsibilities toward State and local governments under section 208(b)(1) of the Intergovernmental-Personnel Act; by the Department of Justice in exercising its responsibilities under Federal law; by the

Office of Revenue Sharing of the Department of the Treasury under the State and Local Fiscal Assistance Act of 1972, as amended; and by any other Federal agency which adopts them.

B. Employment decisions. These guidelines apply to tests and other selection procedures which are used as a basis for any employment decision. Employment decisions include but are not limited to hiring, promotion, demotion, membership (for example, in a labor organization), referral, retention, and licensing and certification, to the extent that licensing and certification may be covered by Federal equal employment opportunity law. Other selection decisions, such as selection for training or transfer, may also be considered employment decisions if they lead to any of the decisions listed above.

C. Selection procedures. These guidelines apply only to selection procedures which are used as a basis for making employment decisions. For example, the use of recruiting procedures designed to attract members of a particular race, sex, or ethnic group, which were previously denied employment opportunities or which are currently underutilized, may be necessary to bring an employer into compliance with Federal law, and is frequently an essential element of any effective affirmative action program; but recruitment practices are not considered by these guidelines to be selection procedures. Similarly, these guidelines do not pertain to the question of the lawfulness of a seniority system within the meaning of section 703(h), Executive Order 11246 or other provisions of Federal law or regulation, except to the extent that such systems utilize selection procedures to determine qualifications or abilities to perform the job. Nothing in these guidelines is intended or should be interpreted as discouraging the use of a selection procedure for the purpose of determining qualifications or for the purpose of selection on the basis of relative qualifications, if the selection procedure had been validated in accord with these guidelines for each such purpose for which it is to be used.

D. Limitations. These guidelines apply only to persons subject to Title VII, Executive Order 11246, or other equal employment opportunity requirements of Federal law. These guidelines do not apply to responsibilities under the Age Discrimination in Employment Act of 1967, as amended, not to discriminate on the basis of age, or under sections 501, 503, and 504 of the Rehabilitation Act of 1973, not to discriminate on the basis of handicap.

E. Indian preference not affected. These guidelines do not restrict any obligation imposed or right granted by Federal law to users to extend a preference in employment to Indians living on or near an Indian reservation in connection with employment opportunities on or near an Indian reservation.

§ 60-3.3 Discrimination defined: Relationship between use of selection procedures and discrimination.

A. Procedure having adverse impact constitutes discrimination unless justified. The use of any selection procedure which has an adverse impact on the hiring, promotion, or other employment or membership opportunities of members of any race, sex, or ethnic group will be considered to be discriminatory and inconsistent with these guidelines, unless the procedure has been validated in accordance with these guidelines, or the provisions of section 6 of this part are satisfied.

B. Consideration of suitable alternative selection procedures. Where two or more selection procedures are available which serve the user's legitimate interest in efficient and trustworthy workmanship, and which are substantially equally valid for a given purpose, the user should use the procedure which has been demonstrated to have the lesser adverse impact. Accordingly, whenever a validity study is called for by these guidelines, the user should include, as a part of the validity study, an investigation of suitable alternative selection procedures and suitable alternative methods of using the selection procedure which have as little adverse impact as possible, to determine the appropriateness of using or validating them in accord with these guidelines. If a user has made a reasonable effort to become aware of such alternative procedures and validity has been demonstrated in accord with these guidelines, the use of the test or other selection procedure may continue until such time as it should reasonably be reviewed for currency. Whenever the user is shown an alternative selection procedure with evidence of less adverse impact and substantial evidence of validity for the same job in similar circumstances, the user should investigate it to determine the appropriateness of using or validating it in accord with these guidelines. This subsection is not intended to preclude the combination of procedures into a significantly more valid procedure, if the use of such a combination has been shown to be in compliance with the guidelines.

§ 60-3.4 Information on impact.

A. Records concerning impact. Each user should maintain and have available for inspection records or other information which will disclose the impact which its tests and other selection procedures have upon employment opportunities of persons by identifiable race, sex, or ethnic group as set forth in subparagraph B of this section in order to determine compliance with these guidelines. Where there are large numbers of applicants and procedures are administered frequently, such information may be retained on a sample basis, provided that the sample is appropriate in terms of the applicant population and adequate in size.

B. Applicable race, sex, and ethnic groups for recordkeeping. The records called for by this section are to be maintained by sex, and the following races and ethnic groups: Blacks (Negroes), American Indians (including Alaskan Natives), Asians (including Pacific Islanders), Hispanic (including persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish origin or culture regardless of race), whites (Caucasians) other than Hispanic, and totals. The race, sex, and ethnic classifications called for by this section are consistent with the Equal Employment Opportunity Standard Form 100, Employer Information Report EEO-1 series of reports. The user should adopt safeguards to insure that the records required by this paragraph are used for appropriate purposes such as determining adverse impact, or (where required) for developing and monitoring affirmative action programs, and that such records are not used improperly. See sections 4E and 17(4), of this part.

C. Evaluation of selection rates. The "bottom line." If the information called for by sections 4A and B of this section shows that the total selection process for a job has an adverse impact, the individual components of the selection process should be evaluated for adverse impact. If this information shows that the total selection process does not have an adverse impact, the Federal enforcement agencies, in the exercise of their administrative and prosecutorial discretion, in usual circumstances, will not expect a user to evaluate the individual components for adverse impact, or to validate such individual components, and will not take enforcement action based

upon adverse impact of any component of that process, including the separate parts of a multipart selection procedure or any separate procedure that is used as an alternative method of selection. However, in the following circumstances the Federal enforcement agencies will expect a user to evaluate the individual components for adverse impact and may, where appropriate, take enforcement action with respect to the individual components: (1) where the selection procedure is a significant factor in the continuation of patterns of assignments of incumbent employees caused by prior discriminatory employment practices, (2) where the weight of court decisions or administrative interpretations hold that a specific procedure (such as height or weight requirements or no-arrest records) is not job related in the same or similar circumstances. In unusual circumstances, other than those listed in [paragraphs \(1\)](#) and [\(2\)](#) of this section, the Federal enforcement agencies may request a user to evaluate the individual components for adverse impact and may, where appropriate, take enforcement action with respect to the individual component.

D. Adverse impact and the “four-fifths rule.” A selection rate for any race, sex, or ethnic group which is less than four-fifths ($\frac{4}{5}$) (or eighty percent) of the rate for the group with the highest rate will generally be regarded by the Federal enforcement agencies as evidence of adverse impact, while a greater than four-fifths rate will generally not be regarded by Federal enforcement agencies as evidence of adverse impact. Smaller differences in selection rate may nevertheless constitute adverse impact, where they are significant in both statistical and practical terms or where a user's actions have discouraged applicants disproportionately on grounds of race, sex, or ethnic group. Greater differences in selection rate may not constitute adverse impact where the differences are based on small numbers and are not statistically significant, or where special recruiting or other programs cause the pool of minority or female candidates to be atypical of the normal pool of applicants from that group. Where the user's evidence concerning the impact of a selection procedure indicates adverse impact but is based upon numbers which are too small to be reliable, evidence concerning the impact of the procedure over a longer period of time and/or evidence concerning the impact which the selection procedure had when used in the same manner in similar circumstances elsewhere may be considered in determining adverse impact. Where the user has not maintained data on adverse impact as required by the documentation section of applicable guidelines, the Federal enforcement agencies may draw an inference of adverse impact of the selection process from the failure of the user to maintain such data, if the user has an underutilization of a group in the job category, as compared to the group's representation in the relevant labor market or, in the case of jobs filled from within, the applicable work force.

E. Consideration of user's equal employment opportunity posture. In carrying out their obligations, the Federal enforcement agencies will consider the general posture of the user with respect to equal employment opportunity for the job or group of jobs in question. Where a user has adopted an affirmative action program, the Federal enforcement agencies will consider the provisions of that program, including the goals and timetables which the user has adopted and the progress which the user has made in carrying out that program and in meeting the goals and timetables. While such affirmative action programs may in design and execution be race, color, sex, or ethnic conscious, selection procedures under such programs should be based upon the ability or relative ability to do the work.

§ 60-3.5 General standards for validity studies.

A. Acceptable types of validity studies. For the purposes of satisfying these guidelines, users may rely upon criterion-related validity studies, content validity studies or construct validity studies, in accordance with the standards set forth in the technical standards of these guidelines, section 14 of this part. New strategies for showing the validity of selection procedures will be evaluated as they become accepted by the psychological profession.

B. Criterion-related, content, and construct validity. Evidence of the validity of a test or other selection procedure by a criterion-related validity study should consist of empirical data demonstrating that the selection procedure is predictive of or significantly correlated with important elements of job performance. See 14B of this part. Evidence of the validity of a test or other selection procedure by a content validity study should consist of data showing that the content of the selection procedure is representative of important aspects of performance on the job for which the candidates are to be evaluated. See 14C of this part. Evidence of the validity of a test or other selection procedure through a construct validity study should consist of data showing that the procedure measures the degree to which candidates have identifiable characteristics which have been determined to be important in successful performance in the job for which the candidates are to be evaluated. See section 14D of this part.

C. Guidelines are consistent with professional standards. The provisions of these guidelines relating to validation of selection procedures are intended to be consistent with generally accepted professional standards for evaluating standardized tests and other selection procedures, such as those described in the Standards for Educational and Psychological Tests prepared by a joint committee of the American Psychological Association, the American Educational Research Association, and the National Council on Measurement in Education (American Psychological Association, Washington, D.C., 1974) (hereinafter “A.P.A. Standards”) and standard textbooks and journals in the field of personnel selection.

D. Need for documentation of validity. For any selection procedure which is part of a selection process which has an adverse impact and which selection procedure has an adverse impact, each user should maintain and have available such documentation as is described in section 15 of this part.

E. Accuracy and standardization. Validity studies should be carried out under conditions which assure insofar as possible the adequacy and accuracy of the research and the report. Selection procedures should be administered and scored under standardized conditions.

F. Caution against selection on basis of knowledges, skills, or ability learned in brief orientation period. In general, users should avoid making employment decisions on the basis of measures of knowledges, skills, or abilities which are normally learned in a brief orientation period, and which have an adverse impact.

G. Method of use of selection procedures. The evidence of both the validity and utility of a selection procedure should support the method the user chooses for operational use of the procedure, if that method of use has a greater adverse impact than another method of use. Evidence which may be sufficient to support the use of a selection procedure on a pass/fail (screening) basis may be insufficient to support the use of the same procedure on a ranking basis under these guidelines. Thus, if a user decides to use a selection procedure on a ranking basis, and that method of use has a greater adverse impact than use on an appropriate pass/fail basis

(see section 5H of this section), the user should have sufficient evidence of validity and utility to support the use on a ranking basis. See sections 3B, 14B (5) and (6), and 14C (8) and (9).

H. *Cutoff scores.* Where cutoff scores are used, they should normally be set so as to be reasonable and consistent with normal expectations of acceptable proficiency within the work force. Where applicants are ranked on the basis of properly validated selection procedures and those applicants scoring below a higher cutoff score than appropriate in light of such expectations have little or no chance of being selected for employment, the higher cutoff score may be appropriate, but the degree of adverse impact should be considered.

I. *Use of selection procedures for higher level jobs.* If job progression structures are so established that employees will probably, within a reasonable period of time and in a majority of cases, progress to a higher level, it may be considered that the applicants are being evaluated for a job or jobs at the higher level. However, where job progression is not so nearly automatic, or the time span is such that higher level jobs or employees' potential may be expected to change in significant ways, it should be considered that applicants are being evaluated for a job at or near the entry level. A "reasonable period of time" will vary for different jobs and employment situations but will seldom be more than 5 years. Use of selection procedures to evaluate applicants for a higher level job would not be appropriate:

- (1) If the majority of those remaining employed do not progress to the higher level job;
- (2) If there is a reason to doubt that the higher level job will continue to require essentially similar skills during the progression period; or
- (3) If the selection procedures measure knowledges, skills, or abilities required for advancement which would be expected to develop principally from the training or experience on the job.

J. *Interim use of selection procedures.* Users may continue the use of a selection procedure which is not at the moment fully supported by the required evidence of validity, provided: (1) The user has available substantial evidence of validity, and (2) the user has in progress, when technically feasible, a study which is designed to produce the additional evidence required by these guidelines within a reasonable time. If such a study is not technically feasible, see section 6B. If the study does not demonstrate validity, this provision of these guidelines for interim use shall not constitute a defense in any action, nor shall it relieve the user of any obligations arising under Federal law.

K. *Review of validity studies for currency.* Whenever validity has been shown in accord with these guidelines for the use of a particular selection procedure for a job or group of jobs, additional studies need not be performed until such time as the validity study is subject to review as provided in section 3B of this part. There are no absolutes in the area of determining the currency of a validity study. All circumstances concerning the study, including the validation strategy used, and changes in the relevant labor market and the job should be considered in the determination of when a validity study is outdated.

§ 60-3.6 Use of selection procedures which have not been validated.

A. *Use of alternate selection procedures to eliminate adverse impact.* A user may choose to utilize alternative selection procedures in order to eliminate adverse impact or as part of an affirmative action program. See section 13 of this part. Such alternative procedures should eliminate the adverse impact in the total selection process, should be lawful and should be as job related as possible.

B. *Where validity studies cannot or need not be performed.* There are circumstances in which a user cannot or need not utilize the validation techniques contemplated by these guidelines. In such circumstances, the user should utilize selection procedures which are as job related as possible and which will minimize or eliminate adverse impact, as set forth below.

(1) ***Where informal or unscored procedures are used.*** When an informal or unscored selection procedure which has an adverse impact is utilized, the user should eliminate the adverse impact, or modify the procedure to one which is a formal, scored or quantified measure or combination of measures and then validate the procedure in accord with these guidelines, or otherwise justify continued use of the procedure in accord with Federal law.

(2) ***Where formal and scored procedures are used.*** When a formal and scored selection procedure is used which has an adverse impact, the validation techniques contemplated by these guidelines usually should be followed if technically feasible. Where the user cannot or need not follow the validation techniques anticipated by these guidelines, the user should either modify the procedure to eliminate adverse impact or otherwise justify continued use of the procedure in accord with Federal law.

§ 60-3.7 Use of other validity studies.

A. *Validity studies not conducted by the user.* Users may, under certain circumstances, support the use of selection procedures by validity studies conducted by other users or conducted by test publishers or distributors and described in test manuals. While publishers of selection procedures have a professional obligation to provide evidence of validity which meets generally accepted professional standards (see section 5C of this part), users are cautioned that they are responsible for compliance with these guidelines. Accordingly, users seeking to obtain selection procedures from publishers and distributors should be careful to determine that, in the event the user becomes subject to the validity requirements of these guidelines, the necessary information to support validity has been determined and will be made available to the user.

B. *Use of criterion-related validity evidence from other sources.* Criterion-related validity studies conducted by one test user, or described in test manuals and the professional literature, will be considered acceptable for use by another user when the following requirements are met:

(1) ***Validity evidence.*** Evidence from the available studies meeting the standards of section 14B of this part clearly demonstrates that the selection procedure is valid;

(2) ***Job similarity.*** The incumbents in the user's job and the incumbents in the job or group of jobs on which the validity study was conducted perform substantially the same major work behaviors, as shown by appropriate job analyses both on the job or group of jobs on which the validity study was performed and on the job for which the selection procedure is to be used; and

(3) ***Fairness evidence.*** The studies include a study of test fairness for each race, sex, and ethnic group which constitutes a significant factor in the borrowing user's relevant labor market for the job or jobs in question. If the studies under consideration satisfy [paragraphs \(1\)](#) and [\(2\)](#) of this section but do not contain an investigation of test fairness, and it is not technically feasible for the borrowing user to conduct an internal study of test fairness, the borrowing user may utilize the study until studies conducted elsewhere meeting the requirements of these guidelines show test unfairness, or until such time as it becomes technically feasible to conduct an internal study of test fairness and the results of that study can be acted upon. Users obtaining selection procedures from publishers should consider, as one factor in the decision to purchase a particular selection procedure, the availability of evidence concerning test fairness.

C. *Validity evidence from multiunit study.* If validity evidence from a study covering more than one unit within an organization satisfies the requirements of section 14B of this part, evidence of validity specific to each unit will not be required unless there are variables which are likely to affect validity significantly.

D. *Other significant variables.* If there are variables in the other studies which are likely to affect validity significantly, the user may not rely upon such studies, but will be expected either to conduct an internal validity study or to comply with section 6 of this part.

§ 60-3.8 Cooperative studies.

A. *Encouragement of cooperative studies.* The agencies issuing these guidelines encourage employers, labor organizations, and employment agencies to cooperate in research, development, search for lawful alternatives, and validity studies in order to achieve procedures which are consistent with these guidelines.

B. *Standards for use of cooperative studies.* If validity evidence from a cooperative study satisfies the requirements of section 14 of this part, evidence of validity specific to each user will not be required unless there are variables in the user's situation which are likely to affect validity significantly.

§ 60-3.9 No assumption of validity.

A. *Unacceptable substitutes for evidence of validity.* Under no circumstances will the general reputation of a test or other selection procedures, its author or its publisher, or casual reports of its validity be accepted in lieu of evidence of validity. Specifically ruled out are: assumptions of validity based on a procedure's name or descriptive labels; all forms of promotional literature; data bearing on the frequency of a procedure's usage; testimonial statements and credentials of sellers, users, or consultants; and other nonempirical or anecdotal accounts of selection practices or selection outcomes.

B. *Encouragement of professional supervision.* Professional supervision of selection activities is encouraged but is not a substitute for documented evidence of validity. The enforcement agencies will take into account the fact that a thorough job analysis was conducted and that careful development and use of a selection procedure in accordance with professional standards enhance the probability that the selection procedure is valid for the job.

§ 60-3.10 Employment agencies and employment services.

A. *Where selection procedures are devised by agency.* An employment agency, including private employment agencies and State employment agencies, which agrees to a request by an employer or labor organization to devise and utilize a selection procedure should follow the standards in these guidelines for determining adverse impact. If adverse impact exists the agency should comply with these guidelines. An employment agency is not relieved of its obligation herein because the user did not request such validation or has requested the use of some lesser standard of validation than is provided in these guidelines. The use of an employment agency does not relieve an employer or labor organization or other user of its responsibilities under Federal law to provide equal employment opportunity or its obligations as a user under these guidelines.

B. *Where selection procedures are devised elsewhere.* Where an employment agency or service is requested to administer a selection procedure which has been devised elsewhere and to make referrals pursuant to the results, the employment agency or service should maintain and have available evidence of the impact of the selection and referral procedures which it administers. If adverse impact results the agency or service should comply with these guidelines. If the agency or service seeks to comply with these guidelines by reliance upon validity studies or other data in the possession of the employer, it should obtain and have available such information.

§ 60-3.11 Disparate treatment.

The principles of disparate or unequal treatment must be distinguished from the concepts of validation. A selection procedure—even though validated against job performance in accordance with these guidelines—cannot be imposed upon members of a race, sex, or ethnic group where other employees, applicants, or members have not been subjected to that standard. Disparate treatment occurs where members of a race, sex, or ethnic group have been denied the same employment, promotion, membership, or other employment opportunities as have been available to other employees or applicants. Those employees or applicants who have been denied equal treatment, because of prior discriminatory practices or policies, must at least be afforded the same opportunities as had existed for other employees or applicants during the period of discrimination. Thus, the persons who were in the class of persons discriminated against during the period the user followed the discriminatory practices should be allowed the opportunity to qualify under less stringent selection procedures previously followed, unless the user demonstrates that the increased standards are required by business necessity. This section does not prohibit a user who has not previously followed merit standards from adopting merit standards which are in compliance with these guidelines; nor does it preclude a user who has previously used invalid or unvalidated selection procedures from developing and using procedures which are in accord with these guidelines.

§ 60-3.12 Retesting of applicants.

Users should provide a reasonable opportunity for retesting and reconsideration. Where examinations are administered periodically with public notice, such reasonable opportunity exists, unless persons who have previously been tested are precluded from retesting. The user may however take reasonable steps to preserve the security of its procedures.

§ 60-3.13 Affirmative action.

A. Affirmative action obligations. The use of selection procedures which have been validated pursuant to these guidelines does not relieve users of any obligations they may have to undertake affirmative action to assure equal employment opportunity. Nothing in these guidelines is intended to preclude the use of lawful selection procedures which assist in remedying the effects of prior discriminatory practices, or the achievement of affirmative action objectives.

B. Encouragement of voluntary affirmative action programs. These guidelines are also intended to encourage the adoption and implementation of voluntary affirmative action programs by users who have no obligation under Federal law to adopt them; but are not intended to impose any new obligations in that regard. The agencies issuing and endorsing these guidelines endorse for all private employers and reaffirm for all governmental employers the Equal Employment Opportunity Coordinating Council's "Policy Statement on Affirmative Action Programs for State and Local Government Agencies" ([41 FR 38814](#), September 13, 1976). That policy statement is attached hereto as appendix, section 17.

Technical Standards

§ 60-3.14 Technical standards for validity studies.

The following minimum standards, as applicable, should be met in conducting a validity study. Nothing in these guidelines is intended to preclude the development and use of other professionally acceptable techniques with respect to validation of selection procedures. Where it is not technically feasible for a user to conduct a validity study, the user has the obligation otherwise to comply with these guidelines. See sections 6 and 7 of this part.

A. Validity studies should be based on review of information about the job. Any validity study should be based upon a review of information about the job for which the selection procedure is to be used. The review should include a job analysis except as provided in section 14B(3) of this section with respect to criterion-related validity. Any method of job analysis may be used if it provides the information required for the specific validation strategy used.

B. Technical standards for criterion-related validity studies—(1) Technical feasibility. Users choosing to validate a selection procedure by a criterion-related validity strategy should determine whether it is technically feasible (as defined in section 16) to conduct such a study in the particular employment context. The determination of the number of persons necessary to permit the conduct of a meaningful criterion-related study should be made by the user on the basis of all relevant information concerning the selection procedure, the potential sample and the employment situation. Where appropriate, jobs with substantially the same major work behaviors may be grouped together for validity studies, in order to obtain an adequate sample. These guidelines do not require a user to hire or promote persons for the purpose of making it possible to conduct a criterion-related study.

(2) Analysis of the job. There should be a review of job information to determine measures of work behavior(s) or performance that are relevant to the job or group of jobs in question. These measures or criteria are relevant to the extent that they represent critical or important job duties, work behaviors or work outcomes as developed from the review of job information. The

possibility of bias should be considered both in selection of the criterion measures and their application. In view of the possibility of bias in subjective evaluations, supervisory rating techniques and instructions to raters should be carefully developed. All criterion measures and the methods for gathering data need to be examined for freedom from factors which would unfairly alter scores of members of any group. The relevance of criteria and their freedom from bias are of particular concern when there are significant differences in measures of job performance for different groups.

(3) *Criterion measures.* Proper safeguards should be taken to insure that scores on selection procedures do not enter into any judgments of employee adequacy that are to be used as criterion measures. Whatever criteria are used should represent important or critical work behavior(s) or work outcomes. Certain criteria may be used without a full job analysis if the user can show the importance of the criteria to the particular employment context. These criteria include but are not limited to production rate, error rate, tardiness, absenteeism, and length of service. A standardized rating of overall work performance may be used where a study of the job shows that it is an appropriate criterion. Where performance in training is used as a criterion, success in training should be properly measured and the relevance of the training should be shown either through a comparison of the content of the training program with the critical or important work behavior(s) of the job(s), or through a demonstration of the relationship between measures of performance in training and measures of job performance. Measures of relative success in training include but are not limited to instructor evaluations, performance samples, or tests. Criterion measures consisting of paper and pencil tests will be closely reviewed for job relevance.

(4) *Representativeness of the sample.* Whether the study is predictive or concurrent, the sample subjects should insofar as feasible be representative of the candidates normally available in the relevant labor market for the job or group of jobs in question, and should insofar as feasible include the races, sexes, and ethnic groups normally available in the relevant job market. In determining the representativeness of the sample in a concurrent validity study, the user should take into account the extent to which the specific knowledges or skills which are the primary focus of the test are those which employees learn on the job.

Where samples are combined or compared, attention should be given to see that such samples are comparable in terms of the actual job they perform, the length of time on the job where time on the job is likely to affect performance, and other relevant factors likely to affect validity differences; or that these factors are included in the design of the study and their effects identified.

(5) *Statistical relationships.* The degree of relationship between selection procedure scores and criterion measures should be examined and computed, using professionally acceptable statistical procedures. Generally, a selection procedure is considered related to the criterion, for the purposes of these guidelines, when the relationship between performance on the procedure and performance on the criterion measure is statistically significant at the 0.05 level of significance, which means that it is sufficiently high as to have a probability of no more than one (1) in twenty (20) to have occurred by chance. Absence of a statistically significant relationship between a selection procedure and job performance should not necessarily discourage other investigations of the validity of that selection procedure.

(6) *Operational use of selection procedures.* Users should evaluate each selection procedure to assure that it is appropriate for operational use, including establishment of cutoff scores or rank ordering. Generally, if other factors remain the same, the greater the magnitude of the relationship (e.g., correlation coefficient) between performance on a selection procedure and one or more criteria of performance on the job, and the greater the importance and number of aspects of job performance covered by the criteria, the more likely it is that the procedure will be appropriate for use. Reliance upon a selection procedure which is significantly related to a criterion measure, but which is based upon a study involving a large number of subjects and has a low correlation coefficient will be subject to close review if it has a large adverse impact. Sole reliance upon a single selection instrument which is related to only one of many job duties or aspects of job performance will also be subject to close review. The appropriateness of a selection procedure is best evaluated in each particular situation and there are no minimum correlation coefficients applicable to all employment situations. In determining whether a selection procedure is appropriate for operational use the following considerations should also be taken into account: The degree of adverse impact of the procedure, the availability of other selection procedures of greater or substantially equal validity.

(7) *Overstatement of validity findings.* Users should avoid reliance upon techniques which tend to overestimate validity findings as a result of capitalization on chance unless an appropriate safeguard is taken. Reliance upon a few selection procedures or criteria of successful job performance when many selection procedures or criteria of performance have been studied, or the use of optimal statistical weights for selection procedures computed in one sample, are techniques which tend to inflate validity estimates as a result of chance. Use of a large sample is one safeguard: cross-validation is another.

(8) *Fairness.* This section generally calls for studies of unfairness where technically feasible. The concept of fairness or unfairness of selection procedures is a developing concept. In addition, fairness studies generally require substantial numbers of employees in the job or group of jobs being studied. For these reasons, the Federal enforcement agencies recognize that the obligation to conduct studies of fairness imposed by the guidelines generally will be upon users or groups of users with a large number of persons in a job class, or test developers; and that small users utilizing their own selection procedures will generally not be obligated to conduct such studies because it will be technically infeasible for them to do so.

(a) ***Unfairness defined.*** When members of one race, sex, or ethnic group characteristically obtain lower scores on a selection procedure than members of another group, and the differences in scores are not reflected in differences in a measure of job performance, use of the selection procedure may unfairly deny opportunities to members of the group that obtains the lower scores.

(b) ***Investigation of fairness.*** Where a selection procedure results in an adverse impact on a race, sex, or ethnic group identified in accordance with the classifications set forth in section 4 of this part and that group is a significant factor in the relevant labor market, the user generally should investigate the possible existence of unfairness for that group if it is technically feasible to do so. The greater the severity of the adverse impact on a group, the greater the need to investigate the possible existence of unfairness. Where the weight of evidence from other studies shows that the selection procedure predicts fairly for the group in question and for the

same or similar jobs, such evidence may be relied on in connection with the selection procedure at issue.

(c) **General considerations in fairness investigations.** Users conducting a study of fairness should review the A.P.A. Standards regarding investigation of possible bias in testing. An investigation of fairness of a selection procedure depends on both evidence of validity and the manner in which the selection procedure is to be used in a particular employment context. Fairness of a selection procedure cannot necessarily be specified in advance without investigating these factors. Investigation of fairness of a selection procedure in samples where the range of scores on selection procedures or criterion measures is severely restricted for any subgroup sample (as compared to other subgroup samples) may produce misleading evidence of unfairness. That factor should accordingly be taken into account in conducting such studies and before reliance is placed on the results.

(d) **When unfairness is shown.** If unfairness is demonstrated through a showing that members of a particular group perform better or poorer on the job than their scores on the selection procedure would indicate through comparison with how members of other groups perform, the user may either revise or replace the selection instrument in accordance with these guidelines, or may continue to use the selection instrument operationally with appropriate revisions in its use to assure compatibility between the probability of successful job performance and the probability of being selected.

(e) **Technical feasibility of fairness studies.** In addition to the general conditions needed for technical feasibility for the conduct of a criterion-related study (see section 16, below) an investigation of fairness requires the following:

(1) An adequate sample of persons in each group available for the study to achieve findings of statistical significance. Guidelines do not require a user to hire or promote persons on the basis of group classifications for the purpose of making it possible to conduct a study of fairness; but the user has the obligation otherwise to comply with these guidelines.

(2) The samples for each group should be comparable in terms of the actual job they perform, length of time on the job where time on the job is likely to affect performance, and other relevant factors likely to affect validity differences; or such factors should be included in the design of the study and their effects identified.

(f) **Continued use of selection procedures when fairness studies not feasible.** If a study of fairness should otherwise be performed, but is not technically feasible, a selection procedure may be used which has otherwise met the validity standards of these guidelines, unless the technical infeasibility resulted from discriminatory employment practices which are demonstrated by facts other than past failure to conform with requirements for validation of selection procedures. However, when it becomes technically feasible for the user to perform a study of fairness and such a study is otherwise called for, the user should conduct the study of fairness.

C. *Technical standards for content validity studies*—(1) *Appropriateness of content validity studies.* Users choosing to validate a selection procedure by a content validity strategy should determine whether it is appropriate to conduct such a study in the particular employment

context. A selection procedure can be supported by a content validity strategy to the extent that it is a representative sample of the content of the job. Selection procedures which purport to measure knowledges, skills, or abilities may in certain circumstances be justified by content validity, although they may not be representative samples, if the knowledge, skill, or ability measured by the selection procedure can be operationally defined as provided in paragraph 14C(4) of this section, and if that knowledge, skill, or ability is a necessary prerequisite to successful job performance.

A selection procedure based upon inferences about mental processes cannot be supported solely or primarily on the basis of content validity. Thus, a content strategy is not appropriate for demonstrating the validity of selection procedures which purport to measure traits or constructs, such as intelligence, aptitude, personality, commonsense, judgment, leadership, and spatial ability. Content validity is also not an appropriate strategy when the selection procedure involves knowledges, skills, or abilities which an employee will be expected to learn on the job.

(2) ***Job analysis for content validity.*** There should be a job analysis which includes an analysis of the important work behavior(s) required for successful performance and their relative importance and, if the behavior results in work product(s), an analysis of the work product(s). Any job analysis should focus on the work behavior(s) and the tasks associated with them. If work behavior(s) are not observable, the job analysis should identify and analyze those aspects of the behavior(s) that can be observed and the observed work products. The work behavior(s) selected for measurement should be critical work behavior(s) and/or important work behavior(s) constituting most of the job.

(3) ***Development of selection procedures.*** A selection procedure designed to measure the work behavior may be developed specifically from the job and job analysis in question, or may have been previously developed by the user, or by other users or by a test publisher.

(4) ***Standards for demonstrating content validity.*** To demonstrate the content validity of a selection procedure, a user should show that the behavior(s) demonstrated in the selection procedure are a representative sample of the behavior(s) of the job in question or that the selection procedure provides a representative sample of the work product of the job. In the case of a selection procedure measuring a knowledge, skill, or ability, the knowledge, skill, or ability being measured should be operationally defined. In the case of a selection procedure measuring a knowledge, the knowledge being measured should be operationally defined as that body of learned information which is used in and is a necessary prerequisite for observable aspects of work behavior of the job. In the case of skills or abilities, the skill or ability being measured should be operationally defined in terms of observable aspects of work behavior of the job. For any selection procedure measuring a knowledge, skill, or ability the user should show that (a) the selection procedure measures and is a representative sample of that knowledge, skill, or ability; and (b) that knowledge, skill, or ability is used in and is a necessary prerequisite to performance of critical or important work behavior(s). In addition, to be content valid, a selection procedure measuring a skill or ability should either closely approximate an observable work behavior, or its product should closely approximate an observable work product. If a test purports to sample a work behavior or to provide a sample of a work product, the manner and setting of the selection procedure and its level and complexity should closely approximate the work situation. The closer the content and the

context of the selection procedure are to work samples or work behaviors, the stronger is the basis for showing content validity. As the content of the selection procedure less resembles a work behavior, or the setting and manner of the administration of the selection procedure less resemble the work situation, or the result less resembles a work product, the less likely the selection procedure is to be content valid, and the greater the need for other evidence of validity.

(5) **Reliability.** The reliability of selection procedures justified on the basis of content validity should be a matter of concern to the user. Whenever it is feasible, appropriate statistical estimates should be made of the reliability of the selection procedure.

(6) **Prior training or experience.** A requirement for or evaluation of specific prior training or experience based on content validity, including a specification of level or amount of training or experience, should be justified on the basis of the relationship between the content of the training or experience and the content of the job for which the training or experience is to be required or evaluated. The critical consideration is the resemblance between the specific behaviors, products, knowledges, skills, or abilities in the experience or training and the specific behaviors, products, knowledges, skills, or abilities required on the job, whether or not there is close resemblance between the experience or training as a whole and the job as a whole.

(7) **Content validity of training success.** Where a measure of success in a training program is used as a selection procedure and the content of a training program is justified on the basis of content validity, the use should be justified on the relationship between the content of the training program and the content of the job.

(8) **Operational use.** A selection procedure which is supported on the basis of content validity may be used for a job if it represents a critical work behavior (*i.e.*, a behavior which is necessary for performance of the job) or work behaviors which constitute most of the important parts of the job.

(9) **Ranking based on content validity studies.** If a user can show, by a job analysis or otherwise, that a higher score on a content valid selection procedure is likely to result in better job performance, the results may be used to rank persons who score above minimum levels. Where a selection procedure supported solely or primarily by content validity is used to rank job candidates, the selection procedure should measure those aspects of performance which differentiate among levels of job performance.

D. Technical standards for construct validity studies—(1) Appropriateness of construct validity studies. Construct validity is a more complex strategy than either criterion-related or content validity. Construct validation is a relatively new and developing procedure in the employment field, and there is at present a lack of substantial literature extending the concept to employment practices. The user should be aware that the effort to obtain sufficient empirical support for construct validity is both an extensive and arduous effort involving a series of research studies, which include criterion related validity studies and which may include content validity studies. Users choosing to justify use of a selection procedure by this strategy should therefore take particular care to assure that the validity study meets the standards set forth below.

(2) *Job analysis for construct validity studies.* There should be a job analysis. This job analysis should show the work behavior(s) required for successful performance of the job, or the groups of jobs being studied, the critical or important work behavior(s) in the job or group of jobs being studied, and an identification of the construct(s) believed to underlie successful performance of these critical or important work behaviors in the job or jobs in question. Each construct should be named and defined, so as to distinguish it from other constructs. If a group of jobs is being studied the jobs should have in common one or more critical or important work behaviors at a comparable level of complexity.

(3) *Relationship to the job.* A selection procedure should then be identified or developed which measures the construct identified in accord with [subparagraph \(2\)](#) of this section. The user should show by empirical evidence that the selection procedure is validly related to the construct and that the construct is validly related to the performance of critical or important work behavior(s). The relationship between the construct as measured by the selection procedure and the related work behavior(s) should be supported by empirical evidence from one or more criterion-related studies involving the job or jobs in question which satisfy the provisions of paragraph 14B of this section.

(4) *Use of construct validity study without new criterion-related evidence—(a) Standards for use.* Until such time as professional literature provides more guidance on the use of construct validity in employment situations, the Federal agencies will accept a claim of construct validity without a criterion-related study which satisfies paragraph 14B of this section only when the selection procedure has been used elsewhere in a situation in which a criterion-related study has been conducted and the use of a criterion-related validity study in this context meets the standards for transportability of criterion-related validity studies as set forth above in section 7. However, if a study pertains to a number of jobs having common critical or important work behaviors at a comparable level of complexity, and the evidence satisfies subparagraphs 14B (2) and (3) of this section for those jobs with criterion-related validity evidence for those jobs, the selection procedure may be used for all the jobs to which the study pertains. If construct validity is to be generalized to other jobs or groups of jobs not in the group studied, the Federal enforcement agencies will expect at a minimum additional empirical research evidence meeting the standards of subparagraphs section 14B (2) and (3) of this section for the additional jobs or groups of jobs.

(b) *Determination of common work behaviors.* In determining whether two or more jobs have one or more work behavior(s) in common, the user should compare the observed work behavior(s) in each of the jobs and should compare the observed work product(s) in each of the jobs. If neither the observed work behavior(s) in each of the jobs nor the observed work product(s) in each of the jobs are the same, the Federal enforcement agencies will presume that the work behavior(s) in each job are different. If the work behaviors are not observable, then evidence of similarity of work products and any other relevant research evidence will be considered in determining whether the work behavior(s) in the two jobs are the same.

Documentation of Impact and Validity Evidence

§ 60-3.15 Documentation of impact and validity evidence.

A. *Required information.* Users of selection procedures other than those users complying with section 15A(1) of this section should maintain and have available for each job information on adverse impact of the selection process for that job and, where it is determined a selection process has an adverse impact, evidence of validity as set forth below.

(1) *Simplified recordkeeping for users with less than 100 employees.* In order to minimize recordkeeping burdens on employers who employ one hundred (100) or fewer employees, and other users not required to file EEO-1, *et seq.*, reports, such users may satisfy the requirements of this section 15 if they maintain and have available records showing, for each year:

- (a) The number of persons hired, promoted, and terminated for each job, by sex, and where appropriate by race and national origin;
- (b) The number of applicants for hire and promotion by sex and where appropriate by race and national origin; and
- (c) The selection procedures utilized (either standardized or not standardized).

These records should be maintained for each race or national origin group (see section 4 of this part) constituting more than two percent (2%) of the labor force in the relevant labor area. However, it is not necessary to maintain records by race and/or national origin (see section 4 of this part) if one race or national origin group in the relevant labor area constitutes more than ninety-eight percent (98%) of the labor force in the area. If the user has reason to believe that a selection procedure has an adverse impact, the user should maintain any available evidence of validity for that procedure (see sections 7A and 8).

(2) **Information on impact** —(a) *Collection of information on impact.* Users of selection procedures other than those complying with section 15A(1) of this part should maintain and have available for each job records or other information showing whether the total selection process for that job has an adverse impact on any of the groups for which records are called for by section 4B of this part. Adverse impact determinations should be made at least annually for each such group which constitutes at least 2 percent of the labor force in the relevant labor area or 2 percent of the applicable workforce. Where a total selection process for a job has an adverse impact, the user should maintain and have available records or other information showing which components have an adverse impact. Where the total selection process for a job does not have an adverse impact, information need not be maintained for individual components except in circumstances set forth in subsection 15A(2)(b) of this section. If the determination of adverse impact is made using a procedure other than the “four-fifths rule,” as defined in the first sentence of section 4D of this part, a justification, consistent with section 4D of this part, for the procedure used to determine adverse impact should be available.

(b) *When adverse impact has been eliminated in the total selection process.* Whenever the total selection process for a particular job has had an adverse impact, as defined in section 4 of this part, in any year, but no longer has an adverse impact, the user should maintain and have available the information on individual components of the selection process required in the preceding paragraph for the period in which there was adverse impact. In addition, the

user should continue to collect such information for at least two (2) years after the adverse impact has been eliminated.

(c) *When data insufficient to determine impact.* Where there has been an insufficient number of selections to determine whether there is an adverse impact of the total selection process for a particular job, the user should continue to collect, maintain and have available the information on individual components of the selection process required in paragraph 15(A)(2)(a) of this part until the information is sufficient to determine that the overall selection process does not have an adverse impact as defined in section 4 of this part, or until the job has changed substantially.

(3) **Documentation of validity evidence** —(a) *Types of evidence.* Where a total selection process has an adverse impact (see section 4 of this part) the user should maintain and have available for each component of that process which has an adverse impact, one or more of the following types of documentation evidence:

- (i) Documentation evidence showing criterion-related validity of the selection procedure (see section 15B, of this section).
- (ii) Documentation evidence showing content validity of the selection procedure (see section 15C, of this section).
- (iii) Documentation evidence showing construct validity of the selection procedure (see section 15D, of this section).
- (iv) Documentation evidence from other studies showing validity of the selection procedure in the user's facility (see section 15E, of this section).
- (v) Documentation evidence showing why a validity study cannot or need not be performed and why continued use of the procedure is consistent with Federal law.

(b) *Form of report.* This evidence should be compiled in a reasonably complete and organized manner to permit direct evaluation of the validity of the selection procedure. Previously written employer or consultant reports of validity, or reports describing validity studies completed before the issuance of these guidelines are acceptable if they are complete in regard to the documentation requirements contained in this section, or if they satisfied requirements of guidelines which were in effect when the validity study was completed. If they are not complete, the required additional documentation should be appended. If necessary information is not available the report of the validity study may still be used as documentation, but its adequacy will be evaluated in terms of compliance with the requirements of these guidelines.

(c) **Completeness.** In the event that evidence of validity is reviewed by an enforcement agency, the validation reports completed after the effective date of these guidelines are expected to contain the information set forth below. Evidence denoted by use of the word “(Essential)” is considered critical. If information denoted essential is not included, the report will be considered incomplete unless the user affirmatively demonstrates either its unavailability due to circumstances beyond the user's control or special circumstances of the user's study which make the information irrelevant. Evidence not so denoted is desirable but its absence will not

be a basis for considering a report incomplete. The user should maintain and have available the information called for under the heading “Source Data” in sections 15B(11) and 15D(11). While it is a necessary part of the study, it need not be submitted with the report. All statistical results should be organized and presented in tabular or graphic form to the extent feasible.

B. *Criterion-related validity studies.* Reports of criterion-related validity for a selection procedure should include the following information:

- (1) **User(s), location(s), and date(s) of study.** Dates and location(s) of the job analysis or review of job information, the date(s) and location(s) of the administration of the selection procedures and collection of criterion data, and the time between collection of data on selection procedures and criterion measures should be provided (Essential). If the study was conducted at several locations, the address of each location, including city and State, should be shown.
- (2) **Problem and setting.** An explicit definition of the purpose(s) of the study and the circumstances in which the study was conducted should be provided. A description of existing selection procedures and cutoff scores, if any, should be provided.
- (3) **Job analysis or review of job information.** A description of the procedure used to analyze the job or group of jobs, or to review the job information should be provided (Essential). Where a review of job information results in criteria which may be used without a full job analysis (see section 14B(3)), the basis for the selection of these criteria should be reported (Essential). Where a job analysis is required a complete description of the work behavior(s) or work outcome(s), and measures of their criticality or importance should be provided (Essential). The report should describe the basis on which the behavior(s) or outcome(s) were determined to be critical or important, such as the proportion of time spent on the respective behaviors, their level of difficulty, their frequency of performance, the consequences of error, or other appropriate factors (Essential). Where two or more jobs are grouped for a validity study, the information called for in this subsection should be provided for each of the jobs, and the justification for the grouping (see section 14B(1)) should be provided (essential).
- (4) **Job titles and codes.** It is desirable to provide the user's job title(s) for the job(s) in question and the corresponding job title(s) and code(s) from U.S. Employment Service's Dictionary of Occupational Titles.
- (5) **Criterion measures.** The bases for the selection of the criterion measures should be provided, together with references to the evidence considered in making the selection of criterion measures (essential). A full description of all criteria on which data were collected and means by which they were observed, recorded, evaluated, and quantified, should be provided (essential). If rating techniques are used as criterion measures, the appraisal form(s) and instructions to the rater(s) should be included as part of the validation evidence, or should be explicitly described and available (essential). All steps taken to insure that criterion measures are free from factors which would unfairly alter the scores of members of any group should be described (essential).
- (6) **Sample description.** A description of how the research sample was identified and selected should be included (essential). The race, sex, and ethnic composition of the sample, including

those groups set forth in section 4A of this part, should be described (essential). This description should include the size of each subgroup (essential). A description of how the research sample compares with the relevant labor market or work force, the method by which the relevant labor market or work force was defined, and a discussion of the likely effects on validity of differences between the sample and the relevant labor market or work force, are also desirable. Descriptions of educational levels, length of service, and age are also desirable.

(7) **Description of selection procedures.** Any measure, combination of measures, or procedure studied should be completely and explicitly described or attached (essential). If commercially available selection procedures are studied, they should be described by title, form, and publisher (essential). Reports of reliability estimates and how they were established are desirable.

(8) **Techniques and results.** Methods used in analyzing data should be described (essential). Measures of central tendency (e.g., means) and measures of dispersion (e.g., standard deviations and ranges) for all selection procedures and all criteria should be reported for each race, sex, and ethnic group which constitutes a significant factor in the relevant labor market (essential). The magnitude and direction of all relationships between selection procedures and criterion measures investigated should be reported for each relevant race, sex, and ethnic group and for the total group (essential). Where groups are too small to obtain reliable evidence of the magnitude of the relationship, need not be reported separately. Statements regarding the statistical significance of results should be made (essential). Any statistical adjustments, such as for less than perfect reliability or for restriction of score range in the selection procedure or criterion should be described and explained; and uncorrected correlation coefficients should also be shown (essential). Where the statistical technique categorizes continuous data, such as biserial correlation and the phi coefficient, the categories and the bases on which they were determined should be described and explained (essential). Studies of test fairness should be included where called for by the requirements of section 14B(8) (essential). These studies should include the rationale by which a selection procedure was determined to be fair to the group(s) in question. Where test fairness or unfairness has been demonstrated on the basis of other studies, a bibliography of the relevant studies should be included (essential). If the bibliography includes unpublished studies, copies of these studies, or adequate abstracts or summaries, should be attached (essential). Where revisions have been made in a selection procedure to assure compatibility between successful job performance and the probability of being selected, the studies underlying such revisions should be included (essential). All statistical results should be organized and presented by relevant race, sex, and ethnic group (essential).

(9) **Alternative procedures investigated.** The selection procedures investigated and available evidence of their impact should be identified (essential). The scope, method, and findings of the investigation, and the conclusions reached in light of the findings, should be fully described (essential).

(10) **Uses and applications.** The methods considered for use of the selection procedure (e.g., as a screening device with a cutoff score, for grouping or ranking, or combined with other procedures in a battery) and available evidence of their impact should be described (essential). This description should include the rationale for choosing the method for

operational use, and the evidence of the validity and utility of the procedure as it is to be used (essential). The purpose for which the procedure is to be used (e.g., hiring, transfer, promotion) should be described (essential). If weights are assigned to different parts of the selection procedure, these weights and the validity of the weighted composite should be reported (essential). If the selection procedure is used with a cutoff score, the user should describe the way in which normal expectations of proficiency within the work force were determined and the way in which the cutoff score was determined (essential).

(11) **Source data.** Each user should maintain records showing all pertinent information about individual sample members and raters where they are used, in studies involving the validation of selection procedures. These records should be made available upon request of a compliance agency. In the case of individual sample members these data should include scores on the selection procedure(s), scores on criterion measures, age, sex, race, or ethnic group status, and experience on the specific job on which the validation study was conducted, and may also include such things as education, training, and prior job experience, but should not include names and social security numbers. Records should be maintained which show the ratings given to each sample member by each rater.

(12) **Contact person.** The name, mailing address, and telephone number of the person who may be contacted for further information about the validity study should be provided (essential).

(13) **Accuracy and completeness.** The report should describe the steps taken to assure the accuracy and completeness of the collection, analysis, and report of data and results.

C. *Content validity studies.* Reports of content validity for a selection procedure should include the following information:

(1) **User(s), location(s) and date(s) of study.** Dates and location(s) of the job analysis should be shown (essential).

(2) **Problem and setting.** An explicit definition of the purpose(s) of the study and the circumstances in which the study was conducted should be provided. A description of existing selection procedures and cutoff scores, if any, should be provided.

(3) **Job analysis—Content of the job.** A description of the method used to analyze the job should be provided (essential). The work behavior(s), the associated tasks, and, if the behavior results in a work product, the work products should be completely described (essential). Measures of criticality and/or importance of the work behavior(s) and the method of determining these measures should be provided (essential). Where the job analysis also identified the knowledges, skills, and abilities used in work behavior(s), an operational definition for each knowledge in terms of a body of learned information and for each skill and ability in terms of observable behaviors and outcomes, and the relationship between each knowledge, skill, or ability and each work behavior, as well as the method used to determine this relationship, should be provided (essential). The work situation should be described, including the setting in which work behavior(s) are performed, and where appropriate, the manner in which knowledges, skills, or abilities are used, and the complexity and difficulty of the knowledge, skill, or ability as used in the work behavior(s).

(4) ***Selection procedure and its content.*** Selection procedures, including those constructed by or for the user, specific training requirements, composites of selection procedures, and any other procedure supported by content validity, should be completely and explicitly described or attached (essential). If commercially available selection procedures are used, they should be described by title, form, and publisher (essential). The behaviors measured or sampled by the selection procedure should be explicitly described (essential). Where the selection procedure purports to measure a knowledge, skill, or ability, evidence that the selection procedure measures and is a representative sample of the knowledge, skill, or ability should be provided (essential).

(5) ***Relationship between the selection procedure and the job.*** The evidence demonstrating that the selection procedure is a representative work sample, a representative sample of the work behavior(s), or a representative sample of a knowledge, skill, or ability as used as a part of a work behavior and necessary for that behavior should be provided (essential). The user should identify the work behavior(s) which each item or part of the selection procedure is intended to sample or measure (essential). Where the selection procedure purports to sample a work behavior or to provide a sample of a work product, a comparison should be provided of the manner, setting, and the level of complexity of the selection procedure with those of the work situation (essential). If any steps were taken to reduce adverse impact on a race, sex, or ethnic group in the content of the procedure or in its administration, these steps should be described. Establishment of time limits, if any, and how these limits are related to the speed with which duties must be performed on the job, should be explained. Measures of central tendency (e.g., means) and measures of dispersion (e.g., standard deviations) and estimates of reliability should be reported for all selection procedures if available. Such reports should be made for relevant race, sex, and ethnic subgroups, at least on a statistically reliable sample basis.

(6) ***Alternative procedures investigated.*** The alternative selection procedures investigated and available evidence of their impact should be identified (essential). The scope, method, and findings of the investigation, and the conclusions reached in light of the findings, should be fully described (essential).

(7) ***Uses and applications.*** The methods considered for use of the selection procedure (e.g., as a screening device with a cutoff score, for grouping or ranking, or combined with other procedures in a battery) and available evidence of their impact should be described (essential). This description should include the rationale for choosing the method for operational use, and the evidence of the validity and utility of the procedure as it is to be used (essential). The purpose for which the procedure is to be used (e.g., hiring, transfer, promotion) should be described (essential). If the selection procedure is used with a cutoff score, the user should describe the way in which normal expectations of proficiency within the work force were determined and the way in which the cutoff score was determined (essential). In addition, if the selection procedure is to be used for ranking, the user should specify the evidence showing that a higher score on the selection procedure is likely to result in better job performance.

(8) ***Contact person.*** The name, mailing address, and telephone number of the person who may be contacted for further information about the validity study should be provided (essential).

(9) **Accuracy and completeness.** The report should describe the steps taken to assure the accuracy and completeness of the collection, analysis, and report of data and results.

D. *Construct validity studies.* Reports of construct validity for a selection procedure should include the following information:

(1) **User(s), location(s), and date(s) of study.** Date(s) and location(s) of the job analysis and the gathering of other evidence called for by these guidelines should be provided (essential).

(2) **Problem and setting.** An explicit definition of the purpose(s) of the study and the circumstances in which the study was conducted should be provided. A description of existing selection procedures and cutoff scores, if any, should be provided.

(3) **Construct definition.** A clear definition of the construct(s) which are believed to underlie successful performance of the critical or important work behavior(s) should be provided (essential). This definition should include the levels of construct performance relevant to the job(s) for which the selection procedure is to be used (essential). There should be a summary of the position of the construct in the psychological literature, or in the absence of such a position, a description of the way in which the definition and measurement of the construct was developed and the psychological theory underlying it (essential). Any quantitative data which identify or define the job constructs, such as factor analyses, should be provided (essential).

(4) **Job analysis.** A description of the method used to analyze the job should be provided (essential). A complete description of the work behavior(s) and, to the extent appropriate, work outcomes and measures of their criticality and/or importance should be provided (essential). The report should also describe the basis on which the behavior(s) or outcomes were determined to be important, such as their level of difficulty, their frequency of performance, the consequences of error or other appropriate factors (essential). Where jobs are grouped or compared for the purposes of generalizing validity evidence, the work behavior(s) and work product(s) for each of the jobs should be described, and conclusions concerning the similarity of the jobs in terms of observable work behaviors or work products should be made (essential).

(5) **Job titles and codes.** It is desirable to provide the selection procedure user's job title(s) for the job(s) in question and the corresponding job title(s) and code(s) from the United States Employment Service's dictionary of occupational titles.

(6) **Selection procedure.** The selection procedure used as a measure of the construct should be completely and explicitly described or attached (essential). If commercially available selection procedures are used, they should be identified by title, form and publisher (essential). The research evidence of the relationship between the selection procedure and the construct, such as factor structure, should be included (essential). Measures of central tendency, variability and reliability of the selection procedure should be provided (essential). Whenever feasible, these measures should be provided separately for each relevant race, sex and ethnic group.

(7) **Relationship to job performance.** The criterion-related study(ies) and other empirical evidence of the relationship between the construct measured by the selection procedure and

the related work behavior(s) for the job or jobs in question should be provided (essential). Documentation of the criterion-related study(ies) should satisfy the provisions of paragraph 15B of this section or paragraph 15E(1) of this section, except for studies conducted prior to the effective date of these guidelines (essential). Where a study pertains to a group of jobs, and, on the basis of the study, validity is asserted for a job in the group, the observed work behaviors and the observed work products for each of the jobs should be described (essential). Any other evidence used in determining whether the work behavior(s) in each of the jobs is the same should be fully described (essential).

(8) **Alternative procedures investigated.** The alternative selection procedures investigated and available evidence of their impact should be identified (essential). The scope, method, and findings of the investigation, and the conclusions reached in light of the findings should be fully described (essential).

(9) **Uses and applications.** The methods considered for use of the selection procedure (e.g., as a screening device with a cutoff score, for grouping or ranking, or combined with other procedures in a battery) and available evidence of their impact should be described (essential). This description should include the rationale for choosing the method for operational use, and the evidence of the validity and utility of the procedure as it is to be used (essential). The purpose for which the procedure is to be used (e.g., hiring, transfer, promotion) should be described (essential). If weights are assigned to different parts of the selection procedure, these weights and the validity of the weighted composite should be reported (essential). If the selection procedure is used with a cutoff score, the user should describe the way in which normal expectations of proficiency within the work force were determined and the way in which the cutoff score was determined (essential).

(10) **Accuracy and completeness.** The report should describe the steps taken to assure the accuracy and completeness of the collection, analysis, and report of data and results.

(11) **Source data.** Each user should maintain records showing all pertinent information relating to its study of construct validity.

(12) **Contact person.** The name, mailing address, and telephone number of the individual who may be contacted for further information about the validity study should be provided (essential).

E. *Evidence of validity from other studies.* When validity of a selection procedure is supported by studies not done by the user, the evidence from the original study or studies should be compiled in a manner similar to that required in the appropriate paragraph of this section 15 above. In addition, the following evidence should be supplied:

(1) **Evidence from criterion-related validity studies** —a. *Job information.* A description of the important job behavior(s) of the user's job and the basis on which the behaviors were determined to be important should be provided (essential). A full description of the basis for determining that these important work behaviors are the same as those of the job in the original study (or studies) should be provided (essential).

b. *Relevance of criteria.* A full description of the basis on which the criteria used in the original studies are determined to be relevant for the user should be provided (essential).

c. *Other variables.* The similarity of important applicant pool or sample characteristics reported in the original studies to those of the user should be described (essential). A description of the comparison between the race, sex and ethnic composition of the user's relevant labor market and the sample in the original validity studies should be provided (essential).

d. *Use of the selection procedure.* A full description should be provided showing that the use to be made of the selection procedure is consistent with the findings of the original validity studies (essential).

e. *Bibliography.* A bibliography of reports of validity of the selection procedure for the job or jobs in question should be provided (essential). Where any of the studies included an investigation of test fairness, the results of this investigation should be provided (essential). Copies of reports published in journals that are not commonly available should be described in detail or attached (essential). Where a user is relying upon unpublished studies, a reasonable effort should be made to obtain these studies. If these unpublished studies are the sole source of validity evidence they should be described in detail or attached (essential). If these studies are not available, the name and address of the source, an adequate abstract or summary of the validity study and data, and a contact person in the source organization should be provided (essential).

(2) ***Evidence from content validity studies.*** See sections 14C(3) and section 15C of this section.

(3) ***Evidence from construct validity studies.*** See sections 14D(2) and 15D of this section.

F. *Evidence of validity from cooperative studies.* Where a selection procedure has been validated through a cooperative study, evidence that the study satisfies the requirements of sections 7, 8 and 15E should be provided (essential).

G. *Selection for higher level job.* If a selection procedure is used to evaluate candidates for jobs at a higher level than those for which they will initially be employed, the validity evidence should satisfy the documentation provisions of this section 15 for the higher level job or jobs, and in addition, the user should provide: (1) a description of the job progression structure, formal or informal; (2) the data showing how many employees progress to the higher level job and the length of time needed to make this progression; and (3) an identification of any anticipated changes in the higher level job. In addition, if the test measures a knowledge, skill or ability, the user should provide evidence that the knowledge, skill or ability is required for the higher level job and the basis for the conclusion that the knowledge, skill or ability is not expected to develop from the training or experience on the job.

H. *Interim use of selection procedures.* If a selection procedure is being used on an interim basis because the procedure is not fully supported by the required evidence of validity, the user should maintain and have available (1) substantial evidence of validity for the procedure, and (2) a report showing the date on which the study to gather the additional evidence commenced, the estimated completion date of the study, and a description of the data to be collected (essential).

Definitions

§ 60-3.16 Definitions.

The following definitions shall apply throughout these guidelines:

A. *Ability*. A present competence to perform an observable behavior or a behavior which results in an observable product.

B. *Adverse impact*. A substantially different rate of selection in hiring, promotion, or other employment decision which works to the disadvantage of members of a race, sex, or ethnic group. See section 4 of these guidelines.

C. *Compliance with these guidelines*. Use of a selection procedure is in compliance with these guidelines if such use has been validated in accord with these guidelines (as defined below), or if such use does not result in adverse impact on any race, sex, or ethnic group (see section 4, of this part), or, in unusual circumstances, if use of the procedure is otherwise justified in accord with Federal law. See section 6B, of this part.

D. *Content validity*. Demonstrated by data showing that the content of a selection procedure is representative of important aspects of performance on the job. See section 5B and section 14C.

E. *Construct validity*. Demonstrated by data showing that the selection procedure measures the degree to which candidates have identifiable characteristics which have been determined to be important for successful job performance. See section 5B and section 14D.

F. *Criterion-related validity*. Demonstrated by empirical data showing that the selection procedure is predictive of or significantly correlated with important elements of work behavior. See sections 5B and 14B.

G. *Employer*. Any employer subject to the provisions of the Civil Rights Act of 1964, as amended, including State or local governments and any Federal agency subject to the provisions of section 717 of the Civil Rights Act of 1964, as amended, and any Federal contractor or subcontractor or federally assisted construction contractor or subcontractor covered by Executive Order 11246, as amended.

H. *Employment agency*. Any employment agency subject to the provisions of the Civil Rights Act of 1964, as amended.

I. *Enforcement action*. For the purposes of section 4 a proceeding by a Federal enforcement agency such as a lawsuit or an administrative proceeding leading to debarment from or withholding, suspension, or termination of Federal Government contracts or the suspension or withholding of Federal Government funds; but not a finding of reasonable cause or a conciliation process or the issuance of right to sue letters under title VII or under Executive Order 11246 where such finding, conciliation, or issuance of notice of right to sue is based upon an individual complaint.

J. *Enforcement agency*. Any agency of the executive branch of the Federal Government which adopts these guidelines for purposes of the enforcement of the equal employment opportunity laws or which has responsibility for securing compliance with them.

K. *Job analysis*. A detailed statement of work behaviors and other information relevant to the job.

L. *Job description*. A general statement of job duties and responsibilities.

M. *Knowledge*. A body of information applied directly to the performance of a function.

N. *Labor organization*. Any labor organization subject to the provisions of the Civil Rights Act of 1964, as amended, and any committee subject thereto controlling apprenticeship or other training.

O. *Observable*. Able to be seen, heard, or otherwise perceived by a person other than the person performing the action.

P. *Race, sex, or ethnic group*. Any group of persons identifiable on the grounds of race, color, religion, sex, or national origin.

Q. *Selection procedure*. Any measure, combination of measures, or procedure used as a basis for any employment decision. Selection procedures include the full range of assessment techniques from traditional paper and pencil tests, performance tests, training programs, or probationary periods and physical, educational, and work experience requirements through informal or casual interviews and unscored application forms.

R. *Selection rate*. The proportion of applicants or candidates who are hired, promoted, or otherwise selected.

S. *Should*. The term “should” as used in these guidelines is intended to connote action which is necessary to achieve compliance with the guidelines, while recognizing that there are circumstances where alternative courses of action are open to users.

T. *Skill*. A present, observable competence to perform a learned psychomotor act.

U. *Technical feasibility*. The existence of conditions permitting the conduct of meaningful criterion-related validity studies. These conditions include: (1) An adequate sample of persons available for the study to achieve findings of statistical significance; (2) having or being able to obtain a sufficient range of scores on the selection procedure and job performance measures to produce validity results which can be expected to be representative of the results if the ranges normally expected were utilized; and (3) having or being able to devise unbiased, reliable and relevant measures of job performance or other criteria of employee adequacy. See section 14B(2). With respect to investigation of possible unfairness, the same considerations are applicable to each group for which the study is made. See section 14B(8).

V. *Unfairness of selection procedure*. A condition in which members of one race, sex, or ethnic group characteristically obtain lower scores on a selection procedure than members of another group, and the differences are not reflected in differences in measures of job performance. See section 14B(7).

W. *User*. Any employer, labor organization, employment agency, or licensing or certification board, to the extent it may be covered by Federal equal employment opportunity law, which uses a selection procedure as a basis for any employment decision. Whenever an employer, labor

organization, or employment agency is required by law to restrict recruitment for any occupation to those applicants who have met licensing or certification requirements, the licensing or certifying authority to the extent it may be covered by Federal equal employment opportunity law will be considered the user with respect to those licensing or certification requirements. Whenever a State employment agency or service does no more than administer or monitor a procedure as permitted by Department of Labor regulations, and does so without making referrals or taking any other action on the basis of the results, the State employment agency will not be deemed to be a user.

X. Validated in accord with these guidelines or properly validated. A demonstration that one or more validity study or studies meeting the standards of these guidelines has been conducted, including investigation and, where appropriate, use of suitable alternative selection procedures as contemplated by section 3B, and has produced evidence of validity sufficient to warrant use of the procedure for the intended purpose under the standards of these guidelines.

Y. Work behavior. An activity performed to achieve the objectives of the job. Work behaviors involve observable (physical) components and unobservable (mental) components. A work behavior consists of the performance of one or more tasks. Knowledges, skills, and abilities are not behaviors, although they may be applied in work behaviors.

Appendix to Part 60-3

§ 60-3.17 Policy statement on affirmative action (see section 13B).

The Equal Employment Opportunity Coordinating Council was established by act of Congress in 1972, and charged with responsibility for developing and implementing agreements and policies designed, among other things, to eliminate conflict and inconsistency among the agencies of the Federal Government responsible for administering Federal law prohibiting discrimination on grounds of race, color, sex, religion, and national origin. This statement is issued as an initial response to the requests of a number of State and local officials for clarification of the Government's policies concerning the role of affirmative action in the overall equal employment opportunity program. While the Coordinating Council's adoption of this statement expresses only the views of the signatory agencies concerning this important subject, the principles set forth below should serve as policy guidance for other Federal agencies as well.

(1) Equal employment opportunity is the law of the land. In the public sector of our society this means that all persons, regardless of race, color, religion, sex, or national origin shall have equal access to positions in the public service limited only by their ability to do the job. There is ample evidence in all sectors of our society that such equal access frequently has been denied to members of certain groups because of their sex, racial, or ethnic characteristics. The remedy for such past and present discrimination is twofold.

On the one hand, vigorous enforcement of the laws against discrimination is essential. But equally, and perhaps even more important are affirmative, voluntary efforts on the part of public employers to assure that positions in the public service are genuinely and equally accessible to qualified persons, without regard to their sex, racial, or ethnic characteristics. Without such

efforts equal employment opportunity is no more than a wish. The importance of voluntary affirmative action on the part of employers is underscored by title VII of the Civil Rights Act of 1964, Executive Order 11246, and related laws and regulations—all of which emphasize voluntary action to achieve equal employment opportunity.

As with most management objectives, a systematic plan based on sound organizational analysis and problem identification is crucial to the accomplishment of affirmative action objectives. For this reason, the Council urges all State and local governments to develop and implement results oriented affirmative action plans which deal with the problems so identified.

The following paragraphs are intended to assist State and local governments by illustrating the kinds of analyses and activities which may be appropriate for a public employer's voluntary affirmative action plan. This statement does not address remedies imposed after a finding of unlawful discrimination.

(2) Voluntary affirmative action to assure equal employment opportunity is construction of any affirmative action plan should be an analysis of the employer's work force to determine whether percentages of sex, race, or ethnic groups in individual job classifications are substantially similar to the percentages of those groups available in the relevant job market who possess the basic job-related qualifications.

When substantial disparities are found through such analyses, each element of the overall selection process should be examined to determine which elements operate to exclude persons on the basis of sex, race, or ethnic group. Such elements include, but are not limited to, recruitment, testing, ranking certification, interview, recommendations for selection, hiring, promotion, etc. The examination of each element of the selection process should at a minimum include a determination of its validity in predicting job performance.

(3) When an employer has reason to believe that its selection procedures have the exclusionary effect described in paragraph 2 of this section, it should initiate affirmative steps to remedy the situation. Such steps, which in design and execution may be race, color, sex, or ethnic “conscious,” include, but are not limited to, the following:

- (a) The establishment of a long-term goal, and short-range, interim goals and timetables for the specific job classifications, all of which should take into account the availability of basically qualified persons in the relevant job market;
- (b) A recruitment program designed to attract qualified members of the group in question;
- (c) A systematic effort to organize work and redesign jobs in ways that provide opportunities for persons lacking “journeyman” level knowledge or skills to enter and, with appropriate training, to progress in a career field;
- (d) Revamping selection instruments or procedures which have not yet been validated in order to reduce or eliminate exclusionary effects on particular groups in particular job classifications;
- (e) The initiation of measures designed to assure that members of the affected group who are qualified to perform the job are included within the pool of persons from which the selecting official makes the selection;

(f) A systematic effort to provide career advancement training, both classroom and on-the-job, to employees locked into dead end jobs; and

(g) The establishment of a system for regularly monitoring the effectiveness of the particular affirmative action program, and procedures for making timely adjustments in this program where effectiveness is not demonstrated.

(4) The goal of any affirmative action plan should be achievement of genuine equal employment opportunity for all qualified persons. Selection under such plans should be based upon the ability of the applicant(s) to do the work. Such plans should not require the selection of the unqualified, or the unneeded, nor should they require the selection of persons on the basis of race, color, sex, religion, or national origin. Moreover, while the Council believes that this statement should serve to assist State and local employers, as well as Federal agencies, it recognizes that affirmative action cannot be viewed as a standardized program which must be accomplished in the same way at all times in all places.

Accordingly, the Council has not attempted to set forth here either the minimum or maximum voluntary steps that employers may take to deal with their respective situations. Rather, the Council recognizes that under applicable authorities, State and local employers have flexibility to formulate affirmative action plans that are best suited to their particular situations. In this manner, the Council believes that affirmative action programs will best serve the goal of equal employment opportunity.

Respectfully submitted,

Harold R. Tyler, Jr.,

Deputy Attorney General and Chairman of the Equal Employment Coordinating Council.

Michael H. Moskow,

Under Secretary of Labor.

Ethel Bent Walsh,

Acting Chairman, Equal Employment Opportunity Commission.

Robert E. Hampton,

Chairman, Civil Service Commission.

Arthur E. Flemming,

Chairman, Commission on Civil Rights.

Because of its equal employment opportunity responsibilities under the State and Local Government Fiscal Assistance Act of 1972 (the revenue sharing act), the Department of Treasury was invited to participate in the formulation of this policy statement; and it concurs and joins in the adoption of this policy statement.

Done this 26th day of August 1976.

Richard Albrecht,
General Counsel,
Department of the Treasury.

§ 60-3.18 Citations.

The official title of these guidelines is “Uniform Guidelines on Employee Selection Procedures (1978)”. The Uniform Guidelines on Employee Selection Procedures (1978) are intended to establish a uniform Federal position in the area of prohibiting discrimination in employment practices on grounds of race, color, religion, sex, or national origin. These guidelines have been adopted by the Equal Employment Opportunity Commission, the Department of Labor, the Department of Justice, and the Civil Service Commission.

The official citation is:

“Section 60-3, Uniform Guidelines on Employee Selection Procedure (1978); [43 FR 38295](#) (August 25, 1978).”

The short form citation is:

“Section 60-3, U.G.E.S.P. (1978); [43 FR 38295](#) (August 25, 1978).”

When the guidelines are cited in connection with the activities of one of the issuing agencies, a specific citation to the regulations of that agency can be added at the end of the above citation. The specific additional citations are as follows:

Equal Employment Opportunity Commission

[29 CFR Part 1607](#)

Department of Labor

Office of Federal Contract Compliance Programs

[41 CFR Part 60-3](#)

Department of Justice

[28 CFR 50.14](#)

Civil Service Commission

[5 CFR 300.103\(c\)](#)

Normally when citing these guidelines, the section number immediately preceding the title of the guidelines will be from these guidelines series 1-18. If a section number from the codification for an individual agency is needed it can also be added at the end of the agency citation. For example, section 6A of these guidelines could be cited for EEOC as follows: “Section 6A,

Uniform Guidelines on Employee Selection Procedures (1978); [43 FR 38295](#), (August 25, 1978); [29 CFR Part 1607](#), section 6A.”

Personnel Policy Manual

S293_1

Supervisory Personnel Records Management

For bargaining unit employees, see applicable [Union/Management Contracts](#) in addition to the Personnel Policy Manual (PPM). Contract provisions take precedence over the PPM ([See Section 5](#)).

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[Exhibit 1](#) – Records that May Be Kept in 7B Extension Files

[Exhibit 2](#) – Records that May Not Be Kept in 7B Extension Files

- 1. ISSUE DATE** – June 13, 2008 (Revised October 2018 and January 2021)
- 2. EMPLOYEES COVERED** – All SSA employees
- 3. LAW AND REGULATION**

The Privacy Act of 1974 (see Privacy Act Responsibilities of SSA Officials in [AIMS, General Administration Manual, Chapter 14, Instruction 2](#)) establishes confidentiality and disclosure requirements pertaining to personal information maintained by agencies on their employees. Generally, the Privacy Act prohibits agencies from disclosing personal information on employees to third parties without the prior written consent of the employees involved. There are, however, exceptions to this written authorization requirement. Most notably, SSA employees who have a need to know personal information in the performance of their official duties may have access to it. In some cases, the Privacy Act permits SSA officials to disclose employee information to third parties, such as law enforcement officials and courts, without an employee's written consent. In these circumstances, SSA officials should only disclose personal information after consulting with SSA's Privacy Officer.

The Privacy Act requires agencies to publish, in the Federal Register, the existence of the systems of records they maintain that contain information that can be retrieved relating to specific individuals on the basis of a personal identifier, such as a name, Social Security number or case number. Consequently, the Office of Personnel Management has published ten government-wide systems of records that cover personnel records such as the Official Personnel Folder (OPM/GOVT-1), Employee Medical File (OPM/GOVT-10), and Adverse Action Files (OPM/GOVT-3). In addition, SSA published in the Federal Register a number of its administrative systems of records, including one entitled, "Personnel Records in Operating Offices, 60-0239."

The National Archives and Records Administration (NARA) has published government-wide regulations pertaining to the retention of Federal records in 36 CFR, Chapter XII. NARA has further detailed requirements specific to Federal personnel records, including those maintained by supervisors, in a publication entitled, "[General Records Schedule \(GRS\) 1](#), Human Resources." SSA's retention and disposal policies with respect to supervisory records proceed from the latter publication.

4. SSA POLICY

For bargaining unit employees, consult the applicable negotiated agreements.

4.1. Establishing Supervisory Records

SSA supervisors may keep only four types of supervisory records. They are the SSA-7-B Employee Record (or electronic equivalent) the 7B Extension File (or electronic equivalent), the IPWFs (or electronic equivalent) and Memory Joggers (written or electronic). Supervisors must keep an SSA-7-B Employee Record and a 7B Extension File (or electronic equivalent) for each of his/her employees. If those records do not already exist for a given employee (e.g., if the employee is new to the Agency), then the supervisors must create them. Often, however, creating new records is not necessary because a current supervisor will

“inherit” pre-existing files from the employee’s former supervisor ([See Section 4.4.2.](#)). If, for some reason, that does not occur, the current supervisor should simply create a new SSA-7-B for the employee and 7B Extension File.

Supervisors are not required to maintain IPWFs or Memory Joggers. Both of those records consist of temporary files and supervisors may establish, use and dispose of them at their discretion.

Hereafter, and for the purpose of this policy, these three types of supervisory records (SSA-7-B Employee Record, the 7B Extension File and IPWFs) refer to the hard-copy paper file or its electronic equivalent.

4.1.1 7B Employee Record (SSA-7-B)

The SSA-7-B Employee Record is a Privacy Act-protected document, which must be treated confidentially and kept in a secure, locked location when not in use. Supervisors must maintain an SSA-7-B for each of his/her employees. The record is primarily used as a source document for emergency contacts. However, supervisors may also use it to plan, schedule and informally record personnel actions such as promotions, step increases, awards, etc.

Supervisors have some discretion as to what they enter on the SSA-7-B. In every instance, to provide proper identification, he/she should complete the section with the space for the employee’s name. The sections containing miscellaneous status information may be completed, but doing so is not required. Similarly, completion of the sections related to the current employment record are optional. Some supervisors may find it beneficial to manually maintain these sections to keep track of past actions affecting their employees and to diary future ones. Others may prefer, in lieu of manual recordkeeping, to access this information, when and as needed, via the Agency’s electronic records (e.g., HRODS and FPPS). In every instance, however, supervisors must complete the emergency contact information specified in the appropriate sections since those sections constitute the Agency’s primary source for such information.

In addition, SSA supervisors should maintain duplicate emergency contact records for their employees as contained in the emergency contact sections of the SSA-7-B at their personal residences. Doing so enables supervisors to contact their employees in the event of an office emergency, wherein the SSA-7-B records are destroyed or rendered inaccessible. Any duplicate emergency contact records supervisors maintains at home are, like the SSA-7-Bs themselves, Privacy Act-protected and must be kept in a secure location.

Supervisors choosing to maintain SSA-7-Bs in electronic form may create them on a computer, taking care to include only those categories of information specified on the paper version of the SSA-7-B and none other. However, once created, the electronic SSA-7-B information must be transferred to a portable electronic medium (such as a CD or flash drive), after which the SSA-7-B data must be erased from the computer's hard drive, since that is not considered to be a secure location. The portable electronic medium to which the data is transferred should have a label stating that the information is protected by the Privacy Act and must itself be stored in a secure, locked location when not in use.

Supervisors opting to maintain SSA-7-Bs in paper form may store them in either of two ways: 1) all together, in alphabetical order, in a locked desk drawer, cabinet or room, or 2) individually, inside each employee's corresponding extension file, which must also be kept in a secure, locked location.

4.1.2 7B Extension File

Extension files are temporary repositories for personnel records needed (e.g., performance plans and supporting documents) by supervisors to perform their administrative duties.

Supervisors must maintain an extension file for each of their employees. For an employee just entering on duty with the Agency, supervisors will need to create a new extension file. He/she may use any type or color of folder for this purpose.

For an employee with prior service in another SSA component, there should be no need to create a new extension file because the current supervisor should receive the employee's existing file from the previous supervisor ([See Section 4.4.1.](#)).

4.1.3 In Process Working Files (IPWF)

An IPWF is essentially an active sub-file of a 7B Employee Extension file. It serves as a temporary repository for documents relating to an administrative action "in process." Common categories of IPWFs involve ongoing actions pertaining to awards, suggestions, within-grade increases and disciplinary/adverse actions.

Supervisors may temporarily establish IPWFs when and as needed to facilitate the processing of certain actions through multiple stages of review and approval. IPWFs are Privacy-Act protected and must be afforded the same confidentiality safeguards as the documents remaining in employees' extension files.

4.1.4 Memory Joggers

“Memory joggers” are personal notes, written or electronic, that supervisors may create for their own use to help them remember and possibly consider, at some future date, something significant with respect to an employee’s work situation. Normally, memory joggers are not Agency records subject to the Privacy Act, although, in certain circumstances, they can be ([See Section 4.2.4](#)).

SSA does not require managers or supervisors to establish or maintain memory joggers. However, the Agency believes that it is a good management practice to maintain memory joggers. Supervisors may establish them at will. Once established, memory joggers, if handled in accordance with Section 4.2 below, are the personal property of the originating supervisors. As such, they are not agency records; they are not subject to the constraints of the Privacy Act. Although memory joggers may not be subject to the Privacy Act, if supervisors choose to maintain them, they may become the subject of an Equal Employment Opportunity Commission (EEOC) investigation or some other Agency-related litigation. In such instances, supervisors may be required to produce memory joggers in response to a discovery request.

4.2. Maintaining Supervisory Records

As the custodians of these supervisory records, supervisors are responsible for assuring the accuracy, currency and confidentiality of the information contained in them.

Some supervisory records, notably the [SSA-7-B Employee Record](#) and 7B Extension File, require periodic maintenance to add new, or delete old, material. Supervisors may perform such maintenance themselves or delegate responsibility for it to administrative assistants. In the latter circumstance, however, they must ensure the assistants understand and adhere to the confidentiality requirements mandated by the Privacy Act when they are handling these files and caution them to strictly maintain the confidentiality and integrity of the records with which they are working.

Supervisors must keep any hardcopy supervisory records in a secure (locked) location when they are not in active use. They may use lockable desk drawers, cabinets or rooms for this purpose.

When not in use, personnel records should be out of sight to ensure the information they contain is not disclosed to unauthorized individuals.

4.2.1 7B Employee Record (SSA-7-B)

Once an SSA-7-B is established, it requires minimal maintenance. e.g., updating address, contact information or annotating employment record information. In that event, the supervisor should glean pertinent information from forms or copies of other official records they should enter it on the SSA-7-B on a flow basis.

4.2.2 7B Extension File

Supervisors must store any hardcopy extension files together, arranged alphabetically by employee name, in a locked desk drawer, cabinet or room. When they are using them, supervisors should always take care to safeguard extension files from unauthorized access or disclosure. That means they must not use or display them in a way that would make them viewable to casual passersby. If a supervisor needs to leave the records for a short time, during a break, for example, he/she should return them to a secure location during his/her absence. Electronic records must be safeguarded in accordance with systems security protocols and access protections for the e7B system.

Supervisors may only maintain certain kinds of records in their extension files; they must remove, in a timely fashion, those that have served their administrative purpose. [Exhibit 1](#) lists most records that may be stored in extension files and their respective retention periods (the retention periods shown are nominal; actual circumstances may sometimes warrant shorter or longer periods).

[Exhibit 2](#) lists records that may not be retained in extension files, usually because they are already properly maintained in other SSA components. When unsure as to whether a record may or may not be placed in an extension file, supervisors should consult with their administrative or personnel offices.

Most records in an extension file are placed there by a supervisor. Usually, the records filed should be the original source documents. In some instances, however, it is more appropriate for the supervisor to give the original document to the employee and place a copy of it in the extension file. That would occur, for example, when the original document was a letter of commendation from a member of the public and it was addressed to the employee. In such a case, the employee should be given the original letter and a copy should be placed in his/her extension file or electronic equivalent.

Supervisors must give employees copies of everything placed in their paper extension file. Employees have access to electronic records in e7B. Specifically, within three working days of placing a record in the extension file, the supervisor must 1) give a copy of the record to the employee; 2) explain, if necessary, why it has been placed there; and 3) have the employee initial the filed document to acknowledge having received a

copy of it. If the employee declines to initial the document, the supervisor should simply add an initialed and dated annotation to it, indicating a copy was given to the employee but that the employee declined to acknowledge receipt.

In addition to any records placed there by a supervisor, an employee may enter into his/her extension file information or documents that are appropriate, relevant, work-related and not in violation of law, government-wide rules or regulations. Therefore, if the employee wishes to supplement or rebut a particular issue documented in the extension file, he/she may do so. Such an entry must be in writing and, once submitted, the employee's statement must be associated with the source document in file, disclosed whenever and to whomever the source document is disclosed and purged from the extension file when the source document itself is purged.

If an employee believes a record in his/her extension file requires correction or amendment or should never have been placed there in the first place, he/she should first discuss the situation with the supervisor and attempt to resolve the matter. If that fails, the employee may formally pursue his/her complaint in accordance with the procedures outlined in [PPM S771 1 SSA Grievance Procedure](#).

4.2.3 In Process Working Files (IPWF)

IPWFs are transitory files and, therefore, require no periodic maintenance. When in the possession of the originating supervisors but not currently in use, IPWFs should be stored in a secure location in, or in close proximity to, employees' extension files. When circulating to other officials for appropriate action(s), IPWFs should be held in a secure location by those officials when they are not actually using the files.

4.2.4 Memory Joggers

Memory joggers are solely intended to refresh supervisors' memories. Supervisors should not discuss or show them to other employees. As long as supervisors do not share memory joggers, they are not agency records. If, however, supervisors do discuss or show their memory joggers to anyone else, the memory joggers may become records as defined by the Privacy Act and/or the Freedom of Information Act. Moreover, if a supervisor maintains and retrieves memory joggers using employees' names or other identifying information, they may create a Privacy Act system of records that must be maintained in accordance with the access and disclosure provisions of the Privacy Act.

Although they are usually not agency records, memory joggers must still be stored in a secure (locked) location. This requirement applies if they are kept in electronic or paper form. If kept in electronic form, memory joggers may only be stored on portable electronic media (e.g., CDs or flash drives), which

can be locked up when not in use. Under no circumstances should memory joggers be kept resident on computer hard drives or network servers. As mentioned above, memory joggers should not be maintained or retrieved by individual employees' names or personal identifiers.

4.3. Accessing Information Contained in Supervisory Records

Custodial supervisors have access to these records when it is necessary to review them in the performance of their official duties. Employees and their authorized representatives also have the right to see and receive copies of the records maintained in them. If an employee would like to have copies of his records delivered to his/her authorized representative, the employee should complete the [SSA-3465 Consent for Release of Personal Information](#) and submit it to the supervisor. In addition, in limited circumstances, SSA officials may disclose employees' personal information to third parties without an employee's written consent ([See Section 3](#)). All others must have the express written consent of the employees involved before they may obtain information from any employee's files.

When an employee or his/her authorized representative requests access to the supervisory records maintained on the employee (excluding personal notes or Memory Joggers), he/she should be granted access promptly; i.e., normally within two working days if the records are kept at the employee's worksite.

When a third party requiring written consent seeks disclosure of employee information, the employee may consent to it by completing and submitting to his/her supervisor form [SSA-3465 Consent for Release of Personal Information](#).

Supervisors must retain form [SSA-3465 Consent for Release of Personal Information](#) for 5 years. This is a Privacy Act requirement, and it applies even though the source document(s) accessed as a result of the authorization may be removed/destroyed before that in accordance with its normal retention schedule ([Exhibit 1](#)).

When a supervisor grants access to a hardcopy confidential record to the employee, the employee's representative or to a third party with consent, the supervisor (or his/her designated representative) must keep the record under surveillance at all times. Under no circumstances may the individual(s) granted access take the record to another private location for review. This restriction is to prevent tampering with the records.

4.3.1 Accessing Information in Extension Files

Access to the confidential information contained in extension files is limited in accordance with the Privacy Act. Generally, within SSA, access to a particular employee's information without his/her written consent is limited to the employee's supervisor, who is the custodian of the record, the employee and other Agency personnel who have a need to review the files in the performance of their official duties. Most other individuals ([See Section 4.3.](#) for exceptions) wishing to access information in an employee's extension file must first obtain the employee's written permission.

The procedures for securing an employee's consent may be found above in [Section 4.3.](#)

4.4. Disposing of Supervisory Records

Supervisors must maintain the [SSA-7-B Employee Record](#) and 7B Extension Files throughout their employees' SSA careers. Supervisors need only maintain IPWF and Memory Joggers as long as they are needed.

4.4.1 7B Employee Record (SSA-7-B)

When an employee is detailed more than 30 days, reassigned or promoted within SSA, the prior supervisor should place the SSA-7-B (paper or extract pertaining to the employee from an electronic record) in the employee's extension file and forward it to the employee's new supervisor within 5 working days of the move.

4.4.2 7B Extension File

To ensure extension files only contain timely and relevant material, they must periodically be purged of old, obsolete documents. Supervisors are required to perform this maintenance, at a minimum, once a year, normally in February or March.

Supervisors may, if they wish, ask administrative assistants to help them with this file maintenance task; but if they do so, they must first ensure the assistants are aware of the confidential nature of the material in the files and their responsibilities under the Privacy Act for safeguarding its integrity.

The Office of Personnel will issue a reminder to supervisors of the upcoming need to perform the annual extension file purge each February.

In removing material from extension files, supervisors should normally follow the records retention schedules in [Exhibit 1](#). However, when administrative need for a record ends sooner, the record may be removed before the normal schedule. Conversely, if the administrative need for a record persists beyond the schedule, it should be retained as long as the need continues.

Supervisors must, with one exception, return old hardcopy material purged from the files to the employees involved. The exception concerns performance plans (i.e., initial discussions, performance discussions, and appraisals). Government regulations require all Federal agencies to retain performance appraisals for four years, including the performance plans on which they are based. Servicing personnel offices (SPO) will advise the regional and Hearings Operations components they service as to how and where to retain the paper performance documents. Within the Baltimore/Washington/Falls Church Headquarters (including the Office of Central Operations), the paper performance plan-related documents must be collectively retained in a separate holding file in a secure location at the secondary level or above. Once the performance plan-related documents attain four years of age after the appraisal (or the administrative need for retaining it beyond that as in, for example, a protracted grievance situation, ceases to exist), it should be removed and destroyed.

When an employee moves from one component in SSA to another, the former supervisor should review the extension file, purge it of any obsolete material and promptly (within 5 days) transfer the employee's records to his/her new supervisor.

When an employee resigns, retires, or otherwise terminates employment with SSA, his/her supervisor should review the SSA-7-B performance and extension files and forward appropriate personnel records, both paper and electronic, (e.g., performance plans and supporting documents) that must be placed in the electronic Official Personnel Folder (eOPF) to the servicing personnel office (SPO), within 45 days of the separation. The SPO should send the eOPF to the National Personnel Records Center within 90 days after the employee separates from SSA. When an employee transfers to another agency, supervisors must send records to be retained in the eOPF to the SPO within 5 working days after receipt of a request from the employee's new agency. Supervisors must retain the remaining employee records for 1 year after the employee's separation or transfer and then destroy all remaining information in a confidential manner.

Ordinarily, when an employee is detailed more than 30 days, reassigned or promoted within SSA, the losing supervisor should review the extension file, purge it of any obsolete material and forward it to the new supervisor within 5 working days of the employee's move.

4.4.3 In Process Working Files (IPWF)

After all actions are completed, IPWFs should return to the originating supervisors. At that time, they should follow the guidelines in [Exhibit 1](#) and [Exhibit 2](#) and either merge the IPWFs contents back into the corresponding extension files (if they are appropriate for retention there) or destroy them in a confidential manner (as in, for example, the cases of denied awards or suggestions).

4.4.4 Memory Joggers

Memory joggers are created and exist solely at the will of supervisors. They do not expire. Supervisors should destroy them in a confidential manner when they are no longer needed. However, when supervisors receive notice that an applicant or an employee has challenged an action or filed a complaint against the Agency, they have a duty to preserve the memory joggers. In these cases, supervisors should seek guidance from the Office of Labor Management and Employee Relations or the Office of the General Counsel regarding the retention and disposal of any relevant memory joggers.

5. SSA LABOR-MANAGEMENT AGREEMENTS

See the [Office of Labor-Management and Employee Relations web site](#) for additional provisions applicable to bargaining unit employees.

Provisions in collective bargaining agreements (CBAs) pertain to the respective bargaining unit employees and govern over the provisions in the SSA Personnel Policy Manual (PPM), unless the provisions of the PPM implement a nondiscretionary mandate of Federal statute or law or a government-wide regulation that predated the execution of the CBA.

6. RECORDS RETENTION

Records must be kept according to the National Archives and Records Administration (NARA) General Records Schedule 2.2., Employee Management Records. This schedule can be accessed through the [NARA web site](#).

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Access to Employee's Desks/Workstations

For bargaining unit employees, see applicable [Union/Management Contracts](#) in addition to the Personnel Policy Manual (PPM). Contract provisions take precedence over the PPM ([See Section 6](#)).

1. [ISSUE DATE](#)
2. [EMPLOYEES COVERED](#)
3. [LAW AND REGULATION](#)
 - 3.1. [Records](#)
4. [SSA DELEGATIONS OF AUTHORITY](#)
5. [SSA POLICY](#)
 - 5.1. [Storage of Agency Records in Employees' Desks/Workstations](#)
 - 5.1.1. [Agency Records](#)
 - 5.1.2. [Temporary Storage of Agency Records](#)
 - 5.2. [Access to Employees' Desks/Workstations](#)
6. [SSA LABOR-MANAGEMENT AGREEMENTS](#)
7. [RECORDS RETENTION](#)

1. **ISSUE DATE** – February 8, 2008
2. **EMPLOYEES COVERED** – All SSA employees.
3. **LAW AND REGULATION**
 - 3.1. **Records** ([See Section 5.1.](#))

Records are all books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the U.S. Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the Government or because of the informational value of data in them. Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference and stocks of publications and of processed documents are not included.

4. [SSA DELEGATIONS OF AUTHORITY](#)

OPENING AN EMPLOYEE'S DESK

Authority 1

Approve opening an employee's desk without his/her permission.

(PPM Chapter S297_2)

Delegate(s)

Deputy Commissioners

General Counsel

Chief Actuary

Regional Commissioners

Condition(s)

Further redelegations are authorized.

March 2018

5. SSA POLICY

5.1. Storage of Agency Records in Employees' Desks/Workstations

5.1.1. Agency Records ([See Section 3.1.](#))

Generally, an employee's desk/workstation is for the storage of personal items and not agency records. Supervisors should designate official repositories for agency records. Agency records should not be stored permanently in employees' desks/workstations.

5.1.2. Temporary Storage of Agency Records

In order to maintain confidentiality and with supervisory approval, employees may temporarily maintain agency records in their desks/workstations while they are actively working with such records. Employees may be required to store agency records in a specific desk/workstation compartment when desk/workstation storage is used, with the understanding that the supervisor has access to the specific compartment when employees are absent. The understanding may be written or oral as the supervisor deems appropriate.

Supervisors may require employees to store agency records in official repositories such as file cabinets when they are actively working with such records.

5.2. Access to Employees' Desks/Workstations

If records temporarily stored in employees' desks/workstations might be needed for official business during their absence, employees should inform those who would need to have access to such materials that they are stored in the desks/workstations, and authorize access to and removal of the records from the desks/workstations when they are needed in order to conduct Government business.

Employees may not open other employees' desks/workstations and examine their contents without the permission of the employees who occupy the desks/workstations unless prior written approval is obtained from the delegated official ([see Section 4.](#)). All requests for such approval should state the reason(s) for the desk/workstation check. The delegated official (see Section 4.) may authorize, in writing, a search of an employee's desk/workstation without the employee's permission when the search is necessary for non-investigatory work-related purposes such as to retrieve a file.

The delegated official may authorize a search of an employee's desk/workstation without the employee's permission if there are reasonable grounds for suspecting that the search will turn up evidence that the employee may have committed work-related misconduct. When a desk/workstation is authorized to be accessed, the employee must be notified as soon as feasible.

6. SSA LABOR-MANAGEMENT AGREEMENTS

See the [Office of Labor-Management and Employee Relations web site](#) for additional provisions applicable to bargaining unit employees.

Provisions in collective bargaining agreements (CBAs) pertain to the respective bargaining unit employees and govern over the provisions in the SSA Personnel Policy Manual (PPM), unless the provisions of the PPM implement a nondiscretionary mandate of Federal statute or law or a government-wide regulation that predated the execution of the CBA.

7. RECORDS RETENTION

Records must be kept according to the National Archives and Records Administration (NARA) General Records Schedule 2.2., Employee Management Records. This schedule can be accessed through the [NARA web site](#).

OPENING AN EMPLOYEE'S DESK

Authority 1

Approve opening an employee's desk without his/her permission.

(PPM Chapter S297_2)

Delegate(s)

Deputy Commissioners

General Counsel

Chief Actuary

Regional Commissioners

Condition(s)

Further redelegations are authorized.

March 2018

Personnel Policy Manual S340_1

Increasing Part-Time Employment Opportunities Through Job Sharing

For bargaining unit employees, see applicable [Union/Management Contracts](#) in addition to the Personnel Policy Manual (PPM). Contract provisions take precedence over the PPM.

1. [ISSUE DATE](#)
2. [PURPOSE](#)
3. [EMPLOYEES COVERED](#)
4. [COMMONLY USED TERMS](#)
5. [DETAILED PROVISIONS](#)
 - 5.1. [Background](#)
 - 5.2. [Considerations for Job Pairing](#)
 - 5.3. [Considerations for Job Splitting](#)
 - 5.4. [Potential Advantages of Job Sharing](#)
 - 5.5. [Potential Concerns](#)
 - 5.6. [Appropriate Positions for Job Sharing](#)
 - 5.7. [Initiating Job Sharing](#)
 - 5.8. [Locating a Job-Sharing Partner](#)
 - 5.9. [Developing a Job-Sharing Proposal](#)
 - 5.10. [Approval of the Job-Sharing Plan](#)
 - 5.11. [Documentation](#)
 - 5.12. [Conclusion](#)
6. [RELATED REFERENCES](#)

[Exhibit 1](#) – Management Considerations Regarding Part-Time Employment

[Exhibit 2](#) – Employee Considerations in Converting to Part-Time Employment

[Exhibit 3](#) – Comparison Chart of Job Splitting and Job Sharing

1. ISSUE DATE – July 1, 1991

2. PURPOSE

This issuance introduces supervisors to the concept of employee job sharing as one of several methods of increasing part-time opportunities. SSA is committed to assisting its employees in meeting their personal and family needs. Therefore, managers are encouraged to consider the use of part-time employment and,

specifically, job sharing where appropriate and consistent with workload requirements and workpower limitations.

3. EMPLOYEES COVERED

This issuance applies to all SSA employees, with the following exceptions:

- employees who are on temporary or intermittent appointments;
- employees specifically appointed to work a full-time schedule are not eligible during the first year of their appointment;
- administrative law judges.

4. COMMONLY USED TERMS

Incumbent Employee - The employee who originally occupies a position selected for job sharing.

Job Sharing - Part-Time employment in which the tours of duty of two employees are arranged in such a way as to cover a single full-time position.

Job Pairing - A form of job sharing where two part-time employees working alternating schedules share one full-time position with responsibility for the full range of duties.

Job Splitting - A form of job sharing where the duties and functions of one full-time position are split to create two new positions, each staffed by a part-time employee.

5. DETAILED PROVISIONS

5.1. Background

Since the creation of the Federal Employees Part-Time Career Employment Act of 1978, SSA has maintained a continuing commitment to increasing part-time opportunities for current as well as prospective employees. With changes in the makeup of today's workforce, part-time employment is an important management tool in attracting and retaining competent employees who cannot work full-time due to family and personal needs. A reduced work schedule may be required to care for a child or elderly parent or result from a medical condition or the desire to pursue educational goals.

In responding to employee part-time requests, SSA traditionally has first considered the possibility of allowing the employee to continue to perform his/her regular duties on a reduced basis with a part-time tour of duty.

This occurs when management determines that the work performed is adaptable to part-time coverage and that workload requirements or the component's mission will not be adversely affected. This will likely continue to be the preferred method of providing part-time opportunities.

Job sharing is another way of creating part-time employment opportunities by dividing the duties and functions of a full-time position between two part-time employees. Job sharing can be implemented through either job pairing or job splitting.

In many cases, part-time employment is not an option for incumbents of positions requiring full-time coverage, unless sharing the job with another part-time individual can be arranged. Therefore, job pairing is useful when management has determined that a position must continue to be performed on a full-time basis but can be performed by two or more employees working alternating part-time schedules.

Job pairing can also be used in positions not requiring full-time coverage. Because of staffing considerations or the duties involved, management may not be able to allow two employees to occupy separate positions and perform work on a reduced (i.e., part-time) basis. By combining two part-time employees into a job-pairing arrangement, management can free up one position for full-time occupancy. In job splitting, a decision is made to officially divide the duties of a full-time position to create two new positions, each of which is staffed by a part-time person.

Job splitting is particularly useful when a full-time position is to be shared by two employees at different grades. Job splitting requires the creation of separate position descriptions. Job splitting will be considered only if the traditional part-time employment and job pairing are not practical or feasible.

A comparison chart of job pairing and job splitting is included in Exhibit 3 of this chapter.

In order to expand part-time opportunities, especially for employees occupying positions requiring full-time coverage, managers are encouraged to explore the possibility of job sharing.

5.2. Considerations for Job Pairing

Managers should realize that job pairing does not significantly alter the duties and tasks specifically assigned to a full-time position, nor does it significantly

change the manner in which these duties or tasks are accomplished. However, since the tasks are performed by two employees with different and alternating schedules, a greater degree of cooperation and communication is necessary to successfully accomplish the work assigned.

Successful job pairing is, therefore, dependent on the identification of employees and supervisors who have the ability to work as a team and who can agree to a detailed plan on how the work will be jointly accomplished.

5.3. Considerations for Job Splitting

At any time, supervisors and managers may request changes in position structure that can result in new positions at the same or different grade levels.

If managers decide to divide the duties of an existing position to create two new positions, approval by the personnel office with classification authority is required. If a job is split to create positions for employees at different grade levels, it is important to split the duties according to grade level criteria. It is also important to determine that sufficient work is available to justify establishing each position on a part-time basis.

Since job splitting results in two distinct positions, the duties are not "shared" on a continuing basis in the same sense as job pairing. It does not require the same degree of coordination in workplans, work schedules and communications as discussed for job pairing in the rest of this chapter.

5.4. Potential Advantages of Job Sharing

5.4.1. For employees

Increased time for personal and family needs;

Improved morale;

Alleviation of job stress; and

Incumbents of positions requiring full-time coverage are able to work part-time.

5.4.2. For Management

Retain and recruit employees who cannot work full-time;

Improved quality and higher productivity from part-time employees;

Increased flexibility to schedule work and increase coverage during periods of peak demand;

Combined tours may exceed 40 hours without incurring overtime costs; and

Employees in job pairing may trade or increase work tour to cover vacations or other absences (can be affected by budgetary constraints).

5.5. Potential Concerns

5.5.1. For Employees

- Difficulty under job pairing in finding compatible job partner;
- Work accomplishment in job pairing dependent on cooperation from job partner;
- Ability to convert back to full-time employment in the future;
- Reduction in employee independence under job pairing;
- Friction between job partners; and
- Shared workstation.

5.5.2. For Management

- Requires greater supervision and scheduling;
- Increased training requirements;
- Problems in task division;
- Accomplishment of work dependent upon the success of the job-sharing arrangement; and
- Possible negative impact on continuity of service and job accountability.

5.6. Appropriate Positions for Job Sharing

As indicated earlier, the use of job pairing is normally driven by a management determination that the duties and functions of the position occupied by the requesting employee are not suitable for performance on a reduced schedule (i.e., conversion to a part-time career position). Positions which might require full-time coverage and be suitable for job pairing might include, but are not limited to, secretaries, analysts, motor vehicle operators, special assistants or technicians.

In other situations, even though full-time coverage is not required, management may choose to have two part-time employees share a position in order to increase part-time opportunities. This may also free up one full-time position.

5.7. Initiating Job Sharing

In most cases, a job-sharing arrangement begins when an employee approaches the supervisor with a request to work part-time. Although an employee might specifically request a job-sharing arrangement, such a request, in essence, is a request to work part-time. In order that the employee may be fully informed of the conditions of part-time employment, the supervisor will provide him/her a copy of [Exhibit 2](#), "Employee Considerations in Converting to Part-Time Employment."

The supervisor's first decision is to determine whether the employee can be accommodated by allowing him/her to perform a full-time position on a reduced basis with a part-time tour. When this alternative is not available or desirable, job sharing becomes a possibility.

The supervisor next determines whether the position at issue is suitable for shared responsibility by two part-time employees. Management may, in fact, determine that certain positions cannot be performed under a job-sharing arrangement.

An employee whose request for job sharing is denied shall be notified of the reasons. Written notification of the reasons for denial will be provided to the employee if requested. However, if the employee is in the AFGE bargaining unit, the supervisor must, in all cases, provide written notification of the reasons for denial to the AFGE at the general committee level as soon as possible.

When it is determined that job sharing is needed or desirable, and that the position is suitable, the next step is to locate an acceptable job partner.

5.8. Locating a Job-Sharing Partner

A job-sharing partner may be located through the incumbent employee's initiatives or through the actions of management.

Management should take appropriate action to advertise the availability of the job-sharing arrangement in order to locate possible candidates. Such measures may include personal contacts, memos to employees within the component or general announcements on local office bulletin boards. SPOs may wish to establish a central location where employees interested in job sharing may forward applications for this purpose.

The incumbent employee has an important role in locating an acceptable partner because the job-sharing arrangement furthers his/her part-time needs and because personal compatibility is an essential ingredient when job pairing is used. To the extent possible, the incumbent employee should make reasonable efforts in locating a partner for management's consideration.

Partners for job pairing in SSA are restricted to employees at the same grade level, in positions with the same known promotion potential and who meet the X-118 qualifications requirements for the position to be shared. Employees entering a job-sharing arrangement involving a career ladder position must be at the journeyman grade.

If one or more candidates are located who meet the minimum criteria mentioned above, the candidate(s) will be interviewed by the immediate supervisor. Because personal compatibility is extremely important to a successful job-sharing arrangement, the supervisor may wish to consider allowing the incumbent employee to meet with each candidate. However, the ultimate selection of the potential job sharer is a management decision. The supervisor must ensure that the selected individual also receives a copy of [Exhibit 2](#).

In considering potential candidates, the following characteristics may be indicators of successful job sharers:

- ability to work as a team;
- willingness to consult with job partner and management personnel supervising arrangement;
- commitment to the job-sharing concept;
- ability to set priorities; and
- good communication skills.

Employees will be granted a reasonable amount of duty time to speak with each other about the possibility of job sharing as well as to develop a job-sharing proposal.

5.9. Developing a Job-Sharing Proposal

Once the potential job-sharing team has been identified, the next step in the process is for the team to jointly agree with the supervisor of the position on a job-sharing proposal covering the issues indicated below. The team should understand that a detailed and carefully developed plan is more likely to

receive management approval. When a bargaining unit position is involved, the supervisor must provide notice to the union and an opportunity to be present at any meetings to discuss the job-sharing arrangement.

- **Workplan**--The proposal should contain a discussion of the specific tasks, functions, projects, etc. which are currently performed on a full-time basis and how they will continue to be performed under the job-sharing arrangement. As indicated earlier, job sharing in the form of job pairing requires that the job partners share ultimate responsibility for the full range of the duties and functions of the position. However, it is possible that the supervisor and the job partners may decide to assign primary and secondary responsibility for different task and functions. In the course of the job-sharing arrangement, each partner may be given responsibility for specific projects or assignments. In dividing tasks in this way, it is important that each partner under job pairing have responsibility for duties of equal complexity and that each partner be sufficiently informed about the work of the other.
- **Proposed Work Schedule**--Job sharing is normally arranged to divide the 40 hour workweek between the two partners. As one example, each employee may choose to work 3 days in one week and 2 days the next week. However, job-sharing arrangements can also exceed 40 regular hours per week when one or both part-time employees, with supervisory approval, work 24 or 32 hour per week schedules with overlapping tours. A shared workday, when both partners are present, can be extremely important for the team to communicate and coordinate their efforts. The supervisor and the job-sharing team must each mutual agreement as to how the full-time workweek will be shared. The work schedules can involve split days (where one employee works mornings and the other afternoons), split weeks (where each employee works half of the week) or the employees may choose to work alternating days in the week.

In arranging schedules, it is important that each employee be scheduled to work at least 1 hour of each week in order to be eligible to earn leave and to meet the definition of a part-time employee.

The proposed schedule should be submitted to the supervisor for review, approval and possible modification.

- **Communication Strategy**--As essential ingredient in any successful job-sharing arrangement is clear and complete communication between the job partners, the supervisor and other coworkers. This is

particularly true of job-pairing arrangements based on shared responsibility of all job functions when the partners have work schedules with minimal or no overlap.

With minimal face-to-face contact, the continuity of service and job accountability will depend on the development of other communication techniques. For example, partners may use a joint notebook to record written messages and followup instructions for each other. Taped messages are often used to communicate with partners, supervisors and other coworkers. In positions involving heavy phone contact, job sharers may need to establish complete and accurate phone logs. Since employees have different ways of recording facts, it is important that the job partners and the supervisor agree on a mutually acceptable communication process.

Job sharing is not intended to require employees to perform job duties while away from work. Every effort should be made to minimize the need to contact an employee when not on duty.

- **Use of Space and Equipment**--The use of space and equipment may or may not be an important issue depending on whether or not they are shared. If sharing the same desk, typewriter/word processor, telephone and filing system will be required, the job partners should reach agreement on any issues which may arise concerning the use or division of these items. Even in circumstances where separate equipment is available, agreement and cooperation may be necessary in order to determine the location of work-related items or otherwise to facilitate the smooth transition of work between partners.
- **Contingency Plan**--With any job-sharing arrangement, it is important that all parties realize that successful performance of the position is dependent on the ability of both job partners to perform their responsibilities under the agreement. However, things can and do go wrong. Problems may arise during the course of the year when one or both partners may be unable to adhere to the agreed upon work schedule due to vacations, illness or family responsibilities. One partner may decide to leave the Agency or accept another full-time position.

In these circumstances, one job partner may have to temporarily increase his/her work schedule. In other cases, incompatible personalities or individual performance deficiencies may negatively affect the accomplishment of assigned work. These situations may

require the modification or termination of a job-sharing arrangement. For these reasons, it is often useful for the participants to decide in advance their willingness to adjust their work schedules and work responsibilities when necessary. They should have an idea of what is expected of each partner should the partnership end.

Requests to revert to full-time status by a participating employee will be handled on a case-by-case basis. The supervisor will consider each request in line with the employee's circumstances and the needs of the organization. If denied, written notification of the reasons will be provided at the employee's request.

In the event one of the partners leaves the job-sharing arrangement, management will assist the remaining individual in finding a new partner within a reasonable period of time.

Employees should understand that management retains the right to increase an employee's tour of duty or change his/her status to full-time when required by workload demands.

If management deems it necessary to convert a job sharer to full-time work, to the maximum extent feasible, it shall give the employee at least 2 weeks notice prior to the start of the affected administrative workweek. The employee will be given an opportunity to explain how such action may cause undue hardship.

The Agency, on presentation of a reasonable explanation showing the undue hardship, will then make every reasonable attempt to alleviate the situation and to find other ways to accomplish the work. The Agency will afford the employee a written explanation of the reason for change to a full-time position for any period exceeding 2 full pay periods.

If management finds it necessary to schedule additional hours for a job-sharing employee, every reasonable effort will be made to avoid additional hours which are not contiguous to (i.e., immediately following) the established tour of duty. If management schedules non-contiguous hours, it will provide an explanation in writing justifying the need to work these hours. Also, additional hours will not be assigned to job-sharing employees in order to eliminate the need to schedule full-time employees for overtime.

- **Performance Evaluation**--Evaluating the performance of partners in a job-sharing arrangement can raise special problems when both partners in job pairing share full responsibility for the performance of all duties and functions. Each job partner must receive an individual performance rating based on his/her work performance. In many cases, however, completion of specific tasks or projects may be a joint accomplishment and determining the contribution of each employee can be difficult.

Because of the importance of performance ratings and the discord that might result from the receipt of differing ratings, this issue needs to be discussed. To the extent practicable, the job partners should seek to reach agreement between themselves, subject to supervisory approval, regarding the methods by which their individual contributions to shared projects will be identified.

5.10. Approval of the Job-Sharing Plan

Potential participants will receive a written response from the supervisor within a reasonable amount of time (normally within 10 workdays) of submitting their written proposal informing them of the acceptance or rejection of the job-sharing plan. If the plan is rejected, the reasons will be stated. Participants may revise their written proposal to accommodate the reasons given for rejection and resubmit it for another decision.

Once a proposed job-sharing plan has been agreed upon, the plan will be signed by the supervisor and the employees. Individual components may require a higher level of management approval. Each employee will receive a copy of the plan. The purpose of the proposed job-sharing plan is to ensure a general understanding between the parties and management as to how the work will be jointly accomplished and how contingencies will be handled. Written contractual agreements are not necessary.

All parties should understand that management reserves the right to assign its employees and the work as necessary and to modify or terminate any approved job-sharing arrangement. Supervisors may want to develop a statement to this effect to be signed by the participating employees.

5.11. Documentation

The Office of Personnel Management requires agencies to identify those employees currently involved in a job-sharing arrangement. The SPO must process a "Change in Work Schedule" personnel action for these employees. Therefore, supervisors should notify the personnel office as soon as a job-sharing arrangement has been approved.

5.12. Conclusion

Job sharing can provide important benefits for management and employees alike. In certain circumstances where full-time coverage of a position is required, job sharing may be the only method by which the incumbent of a position may be provided the opportunity to work part-time.

Job sharing through job pairing does not require any change in the classification or the job description of an established position. The position remains the same but is simply performed by two individuals working as a team. The success of the team is dependent on their ability to communicate and cooperate.

In those rare cases where management agrees to job sharing by employees at different grades, job splitting is required. Job splitting does require position classification action and a change in position description to create two new positions. After the positions are established, job sharing through job splitting does not require the same level of communication and cooperation as job pairing.

Although they share the duties of a full-time position, job sharers are considered to be individual part-time employees for all purposes including appointment, tour of duty, performance evaluation, service credit, adverse actions, grievances, reduction-in-force and pay ([see Exhibit 2](#)).

6. RELATED REFERENCES

1. 6.1. FPM Chapter 340, Subchapter 1
2. 6.2. SSA Personnel Manual for Supervisors, [S610 1](#).

EXHIBIT 1 - MANAGEMENT CONSIDERATIONS REGARDING PART-TIME EMPLOYMENT

Work Schedules

The normal tour of duty for a part-time employee is no less than 16 and no more than 32 hours per week. The employee's tour of duty is documented on the SF-50, Notification of Personnel Action.

Agencies may establish a new tour of duty or temporarily change a current tour to meet the needs of the office or the employee. Changes in the employee's tour of duty must be made in advance of the administrative workweek in which the change will occur and must be approved by management. Part-time employees may increase the tour of duty above 32 hours per week. However, such an increase is not permitted for more than two consecutive pay periods.

As a result of unexpected increases in the workload or changes in staffing, agencies may need to change part-time employees to a full-time schedule. Such changes may be accomplished on a short-term (i.e., with a not-to-exceed date specified in the SF-50 remarks section) or on a permanent basis if the FTE/budget ceilings permit. However, if such a change would be a hardship to the employee, the Agency should attempt to accomplish the added work within available resources.

Documentation

If a part-time employee's tour of duty changes for one or two consecutive pay periods, an SF-50 is not required to document the change. However, the employee's tour should be entered on the timecard each pay period. When the total number of hours per pay period changes for three or more consecutive pay periods, however, a "Change in Hours" SF-50 must be processed.

Overtime

Part-time employees are eligible for overtime pay under Title 5 United States Code (U.S.C.) or under the Fair Labor Standards Act (FLSA). Under Title 5 U.S.C., part-time employees are eligible for overtime pay for work over 8 hours a day or over 40 hours a week. Under the FLSA, part-time employees are eligible for overtime pay only for work over 40 hours a week. (NOTE: For additional information on overtime under Title 5 U.S.C., see SSA PPM S550_2. For additional information on overtime under FLSA, see PPM S550_3.)

Compensatory Time

A part-time employee may request compensatory time off in lieu of overtime pay under Title 5 U.S.C.; compensatory time off in lieu of overtime pay is not authorized under FLSA.

All part-time employees may request compensatory overtime work to be used for religious observances.

EXHIBIT 2 - EMPLOYEE CONSIDERATIONS IN CONVERTING TO PART-TIME EMPLOYMENT

Tour of Duty

Employees who change to a part-time tour after April 8, 1979, must, with certain exceptions, have a work schedule of at least 16 but not more than 32 hours per week. Part-time employees can occasionally change their part-time tours of duty with the agreement of their supervisor. A change must be made in advance of the workweek in which it is to occur. An increase in the tour of duty above 32 hours per week is not permitted for more than 2 consecutive pay periods. Also, as a result of workload requirements, an agency may change the work schedule of a part-time employee to full-time on either a short-term or permanent basis.

Merit Promotion

Changing to a part-time tour has no effect on the date the employee will meet time-in-grade requirements for filing an application for promotion or for noncompetitive advancements in grade (for example, career ladder promotions). However, part-time work is prorated in determining whether an employee meets X-118 qualification requirements. This could extend the period of time an employee must work to be eligible for career ladder promotions and vacancies posted at higher grades. Promotion committees will credit part-time experience on a prorated basis. For example, an employee who works 20 hours per week would earn 6 months of credit for experience per year.

A job-sharing team may apply for a full-time position under Agency merit promotion programs but the qualifications of each job sharer should be evaluated individually. If both job sharers are among the best qualified, they should be referred as a team to the selecting official. A job sharer may also apply individually for promotion to a part-time or full-time position. In the latter case, the job sharer would have to agree to a full-time work schedule if selected for the position.

Service Credit

A part-time employee receives a full year of service credit for each calendar year worked (regardless of tour of duty) for purposes of computing service for retention, retirement, career tenure, completion of probationary period, within-grade increases, leave accrual rate and time-in-grade restrictions on advancement.

Leave

Regularly scheduled part-time employees earn leave as follows:

- Less than 3 years of service--employee earns 1 hour of annual leave for each 20 hours in pay status;
- Three to less than 15 years of service--employee earns 1 hour of annual leave for each 13 hours in pay status;
- Fifteen or more years of service--employee earns 1 hour of annual leave for each 10 hours in pay status;
- Maximum carryover at the end of the leave year is the same as for a full-time employee;
- Part-time employees accrue sick leave at the rate of 1 hour for each 20 hours in pay status;
- Hours in pay status include straight time and overtime hours up to 80 hours in a pay period; and

- A part-time employee is eligible for other types of leave; e.g., leave without pay, court leave, etc., on the same basis as a full-time employee. An eligible part-time employee accrues military leave prorated on the basis of tour of duty.

Holidays

A part-time employee is not entitled to a holiday which falls outside the tour of duty. If a holiday falls on a day a part-time employee is scheduled to work, the employee is paid for the number of hours scheduled for that day.

Retirement

As a result of Public Law 99-272 (Consolidated Omnibus Budget Reconciliation Act) which was effective April 7, 1986, the formula for computing annuities for part-time employees was changed. Employees who have part-time service on or after April 7, 1986 are affected by this law.

For part-time service performed prior to April 7, 1986, retirement benefits are computed using the same formula as that used for full-time service. For part-time service performed after April 6, 1986, there is a different method for computing the retirement benefit. One year of part-time service is still counted as 1 full year of service; the "high 3" average pay is computed as if the employee were on a full-time schedule. However, the annuity computation is then prorated to reflect the part-time tour. For example, the annuity of an employee with 30 years of service all performed after April 6, 1986 and all performed on a three-quarter time basis, will be computed based on 30 years of service and a full-time average pay, but the annuity will then be multiplied by .75, resulting in a reduction in the annuity of 25percent.

NOTE: For employees with substantial years of full-time service before April 7, 1986, a change to part-time before retirement may have a negative effect on the annuity credited for those years. This is because the rules for pre-April 7, 1986 service base that portion of the annuity on the highest 3 salary actually earned. For many employees, a change to part-time at the end of their careers reduces or eliminates their opportunity to increase the high-3 salary actually earned. This issue should be discussed with a personnel staffing specialist before any such action is taken.

Life Insurance

The actual amount of insurance for which a part-time employee is eligible is based on the annual salary. A part-time employee's annual salary is figured on the basis of hours in the tour of duty times base pay rate. The minimum amount of basic insurance is \$10,000.

Health Insurance

Health insurance coverage is the same as that available to full-time employees, but the cost to employees who become part-time on or after April 8, 1979, is greater since they receive a prorated Government contribution toward their health insurance premium according to the number of hours in the tour of duty during the pay period as documented on the SF-50. Part-time employees must pay the difference between this amount and the Government contribution for a full-time employee.

There are three categories of part-time employees who are exempt from the health benefits proration:

- Employees with part-time tours of duty of less than 16 hours per week;
- Employees with mixed tours (i.e., employees who, due to a fluctuating workload, work a part-time tour part of the year and a full-time or intermittent tour the remainder of the year); and
- Employees who have worked a part-time tour since before April 8, 1979 without a break in service.

Adverse Actions

A part-time employee has the same protections as a full-time employee in the event of adverse actions such as removals, suspensions, furloughs, and reductions in grade or pay.

However, it should be noted that once an employee is part-time, a reduction in his/her work schedule does not constitute a reduction in the rate of basic pay. Therefore, it is not an adverse action subject to employee appeal rights.

Reduction-in-Force

In a reduction-in-force, part-time employees compete separately from full-time employees and are placed in separate competitive levels. They have bump and retreat rights only to other part-time jobs. Full-time employees have rights only to full-time jobs.

Pay

Under Title 5 United States Code (U.S.C.), part-time employees are eligible for overtime pay for work over 8 hours a day or over 40 hours a week. Under FLSA, part-time employees are eligible for overtime pay only for work over 40 hours a week. A part-time employee may request compensatory time off in lieu of overtime pay under Title 5 U.S.C.; compensatory time off in lieu of overtime pay is not authorized under FLSA. (NOTE: For additional information on overtime under Title 5 U.S.C., see PPM S550_2. For additional information on overtime under FLSA, see PPM S550_3.)

Part-time employees are not entitled to Sunday premium pay for working on Sundays. They are, however, entitled to night pay for work performed between 6 p.m. and 6 a.m. as part of the irregularly scheduled administrative workweek.

All part-time employees may request compensatory overtime work to be used for religious observances.

EXHIBIT 3 - JOB SHARING - A COMPARISON OF JOB SPLITTING AND JOB PAIRING

JOB SHARING		
	JOB SPLITTING	JOB PAIRING
Positioning Description	Separate PDs	Shared PDs
Workloads	Separate work	Shared work
Grade of Job Partners	Any grades	Same grades
Evaluation	Individual evaluation	Individual evaluation
Schedules	Alternate or not	Alternating
Workstations	Shared or not	Shared or not
Tours of Duty	16 - 32 hours/week	16 - 32 hours/week
Overtime and Compensatory Time	Exceeds 8 hours/day	Exceeds 8 hours/day

Excused Absence and Administrative Leave

For bargaining unit employees, see applicable [Union/Management Contracts](#) in addition to the Personnel Policy Manual (PPM). Contract provisions take precedence over the PPM ([See Section 6](#)).

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1. ISSUE DATE – September 15, 2003 (Revised June 2004, January 2005, July 2010, September 2010, June 11, 2012, April 10, 2013, June 12, 2014, February 26, 2018, March 20, 2018, October 27, 2019, May 18, 2022, and July 22, 2024)

2. EMPLOYEES COVERED – All SSA employees (excluding intermittent employees).

3. LAW AND REGULATION

3.1. Excused Absence - Definition

Excused absence, also known as administrative leave, is an absence from duty without loss of pay or charge to accrued leave approved by the delegated approving official ([See Section 4.](#)).

3.2. Excused Absence – 1-Hour Infrequent Tardiness ([See Section 5.1.](#))

Delegated approving officials ([See Section 4.](#)) may excuse employees from duty for infrequent tardiness of less than 1 hour.

3.3. Excused Absence - Short Time Periods([See Section 5.2.](#))

SSA has the authority to determine the situations that are appropriate for excusing employees from duty for short time periods without charge to leave ([see Section 5.2.](#)). A short time period is generally construed by the Comptroller General as that time appropriate for the circumstances, but not exceeding 40 hours.

3.4. Excused Absence - Bone Marrow

Delegated approving officials ([See Section 4.](#)) may excuse employees from duty up to 7 workdays (56 hours) in a calendar year to serve as bone-marrow donors.

3.5. Excused Absence - Organ Donor

Delegated approving officials ([See Section 4.](#)) may excuse employees from duty up to 30 workdays (240 hours) in a calendar year to serve as organ donors.

3.6. Excused Absence - Preventive Health Screenings

Delegated approving officials ([See Section 4.](#)) may excuse employees from duty up to 4 hours each [leave year](#) to participate in preventive health screenings if they have less than 80 hours of accrued sick leave. Some examples of preventive health screenings include:

- Testing for sickle cell anemia;
- Testing for cholesterol;
- Blood pressure checks;
- Mammograms;
- Prostate screenings;
- Colorectal screenings;
- Pap tests; and
- Dental screenings (not treatment).

3.7. Excused Absence - Veterans

Delegated approving officials ([See Section 4.](#)) may excuse employees from duty who are veterans up to 4 hours to participate as pallbearers or honor guards in funeral services for members of the armed forces whose remains are returned from abroad for final interment in the U.S.

3.8. Excused Absence - Return from Active Military Duty

Delegated approving officials ([See Section 4.](#)) must excuse full time employees from duty who are returning from at least 42 consecutive days of active military duty in support of Overseas Contingency Operations for 5 consecutive workdays upon their return to Federal civilian service. Employees are entitled to the 5 days of excused absence only once in a 12-month period. A new 12-month period begins after the first use of the excused absence.

Part-time employees see [PPM S610 2.](#)

3.9. Excused Absence - Disciplinary and Adverse Actions ([See Section 5.2.19.](#))

Delegated approving officials ([See Section 4.](#)) may place employees on excused absence during all or part of the advance notice period if necessary, in accordance with 5 CFR 752.404(b)(3).

4. [SSA DELEGATIONS OF AUTHORITY](#)

5. SSA POLICY

5.1. Excused Absence – 1-Hour Infrequent Tardiness ([See Section 3.2.](#))

Delegated approving officials ([See Section 4.](#)) may excuse employees from duty for rare instances of infrequent tardiness of less than one hour. Delegated approving officials may not excuse employees' absences occurring within the flexible bands ([See PPM S610 1.](#)).

5.2. Excused Absence - Short Time Periods ([See Section 3.3.](#))

Delegated approving officials ([See Section 4.](#)) may excuse employees from duty for short time periods. Listed below are the Agency's policies for excusing absence for specific situations.

5.2.1. Administrative Hearings([See Section 5.4.1.](#))

Delegated approving officials ([See Section 4.](#)) may excuse employees from duty who are parties to or witnesses in administrative hearings conducted by SSA or other Federal agencies for a reasonably appropriate period of time.

5.2.2. Blood Donations

Normally, delegated approving officials ([See Section 4.](#)) may excuse employees from duty up to 3 hours for blood donation and recovery and up to 4 hours for blood platelet (hemapheresis) donation and recovery.

5.2.3. Change of Duty Station ([See Section 5.4.2.](#))

5.2.3.1. Relocation Expenses Not Paid ([See Section 5.4.2.](#))

For employees whose relocation is not paid for by the government, delegated approving officials ([See Section 4.](#)) may not excuse employees from duty when employees are changing permanent duty stations and requesting excused absence for the moving process.

5.2.3.2. Relocation Expenses Paid - Household Goods ([See Section 5.4.2.](#))

For employees whose relocation is paid for by the government, delegated approving officials ([See Section 4.](#)) may excuse employees from duty up to 1 day to load household goods and up to 1 day to unload household goods.

5.2.4. Job Examinations/Interviews ([See Section 5.3.4.](#))

Delegated approving officials may excuse employees from duty to take job examinations and go on job interviews required for position changes within SSA.

5.2.5. Hazardous Weather and Other Emergencies

If hazardous weather or emergency conditions exist and the official duty station is open, delegated officials may grant up to two hours of administrative leave to employees arriving after the beginning of core hours or scheduled start time. The granting of such leave is contingent upon the delegated official determining that employees made reasonable efforts to arrive timely and were delayed by the conditions.

When hazardous weather or emergencies affect the official duty station, see [PPM S630 10.](#)

5.2.6. Health Programs ([See Section 5.3.3.](#))

Delegated approving officials ([See Section 4.](#)) may excuse employees from duty to participate in:

- SSA sponsored or co-sponsored health programs.

- Health or medical research programs sponsored by the Public Health Service or the National Institutes of Health provided that these agencies agree to reimburse SSA for the employee's absence during official duty time.

5.2.7. On-the-Job Injury

Delegated approving officials ([See Section 4.](#)) will excuse employees from duty who suffer a disabling traumatic injury on the job for any absence on the day of the injury unless the injury occurs before the beginning of the employee's workday. There is a presumption that the employee will file a workers compensation claim ([See PPM S810 2](#)). If no workers' compensation claim is filed, employees must use their own leave.

5.2.8. Medical Examinations and Treatment

Delegated approving officials ([See Section 4.](#)) will excuse employees from duty when the SSA Medical Office determines that they have been exposed to a serious infectious disease in the conduct of their official duties to obtain testing/treatment.

Delegated approving officials ([See Section 4.](#)) will excuse employees from duty who have been ordered to report for physical examinations in connection with entry into the Armed Forces, including the Reserves, if the request is accompanied by an official notice.

Delegated approving officials ([See Section 4.](#)) will excuse employees for medical examinations and treatment in conjunction with:

- The employment process for new appointees; and
- Medical qualifications determinations.

5.2.9. Meetings, Conventions, Conferences, and Training

Delegated approving officials ([See Section 4.](#)) may excuse employees from duty to attend meetings, conventions, conferences, and training (not paid for by SSA) when attendance will contribute to their professional development or enhance knowledge necessary to carry out their official duties.

5.2.10. SSA Baltimore Federal Credit Union

Delegated approving officials ([See Section 4.](#)) may excuse employees from duty who are on the Board of Directors of the Credit Union up to 1½ hours per month to attend monthly meetings.

5.2.11. SSA Band and Chorus Rehearsals ([See Section 5.4.4.](#))

Delegated approving officials ([See Section 4.](#)) will excuse members of the SSA Band and Chorus from duty a maximum of 1 hour, once a week in connection with the lunch period, to attend onsite band or chorus rehearsals for an SSA-sponsored event. The maximum of 1 hour of excused absence per week includes any time officers of the band/chorus may use to complete their duties. Employees who participate in more than one band/chorus are limited to a combined maximum of 1 hour of excused absence per week to participate in these activities. Employees must use leave (for example, annual leave, credit hours, earned compensatory time) or flex out if the rehearsals and any travel time exceed 1 hour.

5.2.12. SSA Child Care Board of Directors

Delegated approving officials ([See Section 4.](#)) may excuse employees from duty who are on the Child Care Board up to 1½ hours per month to attend monthly meetings.

5.2.13. Traffic Violations

Delegated approving officials ([See Section 4.](#)) will excuse employees from duty who attend court during official duty time for traffic violations that occurred on SSA property if the court does not find the employee responsible for the traffic violation. Employees will be granted excused absence for the court hearing or trial and reasonable travel time to and from court.

5.2.14. Visits to the Health Unit

Delegated approving officials ([See Section 4.](#)) may excuse employees from duty to visit an SSA health unit.

5.2.15. Voting

5.2.15.1. Election Day

When practicable to do so without seriously interfering with operations, delegated approving officials ([See Section 4.](#)) may excuse employees from duty to allow them time to vote when the voting places are not open at least 3 hours before or after their arrival or departure times. How much, if any, excused absence delegated approving officials should excuse is determined by employees' work schedules on the day of the election.

The period of excused absence is the lesser amount of excused time required to allow a 3-hour time period for voting, either in the morning or evening. For example, where polls are open from 7 a.m. to 7 p.m. and employees begin work at 8 a.m. and are scheduled to complete their day at 4:30 p.m.,

they could be granted a maximum of ½ hour excused absence at the end of the workday. In this example, the polls are open one hour before the employees report to work and 2½ hours after their workday ends. In this case, employees could be excused from 4 p.m. to 4:30 p.m.

Employees are encouraged to consider alternate voting options such as early voting or mail-in ballots.

5.2.15.2 Unusual Circumstances

Under unusual circumstances, delegated approving officials ([See Section 4.](#)) may excuse employees from duty up to a full day to vote. For example, for employees whose voting places are beyond normal commuting distances and voting by absentee ballot is not permitted, up to 1 day of excused absence may be granted by the delegated official ([See Section 4.](#)) to allow employees to make the trip to the voting places to cast their ballots. If more than 1 day is needed, employees may request to use leave (for example, annual leave, earned compensatory time, earned credit hours, or leave without pay).

5.2.16. Disciplinary and Adverse Actions ([See Section 3.9.](#))

Delegated approving officials ([See Section 4.](#)) may place employees on excused absence during all or part of the advance notice period if necessary, in accordance with 5 CFR 752.404(b)(3). Managers must follow the delegations of authority for excused absences. Coordination with the local labor and employee relations staffs is required on any such excused absences in excess of 40 consecutive hours. Any correspondence documenting approval of these extended excused absences must be included in the disciplinary/adverse action case filed.

5.2.17. Continuing Education Courses

Delegated approving officials ([See Section 4.](#)) may excuse employees from duty up to 10 hours per calendar year to attend continuing education courses that they need to maintain a certification or license required by their job series.

5.2.18. SSA Advisory Councils

Delegated approving officials ([See Section 4.](#)) may excuse non-officer members from duty up to 1 hour per month for advisory council activities. This allotment is limited to 1 hour per month per employee, regardless of the number of councils in which the employee is a member in a non-officer position.

Delegated approving officials ([See Section 4.](#)) may excuse national and regional SSA advisory council officers from duty up to 2 hours per month for advisory council activities, including officer duties. This allotment is limited to a maximum of 2 hours per month per employee, regardless of the number of councils in which the employee is an officer.

Delegated approving officials ([See Section 4.](#)) may excuse officers 1 additional hour per month if they are a member of a different advisory council. This allotment is limited to a combined maximum of 3 hours per month per employee, regardless of the number of councils in which the employee participates.

5.2.19. Military Spouse Relocation

Delegated approving officials ([See Section 4.](#)) may excuse employees from duty for up to 5 workdays if they are geographically relocating with their military spouse as directed by the service member's military orders or letter-in-lieu of orders.

Employees must provide their delegated approving official ([See Section 4.](#)) with their spouse's relocation military orders or letter-in-lieu of order and be listed on the documentation in order to be eligible.

5.3. Activities for Which Excused Absence Must Not be Granted

5.3.1. Advocacy and Special Interest Groups (Excluding SSA Advisory Councils, [See Section 5.2.21.](#))

SSA generally provides space to advocacy and special interest groups to hold meetings. Delegated approving officials ([See Section 4.](#)) may not excuse employees from duty to attend meetings.

5.3.2. Fitness Centers ([See Section 5.2.4.](#))

Delegated approving officials ([See Section 4.](#)) may not excuse employees from duty for offsite fitness center fitness assessments nor to use fitness center facilities that are either offsite or onsite.

5.3.3. Health Programs ([See Section 5.2.7.](#))

Delegated approving officials ([See Section 4.](#)) may not excuse employees from duty to participate in health programs that:

SSA does not officially sponsor or co-sponsor.

Employees seek themselves or are referred to by a physician or other individual.

5.3.4. Job Examinations/Interviews ([See Section 5.2.5.](#))

Delegated approving officials ([See Section 4.](#)) may not excuse employees from duty to:

Take civil service examinations;

Take examinations required for transfer to other Federal agencies; or

Attend job interviews with other Federal agencies.

5.3.5. Volunteer Activities

Delegated approving officials ([See Section 4.](#)) may not excuse employees from duty for volunteer activities. Alternative work schedules such as flextime and 5/4-9 and 4/10 enable employees to have flexibility in their workday to perform services for their communities.

5.3.6. Disability Retirement Applications

Delegated approving officials ([See Section 4.](#)) may not excuse employees from duty to complete disability retirement applications.

5.3.7. SSA Band and Chorus Rehearsals

Delegated approving officials ([See Section 4.](#)) may not excuse members of the band or chorus to participate in offsite rehearsals or offsite events associated with participation in the SSA band or chorus. Employees must use their own leave to participate in offsite events or events not sponsored by SSA, including non-sponsored events that take place onsite (i.e., in the same building where employees work).

5.4. Activities for Which Official Duty Time is Granted

Employees are on official duty time when participating in the following activities even though they are not performing their normal duties. There is no loss in pay or charge to leave.

5.4.1. Administrative Hearing ([See Section 5.2.1.](#))

Employees who participate as an SSA official at an administrative hearing are on official duty time.

5.4.2. Change of Duty Station ([See Section 5.2.3.](#))

5.4.2.1. Relocation Expenses Paid ([See Section 5.2.3.2.](#))

Employees are on official duty time when they are permanently changing their official duty stations and travel orders have been issued authorizing the payment of relocation expenses because the relocation is considered in the Government's interest ([See PPM S335 4](#)).

5.4.2.2. Househunting ([See Section 5.2.3.](#))

Employees who are authorized a househunting trip are on official duty time ([See AIMS, FMM, SSA.g:07.22](#)).

5.4.3. Employee Assistance Program (EAP) Counseling

Employees are on official duty time when traveling to and meeting with an EAP counselor.

5.4.4. SSA Band and Chorus Performances ([See Section 5.2.12.](#))

SSA band and chorus members are on official duty time for SSA-sponsored onsite performances, including reasonable travel time to and from events.

Note: SSA does not sponsor offsite band/chorus events. SSA does not sponsor events hosted by other agencies, even if the event takes place onsite (i.e., in the same building where employees work).

5.4.5. Equal Employment Opportunity (EEO) Complaints

Employees are given a reasonable amount of official duty time (also called EEO Rep Time or EEO official time) to prepare for counseling or mediation, prepare complaints and appeals, engage in discovery, and respond to agency and Equal Employment Opportunity Commission (EEOC) requests for information. Supervisors must also grant a reasonable amount of EEO Rep Time to employees when their presence is authorized or required by the agency or the EEOC during the investigation, informal meetings (such as a settlement conference), or hearing on an EEO complaint. Supervisors will track this time as part of the approval/denial process of all EEO Rep Time requests.

If employees designate other employees of the agency as their representative, the representative's right to EEO Rep Time flows from the employee's right to EEO Rep Time. Generally, the representative may receive a reasonable amount of EEO Rep Time as described above for employees. However, the agency is not obligated to change work schedules, incur overtime expenses, or pay travel expenses (except as provided under a collective bargaining agreement) to facilitate the choice of a specific representative or to allow the complainant and representative to confer.

Additionally, at all times, it is reasonable for the agency to expect employees to spend most of their time doing the work for which they are employed. Therefore, supervisors may also restrict the amount of EEO Rep Time for representational activities.

When employees designate union officials as personal representatives for EEO cases, union officials must count time spent representing employees as union time in accordance with the applicable negotiated agreement.

5.4.6. SSA Diversity and Inclusion Council

Employees participating on the SSA established Diversity and Inclusion Council receive a reasonable amount of official duty time to attend meetings and complete assigned activities for the agency. Union representatives participating on the SSA Diversity and Inclusion Council are on official union time.

5.5. Requesting Excused Absence

Employees must request excused absence in writing in the agency's automated time and attendance system.

6. SSA LABOR-MANAGEMENT AGREEMENTS

See the [Office of Labor-Management and Employee Relations](#) web site for additional provisions applicable to bargaining unit employees.

Provisions in collective bargaining agreements (CBAs) pertain to the respective bargaining unit employees and govern over the provisions in the SSA Personnel Policy Manual (PPM), unless the provisions of the PPM implement a nondiscretionary mandate of Federal statute or law or a government-wide regulation that predated the execution of the CBA.

7. TIMEKEEPING PROCEDURES

Timekeeping procedures may be found in the Time and Attendance Policy and Procedure Guide web site.

8. RECORDS RETENTION

Records must be kept according to the National Archives and Records

Administration (NARA) General Records Schedule 2.4., Employee Compensation and Benefits Records. This schedule can be accessed through the [NARA web site](#).

9. QUESTIONS

Employees may direct questions to their supervisors. Supervisors may direct questions to their servicing personnel offices (SPOs) or component Executive Officers (EOs). SPOs and EOs may direct policy questions to [^DCHR OPE Policy](#) . SPOs and EOs may direct timekeeping questions to [^DCHR OPE Payroll](#).

For bargaining unit employees, see applicable [Union/Management Contracts](#) in addition to the Personnel Policy Manual (PPM). Contract provisions take precedence over the PPM ([See Section 6](#)).

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2. [EMPLOYEES COVERED](#)
3. [LAW AND REGULATION](#)
 - 3.1. [Establishing an Agency Telework Policy](#)
 - 3.2. [Determining Eligibility to Telework](#)
 - 3.3. [Workers Compensation](#)
 - 3.4. [Determining Official Worksite for Locality Pay Purposes](#)
4. [SSA DELEGATIONS OF AUTHORITY](#)
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 - 5.1. [Definitions](#)
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 - 5.7. [Participating in Telework](#)
 - 5.8. [Employee Availability](#)
 - 5.9. [Suspending Telework](#)
 - 5.10. [Terminating Telework](#)
 - 5.11. [Terminating Eligibility to Telework](#)
6. [SSA LABOR-MANAGEMENT AGREEMENTS](#)
7. [RECORDS RETENTION](#)

[Exhibit 1](#) - Telework Program Request & Agreement

[Exhibit 2](#) - Memorandum: Notification of Termination from the Telework Program

[Exhibit 3](#) - Unscheduled Telework Examples

1. **ISSUE DATE** – December 23, 2013 (Revised February 2014, November 2014, April 17, 2017, May 23, 2018, November 5, 2018, October 27, 2019, March 9, 2022, March 4, 2024, and August 26, 2024)
2. **EMPLOYEES COVERED** – All nonbargaining unit, unrepresented bargaining unit, and AFGE bargaining unit employees. For IFPTE and NTEU bargaining unit employees, only sections 3. ([see Section 3.](#)) and 5.11. ([see Section 5.11.](#)) apply.

3. LAW AND REGULATION

3.1. Establishing an Agency Telework Policy ([See Section 5.](#))

Each agency shall establish and implement a telework policy.

3.2. Determining Eligibility to Telework ([See Section 5.3.](#))

Each agency shall determine employees' eligibility to telework.

In order to be eligible to participate in telework, employees must:

- Complete agency telework training.

- Enter into a written agreement that outlines the specific work arrangements agreed to, and abide by the agreement.

In addition, employees are not eligible to participate in telework if their official duties require, on a daily basis:

- Handling secure materials determined to be inappropriate for telework; or

- Engaging in onsite activities that cannot be performed at an alternate location.

Also, employees are not eligible to telework and must be terminated and permanently banned from participation in the telework program ([see Section 5.11.](#)) if they have been officially disciplined for:

- Being absent without permission for more than 5 days in any calendar year; or

- [Violations of Subpart G of the Standards of Ethical Conduct for Employees of the Executive Branch](#) for viewing, downloading, or exchanging pornography on a Federal government computer or while performing official Federal government duties.

3.3. Workers Compensation

Teleworkers are covered under the Federal Employees' Compensation Act (FECA) and the agency's policy and procedures concerning workers compensation for injuries sustained while performing their official duties at the Alternate Duty Station (ADS) ([see PPM S810 2](#)). Employees will immediately notify their supervisors of any accidents or injuries occurring at the ADS in the course of performing official duties.

3.4. Determining Official Worksite for Locality Pay Purposes ([See section 5.7.1.](#))

SSA must determine the official worksite for locality pay purposes for employees covered by a telework agreement on a case-by-case basis using the following criteria:

- Employees must be scheduled to work twice per pay period at the Official Duty Station (ODS) on a regular and recurring basis to retain the locality pay rate for their ODS location. This requirement applies whether they are on a full-time, part-time, 5/4-9, or 4/10 work schedule. If the work schedule does not meet the requirement, the locality pay will be determined based on the locality pay rate for the Alternate Duty Station (ADS) location rather than the locality pay rate for the ODS. This may result in a change in the employees' overall rate of pay and/or potential eligibility for travel expense reimbursement.
- Exceptions may be made to the twice per pay period ODS requirement if the telework is temporary in nature. This temporary status might include situations such as working at home for medical reasons ([See PPM S650 2](#)) or in emergency situations when the employees temporarily cannot commute to work.

4. SSA DELEGATIONS OF AUTHORITY

See [delegations of authority](#)

5. SSA POLICY

5.1. Definitions

- **Telework**, formerly known as flexiplace or work at alternative locations, is a work arrangement in which employees perform officially assigned duties at their home or other worksite geographically convenient ([see Call Backs section 5.8.2](#)) to their ODS. Employees may work at their home or other management-approved ADS.
- **Official Duty Station (ODS)** is the official agency worksite. The official worksite is the location of employees' positions of record where they regularly perform their duties.
- **Alternate Duty Station (ADS)** is a management-approved worksite that is geographically convenient ([see Call Backs section 5.8.2](#)) to

employees' ODS. Delegated Approving Officials (DAO) will approve only one ADS per employee. Specifically:

- An employee's residence as reflected in the Telework Program Request and Agreement; or
 - A Teleworking Center (often called a Telecenter) operated by GSA; or
 - Another SSA facility or office that may be closer to the employee's home and where there is space to accommodate additional agency employees.
- **Delegated Approving Official (DAO)** is the management official with the delegated authority to approve specific actions related to telework ([See Section 4](#)).
 - **Telework Program Request and Agreement** is a written application for participating in the telework program and an agreement between supervisors and employees defining employees' obligations and responsibilities under the telework program. It includes employees' descriptions of the general and specific work assignments they propose to perform at the ADS.
 - **Core Days** refer to day(s) of the week not eligible for telework.
 - **Virtual Private Network (VPN)** is a network that uses a public telecommunication infrastructure, such as the Internet, to provide remote offices or individual users with secure access to their organization's network.
 - **Call Back** is when management requires employees to report to the ODS after they have started their workday at the ADS.
 - **Suspending Telework** is when employees are ordered to report to the ODS to perform work on a short-term basis that cannot otherwise be performed at the ADS or accomplished by telephone or other reasonable alternative methods. Some examples include, but are not limited to, previously scheduled training, conferences, or office coverage as determined by the DAO.

- **Terminating Telework** refers to when employees are removed, or choose to remove themselves, from the telework program.

5.2. Telework Program Categories

5.2.1. Scheduled Telework

Telework that employees perform on a routine, regular, and recurring basis at a management-approved ADS.

5.2.2. Episodic Telework

Telework that employees perform on an occasional, irregular basis at an ADS. On a case-by-case basis, DAOs may approve episodic telework on a temporary basis for projects, or for routine workloads if due to personal circumstances, including situations where employees may work less than a full day at the ADS. Episodic telework may be performed on core days or non-workdays (e.g., weekends, holidays), following the hours of work and pay rules for such days (e.g., work schedules, overtime, premium pay, credit hours).

Episodic telework will be infrequent, based upon unique workload needs of the agency or due to the personal circumstances of the requesting employee, and limited in duration.

5.2.3. Work at Home by Exception (Temporary Telework for Medical Reasons)

See PPM S650_2, [Work at Home by Exception](#).

5.2.4. Unscheduled Telework (Inclement Weather and Other Safety Reasons)

Telework that employees, with an approved telework agreement, request to perform due to inclement weather ([See Exhibit 3](#)) or are required to perform under [PPM S630 10](#), on a non-scheduled telework day at an ADS.

DAOs may offer, assign, and approve unscheduled telework in advance in situations in which the ODS may be open but commuting conditions are likely to be hazardous due to inclement weather (see [Section 5.5.3.](#)).

5.3. Determining Eligibility to Participate in Telework

5.3.1. Determining Position Eligibility

DAOs must determine which positions are eligible for telework. A position's occupational series (e.g., all GS-2210 IT Specialists) cannot be used to determine telework eligibility. DAOs must review

the specific duties of individual positions to determine eligibility. [See the note below concerning positions in the Office of Operations.*](#)

5.3.2. Determining Employee Eligibility

In order for employees to be eligible to participate in telework, they must:

- Meet all the conditions in [Section 3.2](#).
- Not be subject to any training requirements that cannot be performed remotely (this eligibility requirement is limited to probationary employees, excepted service employees serving a trial period, and employees in a formal trainee status).
- Sign and abide by the conditions of the Telework Program Request & Agreement ([Exhibit 1](#)) form.
- Maintain at least an acceptable level of performance (e.g., successful contribution rating) or not be under review (e.g., increased service observations).
- Not be under an Opportunity to Perform Successfully (OPS) plan or have been on an OPS in the preceding 12 months.
- Have sufficient portable work to be completed at the ADS. Portable work is work normally performed at the employees' ODS that can be effectively performed at the ADS. This work is part of the employees' regular work assignment or approved special work assignments.
- Use appropriate technology.
- Not have been disciplined within the 12 months preceding the date of the request to telework or while an approved Telework Request and Agreement is effective for an adverse action (e.g., suspension for more than 14 days, reduction in grade, or reduction in pay).
- Not be excluded from participation by law, or by government-wide rule or regulation.

- Watch the required agency telework training, [Telework - What You Need to Know](#)

5.4. Determining Telework Days

5.4.1. Number of Telework Days

DAOs will determine the number of scheduled telework days, if any, eligible positions, and percentage of employees permitted to telework.

5.4.2. Core Day

DAOs will have the option to set up to two core days per week (see [Delegations of Authority](#)).

5.5. Requesting Approval to Participate in Telework

5.5.1. Scheduled Telework (See [Section 5.5.3.](#))

Deputy Commissioner-level components will solicit telework requests from their employees in February and August. This solicitation should include information about the core day (if applicable) and the allowable number of telework days.

Employees currently not participating in telework may request to participate for the period April through September by submitting written Telework Program Request & Agreement ([Exhibit 1](#)) form to the DAOs in February.

Employees desiring to become new participants in telework for the period October through March must submit these documents to the DAOs in August.

Employees should include their preferred telework day(s) with their request. If approved, employees may begin telework the first full pay period in April or October, respectively. Electronic telework request forms may be accepted.

Subject to DAO consideration and approval, employees may also request to change scheduled telework days or participate in scheduled telework outside the normal request times due to emergency and non-emergency needs.

5.5.2. Episodic Telework (See [Section 5.5.3.](#))

Employees may apply, at any time, for episodic telework by submitting written Telework Program Request & Agreement ([Exhibit 1](#)) form to work on specific assignments. Employees who have already been approved for scheduled telework do not need to submit new forms;

however, they must submit, in advance, a written request to their supervisors with the duration and description of the assignment or circumstances they wish to apply for episodic telework.

5.5.3. Unscheduled Telework

Employees who have submitted Telework Program Request and Agreements ([Exhibit 1](#)) and are approved for scheduled, episodic telework, or telework under work at home by exception (WAHBE) may be required to or request to work unscheduled telework.

If the ODS remains open, DAOs may approve employees' requests to telework on an unscheduled day due to hazardous commuting conditions caused by inclement weather.

When hazardous commuting conditions exist caused by inclement weather, employees must call their supervisors or DAOs by the end of the morning flexible band to request unscheduled telework. (See [Exhibit 3](#)).

If employees' requests are denied, they must report to the ODS or request leave.

DAOs have the discretion to assign unscheduled telework in advance in situations in which the ODS may be open but commuting conditions are likely to be hazardous (See [Exhibit 3](#)). DAOs may also assign unscheduled telework in situations where exposure to unsafe or unhealthy working conditions (e.g., power outage at Agency facility) could result in illness or injury, or for other reasons (e.g., major impact to public highways and infrastructure, such as conventions and large public events).

If the ODS is closed due to inclement weather, see [PPM S630 10](#) concerning employees requirements to telework.

5.6. Approving/Denying Telework Program Requests

5.6.1. Scheduled Telework

DAOs will act on telework requests within 10 working days of the close of the request period for scheduled telework. If DAOs deny participants' requests, they will annotate the reasons for denial on the telework request forms. For AFGE bargaining unit employees only, if the number of requests for a particular day from employees exceeds the coverage requirements, DAOs will approve the telework requests in Service Computation Date (SCD) order.

For non-bargaining unit and unorganized bargaining unit employees, if the number of eligible employees exceeds the coverage requirements, DAOs will approve the telework requests based on their discretion.

Employees will not have to submit future requests during the February and August timeframes, once their original requests are approved, unless they wish to request a change in the number of days or the particular day(s) they telework. Once telework day(s) are approved, employees will keep their day(s) for the remainder of the time they participate in the telework program unless they request a schedule change, are removed from the program, change positions, or are otherwise directed to do so by management.

Any initial approvals or changes to telework schedules, outside the normal request period, will take effect at the beginning of the next pay period.

When affected by a holiday or leave, employees do not receive an “in-lieu of” scheduled telework day.

5.6.2. Episodic Telework

DAOs will act on episodic telework requests no later than 5 working days following receipt of the requests. DAOs may approve employees to work episodic telework up to 5 days per week, which may include a core day, at the ADS depending on the nature of the assignments or circumstances. If DAOs deny participants’ requests, they will annotate the specific reasons for the denials on the telework request forms.

5.6.3. Unscheduled Telework

DAOs will normally act on Unscheduled Telework requests received orally or in writing on the same day as the request. If a DAO does not act on a request, it will automatically be considered a denial. DAOs may advise employees in advance if office coverage requirements, staffing issues (e.g., long term leave situations), or existing scheduled telework is likely to preclude the approval of unscheduled telework. See [Exhibit 3](#) for examples of unscheduled telework.

5.6.4. Recordkeeping

Denied telework program requests must be kept in the SSA-7B Extension File for a period of one year. Approved telework program requests must be kept in the SSA-7B Extension File until one year after the telework agreement is terminated. See [PPM S293 4](#), SSA-7B Employee Record Extension File for additional information.

Requests for episodic or unscheduled telework and approvals or denials of those requests do not need to be kept in the SSA-7B Extension File.

5.7. Participating in Telework

5.7.1. Locality Pay ([See section 3.4.](#))

If an employee will not be reporting to the ODS at least twice a pay period, the supervisor must contact the servicing personnel office to determine if a change in locality pay is necessary based on the location of the employee's alternative duty station. If a change is needed, the supervisor will be instructed to initiate a change in duty station action in the Federal Personnel/Payroll System (FPPS).

5.7.2. Changes to Telework Day(s) and ADS

Employees are not authorized to change their telework day(s) or their ADS without DAO approval.

5.7.3. Staff Coverage

DAOs have sole discretion to change, reduce, suspend, or eliminate approved telework day(s) due to operational needs or employee performance.

5.7.4. Sharing ODS Work Space

Employees that telework may be required to share space (e.g. shared cubicles, hoteling) with other employees.

5.7.5. Determining IT Equipment

SSA will determine and provide appropriate IT equipment for teleworkers. DAOs may allow employees to use their personal equipment to telework if they do not need VPN access to complete their work remotely. If DAOs believe employees will be handling PII on a regular basis, they must require the employees to use an SSA issued laptop with VPN access. Components should refer to the [Information Security Policy \(ISP\)](#) for additional considerations regarding PII and the [Administrative Instructions Manual System \(AIMS\) General Administrative Manual \(GAM\) Chapter 15](#).

SSA retains ownership and control of any agency-furnished hardware, software, and data and is responsible for maintaining, providing support, and repairing the equipment; however, there will be no on-site IT support provided for a home ADS. Employees are not responsible for costs related to maintenance of government-owned equipment. However, they will be responsible for the costs associated to the maintenance of their own equipment.

Employees have a continuing responsibility to safeguard Government property (this includes both equipment and data) and are responsible for the care, security, and effective utilization of the Government property they use. Employees may be required to reimburse SSA for failure to exercise reasonable care of Government property. Failure to exercise these responsibilities may result in termination from telework (See [Section 5.11.](#)).

DAOs may require that employees working at approved ADSs obtain (at their own expense) high-speed/broadband internet access.

5.7.6. Accountability and Evaluation of Work

DAOs may require employees provide electronic notification at the beginning and/or end of their workday.

Firstline supervisors will evaluate work performed at the ADS in accordance with the Telework Program Request and Agreement and the normal performance management policies ([See PPM S430 1](#)).

To assist with assessing performance, firstline supervisors may require employees who telework to submit a written daily account of the work performed at the ADS. Firstline supervisors will determine the format and required content of the written account.

5.7.7. Employee Conduct at the ADS

All laws, government-wide rules, government-wide regulations, and SSA policies governing employee conduct at the ODS continue to apply at the ADS including, but not limited to, the [Privacy Act](#) and the [Standards of Ethical Conduct for Employees in the Executive Branch](#).

5.7.8. Alternate Duty Station Work Site

If the ADS is located in the employee's residence, it is the responsibility of the employee to maintain the ADS worksite in a manner that is conducive to business and is free of hazards. SSA will provide employees with general office supplies needed to work effectively at the ADS.

If the ADS location is not in an agency facility, employees are required to:

- Have and maintain a broadband connection (e.g., high speed internet) at their own expense, if deemed necessary by the DAOs to perform their work at the ADS;

- Furnish and maintain all equipment (e.g., desk, chair, surge protector, locking file cabinet or similar secure storage device, etc.) deemed necessary by the DAOs to perform their work at the ADS; and
- Have and maintain the ADS work site with adequate workspace, proper lighting, power, other utilities, adequate environmental conditions, a readily accessible and working fire extinguisher, and a working smoke detector.

5.7.9. ADS Home Inspections

Management may inspect the ADS to ensure conformity with the conditions set forth in the Telework Program Request and Agreement. Management may conduct this inspection at any time during the teleworker's regular core hours with twenty-four (24) hours advance notice. Management will not inspect non-work space in the ADS.

5.8. Work Schedules and Availability

In accordance with applicable SSA policy, DAOs will determine whether teleworkers are eligible to work the following in conjunction with telework:

Credit hours at the ADS

A 5/4-9 or 4/40 work schedule

Overtime at the ADS (unless required by FLSA, e.g. late interview or call)

A part-time schedule

At the ADS on a non-tour day

Teleworkers' work schedules, breaks and lunch periods will be the same as at the ODS.

Teleworkers are on official duty when teleworking and are expected to have the resources necessary to perform their jobs and concentrate on official duties without interruption. Employees may not use official duty time for any purpose other than performing SSA-assigned work. Employees must not perform union representation activities while teleworking.

Telework is not a substitute for dependent care.

5.8.1. Accessibility/Electronic Communications

- When working at the ADS, employees must be accessible by telephone and email to their supervisors, clients, colleagues, and external customers during working hours, exclusive of the meal break and break periods.
- Management may require that employees use instant messaging, video, or similar technology while working at the ADS. Employees should ensure that the instant messenger or similar technology accurately reflects their work status.
- While at the ADS, employees are responsible for retrieving, and responding in a timely manner to, voice mail, instant messages, and email left at the ADS and ODS.
- Government phone cards will be issued to employees with a need to place long-distance or toll calls for work, upon request. Phone cards must be used for long distance calling. SSA will not reimburse employees for out-of-pocket expenses related to these calls. In addition, SSA will not reimburse employees who choose to use their personal phones for long distance calling. ([See Administrative Instructions Manual System, Material Resources, Chapter 05](#))

5.8.2. Call Backs

DAOs may call employees back to the ODS when warranted. Employees are required to report to their ODS as soon as possible but no more than two hours after notification. Transportation between the ADS and the ODS is considered commuting and does not entitle employees to reimbursement for official travel. However, the time required to report to the ODS will be duty time, unless employees were recalled prior to the beginning of the workday. See [Section 5.8.4](#) regarding duty status due to a disruption at the ADS.

If DAOs suspend telework or call employees back to the ODS, the employees are not guaranteed “replacement time” or an “in lieu of” telework day. However, DAOs may temporarily switch the employees’ telework day to another day.

5.8.3. Split Days at the ADS and ODS

Employees may split a work day between the ADS and the ODS with the approval or at the direction of management. The request may be for a regularly scheduled telework day or in addition to the employee’s telework schedule (e.g., episodic or unscheduled telework). When

employees request to split a workday between the ADS and the ODS, the commute between the ADS and ODS is normal commute time (i.e., the employee is not on duty time).

5.8.4. Alternate Duty Station Problems

Employees will promptly inform their DAOs of any disruptions at the ADS (e.g., equipment failure, power outages, telecommunication difficulties) that impact the employee's ability to perform agency assigned duties. In these situations, DAOs may require the employees to report to the ODS or the employees may request leave. Generally, if a disruption (e.g., loss of electrical service or internet connectivity at the ADS) is through no fault of the Agency, employees will be in a non-duty status from the time of the disruption to the end of the scheduled workday. Employees may request leave to account for the non-duty period. Employees who are required to report to the ODS are given reasonable duty time to report to the ODS, up to two hours. Employees may request leave if the time needed to report exceeds two hours.

If the employees are required to report to the ODS, the employees are not guaranteed "replacement time" or an "in lieu of" telework day. However, the employees' telework day may be temporarily switched to another day with management's approval.

5.8.5. Office Closure/Early Dismissal/Delayed Opening

[Please see PPM S630 10.](#)

5.9. Suspending Telework

Employees may be required to report to the ODS due to previously scheduled training, conferences, meetings, or operational needs. Employees may resume telework as soon as the suspension of telework is over.

5.10. Terminating Telework

Employees may voluntarily terminate their participation in the telework program at any time by notifying their supervisor and may reapply at the next application period.

DAOs retain the right and are expected to terminate employees' participation in the telework program if:

The employees no longer meet one or more of the eligibility requirements contained in Section 3.2. ([see Section 3.2.](#)) and 5.3. ([see Section 5.3.](#)); or

The employees fail to comply with any of the conditions set forth in the Telework Program Request and Agreement; or

The employees fail to comply with the provisions of this chapter; or

There is a diminishment in the employees' performance.

Firstline supervisors will normally counsel employees about specific problems, including a diminishment in performance, before removing employees from the telework program, except in the case of serious violations. When employees' participation in the telework program is terminated, employees will be notified in writing of the reason for termination and the effective date of the termination. Employees who have been removed from the telework program under this section may reapply for telework at the first application cycle following a 1-year termination period, unless prohibited by law, rule, government-wide regulation. DAOs will consider individual circumstances when considering the effective date of removal from the program.

If employees are removed from the telework program for disciplinary reasons and the disciplinary actions are reversed, employees will normally resume telework at the beginning of the first full pay period following the reversal as long as they meet the eligibility requirements.

5.11. Terminating Eligibility to Telework ([See Section 3.2.](#))

DAOs must complete the Notification of Termination from the Telework Program ([See Exhibit 2](#)) and provide it to employees who are no longer eligible and must be terminated from participation in the telework program because they have been officially disciplined for:

- Being absent without permission for more than 5 days in any calendar year; or
- [Violations of Subpart G of the Standards of Ethical Conduct for Employees of the Executive Branch](#) for viewing, downloading, or exchanging pornography on a Federal government computer or while performing official Federal government duties.

Employees are expected to sign an acknowledgment of receipt at the bottom of the Notification of Termination from the Telework Program. If an employee refuses to sign the notice, the delegated official will annotate that "The employee declined to sign." Please note that Exhibit 4 provides template notices for bargaining unit employees covered under the AFGE, IFPTE, and NTEU National Agreements, as well as for nonbargaining unit employees and unrepresented bargaining unit employees. Be sure to use the notice that corresponds with employees' bargaining or nonbargaining unit status as indicated in the "subject" line of the document. DAOs who have questions

concerning issuing the Notification of Termination from the Telework Program should consult their servicing labor relations office.

Employees who are terminated under this section may never reapply to participate in the telework program as they are permanently ineligible.

DAOs must retain the original Notification of Termination from the Telework Program in the SSA-7B Extension File indefinitely and provide a copy to employees. (See [PPM S293 4](#))

DAOs must notify servicing personnel offices (SPOs) when a disciplinary personnel action terminates employees' eligibility for telework. SPOs must include on the SF-50 remark ZS9, which states "This suspension permanently disqualifies the employee from telework while employed by the Federal government."

6. SSA LABOR-MANAGEMENT AGREEMENTS

See the [Office of Labor-Management and Employee Relations web site](#) for additional provisions applicable to bargaining unit employees.

Provisions in collective bargaining agreements (CBAs) pertain to the respective bargaining unit employees and govern over the provisions in the SSA Personnel Policy Manual (PPM), unless the provisions of the PPM implement a nondiscretionary mandate of Federal statute or law or a government-wide regulation that predated the execution of the CBA.

7. RECORDS RETENTION

Records must be kept according to the National Archives and Records Administration (NARA) General Records Schedule 2.3. Employee Relations Records. This schedule can be accessed through the [NARA web site](#).

AIMS GAM 10.05

Reporting and Handling Physical Security Incidents

Manual/Chapter: [General Administration](#) » [Emergency Preparedness and Security Management](#)

Instruction/Handbook: [GAM 10.05](#)

Audience: General

Level: SSA

Inquiries:

-

Office of Security and Emergency Preparedness (OSEP)

DCBFM.OSEP.Controls@ssa.gov

410-965-0000

Related Instructions:

- [Office of the Deputy Commissioner Budget, Finance, and Management \(DCBFM\) » Office of Security and Emergency Preparedness \(OSEP\)](#)

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10.05.01 Purpose

This Instruction provides the procedures to follow when evaluating, handling, and reporting critical physical security incidents using the Automated Incident Reporting System (AIRS). The AIRS program was updated in April 2023 and is now referred to as AIRS Plus (+). This

instruction also includes procedures for handling bomb threats, suspicious packages, and biochemical incidents.

NOTE: In this Instruction, “headquarters” refers to buildings at the Social Security Administration's (SSA) Woodlawn main complex, including the Perimeter East and Security West. Headquarters also includes the outlying buildings in the Baltimore Washington area; the National Support Center in Urbana; 250 E. Street in Washington, DC; the Wilkes-Barre Direct Operations Center in Pennsylvania; and the Second Support Center and Research Triangle Park buildings in North Carolina. OSEP directly controls security or oversees security for facilities in the main complex and outlying buildings. “Field facilities” refers to all other SSA facilities.

10.05.02 Policy

- A. Employees should alert management of all incidents that adversely affect the safety and security of our personnel, third parties, contractors, visitors, and property.
- B. Managers are responsible for evaluating and documenting incidents that affect the safety of life and property. Some incidents require that managers' report; however, even if reporting is not required, managers must exercise judgment in determining what situations constitute a reportable incident (see Section [10.05.07](#) for definitions).
- C. The field facility manager, Designated Officials (for large facilities), or office managers must develop written plans for security events in each office's Facility Security Plan (FSP) (see [AIMS GAM 10.06 Facility Security Plan \(FSP\)](#)).
- D. For all reportable physical security incidents, managers must complete an AIRS+ report; obtain statements or reports from employees, guards, or others involved in or witness to the incident; and attach the statements or reports to each AIRS+ report.

- E. Managers must periodically evaluate AIRS+ reports and security event planning documents included in the FSP to make improvements to the office's physical security plan, changes in office configuration, or other physical security enhancements, when warranted. Coordination with the facility's parent office, Area Director, Regional Physical Security Coordinator (RPSC), Office of Disability Adjudication and Review (ODAR), and OSEP may be necessary to take corrective actions to improve the office's security posture.
- F. RPSCs are responsible for security oversight for their specific regions with guidance from OSEP. Regional coordinators must periodically evaluate physical security plans and AIRS+ incident data for their area of responsibility. RPSCs will identify and document facility problems, justify additional protective measures, and participate in the development and implementation of physical and protective security training programs.
- G. OSEP maintains the AIRS+ database and collects, collates, and analyzes data provided from the incident reports. OSEP designed AIRS+ to produce detailed, accurate, and meaningful data to:
 - 1. Document physical security issues and vulnerabilities;
 - 2. Develop training packages and programs focused on preventive physical security measures;
 - 3. Justify additional protective measures, such as electronic security systems, contract guard service, etc.;
 - 4. Promote changes in our security policy and guidelines;
 - 5. Triage incidents into levels of severity (high, medium, low);
 - 6. Revise reporting timelines based on incident priority;

7. Leverage the Incident Command Center (ICC) as the central point of communications for incidents;
8. Include incident categories for systems-related reporting requirements;
9. Track incidents to remediation and close out once resolved; and and
10. Develop and execute our Physical Protective Security Program (see [Physical Security Handbook](#)).

10.05.03 Automated Incident Reporting System Plus (AIRS+)

A. AIRS+ is an online reporting system that stores data on incidents or advisories (see specific incident definitions in [AIMS GAM 10.05.07](#)) that affect the safety and security of our personnel, third parties, contractors, visitors, property, records, or operational capabilities in our facilities nationwide. When an incident occurs, managers or designees use the AIRS+ Module via the [Security Automated Features and Enhancement \(SAFE\) web portal](#) to complete an AIRS+ Incident Report.

- **AIRS+ Incident:**

1. Reportable AIRS+ incidents are no longer limited to physical security incidents. AIRS+ incidents now include personal crime, property crime, or security activity that occurs on or adjacent to SSA property, and waiting areas for the public; incidents resulting in severe harm to facilities; and incidents resulting in critical compromise of agency information technology systems such as disruptions and major breaches or loss of sensitive

information as confirmed by the Office of General Counsel, Office of Privacy and Disclosure.

B. Employees should report to management as soon as possible after an incident occurs, even if exact details are unknown. Managers must document the incident by completing an AIRS Report within 24 hours of the incident. Managers may submit statements or reports describing the incident prepared by employees, office protective security officers, or others as an attachment to the original report. The protective security officer may also be required to file a Department of Homeland Security (DHS) Form 3155, Offense/Incident Report, with the Federal Protective Service (FPS). Management may attach the DHS Form 3155 to the AIRS+ Report, but cannot file this form in lieu of the AIRS+ Report. If an office requests a telephone trace, regardless of the type of call, the office manager must complete an AIRS+ Report. If a teleservice center (TSC), or any other office, receives a call that an individual has threatened another office, the reporting official must annotate the incident in the "Office Involved" field in AIRS+. Completing this field will automatically generate notification to the office involved. The reporting official should also notify the threatened office by phone.

1. Employees should report to management as soon as possible or when safe to do so after an incident occurs, even if exact details are unknown. Agency defined incidents categories are High, Medium, and Low. High category incidents must be reported within 1 hour or as soon as reasonably possible. Medium category incidents must be reported within 8 hours. Low category incidents must be reported within 24 hours (See Section 10.05.07). Managers must report the incident to the agency's ICC. Managers must document the incident by completing an AIRS+ Report. Managers may submit statements or reports describing the

incident prepared by employees, office protective security officers (PSO), or others as an attachment to the original report. The PSO may also be required to file a Department of Homeland Security (DHS) Form 3155, Offense/Incident Report, with the Federal Protective Service (FPS). Management may attach the DHS Form 3155 to the AIRS+ Report, but cannot file this form in lieu of the AIRS+ Report.

If an office requests a telephone trace, regardless of the type of call, the office manager must complete an AIRS+ Report. If a teleservice center (TSC), or any other office, receives a call that an individual has threatened another office, the reporting official must annotate the incident in the "Office Involved" field in AIRS+. Completing this field will automatically generate notification to the office involved. The reporting official should also notify the threatened office by phone.

- C. AIRS+ automatically sends Incident Report messages to designated individuals (i.e., Office Manager, Assistant Manager, Officer in Charge, Regional Security Staff, etc.). The originating office can view only reports related to its office. Designated area and regional staff receive an e-mail notification when AIRS+ generates an Incident Report in their area or region. A hyperlink in the alert message will open a web browser to [SAFE](#), enabling the recipient to view the report.

NOTE: Do not use AIRS+ to report employee illnesses or accidents that are not the result of a physical security incident. You must report job-related illnesses or accidents for employees on Form [SSA-516](#), Occupational Injury/Illness Report (see [AIMS, GAM 13.05 Occupational Injury and Illness Reporting Requirements](#)). You should investigate visitor injuries or illnesses not related to a physical security incident, but you should not report these on the SSA-516. In addition, do not use AIRS to report threats to systems

security. You should report systems security threats as directed in the Information Security Policy (<https://isp.ssahost.ba.ssa.gov/default.htm>).

- D. Management is responsible for ensuring that the designated union health and safety representative receives a sanitized copy of security incidents involving threats to employees, their offices and property. A completely sanitized copy of the AIRS Incident Alert can be forwarded by email to other components as necessary. **NOTE:** To sanitize, remove any personally identifiable information (PII) which is information that can be used to distinguish or trace an individual's identify, either alone or when combined with other information that is linked or linkable to a specific individual, such as pronouns that may easily identify an individual, claimant names, addresses, telephone numbers, and earnings Social security number should not be included in an AIRS+ report unless relevant to the incident such as visitor, claimant or beneficiary who attempts or commits a violent act in an SSA office and identifying information is needed by law enforcement for investigation purposes.
- E. When a member of the public takes action that threatens or harms agency SSA personnel, third parties, contractors, visitors, property, records, or operational capabilities, the appropriate manager must consider entering the individual into the **Visitor Intake Process (VIP) High Risk Alert** system. If you make such an entry into VIP, you must complete an AIRS+ Report. **NOTE:** Please note for users of Visitor Intake Process-Rewrite (VIPr) and Alternative Service and Appeals Database (ASAD): The format of the AIRS+ incident number is YYYY-MM-NNNNNN where YYYY is the 4-digit year, MM is the 2-digit month, and NNNNNN is the 6-digit report identifier. When entering an AIRS+ incident number into VIPR, management should only use the 6-digit report identifier. Managers can find VIP High

Risk Procedures

at <http://policynet.ba.ssa.gov/poms.nsf/lnx/0831050170>.

- F. When the incident results in lose or potential loss of PII, employees have one hour to report the PII loss to a manager or use the **Loss Reporting**

Tool (<https://kcwf.kc.ad.ssa.gov/piilossreportingtool/controller.cfm>) or call National Network Service Center (NNSC) directly at 1-877-697-4889. Managers and employees can find PII loss reporting procedures in [AIMS GAM 15.02](#) Reporting the Loss of PII.

10.05.04 Reporting Threats After Hours

If someone threatens an office or individuals at an office before or after normal business hours, follow these procedures.

- A. An employee who receives a threat should notify their management or designated official immediately, and provide all known details related to the threat.
- B. The manager or designated official in the office who receives information about the threat will call the Incident Control Center (ICC) in headquarters at 410-965-2222. The ICC operates 24 hours a day, 7 days a week. Provide the following information:
1. Your name and position;
 2. Your telephone number;
 3. Your office designation and office code (e.g., Philadelphia - Downtown, PA (FO/1) Auburn, WA TSC, code 200 E60);
 4. The nature of the threat;
 5. The conversation that took place (e.g., include pertinent information, such as the name of the caller, their Social

Security number (if known), their telephone number, details of the call, and a description of the threatening individual, etc.);

6. The date and time of the threat (including time zone);
7. The city, state, and office code or office name of the threatened office, if known; and
8. The name of individual(s) threatened, if applicable.

C. The ICC will:

1. Call the primary regional contact (or a back-up contact if the primary contact is not available) at the emergency number shown on the "Regional After-Hours Emergency Call Roster" provided by each region. If none of the regional after-hours contacts are available, the ICC will then call the appropriate FPS Mega Center for that region;
2. Relay all of the information received about the threat (refer to Section 10.05.04B); and
3. The Regional After-Hours Emergency Call contact, or designee, will notify the appropriate manager(s), FPS, local law enforcement, and OSEP. If the ICC needs additional information, they will contact the manager reporting the threat at the telephone number provided.

10.05.05 Reporting Threats Against High Profile Officials

- A. You must act IMMEDIATELY if you learn of a direct or implied threat against any of the following:
1. The President or the Vice President of the United States;
 2. Cabinet-level officials; Members of Congress;

3. The Commissioner or the Deputy Commissioner of Social Security; and
 4. Headquarters, including the main complex and outlying buildings.
- B. If you receive a threat, take the following steps:
1. Call the appropriate FPS Mega Center, and provide information about the threat (see previous section 10.05.05.A). The Mega Center operates 24 hours a day, 7 days a week. Keep the Mega Center telephone number readily available. If necessary, FPS will contact the United States Secret Service (USSS).
National Toll Free Number: 1-877-4FPS-411 (1-877-437-7411)
 2. Contact your local Office of the Inspector General (OIG), Office of Investigations (OI). These numbers are readily available on the [intranet](#).
- C. FPS, OIG, and USSS are responsible for directing information regarding the threat to the proper authorities. After you have made the necessary telephone contacts, you should:
1. Notify your designated regional office personnel responsible for relaying the information to the regional executive staff and OSEP through line management. If the person making the threat lives in another region, coordinate with your regional office to contact personnel in the pertinent regional office.
 2. Complete an [AIRS+ Report](#).

10.05.06 Handling Incidents of Special Circumstance (Bombs or Biochemical Warfare)

A. Threat Evaluation

1. At SSA headquarters, the director of OSEP's OPSS is responsible for evaluating threats of bombs or biochemical warfare and directing the appropriate actions.
2. In field facilities, the facility manager, or designee, evaluates these threats and directs the appropriate actions.
3. If you share a facility with other Federal or non-Federal agencies, the Federal Designated Official has the responsibility for evaluating threats and directing the appropriate actions. Normally, this is the senior official of the occupying agency with the most employees, or an official selected through mutual consent of all facility occupants. Your Manager or Designated Officer-in-Charge is responsible for conveying information, coordinating actions, and ensuring the cooperation of employees in an emergency.
4. In shared facilities, you must immediately inform all other facility tenants that a threat was received.

B. Bomb Threat Received by Telephone

1. **If you receive a bomb threat via telephone**, alert your supervisor using a pre-arranged office signal. Use the Federal Bureau of Investigation's Bomb Data Center Card ([Attachment: Federal Bureau of Investigation Bomb Data Center Card, Form FD-730](#)) to record the call. Keep this card near every phone. Activate the call trace feature, if available. A call trace button identifies telephones with the call trace feature. Ask as many questions as the caller permits, recording all information as accurately as possible.

- **If you receive the call at SSA headquarters from main complex facilities**, notify the ACC, 410-965-2222, immediately after the call ends. Personnel from outlying buildings, call 911 immediately.
 - **If you receive the threat in the field**, immediately notify FPS, local OIG/OI and local law enforcement.
2. At SSA headquarters, including the main complex and outlying buildings, the director of OPSS directs activities in conjunction with management and first responders. After business hours, the ICC coordinates bomb threat activities.
After business hours, the security guard supervisor at headquarters coordinates bomb threat activities in conjunction with our on-site management and the OPSS director.
 3. **In the field**, the facility manager coordinates with the designated facility official and FPS or local law enforcement.
 4. **Call-in threats to TSCs**: Although TSCs are field facilities, if you work at a TSC, it is more likely you will receive bomb threats directed at other locations. When you receive a bomb threat through the toll-free telephone system, your primary objective is to immediately determine the potential target and notify the facility involved. You must use the procedures noted above for telephoned bomb threats, and provide all necessary assistance to law enforcement agencies.

C. **Bomb or Suspicious Object, Article, or Package Discovered**

1. Bombs are easily improvised, and can be made of virtually any combustible agent confined in a container. An individual may disguise a bomb as an ordinary article found in an office and can be of any size.

2. Common signs of a suspicious object or package include:
 - **An uneven or lopsided appearance and a rigid feel;**
 - **An irregular shape with soft spots or bulges; or**
 - **Protruding wires, aluminum foil, oil stains, or the emission of a peculiar odor.**
3. The United States Postal Service created a poster ([Suspicious Mail and Packages](#)) to help identify mail bombs. We must display this poster in all areas where we receive and sort mail.
4. Never pick up or open a suspicious package. Do not use radios to communicate in the presence of a suspicious package since the package may contain explosives that a radio signal or cell phone can detonate. An individual can design a bomb to detonate in a number of ways, including:
 - Opening the package;
 - Using a clock, timer, or wristwatch;
 - The use of radio or sound wave;
 - Exposure to light; or
 - Pushing or releasing a button or switch.
5. If you discover a suspected bomb, or there is an explosion, immediately tell your manager. Your manager, or another designated official, should:
 - Instruct personnel not to touch or tamper with the device or any fragments;

- Notify the director of OPSS through the Control Center, (410-965-2222) in headquarters;
- Notify FPS, local OIG/OI and local law enforcement in field facilities;
- Notify the Postal Inspection Service at 1-877-876-2455;
- Notify the building tenants; and
- Evacuate the building, unless it is determined unsafe to do so because of the location of the bomb.

D. **Chemical, Biological, Radiological, Nuclear and Explosives (CBRNE) Incident**

1. If a biochemical incident occurs or is suspected, you should take these actions:

- Evacuate the immediate area;
- Go to a safe place;
 - Once in a safe location, dial 911. (Some locations may need to dial 9 to connect to an outside line.) At headquarters, also call the Control Center 410-965-2222.
 - Wait for first responders.
- If you are **inside**, and the incident is **inside**, follow the reporting procedures below (see Section 10.05.06.D.2). Depending on the nature of the incident, management may evacuate the building; and
- If you are **inside** and the incident is **outside**, stay **inside and follow shelter-in-place (SIP) procedures**. Turn off the heating, ventilation, and air

conditioning (HVAC) system, and seal windows and doors with plastic or duct tape in the SIP location.

2. Report the following information to emergency personnel:

Items to Report:

- Your name, telephone number, specific location (include building name and office or room number);
- Number of people at your location;
- Number of injured and types of injuries; and
- Reason for report (i.e., unusual liquid droplets, people falling ill, unusual odors, dead or discolored living organisms, etc.).

○ **Questions to Answer and Report On:**

- Are there any odors, and, if so, what is the odor (i.e., irritating, garlicky, changing, sweet, peppery, almond, peachy, fruity, flowery, rotten eggs, etc.)?;
- Are there any visible emissions (i.e., smoke, mist, etc.)?;
- Are those exposed experiencing any unexplained physical symptoms (i.e. tightness in chest, stinging of skin, dizziness, blurred vision, reddening of skin, runny nose, fever, welts or blisters on skin, choking, difficulty breathing, nausea or vomiting, cough, diarrhea, headaches, etc.)?;
- Was there an explosion? If so, where (i.e., air, ground, structure, underground)?; and

- Was there an identifiable device (i.e., military munitions, improvised device, etc.)? Describe the container, its condition, and size.
3. Follow the decontamination procedures provided by the first responders.

10.05.07 Definitions and Examples of Incidents

Incidents are criminal and non-criminal events, including threats or potential threats, affecting the security and safety of our personnel, third parties, contractors, visitors, property, records, or operational capabilities. The definitions of incidents shown on the AIRS+ Report and examples of each follow:

1. **HIGH** (*Report within 1 hour or longer timeframe when it is safe to do so*). *The highest criticality of incidents - examples include but are not limited to:*
 - a. **Death, life-threatening injury, or physical attack at an agency facility, including an active shooter**
 - b. **A physical altercation between two individuals requiring immediate medical attention**
 - c. **Hostage situation/kidnapping**
 - d. **Member of the public or employee brings a weapon on agency property (in-car or into the building)**
 - e. **Bomb at or near an agency facility; receipt of imminent threat notification related to an agency facility/personnel** (including a person entering a building and telling the guard they are wearing a bomb)

- f. **An automobile accident at the facility with injuries**
- g. **Threat to the President or Commissioner of Social Security:** A person makes a comment about harming the President or the Commissioner. (Example: An employee states they are going to kill the President. Or a claimant states they are going to Social Security and cause harm to the Commissioner.)
- h. **Child in agency childcare center dies while in the provider's care**
- i. **Risk of critical compromise of the agency's mission**
- examples include but are not limited to:
 - **Serious to severe IT operations disruption**
 - Major and damaging disruption of multiple services and/or operations with ramifications including extensive business production losses, possible cyber impacts, and serious to severe public reputational damage.
 - Outage impacts are agency-wide and spanning across multiple applications and services related to claims processing, enumeration, electronic communications, telephony, and public access to services
 - Application and service examples are: Modernized Claims Systems (MCS), Master File Query (MFQ); Post-Entitlement Online Systems (POS); Modernized Supplemental Security Income System (MSSICS); Social

Security Number Application Process (SSNAP); Electronic View (eVIEW); Disability Case Processing System, Case Processing Management System (DCPS); Exchange; Telephony; ssa.gov; and mySSA application suite

- **Major Breach/Loss of Sensitive Information**

- Any stolen or removed sensitive information/techniques of the agency's anti-fraud program.
- A major breach from an agency data repository containing US citizens' PII as defined by Office of Management and Budget Fiscal Year Guidance on Federal Information Security and Privacy Management Requirements M-21-02 and the SSA Breach Response Plan.

- **A major cyber-security incident as defined in the agency's Incident Response Plan and the US-CERT Federal Incident Notification Guidelines**

j. **Risk of Severe Harm to Facilities** - *examples include but are not limited to:*

- Natural disasters (e.g., tornados, hurricanes, wildfires, earthquakes flooding from heavy rain)
- Incidents that shut down facility operations (e.g., fire, plumbing issues, severe roof leaks, mold, sewer main breaks, gas leaks, floods) immediate mission disruption contingent on amount of facilities/number of employees

affected, and to what extreme affected (i.e., campus wide, by building, and/or by space.)

- A fire at the facility
- Chemical or biological event

k. **Any other incident a manager deems immediate or an emergency due to its perceived negative impact on the agency or mission**

2. **MEDIUM** (*Report within 8 hours or longer timeframe when it is safe to do so*). Risk of Death or Injury (Not Immediate) - *examples include but are not limited to:*

- a. **Death of an employee on agency property due to natural causes**
- b. **Infectious disease outbreak at an agency facility, affecting numerous agency employees and threatening office's ability to function**
- c. **Significant but non-life-threatening injury to an employee or member of the public**
- d. **Shooting or other potentially life-threatening incident that does not take place in an agency facility but in close proximity**
- e. **Dangerous animal spotted on federal property**
- f. **A physical confrontation between two or more individuals not requiring immediate medical attention**
- g. Robbery committed in an SSA facility
- h. Suspicious Package at or near agency facility

- i. **Threats to SSA Facilities** (Examples: A distraught claimant is required to repay a large overpayment. He threatens to come in and do to us what we did to him; A claimant tells the guard to be careful since he will be waiting to assault him when he gets off work.; A claimant states that he or she wants to commit suicide.)
 - **Threat against an Administrative Law Judge (ALJ)**
 - **Threat against an employee**
 - **Threat against a guard**
 - **Threat against other**
 - **Threat to self (suicidal)**
- j. **Prohibited Item at SSA Facility**
 - Firearms and projectile weapons
 - Bladed, edged, or sharp tools
 - Club-like items and striking devices
 - Destructive devices, explosives, or combustible chemical compounds and mixtures
 - Disabling chemicals and other dangerous items
- k. **Risk of compromise of the agency's mission (not immediate)** - *examples include but are not limited to:*
- l. **Moderate to severe IT operations disruption**
 - a. Disruption of service and/or operations. Ramifications include some business production losses, possible cyber impacts, and some public reputational damage.

- b. Impacts include extended (> 1 hour) agency-wide outages for individual applications and services related to claims processing, enumeration, electronic communications, telephony, and public access to services.
- c. Application and service examples are: MCS, MFQ, POS, MSSICS, SSNAP, eVIEW, DCPS, CPMS, Exchange, Telephony, ssa.gov, and mySSA application suite
- d. **Arrest or accusation of a serious crime involving fraud by an agency employee** (Example: Local news report of SSA personnel accused or criminally charged for crime (i.e., sex offender, embezzlement, fraud scheme)
- e. **Unauthorized access to systems**
 - Confirmed worm identified within network logs
 - Theft of software
- f. **Data breach of systems involving PII** (Example: theft of any network security hardware or appliance)
- g. **Risk of harm to facilities (not immediate)** - *examples include but are not limited to:*
 - **Trespassing** (Unlawful, uninvited entry onto SSA property).
 - **Vandalism to or at facility** (Example: Vandalism or break-in of employee or contractor's car while parked at the facility)
 - **Power or water outage, gas leak, sewer main breaks, gas leaks, floods, mold medium mission**

disruption and contingent on number of facilities/number of employees affected and to what extreme affected (i.e., campus wide, by building, and/or by space).

- **Demonstration or public disturbance near agency facilities**
- **Intrusion Detection System (IDS) malfunction** (Failure of the alarm system to work properly causing mission disruption)
- **Inadequate guard service** (Any time the guard is not onsite to perform his or her duties causing the office to not open or close timely.
 - Example: The guard fails to show up on time for the office opening.
 - Example: The guard leaves early due to a medical issue and no other guard is onsite.
- **Facilities-related issues such as malfunctioning elevators taken out of service.**

h. **Any other incident a manager deems reportable due to perceived negative impact on the agency or mission**

3. **LOW** (*Report within 24 hours or longer timeframe when it is safe to do so*). Reporting threats, death, or injury - *examples include but are not limited to:*

- **Disorderly claimant/personnel**
- **Alternative Services and Appeals (ASAD/Ban Letter Violations**

- **Medical Event**
- **Reporting minor/possible compromise of agency mission**
 - *examples include but are not limited to:*
 - **Negligible to minor IT operations disruption**
 - Limited IT service disruptions. Significant but not serious due to mostly limited scope, duration, or effect. Minimal or no business impact, public reputational damage, or cyber related impacts.
 - Examples are:
 - Brief (<1 hour) outages involving individual applications and services.
 - Brief outages are typically resolved by failover to redundant infrastructure or resetting/refreshing affected devices, systems, or software.
 - **Weather delay or power outage**
 - **Theft in agency facility** (Example: Theft or loss of any government or personal equipment)
 - **Burglary of an SSA facility**
 - **Suspected fraud involving agency personnel** (Example: Release of PII to an unauthorized receiver)
 - **Reporting minor incidents/possible harm to facilities**
 - *examples include but are not limited to:*
 - Vehicle incidents on Federal property that results in minor property damage but with no injury to the

drivers or occupants (Example: Includes incidents involving animals)

- Facilities-related issues such as malfunctioning elevators, sinks.
- Any event that affects the ingress or egress of agency facilities
 - Projected significant parking issue
 - Evacuation of agency facility; exercise or incident
 - Agency outdoor event inhibiting transit to and from a facility
- **Nuisance alarm.** A security alarm (i.e., IDS, duress) that has been tripped inadvertently.
- **Any other incident a manager deems reportable**

10.05.08 Authorities

[Title 41, Code of Federal Regulations \(CFR\), Part 102-74](#). Federal Property Management Regulations establishes minimum requirements for Government buildings, property, and leased space.

[CFR Part 102-74.390](#) specifically speaks to disturbances and prohibits any action that prevents the Government from conducting business, Government employees from performing their jobs, or the visiting public from obtaining services provided on the property.

[18 U.S. Code § 930](#) - Possession of firearms and dangerous weapons in Federal facilities

10.05.09 Attachments

Attachments

[Federal Bureau of Investigation Bomb Data Center Card, Form FD-730](#)

AIMS GAM 13.04

Safety, Health, and Fire Standards

Manual/Chapter: [General Administration](#) » [Health and Safety Management](#)

Instruction/Handbook: [GAM 13.04](#)

Audience: General

Level: SSA

Inquiries:

-

[Office of Environmental Health and Occupational Safety \(OEHOS\)](#)

DCBFM.OFLM.OEHOS.Controls@ssa.gov

410-966-7026

Refer to the [OEHOS website](#) as well.

Related Instructions:

- [Office of the Deputy Commissioner Budget, Finance, and Management \(DCBFM\)](#) » [Office of Facilities and Logistics Management \(OFLM\)](#) » [Office of Environmental Health and Occupational Safety \(OEHOS\)](#)

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13.04.01 Purpose

This Instruction establishes agency policy regarding Safety, Health, and Fire Standards. It outlines inspection requirements established by the [Occupational Safety and Health Act](#) and mandates required by the implementation of [Executive Order 12196, Occupational Safety and Health Programs for Federal Employees](#), dated February 26, 1980.

13.04.02 Policy

- A. The agency follows the workplace standards promulgated by the Occupational Safety and Health Administration (OSHA). In addition, we use appropriate national consensus standards (such as those developed by the organizations listed in section [13.04.05](#)) throughout the agency as a basis for the design, construction, alteration, and renovation of facilities; the purchase of equipment,

supplies, and contractual services; and environmental and procedural criteria and design. The agency may establish more stringent requirements than those recommended by OSHA or other listed organizations.

- B. The agency carries out a continuing inspection and evaluation program of facilities and equipment to assure compliance with established standards and requirements. The special agency standards included as attachments to this instruction ([Attachments A through G](#)) are pertinent requirements extracted from the adopted occupational safety and health standards to assist us in implementing our inspection and evaluation effort.
- C. OSHA requires that all agency facilities prominently display the Occupational Safety and Health Protection for Federal Employees ([Attachment H](#)) poster. Managers should print the poster and display it prominently for employees to read. The employee designated as the Health and Safety representative for the facility (see [AIMS, GAM 13.03.04](#)) must enter his or her name, title, location, and telephone number on the appropriate portion of the poster. Where an employee union has designated a health and safety representative for a facility, the manager must also include the union representative's name, union affiliation, location, and telephone number on the poster.
- D. OSHA regulations protect employees who exercise their rights under the provisions of the Environmental Health and Safety Program from discrimination, restraint, interference, coercion, or reprisal.

13.04.03 Applicability

These instructions are applicable to all facilities, including those leased, owned, occupied, or to be occupied by agency personnel, and to all

operations conducted by agency or contractor personnel within these facilities. Safeguards needed for particular situations are not necessarily limited to the safety, health, and fire requirements or references cited in this instruction; e.g., local fire codes.

13.04.04 Responsibilities

A. Commissioner of Social Security

- Establishes and maintains an effective and comprehensive Environmental Health and Safety Program in accordance with the agency's environmental health and safety policy.

B. Associate Commissioner for Facilities and Logistics Management

- As the Designated Agency Safety and Health Official (DASHO), the Associate Commissioner for Facilities and Logistics Management manages and administers the agency's Environmental Health and Safety Program.

C. Regional Commissioners

1. Provide broad, general direction to regional field components on all facets of the agency's Environmental Health and Safety Program.
2. Establish necessary procedures to ensure offices under their jurisdiction implement all requirements of the agency's Environmental Health and Safety Program.
3. Designate a health and safety representative for their Region; ensure that each office manager designates a local health and safety representative; and that the representatives receive proper training.

4. Review and approve requests for safety deviations from agency-specific standards prior to forwarding the request to headquarters for approval. (See section 13.04.06 for information on requesting deviations). The DASHO will forward requests for any deviations from OSHA standards to the Department of Labor for approval.

D. Managers and Component Heads

1. Ensure employees under their jurisdiction have a safe and healthful work environment by implementing the requirements cited in this Instruction.
2. Designate a health and safety representative for the component and ensure the representative receives training in program requirements.
3. Consult with OEHS by calling the Environmental Hotline at 410-966-7026 when occupational safety, health, and fire standards do not cover specific situations, or when management or an employee representative requests a deviation from an existing standard. See section [13.04.06](#) for additional information.
4. Advise OEHS when the implementation of a standard is not within the scope of authority of the office head.
5. Provide the same degree of protection to visitors as to employees.
6. Coordinate with OEHS when requesting technical services of other OFLM components and specialists on matters relating to the interpretation of the requirements of this Instruction, especially with respect to the alteration and acquisition of space and facilities.

E. Supervisors

1. Complete the online supervisory training course [Safety for SSA Supervisors](#) offered on the Office of Learning's website.
2. Assure compliance with periodic inspection requirements, special agency standards (see section [13.04.05C](#)), and other national standards referenced in this Instruction.
 - **NOTE:** Supervisors of high hazard operations must provide employees who perform high hazard operations written operating procedures that specify the proper and safe methods for using machinery and other high hazard operations. Supervisors must ensure the employees receive proper explanations of the operating procedures and that the procedures are readily available. High hazard operations include those in shops (e.g.; plumbing, electrical, carpentry, construction, etc.), battery charging areas, warehouse storage areas with motorized industrial trucks, and building utility areas located in facilities for which we have delegated building management authority. When high hazard operations are added or revised, the supervisor must add or revise the operating procedures and inform employees of the changes. Training materials on various high hazard operations are also available from the [OEHOS website](#) or by calling the OEHOS Environmental Hotline (410-966-7026) for presentation to appropriate employees.

F. Employees

- Employees must comply with all environmental health and safety standards and all rules and regulations applicable to their own actions and conduct. Employees must report any unsafe or unhealthful working condition of which they are aware to

supervisors, safety and health officials, and/or designated union representatives following the procedures established here, or by local procedures.

G. Office of Facilities and Logistics Management (OFLM)

1. Identifies and maintains a central file of occupational safety, health, and fire standards that are applicable within the agency.
2. Develops occupational safety, health, and fire standards for operations and facilities where no existing standard applies.
3. Reviews floor plans, drawings, and specifications to ensure compliance with the referenced standards and codes outlined in this Instruction during the planning stages of a construction or renovation project, and before presenting a final plan to a component and/or contractor.
4. Performs safety audits to ensure that new construction and modification project conditions comply with referenced standards and codes in this Instruction.
5. Reviews requisitions for the procurement or contracting, or both, of equipment and materials to ensure inclusion of data relative to safety, health, and environmental effects of such items.
6. Ensures workplace facility conditions comply with pertinent standards and performs periodic inspections of facilities and operations.
7. Evaluates all requests for deviation from standards and forwards them to the DASHO for final approval (see section [13.04.06](#)).

8. Maintains a central file of all deviations granted and conducts at least a semi-annual review to determine continuation of the deviation.
9. Provides health and safety data to union representatives in accordance with national labor agreements.
10. Reviews plans, drawings, and specifications for new construction and renovation to ensure they allow for reasonable access for employees with disabilities.
11. Monitors environmental factors, such as indoor air quality, ventilation, lighting, noise, and potable water
12. Investigates occupational accidents and reviews whether a violation of safety codes occurred.
13. Provides briefing, consultation, and information services to agency management and employees about health and safety codes and regulations.
14. Ensures that, when the repair, maintenance, or alteration of buildings or grounds presents an accident potential, the task does not begin until the requirements of the codes and standards cited in this Instruction are met.
15. Initiates corrective action on any facilities-related non-compliance items noted on health and safety inspection reports and prepares an abatement plan using Form [SSA-127, Safety Hazard Abatement Plan \(Attachment I\)](#) for facilities-related items they cannot correct within 30 calendar days. As required by [29 CFR 1960.34\(a\)\(6\)](#), the abatement plan "shall give priority to the allocation of resources to bring about prompt abatement of the conditions."

H. Office of Acquisition and Grants (OAG)

1. Oversees all equipment and material purchases and works with OFLM to ensure the purchases include data on safety, health, and environmental effects. Examples include motorized vehicles, shop machinery, materials handling equipment, equipment requiring special ventilation or waste disposal, and chemicals that may be harmful to employees' health.
2. When practical, includes the specific environmental safety and health standards as part of each purchase and contract service.
3. Notifies OFLM if any component violates this policy.

I. Health and Safety Representatives

- As specified in [AIMS, GAM 13.03.04](#), component heads will designate health and safety representatives for headquarters components and for each facility outside of headquarters. These representatives help the agency ensure it has an effective Environmental Health and Safety Program. OFLM/OEHOS provides these representatives with introductory and annual refresher training on health and safety topics pertinent to SSA work environment.

1. Headquarters Component Representatives

- Maintain liaison between their components and OFLM to ensure the implementation of the requirements contained in this Instruction.
- Initiate corrective action for all non-compliance items found during health and safety inspections that are the component's responsibility to correct. Where corrective action is not possible within 30 calendar days, the

representative must develop an abatement plan using Form [SSA-127](#).

2. **Representatives Outside of Headquarters**

- Ensure the implementation of the requirements contained in this Instruction at the facilities they represent.
- Complete the [Self-Instructional Training for Health and Safety Representatives](#) training package. Representatives must also complete any additional required training and should participate in their local U.S. Department of Labor Field Federal Safety and Health Council and receive any other appropriate information and training.
- Conduct inspections as specified in [AIMS, GAM 13.04.08.A.2](#) using Form [SSA-5510-BK](#), Office Safety Inspection Worksheet ([Attachment J](#)) for office space and Form [SSA-3510-BK](#), High Hazard Safety Inspection Worksheet ([Attachment K](#)) for high hazard areas, if necessary, and ensure that all necessary corrective actions or abatement plans, or both, have been completed.
- Review proposed space renovation floor plans for conformance with the requirements of Form [SSA-5510-BK](#).
- Ensure supervisors properly investigate all employee reports of unsafe or unhealthful working conditions, and maintain a log of these reports at the facility as required by [29 CFR 1960.28](#). Maintain one centralized log for

each SSA facility. The log must contain the date and time of report, an assigned report number, location of condition, brief description of the condition, classification (imminent danger, serious or other), and date and nature of action taken.

- Ensure that supervisors and employees perform all accident and occupational illness reporting requirements as specified in [AIMS, GAM 13.05](#).
- Establish a properly trained health and safety committee, where required, by [AIMS, GAM 13.03.07](#) or Union-Management Agreement.

13.04.05 Standards

- A. SSA adheres to occupational safety, health, and fire standards promulgated by OSHA throughout the agency and considers these standards as minimum requirements. OEHS maintains a master file of standards and makes them available to those responsible for implementation, enforcement, or conformance.
- B. The following lists the Federal agencies and nationally recognized organizations that develop occupational safety, health, and fire standards and codes used throughout the agency, where applicable:
 1. Department of Labor
 2. General Services Administration (GSA)
 3. American National Standards Institute
 4. National Fire Protection Association
 5. Environmental Protection Agency
 6. American Industrial Hygiene Association

7. American Society of Heating, Refrigeration and Air Conditioning Engineers
 8. Department of Transportation
 9. Department of Energy
 10. Department of Agriculture
 11. National Bureau of Standards
 12. American Society for Testing and Materials (ASTM)
 13. American Society of Mechanical Engineers
 14. International Conference of Building Officials/International Code Council
 15. American Insurance Association
 16. American Conference of Governmental Industrial Hygienists
 17. Manufacturing Chemists' Association
 18. National Sanitation Foundation
 19. Joint Commission on Hospital Accreditation
 20. ASTM International
- C. The agency developed special standards for its operations and facilities to aid personnel responsible for determining compliance. These standards are provided as attachments to this Instruction, including:
1. [Attachment A: Means of Egress](#)
 2. [Attachment B: Fire Extinguishers](#)

3. [Attachment C: Personal Protective Equipment](#)
 4. [Attachment D: Electrical Equipment](#)
 5. [Attachment E: Flammable Liquids](#)
 6. [Attachment F: Materials Handling Equipment](#)
 7. [Attachment G: Ladders](#)
- We will publish additional standards as appropriate.

13.04.06 Deviations

This section provides guidelines for those situations where it may be necessary to request relief from the standards enumerated in this Instruction.

- A. The need to request a deviation may be due to the inability to conform to adopted standards involving operational factors or because of preexisting sub-standard conditions in leased and/or occupied space. In every case where a variance exists that cannot be resolved at the local level, components must follow the procedure outlined in paragraph D below.
- B. The DASHO holds authority to approve requests for deviation from adopted standards. The DASHO will approve a deviation only after determining the requestor cannot meet an applicable standard and must still perform essential work. In special cases, the DASHO may delegate authority for approving deviations from safety, health, and fire standards to the Director, OEHS.
- C. The DASHO or Director, OEHS approves deviations for site or situation specific situations. Therefore, approved deviations do not apply to similar conditions at other locations. The requesting component must make every effort to correct the deficiency or request procurement of new space. The DASHO or Director, OEHS

considers a permanent deviation only after the requesting component exhausts all means to correct the deficiency.

D. Components should submit deviation requests to OEHS at [^DCBFM OFLM OEHS EHS](#) Records. The request must contain the following information:

1. Name, title, organization, address, and telephone number of requester.
2. Name of building, address, and specific location.
3. Description of condition and include drawings and sketches, as necessary.
4. Standard violated.
5. Statement of why the component cannot comply with the requirement locally.
6. Specific duration required for the deviation.
7. Precautions the component takes to achieve safety during the period of the deviation.
8. List of specific actions taken or anticipated to ensure compliance with the standard in violation. If the component processes new space, provide documentation.

E. Components must perform a review of all approved deviations at least annually to determine if conditions still necessitate a continuation.

13.04.07 Multi-Occupied Facilities

This section gives guidelines to components who share space in non-SSA buildings with other Federal or private sector components.

- A. Except where SSA is the largest organization occupying the building, the agency retains responsibility only for the space that it occupies in reference to compliance with applicable occupational safety and health standards.
- B. Conditions in a facility that may affect the safety of SSA employees should be resolved with the GSA Building Manager, the lessor, or other organization(s) that has jurisdiction over the facility, preferably before occupancy.
- C. The lessor, primary tenant, or others having jurisdiction over the facility normally develop plans to cope with emergencies, such as fire drills. Where such plans exist, SSA employees must cooperate fully in their execution. Where plans do not exist, SSA personnel shall receive evacuation instructions from their supervisor and a practice drill held at least semiannually.
- D. Inspection and maintenance of fire protection equipment given by the lessor is the responsibility of the lessor and subject to approval by GSA and the local fire department. If the lessor fails to meet this responsibility, the components should contact the regional Center for Material Resources or the OEHS Environmental Hotline at 410-966-7026 for assistance. The Health and Safety Representative will visually inspect SSA-installed extinguishers monthly for any obvious problems, and arrange for an annual maintenance inspection of them as required by [Attachment B](#) of this Instruction. During the monthly visual inspection of SSA equipment, the component must also spot check any lessor furnished equipment and, if lacking a current inspection, bring it to the attention of the lessor.
- E. Components should contact the regional Center for Material Resources to discuss any situations they cannot resolve

local. Components needing assistance may also call the OEHOS Environmental Hotline at 410-966-7026 with questions.

13.04.08 Mandatory Compliance (Inspections - Evaluations)

Federal regulations require mandatory compliance by all Federal agencies with OSHA regulations. OSHA requires agencies to self-conduct periodic inspections and annual reviews of Environmental Health and Safety Programs. Components must notify OEHOS before contacting any enforcement agency, Federal (e.g., OSHA) or State (e.g., Maryland Department of the Environment), concerning employee complaints or environmental or safety problems. When appropriate, the agency should allow Federal, State, and local authorities, e.g., fire departments, building inspectors, safety and health inspectors, etc., to periodically inspect facilities.

A. Inspections

1. Headquarters

- OFLM/OEHOS is responsible for developing a system to conduct environmental health and safety inspections of all headquarters workspace. In addition to conducting office inspections, OFLM/OEHOS also inspects high hazard areas, such as loading docks, warehouses, shop areas, and any other areas or operations with a high degree of risk.
- After completing an inspection, OFLM/OEHOS prepares an inspection report explaining each finding that does not meet the requirements of Form SSA-5510-BK and Form SSA-3510-BK, or applicable standards. Within 30 calendar days, the component must correct each of the non-compliance findings for which it holds

responsibility, and OFLM/OBM corrects the facilities-related items for which it holds responsibility. The responsible component must prepare an abatement plan using Form [SSA-127](#) for any items it cannot correct within 30 days. If a follow-up inspection reveals that the responsible component has not corrected a noncompliance item or implemented an abatement plan, OFLM notifies the appropriate Associate Commissioner or Office Director.

2. Facilities Outside of Headquarters

- Managers of agency facilities outside of headquarters will have the responsibility to initiate a system of periodic workplace inspections using the latest version of Form [SSA-5510-BK](#). Components may not use other inspection forms (i.e., those provided by GSA, fire departments, or other agencies) as a substitute for this requirement. In facilities occupied by multiple agency components, each component must conduct its own inspection, including coordinating with appropriate labor organizations where applicable.
- Components must conduct these inspections at least twice each calendar year--one during March or April and the second during September or October. In large facilities (e.g., program service centers, the National Support Center in Urbana, the Second Support Center in Durham, and the Wilkes Barre Data Operations Center), the second inspection serves as a follow-up inspection conducted within 90 days after completion of the original inspection.

- Employees responsible for performing inspections should complete the [Self-Instructional Training for Health and Safety Representatives](#) training package.
- Inspectors should use only Form [SSA-5510-BK](#) when inspecting office environments.
- Inspectors who inspect office space and high hazard areas must complete Form [SSA-3510-BK](#) in addition to Form [SSA-5510-BK](#). The National Fire Protection Association (NFPA) 101, Section 3.3 defines high hazard areas, which includes our shops (plumbing, electrical, carpentry, construction, etc.), battery charging areas, warehouse storage areas using motorized industrial trucks, and building utility areas in those buildings where we have delegated building management authority. All agency components must conform to all NFPA, GSA, OSHA, and other applicable high hazard standards and regulations for space under the control of SSA.
- Once completed, inspectors should file the original forms [SSA-5510-BK](#) and [SSA-3510-BK](#) at the inspected facility and send copies to the appropriate Area Directors and the Regional Office responsible for conducting follow-up inspections. Do not send copies to OEHOS in Baltimore.
- Components and facility managers must correct unsafe or unhealthful working conditions noted on forms [SSA-5510-BK](#) or [SSA-3510-BK](#) within 30 calendar days. If they cannot make the corrections within this timeframe, the component responsible for correcting the problem must prepare an abatement plan using Form [SSA-127](#). This plan must explain why correction of the unsafe

or unhealthful working condition is delayed, a proposed timetable for the abatement, and a summary of steps being taken in the interim to protect employees from injury as a result of the condition, as required by [29 CFR 1960.30\(c\)](#).

- For conditions requiring that GSA or another agency or organization make the correction, that agency is responsible for submitting the abatement plan. The abatement plan must give priority to the allocation of resources to ensure prompt abatement of the conditions, as required by [29 CFR 1960.34\(a\)\(6\)](#). The regional GSA Safety and Environmental Management Branch can provide assistance in resolving unsafe and unhealthful conditions in GSA-controlled space.

B. Evaluations

- In accordance with [29 CFR Part 1960, *Basic Program Elements for Federal Employee Occupational Safety and Health Programs*](#), the agency will evaluate all phases of its Environmental Health and Safety Program. Evaluations will consist of the following two components:
 1. **Annual Report**
 - The Director of OEHOS completes and submits the Annual Report to the Department of Labor on the SSA Environmental Health and Safety Program in accordance with OSHA guidelines. Agency facilities outside of headquarters may receive instructions for submitting information to OEHOS for inclusion in the Annual Report.
 2. **Onsite Surveys**

- OEHOS conducts periodic onsite evaluations of the SSA Environmental Health and Safety Program at headquarters and a representative group of select locations outside of headquarters. The objectives of the evaluations are to determine the degree of compliance with pertinent regulations, standards, and sound practices and procedures; point out deficiencies and inadequacies; and make suitable recommendations to improve the program. Generally, these evaluations encompass the following major areas:

- **Environmental Health and Safety**

- **Administration:** Covers the assignment of responsibilities, policy, funding, reporting, and accident and injury experience as these functions pertain to the Environmental Health and Safety Program.

- **Environmental Health and Safety Training:** Covers education and training programs; e.g., specialized training for environmental health and safety, management, inspection, and supervisory personnel.

- **Environmental Health and Safety Promotion:** Covers Presidential initiatives and other specialized emphasis programs and promotional efforts, contests, awards programs, and those methods and techniques employed that impact employee attitudes as they relate to environmental health and safety.

- **Environmental Health and Safety Research and Engineering:** Covers safety engineering; i.e., the amalgamation of safety, planning, and design for project development. This research and engineering encompasses such areas as testing and the conduct of workplace hazard analyses, fire safety, and the

establishment and enforcement of related operational procedures.

- **Investigation, Reporting, and Analysis:** Covers the development and dissemination of all matters pertaining to environmental health and safety and encompasses top management's involvement in the Environmental Health and Safety Program, abatement actions aimed at the elimination of existing hazards, and accident reporting to include injury and illness analysis for purposes of accident prevention.
- **Environmental Health and Safety Inspections:** Covers responsibilities and procedures as they pertain to the conduct of environmental health and safety inspections of workplaces.
- **Environmental Health and Safety Standards:** Covers standards applicable to the Environmental Health and Safety Program, specifically, the responsibility for developing standards to include policies and procedures related to medical examinations for individuals engaged in hazardous occupations and the abatement of hazards, etc.
- **Environmental Health and Safety Committees:** Covers the use of committees and labor-management relations in furtherance of the safety management function.
- **General:** Covers safety and occupational health matters that do not fall into one of the categories set forth above.

13.04.09 Attachments

[Attachment A - Means of Egress](#)

[Attachment B - Fire Extinguishers](#)

[Attachment C - Personal Protective Equipment](#)

[Attachment D - Electrical Equipment](#)

[Attachment E -Flammable Liquids](#)

[Attachment F - Materials Handling Equipment](#)

[Attachment G - Ladders](#)

[Attachment H - Occupational Safety and Health Protection for Federal Employees ...](#)

[Attachment I - Form SSA-127, Safety Hazard Abatement Plan](#)

[Attachment J - Form SSA-5510-BK, Office Safety Inspection Worksheet](#)

[Attachment K - Form SSA-3510-BK, High Hazard Safety Inspection Worksheet](#)

AIMS GAM 13.05

Occupational Injury and Illness Reporting Requirements

Manual/Chapter: [General Administration](#) » [Health and Safety Management](#)

Instruction/Handbook: [GAM 13.05](#)

Audience: General

Level: SSA

Inquiries:

-

[Office of Environmental Health and Occupational Safety \(OEHOS\)](#)

DCBFM.OFLM.OEHOS.Controls@ssa.gov

410-966-7026

Refer to the [OEHOS website](#) as well.

Related Instructions:

- [Office of the Deputy Commissioner Budget, Finance, and Management \(DCBFM\)](#) » [Office of Facilities and Logistics Management \(OFLM\)](#) » [Office of Environmental Health and Occupational Safety \(OEHOS\)](#)

Updated: 7/24/2020

Certified: 7/24/2020

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13.05.01 Purpose

This instruction establishes policy, objectives, and responsibilities for the reporting, recording, and investigation of fatalities, injuries, and occupational illnesses. This instruction ensures SSA complies with the Occupational Safety and Health Administration's (OSHA) requirements for Federal agency recordkeeping of occupational injuries and illnesses and timely reporting of fatality, injury, and illness information to OSHA.

13.05.02 Policy

It is SSA policy to pursue all elements of the established SSA Occupational Health and Safety Management Program. One of the essential elements of the Program is the immediate investigation of all injuries and occupational illnesses. All investigations and any required reports related to these occurrences shall be timely, complete, accurate, and factual.

13.05.03 Objectives

The objective of occupational injury and illness investigation and reporting is to develop essential information necessary for an effective Occupational Health and Safety Management Program. In addition, we designed our reporting system to identify unsafe and unhealthful working conditions and help establish corrective actions necessary to mitigate these occurrences. The requirements and procedures set forth in this Instruction are designed to:

- A. Establish a written record of each occupational injury or illness, its causes, and the circumstances surrounding it;
- B. Provide information to initiate and support corrective or preventive action;
- C. Ensure proper and timely reporting of fatality, injury, and illness Information to OSHA; and
- D. Obtain required statistical information on occupational injuries and illnesses, and provide data to evaluate the SSA Occupational Health and Safety Management Program.

13.05.04 Responsibilities

A. **Deputy Commissioner for Budget, Finance and Management**

- Exercises authority delegated by the Commissioner of SSA for administration of an SSA-wide Occupational Health and Safety Management Program.

B. **Office of Environmental Health and Occupational Safety (OEHOS)**

1. Maintains, consolidates, summarizes, and disseminates SSA occupational injury and illness experience according to OSHA requirements.
2. Reviews occupational injury and illness experience for use in improving codes, standards, guides, and procedures for the prevention of future injuries and illnesses.
3. Prepares reports of progress of occupational health and safety management activities and other reports and studies required by higher authority.

4. Provides assistance and advice in injury and illness investigation when requested.

C. Component Heads (Deputy Commissioner Level and Equivalents)

1. Implement occupational injury and illness reporting and investigation procedures within their organization to ensure compliance with the provisions of this Instruction and other applicable SSA and OSHA policies.
2. Designate an individual to serve as the component's (Deputy Commissioner level and equivalents) Occupational Health and Safety Representative to assist in the implementation of the requirements contained in this Instruction.

D. Supervisors

1. Ensure that all occupational illnesses and injuries that occur to SSA employees or contract employees (as specified in [AIMS.GAM 13.05.05](#)) in their component or to visitors in areas under their responsibility are investigated. The supervisor should initiate any corrective action necessary to prevent a recurrence.
2. Prepare and sign (if hard copy) Form SSA-516, [Occupational Injury and Illness Report](#), for reportable injuries and illnesses to SSA or contract employees as specified in [AIMS, GAM 13.05.05](#).
3. Instruct employees under their supervision of the procedures to follow in reporting occupational illnesses and injuries.

4. Report any fatalities, injuries, or illnesses to OSHA in the timeframes and manners specified in Section 13.05.05D of this Instruction.

E. SSA Employees and Contract Employees

- SSA employees and contract employees are responsible for reporting to their supervisors:
 1. Each work-related injury or illness; and
 2. Conditions or practices observed in work areas and elsewhere that could cause injury to SSA employees, contract employees and/or to the visiting public.

F. Office Occupational Health and Safety Representatives

1. For offices outside of Central Office, ensure that information from each completed SSA-516 report is entered on Form OSHA 300, Log of Work-Related Injuries and Illnesses ([Attachment A](#)).
2. Ensure that [Form OSHA 300A, Summary of Work-Related Injuries and Illnesses](#), is completed and posted annually between February 1 and April 30 of each year in a physical location where notices to employees are customarily posted. OSHA regulation requires this notice to be physically post at the work site.
3. Concurrently follow up to ensure that the stated or needed corrective action has been taken or is in the process of completion.

13.05.05 Occupational Injury and Illness Reports and Records

Federal agencies are required to follow OSHA reporting requirements for work-related injuries and illnesses as specified in 29 CFR 1904. Furnished below in a Q&A format is information from those requirements for addressing most of these occurrences at SSA. More detailed information is available, if necessary, by accessing OSHA's [Recordkeeping webpage](#).

A. Which work-related injuries and illnesses should be recorded on form SSA-516?

- Supervisors must record injuries or occupational illnesses to SSA employees or to contract employees under the supervision of SSA using form SSA-516, Occupational Injury and Illness Report. The SSA-516 Occupational Injury and Illness Report is available on [OEHOS' website](#).
- The recording of injuries and illnesses to SSA visitors is not required on form SSA-516. If an injury or illness to an SSA visitor results in a claim for or against the United States, please notify the Office of General Law, attention Federal Tort Claims Act (FTCA) team, at the following: [^HQ OGC FTCA](#). Please see [AIMS FMM 06.01, Processing Claims Filed Against SSA Under the Federal Tort Claims Act](#).
- The supervisor must report all employee injuries or occupational illnesses that are work-related, are new cases, and that result in:
 1. Death,
 2. Loss of consciousness,
 3. Days away from work,
 4. Restricted work activity or job transfer, or

5. Medical treatment beyond first aid.
- In addition, supervisors should use the SSA-516 to record work-related injuries and illnesses that meet these special circumstances:
 1. Cancer
 2. Chronic irreversible disease
 3. Fractured or cracked bone
 4. Punctured eardrum
 5. Any needle-stick injury or cut from a sharp object that is contaminated with another person's blood or other potentially infectious material.
 6. Any case requiring an employee to be removed under the requirements of an OSHA health standard
 7. Tuberculosis (TB) infection as diagnosed by a physician or other licensed health care professional (e.g., SSA Medical Officer) after exposure to a known case of active tuberculosis.
 8. An employee's hearing test (audiogram) reveals (1) that the employee has experienced a Standard Threshold Shift (STS) in hearing in one or both ears (averaged at 2000, 3000 and 4000 Hz) and (2) the employee's total hearing level is 25 decibels (dB) or more above audiometric zero (also averaged at 2000, 3000 and 4000 Hz) in the same ear(s) as the STS.
 - In determining whether the case is work-related, the supervisor must evaluate the diagnosis of a physician or other licensed health care professional, the employee's environment and work duties to decide whether or not one or more events or exposures in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing condition. For example, if

a claims representative acquires TB after exposure to a claimant known to have an active case of TB, the case would be considered work-related.

- The [SSA Medical Office](#) can provide advice on work-related medical issues, and [OEHS](#) can provide advice on work-related environmental health and safety issues. As discussed in [Section D](#) below, these OSHA reporting requirements and determination of work-relatedness should not be confused with those for workers compensation claims, which have their own criteria and reporting requirements.

B. How and When Should Supervisors Report Fatality, Injury, and Illness Information to OSHA?

1. Supervisors are required to report the following injuries, illnesses, or fatalities to OSHA in the specified timeframes:
 - Report the death of an employee due to a work related incident within eight (8) hours after the occurrence.
 - Report an inpatient hospitalization, amputation, or loss of an eye due to a work-related incident within twenty-four (24) hours after the incident.
2. Supervisors must report the above noted incidents to OSHA in the following ways:
 - Call the nearest [OSHA office](#).
 - If the local office is not open, call the OSHA 24-hour hotline at 1-800-321-OSHA (1-800-321-6742).
 - Submit the report electronically using OSHA's [Serious Event Reporting Online Form](#).

3. Supervisors must give OSHA the following information for each fatality, in-patient hospitalization, amputation, or loss of an eye:

- The establishment name;
- The time of the work-related incident;
- The type of reportable event (i.e., fatality, in-patient hospitalization, amputation, or loss of an eye);
- The number of employees who suffered a fatality, in-patient hospitalization, amputation, or loss of an eye;
- The names of the employees who suffered a fatality, in-patient hospitalization, amputation, or loss of an eye;
- Your contact person and his or her phone number; and
- A brief description of the work related incident.

C. What other forms must be completed?

- **Offices Outside of Central Office:**
In addition to completing form SSA-516, the Health and Safety Representative in each office must enter the information on the injury/illness OSHA form 300, Log of Work-Related Injuries and Illnesses. The Health and Safety Representative must also post, from February 1 to April 30 of each year, OSHA form 300A, Summary of Work-Related Injuries and Illnesses for the previous calendar year, as discussed in Section S below. The OSHA Form 300 and OSHA Form 300A are available on OEHS' [Injury and Illness Reporting website](#).

- Central Office:
 OSHA form 300, Log of Work-Related Injuries and Illnesses, is maintained by OEHOS. OSHA form 300A, Summary of Work-Related Injuries and Illnesses, is completed and posted by OEHOS.

D. Must workers compensation (CA) forms be completed?

Workers compensation claims are handled apart from the OSHA recordkeeping requirements of this Instruction, and they have their own criteria and reporting requirements. Workers compensation forms are submitted separately if a workers compensation claim is to be established. For Workers' Compensation claims, please contact your assigned [Workers' Compensation Specialists](#). Claims are filed in accordance with [PPM S810_2](#).

E. How are employees made aware of the reporting requirements?

Supervisors must set up a process for their employees to report work-related injuries and illnesses promptly. They must inform each employee of how he or she is to report an occupational injury or illness.

F. What is medical treatment?

Medical treatment includes managing and caring for a patient for the purpose of combating disease or disorder. The following are NOT considered medical treatments and are NOT recordable:

1. Visits to a physician or health care professional solely for observation or counseling;
2. Diagnostic procedures, such as x-rays and blood tests, including administering prescription medications that are used solely for diagnostic purposes; and

3. Any procedure considered first aid as defined in [OSHA Standard 29 CFR 1904.7 General Recording Criteria](#) (see below for more information about first aid).

G. What is first aid?

If the incident required only the types of treatment noted below, administered either on or off-site, consider it first aid. The cases below DO NOT require recording:

1. Using non-prescription medications at non-prescription strength;
2. Administering tetanus immunizations;
3. Cleaning, flushing, or soaking wounds on the skin surface;
4. Using wound coverings, such as bandages, BandAids™, gauze pads, etc., or using SteriStrips™, or butterfly bandages;
5. Using hot or cold therapy;
6. Using any totally non-rigid means of support, such as elastic bandages, wraps, non-rigid back belts, etc.;
7. Using temporary immobilization devices while transporting an accident victim (splints, slings, neck collars, or back boards);
8. Drilling a fingernail or toenail to relieve pressure, or draining fluids from blisters;
9. Using eye patches;
10. Using simple irrigation or a cotton swab to remove foreign bodies not embedded in or adhered to the eye;
11. Using irrigation, tweezers, cotton swab, or other simple means to remove splinters or foreign material from areas other than the eye;

12. Using finger guards;
13. Using massages; and/or
14. Drinking fluids to relieve heat stress.

H. Are there situations where an injury or illness occurs in the work environment and is not considered work-related?

Yes, an injury or illness occurring in the work environment that falls under one of these exceptions is considered not work-related, and therefore is not recordable:

1. At the time of the injury or illness, the employee was present in the work environment as a member of the general public rather than as an employee.
2. The injury or illness involves signs or symptoms that surface at work, but results solely from a non-work-related event or exposure that occurs outside the work environment.
3. The injury or illness results solely from voluntary participation in a wellness program or in a medical, fitness, or recreational activity, such as blood donation, physical examination, flu shot, exercise class, racquetball, or baseball.
4. The injury or illness is solely the result of an employee eating, drinking, or preparing food or drink for personal consumption (whether bought on SSA premises or brought in). For example, if the employee is injured by choking on a sandwich while at SSA, the case would not be considered work-related. NOTE: If the employee becomes ill by ingesting food contaminated by workplace contaminants (such as lead) or gets food poisoning from food supplied by SSA, the case would be considered work-related.

5. The injury or illness is solely the result of an employee doing personal tasks (unrelated to their employment) at SSA outside of the employee's assigned working hours.
6. The injury or illness is solely the result of personal grooming, self-medication for a non-work-related condition, or is intentionally self-inflicted.
7. The injury or illness is caused by a motor vehicle accident while the employee is commuting to or from work.
8. The illness is the common cold or flu. **NOTE:** Contagious diseases such as tuberculosis, brucellosis, hepatitis A, or the plague are considered work-related if medical documentation indicates that the employee was infected at work.
9. The illness is a mental illness. **NOTE:** Mental illness will not be considered work-related unless the employee voluntarily provides SSA with an opinion from a physician or other licensed health care professional with appropriate training and experience (psychiatrist, psychologist, psychiatric nurse practitioner, etc.) stating that the employee has a mental illness that is work-related.

If you are unsure of whether an incident is work related, please contact OEHS' Environmental Hotline at 410-966-7026.

I. What determines whether an injury or illness is work-related if the employee is on travel status at the time it occurs?

Injuries and illnesses that occur while an employee is on travel status are work-related if, at the time of the injury or illness, the employee was engaged in work activities "in the interest of SSA." Examples of such activities include travel to and from customer contacts, conducting job tasks, and entertaining or being entertained to transact, discuss, or promote SSA business (work-

related entertainment includes only entertainment activities being engaged in at the direction of SSA). Remember that these OSHA work-related criteria do not necessarily correspond to those for workers compensation, which have their own criteria and reporting requirements (see section D above).

Injuries or illnesses that occur when the employee is on travel status do not have to be recorded on form SSA-516 or form OSHA 300 if they meet one of these exceptions:

1. If the employee has checked into a hotel/motel or other temporary residence for one or more days to work in a nearby location, he/she has established a "home away from home." The supervisor should evaluate the employee's activities after checking in for their work-relatedness in the same manner in which a non-traveling employee is evaluated. An injury or illness that occurs while the employee is commuting to or from either home or the "home away from home" to the work location is not considered work-related. After check-in, the employee is considered to have left the work environment. When the employee begins work each day, he or she re-enters the work environment. Traveling from one work location to another work location, however, is reportable. For example, consider an employee who has checked into a hotel and is working at two locations that day, returning to the same hotel at the end of the day. An injury or illness to the employee while enroute from the hotel to the first work location is not considered work-related. However, if the employee has an injury or illness while enroute from the first to the second work location, it is considered work-related. An injury or illness is also considered work-related, for example, if it occurs during travel from a permanent work

location to or from customer contacts, before check-in to a hotel, or after checkout from a hotel.

2. If the employee has taken a personal detour from a reasonably direct route of travel, the injury or illness is not considered work-related. (For example, the employee has taken a side trip for personal reasons).

J. What determines whether an injury or illness is work-related when the employee is working at home?

Injuries or illnesses that occur while an employee is working at home will be considered work-related if the injury or illness occurs while the employee is performing work for pay or compensation in the home and the injury or illness is directly related to the performance or work rather than to the general home environment. For example, if an employee drops a box of SSA documents and injures his/her foot, the case is considered work-related. If an employee is injured because he or she trips on the family dog while rushing to answer a work phone call, the case is not considered work-related. If an employee working at home is electrocuted because of faulty home wiring, the injury is not considered work-related.

K. How does the supervisor decide if the injury or illness resulted in restricted work activity?

Restricted work activity occurs when, as the result of a work-related injury or illness, an employer or health care professional keeps, or recommends keeping, an employee from doing the routine functions of his or her job or from working the full workday that the employee would have been scheduled to work before the injury or illness occurred. When an employee is on restricted work activity, the supervisor must report the incident on form SSA-516 and OSHA form 300.

L. How are the number of days away from work or the number of days of restricted work activity counted and recorded on form SSA-516 and OSHA form 300?

Count the number of calendar days the employee was away from work or was on restricted work activity because of the recordable injury or illness. Do not count the day on which the injury or illness occurred in this number. Begin counting days from the day after the injury or illness occurred. If a single injury or illness involved both days away from work and days of restricted work activity, enter the total number of days for each. Stop counting days once either the total of or combination of both reaches 180 days. If there is a discrepancy between the number of days the employee was away or on restricted work activity and the number of days recommended by a physician or other licensed health care professional, record the number of days recommended rather than the actual number of days the employee was away or on restricted work activity.

M. Under what circumstances should the employee's name not be entered on form SSA-516 and OSHA form 300 due to privacy concerns?

1. An injury or illness to an intimate body part or to the reproductive system;
2. An injury or illness resulting from a sexual assault;
3. A mental illness;
4. A case of HIV infection, hepatitis, or tuberculosis;
5. A needle-stick injury or cut from a sharp object that is contaminated with blood or other human bodily fluids, tissues, organs, or other materials infected with the HIV or hepatitis B virus such as laboratory cultures or tissues from experimental animals; and,

6. Other illnesses, if the employee independently and voluntarily requests that his or her name not be recorded.

For these cases, enter, "privacy case" in the space normally used for the employee's name. An employee's supervisor must keep a separate, confidential list that includes the case numbers and employee names for the office's privacy concern cases so the cases can be updated and information provided to OSHA or other program reviewers, if requested. If there is a reasonable basis to believe that information describing the privacy concern case may be personally identifiable even though the employee's name has been omitted, discretion may be used in describing the injury or illness on both form SSA-516 and OSHA form 300. Enter enough information to identify the cause of the injury or illness and its severity, but not details of an intimate or private nature. All information related to injury and illness reporting shall be used, maintained, and disseminated in accordance with the requirements of the Privacy Act (Public Law 93-579) and the Freedom of Information Act (Public Law 93-502).

N. Where should the supervisor send the original form SSA-516? Should he/she keep a copy?

Supervisors should complete the electronic version of the [SSA-516](#) to report employee illnesses and injuries. If the electronic version is not available, supervisors may use a hard copy of the SSA-516. They should send the original completed form SSA-516 to the OEHS contact and address shown on the form SSA-516 instructions. Supervisors should direct questions related to completion of the form to the contact on the instructions. SSA components may establish procedures requiring additional internal review and sign-off before forwarding the form to OEHS. Offices reporting the injury or illness should maintain a copy of the form for 5 years following the year to which it pertains.

O. What if the outcome changes after the supervisor records the case?

If the outcome or extent of an injury or illness changes after recording the case on the hard copy, the supervisor should simply draw a line through the original entry on the copy of the form SSA-516 he/she has maintained and write the new entry where it belongs. If the SSA-516 was submitted electronically, the supervisor should use the edit feature to correct the original entry. The OSHA form 300 Log should similarly be altered to reflect the change. Remember, the most serious outcome of the case is what must be recorded. The supervisor should send a copy of the corrected form SSA-516 to OEHS at the address shown in the form SSA-516 instructions.

P. How can I prevent recurrences of the injury or illness?

Every accident or occupational illness must be investigated by the supervisor to ascertain what the employee was doing at the time of the accident, how he/she was doing it, and what action can be taken to prevent a recurrence. Use Investigation Procedures ([Attachment B](#)) as a guide.

Q. How should work-related injuries be classified when completing OSHA form 300?

An injury is any wound or damage to the body resulting from an event in the work environment.

Examples: Cut, puncture, laceration, abrasion, fracture, bruise, contusion, chipped tooth, amputation, insect bite, electrocution, or a thermal, chemical, electrical, or radiation burn. Sprain and strain injuries to muscles, joints, and connective tissues are classified as injuries when they result from a slip, trip, fall, or other similar accidents.

R. How should work-related illnesses be classified when completing OSHA form 300?

- **Skin diseases or disorders** – illnesses involving the employee's skin caused by work exposure to chemicals, plants, or other substances.
 - **Examples:** Contact dermatitis, eczema, or rash caused by primary irritants and sensitizers or poisonous plants; oil acne; friction blisters, chrome ulcers; inflammation of the skin.
- **Respiratory conditions** – illnesses associated with breathing hazardous biological agents, chemicals, dust, gases, vapors, or fumes at work.
 - **Examples:** Silicosis, asbestosis, pneumonitis, pharyngitis, rhinitis or acute congestion; beryllium disease, tuberculosis, occupational asthma, reactive airways dysfunction syndrome (RADS), chronic obstructive pulmonary disease (COPD), hypersensitivity pneumonitis, toxic inhalation injury, such as metal fume fever, chronic obstructive bronchitis, and other pneumoconiosis.
- **Poisoning** – disorders evidenced by abnormal concentrations of toxic substances in blood, other tissues, other bodily fluids, or the breath that is caused by the ingestion or absorption of toxic substances into the body.
 - **Examples:** Poisoning by lead, mercury, cadmium, arsenic, or other metals; poisoning by carbon monoxide, hydrogen sulfide, or other gases; poisoning by benzene,

benzol, carbon tetrachloride, or other organic solvents; poisoning by insecticide sprays, such as parathion or lead arsenate; poisoning by other chemicals, such as formaldehyde.

- **Hearing Loss** – noise-induced hearing loss is defined for recordkeeping purposes as a change in hearing threshold relative to the baseline audiogram of an average of 10dB or more in either ear at 2000, 3000 and 4000 hertz, and the employee's total hearing level is 25 decibels (dB) or more above audiometric zero (also averaged at 2000, 3000, and 4000 hertz in the same ear(s).
- **All other occupational illnesses**
 - **Examples:** Heatstroke, sunstroke, heat exhaustion, heat stress and other effects of environmental heat; freezing, frostbite, and other effects of exposure to low temperatures; decompression sickness; effect of ionizing radiation (isotopes, x-rays, radium); effects of nonionizing radiation (welding flash, ultra-violet rays, lasers); anthrax, blood borne pathogenic diseases, such as AIDS, HIV, hepatitis B or hepatitis C; brucellosis; malignant or benign tumors; histoplasmosis; coccidioidomycosis.

S. What is the procedure for completing, certifying, and posting the form OSHA 300A Summary?

- **Offices Outside of Central Office:**
 - The Health and Safety Representative in each SSA office location must annually complete form OSHA 300A,

Summary of Work-Related Injuries and Illnesses, even if no injuries or illnesses occurred during the calendar year. Prior to completing the Summary, the office's form OSHA 300 Log must be reviewed to verify that the entries are complete. The Summary must be completed by obtaining information from the Log. The SSA Office Manager, or an official at a higher level of his/her component, must certify the accuracy of the Summary by completing the signature section in the lower right corner. The completed form OSHA 300A Summary (not the form OSHA 300 Log) must be posted in a conspicuous location where notices to employees are customarily posted. It must be posted from February 1 to April 30 of the year following the year covered by the form.

- **Central Office:**

- OEHOS maintains the form OSHA 300 Log for Central Office injuries or illnesses, prepares, and certifies the accuracy of the OSHA 300A Summary, and posts the Summary on Central Office bulletin boards from February 1 to April 30 of the year following the year covered by the form.

T. How long must the Summary, Log and copies of form SSA-516 be kept in SSA offices?

They must be kept for five years following the year to which they pertain.

U. What serious injuries/illnesses must be reported to OEHOS immediately by telephone?

Report within eight (8) hours after the death of any employee from

a work-related injury or illness.

Within twenty-four (24) hours after the in-patient hospitalization of one or more employees, or an employee's amputation or an employee's loss of an eye due to a work-related incident, the supervisor or SSA office manager must orally report the event by calling the OEHOS hotline at 410-966-7026.

If the supervisor learns of an event that should be called in after the 8-hour period has passed, he/she must call in the event within 8 hours after it is reported to him/her.

The following information must be provided:

1. SSA office name, phone number, and location;
2. Location of the event;
3. Time of the event;
4. Number of fatalities or hospitalized employees;
5. Names of any injured employees;
6. Name of supervisor/manager reporting the event; and
7. A brief description of the event. In addition, fatalities caused by a heart attack at work must be reported to OEHOS. Fatalities or multiple hospitalization events resulting from a work-related motor vehicle accident on a public street, mass transit, commercial airplane, or train must be reported to OEHOS and are recordable on the [SSA-516 Occupational Injury and Illness Form](#).

V. What discrimination protection is provided to an employee who reports a work-related fatality, injury, or illness?

The OSHA Act prohibits discrimination against any employee who reports a work-related fatality, injury, or illness. Employees are also protected from discrimination when filing a health and safety

complaint, asking for access to injury or illness records, or otherwise exercising any rights afforded under the Act.

13.05.06 Attachments

Attachments

[Attachment A - Form OSHA 300, Log of Work-Related Injuries and Illnesses](#)

[Attachment B - Investigation Procedures](#)

AIMS GAM 13.06

Health Services

Manual/Chapter: [General Administration](#) » [Health and Safety Management](#)

Instruction/Handbook: [GAM 13.06](#)

Audience: General

Level: SSA

Inquiries:

-

[Center for Employee Benefits and Services \(CEBS\)](#)

DCHR.OPE.Controls@ssa.gov

410-965-4606

Related Instructions:

- [Office of Human Resources \(DCHR\)](#) » [Office of Personnel \(OPE\)](#) » [Center for Employee Benefits and Services \(CEBS\)](#)

Updated: 8/19/2020

Certified: 8/19/2020

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13.06.01 Purpose

This Instruction sets forth the authority and objectives for the Social Security Administration (SSA) Employee Health Program. It describes the health services available to employees and outlines the procedures for obtaining the overall objectives of the program.

13.06.02 Objectives

- A. To provide medical support for a safe and healthy environment to protect employees from worksite hazards.
- B. To assist in the development and implementation of a program of reasonable accommodation for employees with special needs.
- C. To assure adequate medical care and rehabilitation of the occupationally ill and injured.
- D. To encourage personal health maintenance.

13.06.03 Policy

- A. The health of employees is an important factor in personnel management and in the effective administration of all SSA programs. The Director, Medical Office (MO) is authorized to establish an occupational health program to support and improve

the health of all SSA employees concerning their working environment.

- B. This program will vary in scope according to employee population, working environment and availability of medical personnel and laboratory facilities.
- C. In localities where there are less than 300 SSA employees, MO is authorized to provide health services:
 - 1. By entering into an appropriate agreement with another Federal department or agency at locations where that department or agency has available adequate professional staff or facilities; or
 - 2. By entering into an appropriate agreement with qualified private or public sources for professional services, including consulting services or facilities, if other Federal department or agency's staff or facilities are not available.

13.06.04 Procedures

The extent of employee health services to be provided will be determined by the Director, MO, according to working environment, employee population and availability of medical personnel, for example:

- A. Emergency treatment of injury or illness that becomes necessary during working hours, whether or not such injury was sustained by the employee while in the performance of duty or whether or not such illness was caused by their employment. When deemed necessary by the health services team, the employee will be referred or transferred to a nearby physician or suitable community medical facility.

- B. Administration, at the discretion of the health unit physician, of prescribed treatments and medications furnished by the employee.
- C. Preventive programs to: appraise and report work environment health hazards to management as an aid in preventing and controlling health risks; provide health education to encourage employees to maintain personal health; and provide specific disease screening examinations and immunizations as the Medical Officer determines to be necessary and/or in the best interest of the employees.
- D. In addition to the above, employees may be referred to private physicians, dentists and other community health resources.
- E. Maintenance of confidential, accurate and complete medical records.
- F. Health guidance and counseling.

13.06.05 Authority

- A. Health Services Programs (5 U.S.C 7901).
- B. Federal Employee Health Services (41 CFR 101-5.304).
- C. Injury or illness of an Employee at Work (Personnel Policy Manual S810-1).

Social Security Administration

OFFICE SAFETY INSPECTION WORKSHEET

INSTRUCTIONS: Executive Order 12196 and AIMS GAM 13.04.08A mandate periodic inspections of workplaces to assure prompt correction of unsafe and unhealthy working conditions. The questions below are intended to help identify potentially hazardous conditions and practices. All NO answers require an explanation of corrective action to be taken on that item. If corrective action cannot be taken, explain why not. (Use additional sheets, if necessary.) If there are any items or conditions that are not listed which may cause injury or illness, list them under "OTHER". Where a question is not applicable to a workplace, check N.A.

ORGANIZATION:	INSPECTION DATE:
BUILDING - SPACE INSPECTED:	NAME AND PHONE NUMBER OF INSPECTORS
ADDRESS:	FOR MANAGEMENT
	FOR UNION
A. EMERGENCY EGRESS	<i>Please consult page 8, Information Sheet, before the inspection is conducted.</i>

ITEMS INSPECTED	YES	NO	N.A.	COMMENTS/CORRECTIVE ACTION/DATE CORRECTIVE ACTION TAKEN
1. Are there at least two separate ways (exits) to leave the work area or office?	☐	☐	☐	
2. Are exits are remote as possible from each other so that employees do not have to travel more than 200 feet to an exit facility (300 feet if the building is completely sprinkler protected)?	☐	☐	☐	
3. Are exit aisles maintained which meet the requirements shown on page 6?	☐	☐	☐	
4. Are exit aisles arranged in a clear, direct pattern and kept free of obstructions and impediments?	☐	☐	☐	
5. Is emergency lighting provided in buildings where: - the building is 3 or more stories in height, or - the total building occupancy is 1000 or more, or - the occupancy is 100 or more people at levels above or below the ground exit level?	☐	☐	☐	
6. Are all exits, other than ground level main entrances, identified with clearly visible, electrically illuminated exit signs?	☐	☐	☐	
7. When the building is occupied, are all exits free of locks, chains and other fastening devices which could prevent free escape?	☐	☐	☐	
8. Are exit stairways clean, free of storage, equipped with secure handrails and self-closing doors?	☐	☐	☐	
9. Do all doors serving 50 or more people swing in the direction of travel?	☐	☐	☐	
EMS INSPECTED	YES	NO	N.A.	COMMENTS/CORRECTIVE ACTION/DATE CORRECTIVE ACTION TAKEN
10. Has there been an employee evacuation drill (such as fire, earthquake, bomb threat, hurricane, tornado, flood or similar emergency) in the last 6 months? (If no, explain why not, and give date of last scheduled evacuation.)	☐	☐	☐	
11. Have employees been instructed in fire emergency procedures, how to report a fire and instructed to evacuate the building?	☐	☐	☐	
12. Are designated phones labeled with appropriate emergency numbers?	☐	☐	☐	
13. Do all exits from the building discharge directly to the street, or to yard, court, or open space that gives access to a public way?	☐	☐	☐	
14. Are all means of egress arranged so that it will not normally be necessary to pass through any high hazard area to reach an exit?	☐	☐	☐	

15. Do all "EXIT" signs have arrows indicating the correct direction of egress, except where the direction of travel is immediately apparent?	☐	☐	☐	
16. Have adequate accommodations been made to assure that handicapped employees can enter and exit safely?	☐	☐	☐	
17. Does each handrail allow continuous sliding of hands on them?	☐	☐	☐	

18. Other comments

ITEMS INSPECTED	YES	NO	N.A.	COMMENT/CORRECTIVE ACTION/DATE CORRECTIVE ACTION TAKEN
1. Is a fire alarm system (manual-, sprinkler-, or detector-activated) provided in proper operating condition in buildings where: - the building is 3 or more stories in height, or - the total building occupancy is 1000 or more, or - the occupancy is 100 or more people at levels above or below the ground exit level?	☐	☐	☐	
2. Have portable fire extinguishers been provided which meet the selection and placement criteria on page 7?	☐	☐	☐	
3. Are additional extinguishers provided for separate areas used exclusively for computer operations, storage of flammable materials or reprographic operations?	☐	☐	☐	
4. Are extinguishers properly charged, mounted, conspicuously marked, and free from obstruction and impediments?	☐	☐	☐	
5. Are extinguishers inspected and tagged annually, and replaced by similar spares when taken for servicing?	☐	☐	☐	
6. Are quantities of flammable materials such as toners, inks, solvents, alcohol, thinners, paints, etc. stored in closed metal cabinets? (not required for small daily maintenance quantities)	☐	☐	☐	
7. Are hotplates, coffee pots, and similar electrical food and beverage preparation appliances inspected and strictly controlled to avoid unauthorized and indiscriminate use?	☐	☐	☐	
8. Are there adequate disposal facilities for cigarettes, etc., in areas where smoking is still allowed?	☐	☐	☐	
9. Are on-off timers strictly prohibited on employee appliances?	☐	☐	☐	

10. Are areas where flammable liquids are used well ventilated?	☐	☐	☐	
11. Have employees been instructed to evacuate the building in the event of a fire?	☐	☐	☐	
12. Where an alarm system is in place, is it capable of being perceived above background noise or light levels?	☐	☐	☐	
13. Have fire alarm pull boxes been inspected, and are they and other appropriate fire emergency equipment free from obstruction and impediments?	☐	☐	☐	
14. Are all flammable material containers clearly marked as to their contents?	☐	☐	☐	

15. Other comments

16.

ITEMS INSPECTED	YES	NO	N.A.	COMMENT/CORRECTIVE ACTION/DATE CORRECTIVE ACTION TAKEN
1. Are all 3-prong electrical plugs connected to grounded 3-hole receptacles? (NOTE: If building system does not have 3-hole receptacles, any adapters used must be checked upon installation for adequate grounding by a competent electrician.)	☐	☐	☐	
2. Are refrigerators, water coolers, portable electrical tools, and other appliances or machines positioned away from radiators or water pipes or, if used in damp-wet locations, grounded?	☐	☐	☐	
3. Is the use of employee-owned appliances strictly controlled with routine spot checks, and are appliances turned off at the end of each workday?	☐	☐	☐	
4. Are locations of cut-off switches to machines and equipment known to employees who use them regularly?	☐	☐	☐	
5. Are the visible wires, cords and plugs of all electrical equipment, tools, and appliances in good condition? (not frayed, cracked or broken, or prongs missing.)	☐	☐	☐	
6. Are extension cords prohibited, except where issued by SSA for work-related equipment?	☐	☐	☐	
7. Are the SSA-issued extension cords in good condition, do not pose a tripping hazard, and used only where fixed outlets cannot be installed?	☐	☐	☐	
8. Do all employee-owned appliances bear the approval mark of Underwriters Lab (UL) or other recognized testing agency?	☐	☐	☐	

9. Are repairs to electrical equipment and appliances made by competent personnel?	☐	☐	☐	
10. Are guards provided for exposed electrical or moving parts of machinery, equipment, or appliances?	☐	☐	☐	
11. Are all electrical receptacles (wall & floor) in good condition with face plates securely fastened?	☐	☐	☐	
12. Are all wires and cables securely fastened and not hanging from the wall or ceiling in an unsafe manner?	☐	☐	☐	
13. Have the portable electric tools been inspected and tested during the last 6 months?	☐	☐	☐	
14. Are clearly visible electric wires and cables placed in such a way as not to cause future damage?	☐	☐	☐	
15. Are SSA-issued extension cords free of splices or tape and do they not exceed 8 feet in length?	☐	☐	☐	
17. Other comments				

ITEMS INSPECTED	YES	NO	N.A.	COMMENT/CORRECTIVE ACTION/DATE CORRECTIVE ACTION TAKEN
1. Are all light and other ceiling fixtures securely attached?	☐	☐	☐	
2. Are work space partitions adequately secured, standing straight and not infringing on adequate aisle space?	☐	☐	☐	
3. Are furniture and equipment in good condition and safe to use? (Free of splintered or jagged edges, etc.)	☐	☐	☐	
4. Are furniture and equipment so arranged that they do not infringe on adequate aisle space?	☐	☐	☐	
5. Are file cabinets and shelves properly loaded (from the bottom first) to prevent tipping over?	☐	☐	☐	
6. Is inappropriate storage of materials avoided atop cabinets, bookcases and window sills?	☐	☐	☐	
7. Are aisles and pedestrian walkways free of electrical and telephone receptacles, cords, loose carpets, floor tiles, or any other uneven surface that may pose as a tripping or falling hazard?	☐	☐	☐	
8. Are floors clean, dry, non-slippery and free of trash?	☐	☐	☐	
9. Are adequate storage areas provided for materials and supplies?	☐	☐	☐	
10. Are materials piled in an orderly manner, not extending into aisles and kept to a safe height?	☐	☐	☐	

11. Are all fans properly guarded with mesh openings of less than 1/2 inch?	☐	☐	☐	
12. Are workplace/equipment noise levels kept at an acceptable level?	☐	☐	☐	
13. Is door hardware in good working order?	☐	☐	☐	
14. Are aisles kept free of storage?	☐	☐	☐	
15. Are individual trash cans kept out of aisles to prevent tripping?	☐	☐	☐	
16. Is adequate lighting provided?	☐	☐	☐	
17. Is adequate ventilation provided?	☐	☐	☐	
18. Are room and location finders in plain view and easily recognizable?	☐	☐	☐	
19. Is there a stepstool or ladder so objects can be reached safely?	☐	☐	☐	
20. Where headsets are provided, are clean headsets available for employees?	☐	☐	☐	
21. Are floor and wall heating and air-conditioning units covered?	☐	☐	☐	
22. Are all windows free of breakage, cracks, etc.?	☐	☐	☐	
ITEMS INSPECTED	YES	NO	N.A.	COMMENT/CORRECTIVE ACTION/DATE CORRECTIVE ACTION TAKEN
23. Has there been any violation cited since the last inspection? If so, has corrective action been taken? If not, why?	☐	☐	☐	
24. Are video display terminals maintained in a clean and proper manner?	☐	☐	☐	
25. Where there are employees trained in CPR, are they certified, and are names posted in the facility?	☐	☐	☐	

26. Other comments

E. HOUSEKEEPING - SANITATION

ITEMS INSPECTED	YES	NO	N.A.	COMMENT/CORRECTIVE ACTION/DATE CORRECTIVE ACTION TAKEN
1. Has a routine cleaning schedule been established and adhered to?	☐	☐	☐	

2. Are approved trash receptacles used and emptied daily?	☐	☐	☐	
3. Are trash receptacles and cans maintained in a sanitary condition?	☐	☐	☐	
4. Are there suitable toilet and washing facilities and supplies, and are they maintained in a sanitary condition?	☐	☐	☐	
5. Are vending areas maintained in a sanitary condition?	☐	☐	☐	
6. Are personal use cooking and coffee pot areas maintained properly and routinely checked?	☐	☐	☐	
7. Are eating/work/multipurpose areas maintained in a sanitary condition?	☐	☐	☐	
8. Are microwave ovens, refrigerators, etc. checked routinely for cleanliness and proper operations?	☐	☐	☐	
9. Are the work and food areas free from pests and rodents?	☐	☐	☐	
10. Are cleansers and rags available to employees for cleaning desktops, chairs, terminals, etc.?	☐	☐	☐	
11. Are water fountains and coolers maintained in a sanitary and proper way?	☐	☐	☐	

12. Other comments

F. SPECIAL INSPECTION AREAS (Check N.A. if not applicable to your worksite)

ITEMS INSPECTED	YES	NO	N.A.	COMMENT/CORRECTIVE ACTION/DATE CORRECTIVE ACTION TAKEN
1. Are outdoor walking surfaces (sidewalks, steps, parking areas, etc.) free of holes, cracks or other hazards which could cause falls?	☐	☐	☐	
2. Are snow and ice removed from outdoor walking surfaces in a timely manner?	☐	☐	☐	
3. Does building management have a regular inspection schedule for elevators, fire protection and alarm systems, boiler rooms, electrical utility areas, etc. by competent technicians?	☐	☐	☐	
4. Is personal protective equipment (e.g., safety shoes, safety glasses, face shields, gloves, aprons, etc.) provided and required to be worn where such protection is obviously needed?	☐	☐	☐	

5. Other comments

AISLES AND ACCESS AREAS

INDIVIDUAL WORK STATIONS: 28"

OTHER AISLES SERVING UP TO 200 PEOPLE:3'8"	OTHER AISLES SERVING UP TO 250 PEOPLE:4'0"
OTHER AISLES SERVING UP TO 300 PEOPLE:5'6"	OTHER AISLES SERVING UP TO 350 PEOPLE:6'0"
OTHER AISLES SERVING UP TO 400 PEOPLE:7'4"	OTHER AISLES SERVING UP TO 450 PEOPLE:8'0"

OTHER AISLES SERVING UP TO 500 PEOPLE: 9'2"

OTHER MINIMUMS ARE REQUIRED WHEN CHAIRS, FILE CABINETS AND OTHER EQUIPEMENT CONSUME AISLE SPACE:

FILE ROOM AISLES

DESK SPACING

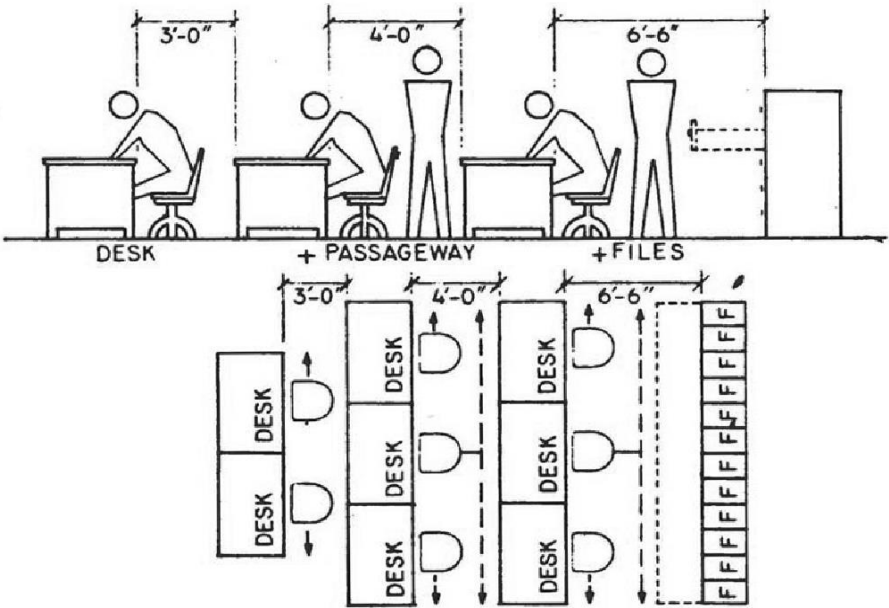
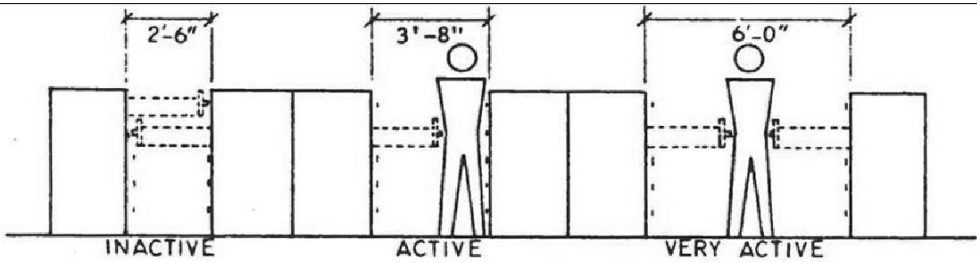


FIGURE 1

GENERAL GUIDELINES TO FOLLOW FOR HANDICAPPED AISLES

(All allowances are the minimum requirements)

Clear width for single wheelchair to move continuously: 36 inches

Clear width for single wheelchair at a point (moving continuously and through a doorway): 32 inches Clear width for 2 wheelchairs moving continuously to pass each other: 60 inches

Every 200 feet of 44-inch wide aisles increase the width of the aisle to 60 inches for passing space. Clear width for single wheelchair to make a complete turn: 60 inches

Clear width for single wheelchair to make a 180-degree turn around an obstruction: 42 inches Entrance into the workstation: 42 inches

Please keep in mind that the requirements listed above are minimum requirements. Provide aisles as wide as possible when space allows.

PORTABLE FIRE EXTINGUISHER SELECTION AND PLACEMENT CRITERIA

Selection of Extinguishers

Class of fire covered (shown on extinguisher):

Class A - Ordinary combustibles (paper, wood, trash, etc.) Class B - Flammable liquids (paint, oil, solvents, etc.) Class C - Electrical (computers, copiers, motors, etc.)

The work area should be evaluated for which of these 3 classes of fire could possible occur. Then the appropriate extinguisher should be selected:

Class ABC multipurpose dry chemical extinguisher - This extinguisher will extinguish all 3 classes of fire and is preferable for most SSA office environments. It does, however, leave a powdery residue and should not be placed in rooms used exclusively for computer operations.

Class BC carbon dioxide extinguisher - This extinguisher leaves no residue and should be the selection in rooms used exclusively for computer or other electrical operations. Please note: Several SSA facilities have inquired about the use of portable Halon extinguishers for computer operations. Because of the health hazards associated with high concentrations of Halon, SSA continues to recommend selecting the BC carbon dioxide extinguisher rather than Halon. Halon use also may soon be restricted because it is a member of the chlorinated fluorocarbon group responsible for depleting the protective ozone layer of the atmosphere.

Class A water extinguisher - Only for areas with ordinary combustibles (paper, wood, trash, etc.). It should not be located where electrical equipment is used.

Placement of Extinguishers

(1) Along normal paths or travel, visible and unobstructed. Red tape, paint or sign should be placed above the extinguisher so its location is apparent from a distance.

(2) Maximum travel distance from a potential fire

location to an extinguisher: Class A water

extinguisher - 75 feet

All other extinguishers - 50 feet

INFORMATIONAL SHEET

It is recommended that the following information be reviewed by the inspection team members, prior to conducting the actual inspection.

1. Log and Summary of Work-Related Injuries and Illnesses (OSHA Forms 300 and 300A), or equivalents
2. Reports of non-compliance from OSHA or other regulatory agencies
3. Changes in applicable rules, laws, regulations, etc.
4. Previous health and safety report
5. Written reports or unsafe practices or conditions
6. Whether personal protective equipment is required in the area
7. Material Safety Data Sheets, if requested.

ITEM (e.g., A.9) CHECKLIST ITEMS	ADDITIONAL SIGNIFICANT COMMENTS ON

NOTE: Those who desire additional information on the enclosed checklist items, or on OSHA safety, health and fire standards applicable within SSA, should contact the Office of Environmental Health and Occupational Safety at SSA headquarters in Baltimore, Maryland 21235, telephone 410--966-7026. Also see SSA Administrative Instructions Manual System (AIMS) GAM 13.04, Safety, Health and Fire Standards.

Veterans Benefits General Information



The Social Security Administration welcomes members of the armed forces to our team! Visit the [Veterans Employee Terminal](#) to learn more about the benefits and resources available to you. See the Unions Veteran New Hire Checklist down below. The key is for new hired Vets to get their office management teams all that is needed so that management can help ensure timely and accurate processing of the Checklist items. New hired Vets should check in with their management teams and/or the office Union Rep or Local Union Executives if any lack of movement on Checklist items after 90 days into SSA employment.

Union Contacts: Amber Westbrook – Chicago Regional Vice-President amber.westbrook@ssa.gov; Amad Ali – Local 3571 President and Council 220 Veterans Committee Chair amad.ali@ssa.gov

Veterans and Military Affairs Advisory Council (VMAAC)

VMAAC was officially chartered in 2013. VMAAC is committed to creating a fair and progressive work environment for its members and improving the service delivery of SSA benefits to the military population.

Visit the VMAAC [website](#) for more details about the council.

Contact Information

Benefit or Resource	Contact
Military Leave and Military Buy-Back and Correct Service Comp Dates	First Line Supervisor
Disabled Veteran Leave	First Line Supervisor
Family and Medical Leave	First Line Supervisor
Reasonable Accommodations	First Line Supervisor

Veterans Administration Education and Training Benefit	Ed Jackson Management Analyst Office of Personnel mailto:DCHR.OPE.WLT@ssa.gov
Veterans and Military Affairs Advisory Council	Paul Emerson Council Chair Chicago Region
Service Credit for Retirement for Military Buy-Back and Correct Service Comp Dates	 CHI ARC MOS HROS CHI ARC MOS HRPB

Education and Training Benefits



What is the Benefit?

The Department of Veterans Affairs (VA) offers a [GI Bill On-the-Job Training Benefit](#) for veterans who are either attending school or on-the-job training after returning from service. Our veteran employees can be eligible for the benefit if they meet the criteria set by the VA. This allows veteran employees to receive a stipend from the VA, in addition to their regular salary, while completing on-the-job training.

Who Can Participate?

The VA has issued a national approval for the following SSA front-line positions:

- SSA Benefit Authorizer
- SSA Claims Specialist – Field Office (FO) & Program Service Center
- SSA Customer Service Representative – FO & Teleservice Center

To determine the eligibility of other positions, contact the VA and your supervisor.

What is the Application Process?

Step 1: Veteran Eligibility

Employee contacts the VA to determine eligibility. The employee should also notify their supervisor to indicate interest in the program. The VA issues certificate of eligibility.

Step 2: Training Program Certification/Approval

The SSA Certifying Official (CO) contacts the VA Educational Liaison Representative (ELR) to request a facility code and complete a Memorandum of Understanding.

Step 3: Validation & Approval

The CO completes all required forms. The ELR sends completed application package to the VA Central Office (VACO) for approval. Once approved, VACO notifies the ELR. The ELR will provide notification to the CO.

Step 4: Monthly Recertification

Once the veteran is deemed eligible and benefits have started, the CO must complete monthly certification to verify the number of hours worked each month.

For more information about the eligibility criteria and applying for the benefit visit

<https://humanresources.ba.ssa.gov/VET/ojt.htm>

Military Leave



Military Leave Categories

Regular Military Leave (WebTA code 070)

Full-time employees are credited with 120 hours (15 workdays x 8 hours) of military leave when they are first appointed and on October 1 of each fiscal year.

Special Military Leave (WebTA code 072)

Employees may use special military leave, also known as law enforcement military leave, for emergency duty as ordered by the President or a State governor.

Employees who perform military duties to assist civil authorities in the protection or saving of life or property or the prevention of injury may use this leave.

Leave for Parades and Encampments (WebTA code 074)

Members of the Washington, D.C. National Guard receive leave for parades or encampments (standby duty under the threat of civil disorder). If a civil disorder does occur, they are called to active duty and are entitled to special military leave.

**Additional information about military leave is available in the online
[Personnel Policy Manual](#)**



VETERANS COMMITTEE GUIDE FOR ALL VETERANS

NEW HIRE CHECKLIST

Below are the basics to be taken care of in the first 90 days of employment. The in-office management team is the first point of contact with HR to ensure the processes take place timely and accurately. Please contact your Union Rep with any issues.

- MILITARY BUY-BACK
- ACCURATE VETERAN SERVICE COMP DATES
- GI BILL: QUALIFYING VETS CAN RECEIVE ADDITIONAL PAY DURING THEIR SSA TRAINING
- INFORM AND GUIDE VETERANS ON REASONABLE ACCOMMODATIONS (RA)
- FAMILY MEDICAL LEAVE ACT (FMLA)
- QUALIFYING VETERANS SHOULD HAVE LEAVE ALREADY AVAILABLE TO THEM FOR USE IMMEDIATELY UPON EMPLOYMENT AT SSA.

<http://humanresources.ba.ssa.gov/VET/default.htm>

FEDERAL LABOR RELATIONS AUTHORITY

Guidance on Meetings

Office of the General Counsel

9/1/2015

GUIDANCE ON MEETINGS OVERVIEW

The Office of General Counsel has developed this guidance to assist parties in determining their respective rights and obligations during formal discussions, investigatory examinations and other meetings or discussions which may trigger representational rights under the Federal Service Labor-Management Relations Statute.

The Statute provides for representation in two well-established instances when certain conditions have been met: formal discussions and investigatory examinations. The Statute also prohibits agencies from bypassing exclusive representatives, and dealing directly with unit employees, regarding grievances and other matters relating to the collective bargaining relationship.

The three sections of this Guidance address these topics by examining the Statutory authority of these representational rights; the scope and purpose of the rights; the types of meetings and discussions to which they apply; and the appropriate remedies. While this Guidance is intended to assist the parties in understanding this important area of law, it does not represent legal advice, nor should it be interpreted to predict the legal outcome in any particular case.

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I. Formal Discussions

A. Statutory Authority

Section 7114(a)(2) of the Statute provides:

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

(A) 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.

B. Purpose of the Right

Section 7114(a)(2)(A) of the Statute was established “to provide the union with an opportunity to safeguard its interests and the interests of employees in the bargaining unit viewed in the context of a union’s full range of responsibilities under the Statute.”¹ By attending formal discussions, the exclusive representative is “assured the opportunity to hear, along with unit employees, about matters of interest to unit employees and be in a position to take appropriate action to safeguard those interests.”²

C. Elements of Formal Discussion

In order for the section 7114(a)(2)(A) formal discussion right to exist, the following elements must be satisfied: (1) a discussion; (2) which is formal in nature; (3) between at least one or more agency representatives and one or more unit employees or their representatives; (4) concerning any grievance or personnel policy or practice or other general condition of employment.³

The Authority examines the totality of the circumstances presented in each case, guided by the intent and purpose of the section.⁴ A failure to afford a union an opportunity to be represented at a section 7114(a)(2)(A) formal discussion constitutes a violation of sections 7116(a)(1) and (8) of the Statute. Each of the above-listed elements is discussed in greater detail below.

¹ *DOJ, BOP, FCI, Ray Brook*, 29 FLRA 584, 589 (1987) (*FCI Ray Brook*), *aff’d*, *AFGE v. FLRA*, 865 F.2d 1283 (D.C. Cir. 1989); *see also DOD, Air Force 325th Fighter Wing, Tyndall AFB*, 66 FLRA 256, 259 (2011) (*Tyndall AFB*) (purpose of the provision is to “afford an exclusive representative the opportunity to be present at discussions addressing matters of interest to unit employees”).

² *DOD, Nat’l Guard Bureau, Tex. Adjutant General’s Dep’t, 149th TAC Fighter Group, Kelly AFB*, 15 FLRA 529, 532 (1984) (*Kelly AFB*).

³ *INS, NY Office of Asylum, Rosedale, N.Y.*, 55 FLRA 1032, 1034 (1999) (*INS, Rosedale*).

⁴ *FCI Ray Brook*, 29 FLRA at 588-89; *see also VA, N. Ariz. VA Healthcare Prescott, Ariz.*, 61 FLRA 181, 186 (2005) (“we consider these factors in view of the totality of the circumstances”).

1. Discussion

For purposes of section 7114(a)(2)(A), a “discussion” is a meeting between representatives of the agency and unit employees. There does not have to be an actual conversation, debate, or dialogue between agency officials and unit employees to meet the “discussion” element.⁵ Thus, if the other requirements of section 7114(a)(2)(A) are met, a meeting for the sole purpose of making a statement or announcement is a formal discussion.⁶ In addition, a telephone conversation may constitute a formal discussion.⁷ On the other hand, surveys of employees for information-gathering purposes have been found not to constitute a discussion.⁸ The Authority has further held that “even if a meeting does not begin as a formal discussion, it may nonetheless develop into or become a formal discussion.”⁹

2. Formality

To determine whether a discussion is “formal in nature,” the Authority examines the purpose and nature of a discussion, as well as several factors set forth in Authority precedent, including:

- a. the status of the individual who held the discussions;
- b. whether any other management representatives attended;
- c. the site of the discussions [in the supervisor’s office, at the employee’s desk or elsewhere];

⁵ *DOJ, BOP, FCI, Bastrop, Tex.*, 51 FLRA 1339, 1343 (1996) (*FCI Bastrop*).

⁶ *Kelly AFB*, 15 FLRA at 532 (1984) (holding that the “legislative history supports the conclusion that Congress intended to continue treating ‘discussion’ as synonymous with ‘meeting’”); *see also Tyndall AFB*, 66 FLRA at 260.

⁷ *SSA, OHA, Bos. Reg’l Office, Bos., Mass.*, 59 FLRA 875, 878-79 (2004) (*SSA, OHA, Bos.*), *request for reconsideration granted as to remedy*, 60 FLRA 105 (2004).

⁸ *Kaiserlautern Am. High Sch., DOD Dependents Sch., Germany N. Region*, 9 FLRA 184, 187 (1982) (questionnaire containing one question which a manager individually handed to unit employees to support application for school accreditation was not a discussion). Solicitation of employees’ views with respect to negotiable conditions of employment through polls or questionnaires can, however, constitute an unlawful bypass of the exclusive representative, as discussed more fully in the section of this Guidance addressing “Bypass”.

⁹ *Dep’t of the Army, New Cumberland Army Depot, New Cumberland, Pa.*, 38 FLRA 671, 677 (1990) (*New Cumberland Army Depot*).

- d. how the meetings for the discussions were called [formal advance notice or spontaneous];
- e. how long the discussions lasted;
- f. whether a formal agenda was established for the discussions; and
- g. the manner in which the discussions were conducted.¹⁰

In some cases, the Authority has also considered “an eighth factor, namely, whether attendance by the bargaining unit employee was mandatory.”¹¹

In general, the more significant the subject matter of the discussion, the less the Authority will rely upon the enumerated factors to establish formality. Thus, in some situations, the “purpose of the discussion [is] sufficient in itself to establish formality.”¹² For instance, where the purpose of a meeting was to inform employees that they were targets of a reduction-in-force, the Authority found it “highly implausible” that the agency “would leave an announcement of such gravity to a spontaneous, causal encounter with affected employees,” and therefore concluded the meeting met the formality threshold “even if evidence regarding the factors did not indicate formality.”¹³ Formality has also been established with respect to meetings conducted for the purpose of interviewing bargaining unit employees in preparation for third-party proceedings, such as MSPB cases.¹⁴

In cases where the Authority has relied upon the enumerated factors, it has emphasized that the factors are not meant to be rigidly applied to each case.¹⁵ Although the outcome of each case is heavily dependent upon its particular facts, the following examples illustrate the conditions under which meetings have been found to be “formal”:

- A meeting initiated when a first-line supervisor walked to the employee’s cubicle, asking her to come to a conference room; attended by a member of management; lacked a formal agenda but had the clear purpose of discussing the employee’s placement on administrative leave; and lasted no more than 15 minutes.¹⁶

¹⁰ *FCI Bastrop*, 51 FLRA at 1342; *Dep’t of Energy, Rocky Flats Field Office*, 57 FLRA 754, 755 (2002) (*DOE, Rocky Flats*).

¹¹ *VA, Cent. Ark. Veterans Healthcare Sys., N. Little Rock, Ark.*, 63 FLRA 169, 172 (2009) (*VA, N. Little Rock*).

¹² *F.E. Warren AFB, Cheyenne, Wyo.*, 52 FLRA 149, 156 (1996) (*Warren AFB*).

¹³ *Id.* at 155-57.

¹⁴ *INS, Border Patrol, El Paso, Tex.*, 47 FLRA 170, 183 (1993) (*INS, El Paso*); *VAMC, Long Beach, Cal.*, 41 FLRA 1370, 1379-80 (1991) (telephone interview of unit employee by agency attorney in preparation for an MSPB hearing), *enf’d sub nom.*, *VAMC, Long Beach v. FLRA*, 16 F.3d 1526 (9th Cir. 1994).

¹⁵ *VAMC, Richmond, Va.*, 63 FLRA 440, 443 (2009) (noting that the factors “are illustrative, and other factors may be identified and applied as appropriate”).

¹⁶ *Tyndall AFB*, 66 FLRA at 274-75.

- A meeting held to mediate an EEO dispute at a neutral location away from the worksite; scheduled in advance; followed pre-established agenda; lasted three hours; attended by an attorney representing the agency; and resulted in signed settlement agreement.¹⁷
- A phone interview by an EEO investigator of an employee to obtain information about another employee's EEO complaint; employee was given advance notice; conversation was tape-recorded; lasted 20 minutes; and resulted in a written statement.¹⁸
- A meeting conducted by an attorney on behalf of management; attended by a personnel officer; scheduled in advance; held in the legal offices away from the employee's worksite; and with clearly defined objectives.¹⁹
- A meeting to discuss enforcement of the dress code; called by the division director in accordance with a letter from the acting regional commissioner; attended by several management officials; planned and announced in advance; and which lasted for 20-25 minutes.²⁰
- A meeting to advise an employee as to the nature and scope of his duties, held pursuant to an MSPB settlement; attended by the second-level supervisor; planned in advance by the supervisors; lasted approximately one hour; and for which attendance was mandatory.²¹
- A meeting called to discuss issues raised in a grievance conducted by a supervisor; took place in the supervisor's office; scheduled in advance; attendance was mandatory; and, although no notes or minutes were taken of the meeting, its results were reported to the agency director.²²
- A meeting held by a fourth-level supervisor in his office to respond to an employee's grievance; attended by the second-level supervisor; planned in advance; lasted 25-30 minutes; and for which attendance was mandatory.²³
- A meeting conducted by a second-level supervisor to orient six new employees; arranged in advance; followed a pre-arranged plan; lasted one and a half hours; attendance was mandatory; and at which employees were presented an orientation package.²⁴

¹⁷ *Luke AFB, Ariz.*, 54 FLRA 716, 726 (1998) (*Luke AFB*), *rev'd on other grounds*, *Luke AFB v. FLRA*, 208 F.3d 221 (9th Cir. 1999).

¹⁸ *SSA, OHA, Bos.*, 59 FLRA at 879.

¹⁹ *Luke AFB, Ariz.*, 58 FLRA 528, 532-33 (2003) (*Luke AFB II*).

²⁰ *Customs Serv., Region VIII, S.F., Cal.*, 18 FLRA 195, 197-98 (1985).

²¹ *DOL, Office of the Assistant Sec'y for Admin. & Mgmt., Chi., Ill.*, 32 FLRA 465, 470 (1988) (*DOL, Chi.*).

²² *INS, Rosedale*, 55 FLRA at 1038.

²³ *SSA, Balt., Md.*, 18 FLRA 249, 250 (1985).

²⁴ *SSA*, 16 FLRA 232, 233 (1984).

Where a meeting is brief, spontaneous or deals with a performance issue particular to the bargaining unit employee, the Authority is less likely to find that it meets the “formality” requirement. In reaching this conclusion, the Authority has noted that the word “formal” was inserted as an amendment to the Civil Service Reform Act of 1978 “to make clear that this subsection does not require that an exclusive representative be present during highly personal, informal meetings such as counseling sessions regarding performance.”²⁵ Applying these principles and the enumerated factors, the Authority has found that the following meetings did not constitute “formal” discussions:

- Routine, periodic counseling meetings between an employee and his first-line supervisor, with no other management personnel present, regarding the employee’s job performance.²⁶
- A meeting between a new employee and his supervisor at the supervisor’s desk to introduce co-workers; was spontaneous; lasted for 20 minutes; had no prepared agenda; and no notes were taken.²⁷
- A phone conversation between an EEO contractor and an employee to discuss another employee’s EEO complaint; interview was not scheduled in advance; was terminated by the employee; and was not documented by affidavit or confirming letter.²⁸
- A meeting with an EEO Representative to discuss an employee’s EEO complaint which was impromptu and initiated by the employee.²⁹
- A mandatory meeting to distribute information regarding a management survey concerning organizational and staffing requirements; lasted 15 minutes; and was conducted solely by first-level supervisor with no agenda or minutes.³⁰
- A meeting to solicit volunteers for overtime assignments; attended by only the first-line supervisor; held on the shop floor; lasted 10 minutes; no prepared agenda; and no notes were taken of the meeting.³¹

²⁵ *Warren AFB*, 52 FLRA at 156 (quoting *Legislative History of the Federal Service Labor-Management Relations Statute, Title VII of the Civil Service Reform Act of 1978* (Comm. Print 1979) (*Legislative History*) at 957).

²⁶ *SSA*, 14 FLRA 28, 28 (1984).

²⁷ *SSA, Field Operations Region II*, 29 FLRA 1205, 1207 (1987).

²⁸ *SSA, OHA, Bos.*, 59 FLRA at 878.

²⁹ *DOE, Rocky Flats*, 57 FLRA at 755 (“We note that the Authority has not previously found such impromptu, employee-initiated discussions to constitute formal discussions within the meaning of § 7114(a)(2)(A) of the Statute”).

³⁰ *DLA, Def. Distrib. Region West*, 48 FLRA 744, 745 & n.2 (1993).

³¹ *Marine Corps Logistics Base Barstow, Cal.*, 45 FLRA 1332, 1335-36 (1992).

- A meeting with five or six unit employees to announce a change in sick leave policy; involved only the first-line supervisor; held in the supervisor’s office; not scheduled in advance; and lasted no more than 10 minutes.³²
- A meeting to discuss changes in the teleclaims process; not scheduled in advance; held at the employees’ desks; and lasted 5 minutes.³³

3. Participants in the Discussion

For a union to have the right to be represented at a formal discussion, at least one agency representative and at least one bargaining unit employee must be present. Because both sections 7114(a)(2)(A) and 7114(a)(2)(B) use the same term “representative of the agency” and there is “no legislative history indicating otherwise,” the Authority has held that it is appropriate to “give [these] same terms the same meaning.”³⁴ Accordingly, additional guidance on the scope of this term can be found in the discussion of representational rights arising from section 7114(a)(2)(B) in the Guidance addressing “Investigatory Examinations”.

The Statute does not require a “representative of the agency” to be a supervisor. For instance, the Authority has found that an attorney from the Judge Advocate General’s Office acted as the agency’s representative during mediation of an EEO claim.³⁵ Similarly, it has found that outside contractors acted as agency representatives during formal discussions.³⁶

A bargaining unit employee for purposes of this section of the Statute is one who included in the exclusive representative’s bargaining unit.³⁷ Concluding that it is the employee’s status “at the time of the formal discussion that is the controlling factor for determining the applicability of § 7114(a)(2)(A),” the Authority has held that the union had the right to be represented at an interview of a bargaining unit member who it listed as a witness for a grievance arbitration where the questions related only to the employee’s actions as an acting supervisory agent four years earlier.³⁸

³² *DLA, Def. Depot Tracy, Cal.*, 14 FLRA 475, 477 (1984).

³³ *SSA, Balt., Md.*, 15 FLRA 525, 527 (1984).

³⁴ *PBGC, Wash., D.C.*, 62 FLRA 219, 223 (2007).

³⁵ *Luke AFB*, 54 FLRA at 730.

³⁶ *DLA, Def. Depot Tracy, Cal.*, 39 FLRA 999, 1013 (1991) (independent contractor providing an employee assistance program was a representative of the agency); *SSA, OHA, Bos.*, 59 FLRA at 879-80 (contract EEO investigator is an agency representative); *PBGC, Wash., D.C.*, 62 FLRA at 222 (same).

³⁷ *Dep't of the Air Force, Sacramento Air Logistics Command, McClellan AFB, Cal.*, 38 FLRA 732, 734 (1990) (holding that “alternate supervisors” meet this condition where they “continue to be covered by the parties’ collective bargaining agreement” and “continue to be subject to dues withholding”).

³⁸ *DHS, Border & Transportation Sec. Directorate, Customs & Border Prot., El Paso, Tex.*, 62 FLRA 241, 247-49 (2007) (*CBP, El Paso*) (also noting that even if the employee’s status when he took the disputed actions was relevant, the record supported the “alternate finding” that he was not a supervisor, and was a bargaining unit employee, on that date as well).

The union, however, is not entitled to representation at a formal meeting to discuss settlement of an EEO complaint filed by an employee who was not in the bargaining unit represented by the union “at the time of the events giving rise to the complaint or at the time of the filing of the complaint,” even where the employee was a member of the bargaining unit at the time of the discussion.”³⁹

4. Subject Matter of the Discussion

To be a formal discussion, the meeting must concern a personnel policy or practice, a general condition of employment, or a grievance.

a. Personnel Policy or Practice or General Condition of Employment

The phrase “any personnel policy or practices” in section 7114(a)(2)(A) of the Statute means “‘general rules applicable to agency personnel, not discrete actions taken with respect to individual employees.’”⁴⁰ The Authority has also held that “other general conditions of employment [are] ‘limited to those discussions (except grievance meetings) which concern conditions of employment affecting employees in the unit generally.’”⁴¹

Applying these criteria, the Authority has applied section 7114(a)(2)(A) rights to a meeting called to discuss enforcement of a dress code policy;⁴² to address alleged management interference with Statutory rights;⁴³ to announce a change in workweek and staffing;⁴⁴ to inform employees of a reduction-in-force;⁴⁵ and to discuss implementation of a compressed work schedule.⁴⁶

³⁹ *Nuclear Regulatory Comm’n*, 29 FLRA 660, 662-63 (1987) (*NRC*) (noting that the “complaint concerned matters which took place entirely outside the bargaining unit”).

⁴⁰ *AFGE Council 214*, 38 FLRA 309, 330 (1990) (quoting *Bureau of Field Operations, SSA, S.F., Cal.*, 20 FLRA 80, 83 (1985) (*SSA, S.F.*), *enf’d sub nom.*, *Dep’t of the Air Force, Wright-Patterson AFB v. FLRA*, 949 F.2d 475 (D.C. Cir. 1991).

⁴¹ *AFGE Council 214*, 38 FLRA at 330.

⁴² *Customs Serv., Region VIII, S.F., Cal.*, 18 FLRA at 197-98.

⁴³ *Dep't of Air Force, F.E. Warren AFB*, 31 FLRA 541, 552 (1988) (*Warren AFB II*) (meeting involved alleged management interference with employee picketing).

⁴⁴ *Kelly AFB*, 15 FLRA at 530.

⁴⁵ *HUD*, 15 FLRA 438, 439 (1984).

⁴⁶ *New Cumberland Army Depot*, 38 FLRA at 677.

⁴⁷ *INS, Rosedale*, 55 FLRA at 1035.

The formal discussion representation right does not apply to meetings related to discrete actions taken with respect to individual employees. Thus, a discussion between an employee and agency officials that was limited to the employee's work assignments and job performance did not constitute a formal meeting,⁴⁷ nor did a meeting related to an employee's "last chance agreement,"⁴⁸ or an oral reply meeting in response to a proposed adverse action.⁴⁹ Similarly, a meeting limited to discussing the temporary assignment of two unit employees did not concern a "personnel policy or practice."⁵⁰ The Authority has also held that the representation right does not apply to a meeting addressing "routine reminders of past policies and requirements."⁵¹

On the other hand, the Authority rejected an argument that a meeting concerning a reorganization did not relate to a personnel policy or practice or other condition of employment where only two employees had actually been affected, because it was reasonably foreseeable that other employees would also be relocated.⁵² In addition, a meeting does not have to deal with a specific policy or practice to meet this element. For instance, the Authority has held that a discussion with several bargaining unit employees about a supervisor's conduct, as well as the "general environment in the office, including matters involving employee morale and social relationships," concerned general conditions of employment.⁵³ A meeting that does not begin by addressing conditions of employment may nonetheless develop into or become a formal discussion.⁵⁴

⁴⁸ *AFGE Council 214*, 38 FLRA at 330-31 ("Inasmuch as the last chance agreement meeting would involve only the discrete action taken with respect to an individual employee, the proposed meeting would not involve a personnel policy or practice or other conditions of employment within that section").

⁴⁹ *FCI Ray Brook*, 29 FLRA at 588-89.

⁵⁰ *SSA, S.F.*, 20 FLRA at 83; see also *GPO, Public Documents Distrib. Ctr., Pueblo, Colo.*, 17 FLRA 927, 929 (1985) ("The discussion did not involve conditions of employment affecting employees in the unit generally, but instead concerned the manner in which four specific employees in one small subcomponent of the Respondent's operations were reporting their productivity").

⁵¹ *VAMC, Gainesville, Fla.*, 49 FLRA 1173, 1175-76 (1994).

⁵² *Dep't of the Air Force, Air Force Materiel Command, Space and Missile Sys. Ctr., Detachment 12 Kirtland AFB, N.M.*, 64 FLRA 166, 174 (2009) (further rejecting the argument that the purpose of the meeting was merely "to provide information" about the reorganization, since "there is a high potential for changes to employees' conditions of employment" arising from the reorganization); see also *GSA, Region VIII, Denver, Colo.*, 19 FLRA 20, 22 (1985) (holding that the purpose of a meeting at which employees' work schedules were

discussed “was not limited to the discrete application of a personnel policy, but rather involved a general discussion of that policy and how it was working”).

⁵³ *GSA, 50 FLRA 401, 404-05 (1995)*; see also *New Cumberland Army Depot, 38 FLRA at 677* (“[t]he subject matter of safety concerns a general condition of employment”).

⁵⁴ *DLA, Def. Depot Tracy, Cal., 37 FLRA 952, 960 (1990)* (“whether or not the meeting concerned a ‘personnel policy or practice’ when it began, it developed into a discussion concerning a ‘personnel policy or practice’ ... that concerned a general condition of employment of all warehouse employees.”).

b. Grievances

Section 7103(a)(9) of the Statute defines “grievance” as “any complaint -

(A) by any employee concerning any matter relating to the employment of the employee;

(B) by any labor organization concerning any matter relating to the employment of any employee; or

(C) by any employee, labor organization, or agency concerning – (i) the effect or interpretation, or a claim of breach, of a collective bargaining agreement; or (ii) any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.”

The Authority interprets the term “grievance” for formal discussion purposes in light of its broad statutory definition.⁵⁵ Grievances at both the initial and informal stages of a grievance procedure have been found to be “grievances” for formal discussion purposes.⁵⁶ Moreover, a meeting can “concern” a grievance “even where it [does] not directly involve a grievant, such as where it was held to interview witnesses scheduled to testify in a grievance arbitration hearing.”⁵⁷ The Authority has rejected the argument that affording union representational rights during interviews conducted by the agency’s attorneys would offend the attorney work product privilege, noting that “nothing in our decision requires an agency attorney to disclose to a union his or her thoughts or impressions, whether written or otherwise, resulting from the interview.”⁵⁸

⁵⁵ *Tyndall AFB, 66 FLRA at 259*.

⁵⁶ *FCI Bastrop, 51 FLRA at 1344-45* (manager’s meeting with employee and his supervisor to direct them to “quit acting like children” and to go back to work concerned a grievance on grounds that it “was not simply a counseling session, but was in response to the Union’s efforts under the parties’ CBA to informally resolve the differences which were the subject of a potential grievance”); see also *INS, Rosedale, 55 FLRA at 1035-37* (meeting concerned a “grievance” where it related to an employee’s work assignments and job performance that had been the subject of a counseling session and culminated in employee’s removal, and where the employer was on notice that the union had attempted to file an informal grievance on the employee’s behalf).

⁵⁷ *Tyndall AFB*, 66 FLRA at 260 (citing *VA, N. Little Rock*, 63 FLRA at 172); see also *Dep’t of the Air Force, Sacramento Air Logistics Ctr., McClellan AFB, Cal.*, 35 FLRA 594, 605-06 (1990) (*McClellan AFB*) (same conclusion with respect to telephone and office interviews by agency’s counsel of union’s designated witness for an arbitration).

⁵⁸ *McClellan AFB*, 35 FLRA at 607 (“The Respondent has not cited any provision of the Statute or its legislative history which demonstrates that Congress intended to exclude from the coverage of section 7114(a)(2)(A) formal discussions which involve interviews by agency attorneys of unit employees who are known to be scheduled to testify for the union in upcoming third-party proceedings.”); see also *VAMC, Denver, Colo.*, 44 FLRA 768, 770 (1992) (same), *aff’d*, *VA v. FLRA*, 3 F.3d 1386 (10th Cir. 1993); *CBP, El Paso*, 62 FLRA at 244-47 (concerns over the attorney work product privilege did not justify agency’s exclusion of the union’s president as its representative at a pre-arbitration interview).

⁵⁹ *Tyndall AFB*, 66 FLRA at 260 (noting, without deciding, the ALJ’s undisputed finding that the call to security constituted a “grievance”).

A matter does not have to be subject to the negotiated grievance procedure to be considered a “grievance.” For instance, a meeting to discuss the placement of an employee on administrative leave because she called security to complain of harassment was found to constitute a formal discussion because it concerned a “grievance” within the meaning of the Statute.⁵⁹ On the other hand, the Authority has held that a meeting requested by an employee to present an oral reply to a proposed suspension did not concern a “grievance” because no adverse action had yet been taken, and the meeting did not involve application of the parties’ contractual grievance procedure.⁶⁰ In another case, the Authority concluded that interviews of employees for the purpose of investigating and rendering a decision on a grievance did not constitute formal discussions.⁶¹

c. MSPB Appeals

The term “grievance” also encompasses statutory appeals filed by bargaining unit members,⁶² including MSPB appeals.⁶³ Thus, interviews of bargaining unit employees by agency representatives to prepare for an MSPB hearing,⁶⁴ as well as formal depositions related to MSPB appeals,⁶⁵ constitute “formal discussions” for which the union has the right to be present.

Settlement discussions related to a bargaining unit employee’s MSPB appeal also constitute “formal discussions.”⁶⁶ However, MSPB hearings, and federal court hearings related to MSPB cases, do not constitute “formal discussions” because these proceedings “are not conducted by agency representatives” but are instead “controlled by administrative or Federal judges.”⁶⁷

The Authority has held that an MSPB appeal filed by a supervisory or management official is not a “grievance” within the meaning of the Statute. In that same decision, however, the Authority concluded that the union had the right to representation at discussions with unit employees in preparation for a hearing on the claim because employees were asked whether the supervisor or other employees had told jokes of a sexual nature or had misused government vehicles – and were otherwise asked about the “atmosphere that existed in the office” – since these questions concerned their “conditions of employment.”⁶⁸

⁶⁰ *FCI Ray Brook*, 29 FLRA at 590-91.

⁶¹ *SSA*, 18 FLRA 42, 46 (1985) (“Here, the meetings between the management representative and the employees were not formal discussions under the steps of the grievance procedure, but instead were examinations of unit employees in connection with an investigation by management for the purpose of making a decision in the grievance,” which the Authority concluded should instead be evaluated under section 7114(a)(2)(B)).

⁶² *Luke AFB II*, 58 FLRA at 533.

⁶³ *FCI Ray Brook*, 29 FLRA at 589-90; *NTEU v. FLRA*, 774 F.2d 1181(D.C.Cir. 1985).

⁶⁴ *VAMC, Denver*, 44 FLRA 408, 408 (1992), *aff’d*, *VA v. FLRA*, 3 F.3d 1386 (10th Cir. 1993); *see also VAMC, Long Beach, Cal.*, 41 FLRA at 1379-80 (same conclusion with respect to telephone interviews).

⁶⁵ *INS, El Paso*, 47 FLRA at 183-84.

⁶⁶ *GSA, Region 9*, 48 FLRA 1348, 1355 (1994) (meeting with an employee, her attorney, and an agency representative to discuss settlement of an MSPB complaint that resulted in a last chance agreement constituted a formal discussion by its “very nature”), *following remand*, 53 FLRA 925 (1997); *see also DOL, Chi.*, 32 FLRA at 471

(meeting with employee and his lawyer pursuant to an MSPB settlement to discuss the employee’s position responsibilities and conduct upon reinstatement constituted a formal discussion).

⁶⁷ *INS, El Paso*, 47 FLRA at 183 n.6.

⁶⁸ *GSA*, 50 FLRA at 404.

The Authority has rejected the argument that the presence of a union representative at agency interviews in preparation for an MSPB hearing was inconsistent with the Freedom of Information Act (FOIA), the Privacy Act or the agency’s attorney-client or attorney work product privilege.⁶⁹

d. EEO Complaints

Formal EEO complaints constitute “grievances” within the meaning of section 7114(a)(2)(A).⁷⁰ Accordingly, settlement and mediation conferences related to EEO complaints constitute “formal discussions” for which the union has the right to be represented.⁷¹

It should be noted, however, that the Authority’s conclusion in this regard has not been uniformly adopted by the federal circuit courts. Specifically, the Ninth Circuit Court of Appeals reversed the Authority’s conclusion on this issue, holding instead that a unit member’s EEO complaint was not a “grievance” because it was brought pursuant to EEOC procedures, which are “discrete and separate” from the grievance process. In support of this conclusion, the Ninth Circuit noted that the parties’ collective bargaining agreement explicitly excluded discrimination claims from the grievance procedure.⁷²

The U.S. Court of Appeals for the D.C. Circuit, however, has endorsed the Authority's approach, finding that a formal EEO complaint constituted a "grievance," even where the parties' bargaining agreement explicitly excluded discrimination claims.⁷³ The Authority has reiterated this position in several subsequent decisions.⁷⁴

⁶⁹ *VAMC, Long Beach, Cal.*, 41 FLRA at 1381-82. The Authority found that neither the Privacy Act nor FOIA is applicable to the pre-hearing investigation. Further, it rejected the agency's assertion, based on *Upjohn v. United States*, 449 U.S. 383 (1981), that the union's presence at the interviews would violate the attorney-client privilege because the employees "were not interviewed in their capacity as representatives of the [agency], nor about actions they had taken in the course of their official duties." *Id.* at 1382. It rejected the agency's assertion of attorney work product privilege for the same reasons set forth in *McClellan AFB*, 35 FLRA at 607-08.

⁷⁰ *Dep't of the Air Force, 436th Airlift Wing, Dover AFB, Dover, Del.*, 57 FLRA 304, 308 (2001) (*Dover AFB*) (employee's formal EEO complaint "that he was a victim of illegal discrimination by his employing agency is undeniably a complaint by [an] employee concerning [a] matter relating to [his employment], i.e., a grievance under the Statute's definition"), *aff'd*, *Dep't of the Air Force, 436th Airlift Wing, Dover AFB v. FLRA*, 316 F.3d 280 (D.C. Cir. 2003).

⁷¹ *Marine Corps Logistics Base, Barstow, Cal.*, 52 FLRA 1039, 1048 (1997) (EEO settlement conference); *Dover AFB*, 57 FLRA at 308-10 (EEO mediation session); *Dep't of the Air Force, Davis-Monthan AFB*, 64 FLRA 845, 849 (2010) (*Davis-Monthan AFB*) (EEO ADR/mediation conference).

⁷² *Luke AFB*, 208 F.3d 221 (9th Cir. 1999) (unpublished), *reversing Luke AFB*, 54 FLRA 716.

⁷³ *Dep't of the Air Force, 436th Airlift Wing, Dover AFB v. FLRA*, 316 F.3d 280, 287 (D.C. Cir. 2003).

⁷⁴ *Luke AFB II*, 58 FLRA at 533 ("we respectfully disagree with the Ninth Circuit's determination to the contrary that the formal discussion right ... does not apply to complaints filed under EEOC's statutory procedure because they are discrete and separate from the grievance process"); *SSA, OHA, Bos.*, 59 FLRA at 880 (noting that the Authority "has already addressed and resolved this issue"); *Davis-Monthan AFB*, 64 FLRA at 849 ("although the Ninth Circuit

The Authority has rejected the argument that the union's presence at discussions involving EEO complaints conflicts with EEOC regulations, the Privacy Act, the Administrative Dispute Resolution Act, "and other statutes and regulations that protect the confidentiality of certain information and records."⁷⁵ It has held, however, that a "direct" conflict of interest between the union's institutional rights and the employee's rights to confidentiality in mediation and settlement discussions must be resolved in favor of the employee.⁷⁶ Moreover, the D.C. Circuit Court has "not foreclose[d] the possibility that an employee's objection to union presence could create a 'direct' conflict that should be resolved in favor of the employee."⁷⁷

In applying these principles, the Authority has found that an employee's objection to the union's presence because it would be a "waste of time" did not "establish the requisite direct conflict," where the employee testified that his objection "was not based on any concerns over confidentiality, privacy interests, or that the Union's presence would disrupt the mediation process."⁷⁸ It has also rejected the argument that the union's prior representation of alleged wrongdoers in unrelated hostile work environment claims justified excluding the

union in an EEO mediation session.⁷⁹

The right to representation also attaches to investigative interviews associated with EEO complaints.⁸⁰ Indeed, the Authority has found representational rights related to EEO complaints even where the employee who filed the complaint did not designate the union as his or her representative in the case,⁸¹ and where the parties have excluded discrimination claims from the scope of their negotiated grievance procedure.⁸²

agrees with the Respondent's position ... the D.C. Circuit and the Authority have repeatedly rejected this approach and have held that a formal EEO complaint is a grievance within the meaning of § 7114(a)(2)(A)").

⁷⁵ *Dep't of Agric., Forest Serv., Los Padres Nat'l Forest, Goleta, Cal.*, 60 FLRA 644, 651-53 (2005) (*Los Padres Nat'l Forest*); *Luke AFB II*, 58 FLRA at 534-36.

⁷⁶ *Luke AFB II*, 58 FLRA at 535 & n.13 (citing *NTEU v. FLRA*, 774 F.2d 1181, 1189 n.12 (D.C.Cir. 1985)).

⁷⁷ *Dep't of the Air Force, 436th Airlift Wing, Dover AFB*, 316 F.3d at 287.

⁷⁸ *Davis-Monthan AFB*, 64 FLRA at 850.

⁷⁹ *Los Padres Nat'l Forest*, 60 FLRA at 653; see also *Luke AFB II*, 58 FLRA at 535 n.14 (finding that the employee's "demonstrated willingness to discuss her complaint with, and to seek advice from, the Union regarding proposed terms of the settlement agreement strongly indicates that the employee would not have objected to the Union's presence at the mediation and settlement discussions on confidentiality grounds").

⁸⁰ *SSA, OHA, Bos.*, 59 FLRA at 879-80 (interviews conducted by agency's EEO contractor); *PBGC, Wash., D.C.*, 62 FLRA at 222 (EEO contractor's interviews with eleven bargaining unit employees).

⁸¹ *Los Padres Nat'l Forest*, 60 FLRA at 653 ("[t]he employee's choice of personal representative under the EEOC regulations does not have any bearing on the separate right of the Union to attend such mediation hearings").

⁸² *Id.*, 60 FLRA at 651 ("the statutory definition of a grievance is not dependent on the scope of a negotiated grievance procedure").

Not all discussions related to EEO complaints, however, constitute "formal discussions." The union's representation right only applies to formal discussions of EEO complaints brought by employees within its bargaining unit. Thus, the right does not attach to complaints "filed by an employee who was not in the unit represented by the Union at the time of the events giving rise to the complaint or at the time of the filing of the complaint."⁸³ Moreover, the Authority has indicated that the representation right would not attach to discussions related to EEO claims at the "pre-complaint" counseling stage.⁸⁴ In distinguishing between informal and formal complaints, the Authority has explained that "[u]nder EEOC regulations and directives, the formal EEO complaint process begins with the filing of a formal complaint after the issuance of the notice of right to file a discrimination complaint."⁸⁵

e. Unfair Labor Practice Complaints

Unfair labor practice complaints fall within the statutory definition of a “grievance” as it applies to section 7114(a)(2)(B).⁸⁶ Accordingly, an interview by an agency attorney of a bargaining unit employee in preparation for an upcoming unfair labor practice hearing constitutes a “formal discussion” at which the union is entitled to be represented.⁸⁷

⁸³ *NRC*, 29 FLRA at 662-63, 665 (noting, however, that if the settlement of the complaint “results in a change in unit employees’ conditions of employment, an agency is obligated to give prompt notice of the change to the exclusive representative of the unit employees and to provide the union with an opportunity to bargain to the extent required by the Statute”).

⁸⁴ *SSA, Field Operations, NY Region*, 16 FLRA 1021, 1022 n.1 (1984), *overruled on other grounds*, *Luke AFB*, 54 FLRA at 729; *Marine Corps Logistics Base, Barstow*, 52 FLRA at 1046 (distinguishing pre-complaint meeting at issue in *IRS, Fresno* from discussion involving formal EEO complaint in part because “at the precomplaint stage, the EEO counselor is prohibited from revealing the identity of a person consulting him”).

⁸⁵ *Los Padres Nat’l Forest*, 60 FLRA at 649 (rejecting agency’s argument that complaint was not “formal” until it issued a letter acknowledging acceptance of the complaint).

⁸⁶ *Warren AFB II*, 31 FLRA at 552.

⁸⁷ *Id.* at 551-52.

⁸⁸ *Dep’t of the Air Force, Sacramento Air Logistics Ctr., McClellan AFB (McClellan AFB II)*, 29 FLRA 594, 605. The Authority affirmed this principle in *CBP, El Paso*, 62 FLRA at 244, further concluding that the agency’s interference with the union’s choice of representative was not justified under the “special circumstances” exception it has applied to the union’s designation of representatives under section 7114(a)(2)(B) of the Statute, which pertains to investigatory examinations. This exception is more fully discussed in the section of this Guidance addressing “Investigatory Examinations”.

D. Notice of the Meeting

Section 7114(a)(2)(A) of the Statute requires an agency to notify the union in advance of a formal discussion so the union has an opportunity to choose its own representative.⁸⁸ The Authority has emphasized that the right to designate its own representative is “of considerable practical importance to the union,” insofar as it “may decide to choose a representative who would be unaffected by the matters to be discussed at the meeting or one who is outside the direct supervisory chain of those conducting the meeting.”⁸⁹ Thus, if the union has designated a representative for a grievance arbitration hearing, an agency violates the statute by failing to provide the designated representative with notice regarding its interview of a bargaining unit employee who is scheduled to be a witness at the hearing.⁹⁰

Where a union official receives actual notice of a formal meeting, but not formal notice “as a union representative,” the Authority will determine whether the actual notice was sufficient to provide the union with the opportunity to be represented at the meeting, including the opportunity to designate a representative of its own choosing.⁹¹ Thus, the Authority has held

that notice of a formal meeting provided to a union steward by virtue of his attendance at the meeting as an employee did not satisfy the notice requirement where the union president, who was normally notified of formal discussions, did not receive notice of the meeting.⁹² Similarly, the Authority affirmed an arbitrator's finding that notice of a formal meeting to the union's local representative was not sufficient where the union had a contractual right to determine whether to send a national or other representative to formal meetings.⁹³ In another case, the Authority held that the burden of informing the union of a mediation session regarding an EEO complaint did not shift to the complainant bargaining unit member simply because he had chosen to be represented in the matter by a union representative.⁹⁴

Upon receiving notice of a formal discussion, the union may waive its right to be represented at the discussion if the waiver is "clear and unmistakable." Applying this standard, the Authority found that a union waived its statutory right to be represented at certain formal discussions involving unit employees when, upon being provided with detailed notice of the discussions, it told management that it did not need to know about these meetings.⁹⁵ On the other hand, the exclusion of EEO disputes from the parties' negotiated grievance procedure does not equate to a waiver of the union's interest in being represented at formal discussions involving EEO complaints.⁹⁶

⁸⁹ *McClellan AFB II*, 29 FLRA at 605.

⁹⁰ *Id.* at 606 (holding that notice to the bargaining unit witness was not sufficient because he was "the bargaining unit employee involved in the formal discussion, so it is not at all clear he could have adequately represented the Union's interests"); see also *Dep't of the Air Force, 63rd Civil Engineers Squadron, Norton AFB*, 22 FLRA 843, 847 (1986) (union's interest cannot be adequately represented at a formal meeting to discuss a grievance where the union representative is the grievant and therefore would be "placed in the position of representing himself in his own grievance").

⁹¹ *McClellan AFB II*, 29 FLRA at 605-06; see also *GSA, Region 9, L.A., Cal.*, 56 FLRA 683, 685 (2000) (same).

⁹² *Dep't of Treasury, Customs Serv., Miami, Fla.*, 29 FLRA 610, 614 (1987).

⁹³ *GSA, Region 9, L.A., Cal.*, 56 FLRA at 685.

⁹⁴ *Luke AFB*, 54 FLRA at 722-723 n.6 (concluding that the attendance of the union representative at an earlier mediation session did not relieve the agency of its obligation to inform the union of future sessions).

⁹⁵ *NLRB*, 46 FLRA 107, 110 (1992).

⁹⁶ *Dover AFB*, 57 FLRA at 309-10 (noting that the union might have agreed to exclude such matters "in order to avoid the expenditure of resources required to process an EEO grievance to arbitration").

E. Union Participation in the Meeting

The union's right to be represented at formal discussions "means more than merely a right to be present," and encompasses the right to "comment, speak and make statements," so long as the representative does not take charge of, usurp, or disrupt the meeting.⁹⁷ The extent of the union's participation is governed by "a rule of reasonableness, which requires that there be respect for orderly procedures and that the comments be related to the subject matter addressed by the agency representative(s) at the meeting."⁹⁸ For example, an agency violated

the Statute when its management representative interrupted the union's representative several times when he attempted to explain his understanding of new procedures related to a reorganization.⁹⁹ An agency was also found to violate the Statute by not allowing a union representative to comment regarding the compressed work schedule being discussed at a formal meeting.¹⁰⁰

A union representative is bound by confidentiality rules that apply to the meeting or proceeding, such as those imposed by the Administrative Dispute Resolution Act or EEOC regulations.¹⁰¹ Moreover, when formal discussions occur in the course of statutory appeals procedures, the union's institutional role is "obviously more restricted than its role in a negotiated grievance procedure."¹⁰² For example, in determining the role of the union representative during depositions related to an MSPB complaint, the Authority relied upon federal procedural rules to conclude that the union had the right to be present but not to "actively participate at the deposition."¹⁰³

F. Remedies for Formal Discussion Violations

To address violations of section 7114(a)(2)(A), the Authority routinely orders the respondent agency (1) to commence providing the union with advance notice and the opportunity to be represented at formal discussions; and (2) to post a remedial notice.¹⁰⁴

⁹⁷ *Nuclear Regulatory Comm'n*, 21 FLRA 765, 767-68 (1986).

⁹⁸ *Id.* at 768 (noting further that the Authority will "consider the purpose of the meeting ... and all of the surrounding circumstances in determining the extent of a union representative's right to participate").

⁹⁹ *Id.*

¹⁰⁰ *New Cumberland Army Depot*, 38 FLRA at 677.

¹⁰¹ *Luke AFB II*, 58 FLRA at 535-36 (finding no indication in the record "that the Union would have objected to or failed to comply with any confidentiality requirements imposed by the mediator").

¹⁰² *NTEU v. FLRA*, 774 F.2d 1181, 1188 (D.C.Cir. 1985).

¹⁰³ *INS, El Paso*, 47 FLRA at 187.

¹⁰⁴ See, e.g., *Luke AFB II*, 58 FLRA at 536; see also *FAA, Airways Facilities Division, Nw. Mountain Region, Wash.*, 60 FLRA 819, 821 (2005) (rejecting agency's argument that order should not specifically reference the opportunity to be represented at "discussions to mediate settlement of formal EEO complaints filed by bargaining unit

employees" on grounds that "it is appropriate to set forth this level of detail ... to ensure that the Respondent avoids committing a similar unfair labor practice in the future").

Under limited circumstances, the Authority has also ordered the agency to repeat the meeting to enable the union to ask questions and make comments as if it had been given notice of the meeting and an opportunity to actively participate. For instance, where the agency violated the Statute by denying the union's request to attend a meeting with a bargaining unit member to discuss his performance standards following his reinstatement pursuant to an MSPB

settlement, the Authority required the agency, upon the request of the union, to repeat the meeting in the presence of the union’s representative.¹⁰⁵ In another case, however, the Authority declined to order remedial training of supervisors who conducted formal discussions in violation of section 7114(a)(2)(A) because the supervisors’ actions were not based on “ignorance of obligations under the Statute” – insofar as the “state of the law” was not settled at the time of the formal discussions – and it was not otherwise apparent how the training would effectuate the purpose and policies of the Statute.¹⁰⁶

¹⁰⁵ *DOL, Chi.*, 32 FLRA at 472-73 (noting the union’s “obvious interest” in a meeting where “the job description, performance elements and performance standards of a position in the unit,” as well as the employee’s use of official time and the union’s office, were discussed).

¹⁰⁶ *VAMC, Phx., Ariz.*, 52 FLRA 182, 186 (1996) (also rejecting a request that the supervisors who committed the violations be specifically named in the posted notice).

II. Investigatory Examinations

A. Statutory Authority

Section 7114(a)(2) of the Statute provides:

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

(B) 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.

B. Purpose of the Right

The union’s right under the Statute to be represented at investigatory examinations is based on the similar right of private sector employees that was established by the Supreme Court in *NLRB v. J. Weingarten, Inc.*, 420 U.S. 251 (1975) (*Weingarten*). When enacting the Statute, Congress modeled section 7114(a)(2)(B) after the Court’s holding in *Weingarten* and, as a result, the term “Weingarten rights” is commonly used in the federal sector when referencing the union’s right to be present at an investigatory interview. The Statute’s legislative history “demonstrates that this statutory requirement is intended to provide rights to Federal sector bargaining unit employees consistent with those” provided by the *Weingarten* decision.¹⁰⁷

¹⁰⁷ *BOP, Office of Internal Affairs, Wash., D.C. & Aurora, Colo. & BOP, FCI Englewood, Littleton, Colo.*, 54 FLRA 1502, 1509 (1998) (*FCI Englewood*), citing *Legislative History of the Federal Service Labor-Management Relations Statute, Title VII of the Civil Service Reform Act of 1978* (Comm. Print 1979) (*Legislative History*) at 926; see also *NASA v.*

FLRA, 527 U.S. 229, 236 (1999) (“Congress’ specific endorsement of a Government employee’s right to union representation by incorporating it in the text of the FSLMRS gives that right a different foundation than if it were merely the product of an agency’s attempt to elaborate on a more general provision in light of broad statutory purposes”); cf. *INS, N.Y. Dist. Office, N.Y.C., N.Y.*, 46 FLRA 1210, 1218 (1993) (*INS, N.Y.C.*) (noting “that the legislative history of section 7114(a)(2)(B) also reflects Congressional recognition that the right to representation might evolve differently in the private and Federal sectors and that NLRB decisions would not necessarily be controlling in the Federal sector”).

The Supreme Court’s decision in *Weingarten* was based upon the premise that when an employee is questioned during an investigatory examination which the employee perceives may result in discipline, the employee “may be too fearful or inarticulate to relate accurately the incident being investigated, or too ignorant to raise extenuating factors,” and that a “knowledgeable union representative could assist the employer by eliciting favorable facts, and save the employer production time by getting to the bottom of the incident occasioning the interview.”¹⁰⁸ The Court also reasoned that by attending the interview, the exclusive representative “protects ‘the interests of the entire bargaining unit’” and “is able to exercise ‘vigilance to make certain that the employer does not initiate or continue a practice of imposing punishment unjustly.’”¹⁰⁹ The Authority has concluded that the “purposes underlying the *Weingarten* right in the private sector – promoting a more equitable balance of power and preventing unjust disciplinary actions and unwarranted grievances – also apply to the right to representation created by section 7114(a)(2)(B).”¹¹⁰

C. Elements of a Section 7114(a)(2)(B) Claim

In order for the representational right under section 7114(a)(2)(B) to be triggered, the following elements must be satisfied: (1) the meeting must be an examination of an employee by a representative of the agency; (2) in connection with an investigation; (3) the employee must reasonably believe that the examination may result in disciplinary action against the employee; and (4) the employee must request representation.¹¹¹ Each of the above-listed elements is discussed in greater detail below.

1. Participants in the Meeting

a. *Employee in the Unit*

Representational rights under section 7114(a)(2)(B) are limited to employees in an appropriate unit. It is the employee’s bargaining unit status at the time of the investigatory examination – rather than his or her bargaining unit status during the events giving rise to the examination – which determines the *Weingarten* right.¹¹² The Authority has applied section 7114(a)(2)(B) rights to probationary employees.¹¹³

b. Representative of the Agency

In most situations, the agency representative who conducts an investigatory examination will be the first or second level supervisor or a manager from the same agency or organization as the employee being investigated. In these types of situations, there usually is no disagreement about whether an agency representative participated in the meeting.

¹⁰⁸ *DOJ, BOP, Safford, Ariz.*, 35 FLRA 431, 439 (1990) (*BOP Safford*) (quoting *Weingarten*, 420 U.S. at 262-63).

¹⁰⁹ *FCI Englewood*, 54 FLRA at 1509 (quoting *Weingarten*, 420 U.S. at 260-61).

¹¹⁰ *BOP Safford*, 35 FLRA at 439-40.

¹¹¹ *DOI, Bureau of Land Mgmt., Eugene Dist., Portland, Or.*, 68 FLRA 178, 181 (2015) (*BLM Portland*).

¹¹² *Dep't of Navy, Charleston Naval Shipyard, Charleston, S.C.*, 32 FLRA 222, 228-31 (1988) (*Charleston Shipyard*) (where employee was on detail to a position represented by AFGC during events giving rise to the investigation, but was represented by FEMTC during the examination, the employer violated the statute by refusing to allow an FEMTC representative to be present at the examination). The Authority distinguished this outcome from its decision in *Nuclear Regulatory Comm'n*, 29 FLRA 660 (1987), which was decided under section 7114(a)(2)(A).

¹¹³ *VAMC, Jackson, Miss.*, 48 FLRA 787, 797-98 (1993) (*VAMC Jackson*) (“We find no basis on which to conclude that the employees’ status as probationers affects their statutory rights as Federal employees under section 7114(a)(2)(B). Nothing in the Statute or legislative history indicates that the rights afforded by section 7114(a)(2)(B) are based on an employee’s tenure status.”), *rev’d on recons. on other grounds*, 49 FLRA 171 (1994).

A parent agency is responsible for the actions of investigators it employs and utilizes to investigate its employees.¹¹⁴ This is true even where the investigators receive direction and oversight by outside entities,¹¹⁵ or where investigators from a separate component or a different regional office within the agency are utilized.¹¹⁶ The Supreme Court has affirmed the Authority’s position that an agency may be held responsible for the actions of investigators employed by its Office of Inspector General (OIG) when examining the agency’s bargaining unit employees, even though OIG investigators operate with significant autonomy within agencies. The Court rejected the argument that section 7114 rights do not apply to such examinations because the investigators are not employed by the same entity within the agency that collectively bargains with the union.¹¹⁷ The Authority has applied this principle to both civil and criminal OIG investigations.¹¹⁸

¹¹⁴ *DOL, Mine Safety & Health Admin.*, 35 FLRA 790, 802-03 (1990) (*DOL, MSHA*) (investigator from the agency’s Office of Inspector General acted as agency’s representative).

¹¹⁵ *DOJ, INS Border Patrol, El Paso, Tex.*, 36 FLRA 41, 50 (1990) (*INS, El Paso*) (“Because the [Office of Professional Responsibility] investigators are employed by the INS, as is [the interviewed employee], and were questioning [the employee] regarding possible misconduct on the part of agency employees in connection with their work, the fact that they were questioning [the employee] under the direction and oversight of a U.S. Attorney does not affect our determination that they were acting as representatives of the Agency”), *remanded sub nom. on other grounds*, *INS, El Paso v. FLRA*, 939 F.2d 1170 (5th Cir. 1991).

¹¹⁶ *IRS, Wash., DC & Hartford Dist. Office*, 4 FLRA 237, 245-48 (1980) (*IRS, Hartford*), *enf’d sub nom. IRS, Hartford v. FLRA*, 671 F.2d 560 (D.C. Cir. 1982); see also *DOD, Def. Criminal Invest. Serv., DLA*, 28 FLRA

1145, 1149-50 & n.2 (1987) (holding the Department of Defense responsible for the actions of investigators employed by the Defense Criminal Investigative Service (DCIS), a component of its OIG, even where the employees being interviewed were employed by the DLA, a separate component within DOD, on grounds that “[a]n organizational entity of an agency not in the same ‘chain of command’ as the entity at the level of exclusive recognition violates section 7116 of the Statute by unlawfully interfering with the rights of employees other than its own”), *enf’d sub nom. DCIS v. FLRA*, 855 F.2d 93 (3d Cir. 1988).

¹¹⁷ *NASA*, 527 U.S. at 237-43 (1999) (rejecting agency’s argument that the OIG’s independence under the Inspector General Act rendered the OIG’s employees incapable of acting as agency representatives).

¹¹⁸ *DOJ, Wash., DC*, 56 FLRA 556, 560 (2000) (the relationship between the Office of Inspector General and the agency discussed in *NASA*, 527 U.S. 229 does not change when a criminal matter is investigated).

¹¹⁹ *Dep’t of Air Force, Ogden Air Logistics Ctr., Hill AFB, Utah*, 36 FLRA 748, 764 (1990) (*Hill AFB*); see also *Lackland AFB Exch., Lackland, AFB, Tex.*, 5 FLRA 473 (1981) (*Lackland AFB*) (subordinate activity held responsible for conduct of OSI investigators where it worked closely with the investigators during the investigation and used their work product for its own purposes); but see *Hill AFB*, 68 FLRA 460, 464-65 (2015) (holding that AFOSI investigators cannot act as representatives of an agency under section 7114(a)(2)(B) by virtue of their

A subordinate activity can also be held responsible for the actions of investigators employed by another entity with the same agency so long as there is significant collaboration between the activity and the investigators with respect to the investigation. For example, the Authority has held subordinate activities responsible for the conduct of investigators from an agency’s Office of Special Investigations (OSI) where there was “close collaboration” during the investigation between the activities and the OSI, including coordination regarding interview questions and the sharing of results and other work product.¹¹⁹ Conversely, the Authority concluded that an activity was not responsible for the conduct of investigators from its agency’s OIG where the activity’s involvement was generally limited to referring the matter to the OIG and arranging the interview schedules, and it did not provide substantive input into the conduct of the investigation.¹²⁰

An agency can also be held liable for *Weingarten* violations committed by investigators employed by a separate federal agency where it is shown that the investigators were performing a function of the agency by conducting the examination, and the agency exercised sufficient control over the investigators’ actions during the examination.¹²¹ The Authority has concluded, however, that investigators employed by agencies or activities excluded from coverage of the Statute by virtue of an Executive Order issued under section 7103(b)(1) of the Statute do not act as “representatives” of an agency when conducting investigatory examinations, and that section 7114(a)(2)(B) therefore does not apply to such examinations.¹²²

c. *Representative of the Union*

The exclusive representative has the right to designate its representatives when fulfilling its responsibilities under section 7114(a)(2)(B) and – absent “special circumstances” – an agency violates the Statute when it refuses to honor the union’s designation of a representative.¹²³ The union has the right to choose which individual will serve as its representative at a particular examination, and it may designate its attorney to serve as a *Weingarten* representative.¹²⁴ Because the representation right belongs to the union, an agency cannot cure its failure to provide requested union representation by instead offering

to provide the employee with legal counsel during the examination.¹²⁵

exclusion from the Statute's provisions pursuant to Executive Order 12,171), *appeal docketed*, No.15-9542 (10th Cir. June 9, 2015).

¹²⁰ *DOJ, BOP, FCI Forrest City, Ark.*, 57 FLRA 787, 790 (2002) (holding that sufficient level of collaboration requires an "active and continuing effort by the activity to be involved in the investigation").

¹²¹ *NTEU*, 66 FLRA 506, 510-11 (2012) (OPM investigators acted as the agency's representatives when conducting background investigations for which the agency was primarily responsible, and which OPM performed by virtue of authority delegated from the agency, but not when conducting suitability determinations, which is an OPM function independent of agency control), *review denied sub nom. NTEU v. FLRA*, 754 F.3d 1031 (D.C.Cir. 2014).

¹²² *Hill AFB*, 68 FLRA at 464-65 (because AFOSI's exclusion from the Statute under Executive Order 12,171 "preclude[s] finding AFOSI to be a 'representative of the [A]gency' under § 7114(a)(2)(B) of the Statute," conduct of AFOSI investigators could not form the basis of a *Weingarten* violation).

¹²³ *FCI Englewood*, 54 FLRA at 1512-13.

¹²⁴ *Fed. Prison Sys., FCI Petersburg, Va.*, 25 FLRA 210, 212 (1987) (*FCI Petersburg*).

¹²⁵ *Lackland AFB*, 5 FLRA at 486-87.

¹²⁶ *FCI Englewood*, 54 FLRA at 1513.

An agency may prohibit a particular representative from representing the employee if it can demonstrate "special circumstances" that justify precluding that particular individual from serving as a representative. The "special circumstances" exception, however, is narrowly construed "to preserve the union's normal prerogatives."¹²⁶ Applying this standard, the Authority has held that an agency was justified, in order to "preserve the integrity of [the] investigation," in refusing to accept the union's designated representative because he was a witness to the incident under investigation who had yet to be interviewed.¹²⁷ An agency may also deny the union's choice of representative where the representative is the subject of the investigation because "the subject of an investigation, unlike a witness, has a direct stake in the outcome of the investigation."¹²⁸ The Authority has also favorably noted NLRB precedent holding that an employer may deny the union's choice of representative because the representative engaged in obstructive behavior during an earlier investigative examination.¹²⁹

Whether an agency must postpone an examination because a particular union representative is not available depends upon such factors as the reason for the representative's unavailability; the availability of other capable representatives; and the impact of postponing the investigation.¹³⁰ Applying these factors, the Authority has held that an agency did not violate section 7114(a)(2)(B) when it refused to postpone investigatory interviews due to the unavailability of the union's designated representatives, where the interviews were scheduled a week in advance, the inability of the designated representatives to attend the interviews was not caused by any agency action but rather "resulted from the Union's decision to have the officers attend other functions," and the agency did not otherwise interfere with the Union's ability to designate another representative to attend the interviews.¹³¹

2. An Examination in Connection with an Investigation

a. Governing Factors

The right to representation under section 7114(a)(2)(B) only applies to an examination in connection with an investigation. Because the term "examination" is not defined by the Statute, the Authority examines the totality of circumstances surrounding each particular meeting and considers such factors as whether the meeting was: (1) designed to ask questions and solicit information from the employee; (2) conducted in a confrontational manner; (3) designed to secure an admission from the employee of wrongdoing; and/or (4) designed for the employee to explain his/her conduct.¹³²

¹²⁷ *FCI Petersburg*, 25 FLRA at 211. This exception does not apply, however, if the union representative's examination as part of the investigation had been completed. *FCI Englewood*, 54 FLRA at 1513 (the "mere fact that the chief steward was a witness to the incident under investigation alone is not enough to warrant precluding her from serving as the Union's representative," where the agency failed to show how this would harm the integrity of its investigation).

¹²⁸ *Dep't of Treasury, Customs Serv., Customs Mgmt. Ctr., Ariz.*, 57 FLRA 319, 322 (2001) (*Customs Serv., Ariz.*).

¹²⁹ *FCI Englewood*, 54 FLRA at 1512 (citing *N.J. Bell Tel. and Local 827*, *IBEW*, 308 NLRB 277, 282 (1992)).

¹³⁰ *INS, N.Y.C.*, 46 FLRA at 1222-23.

¹³¹ *Id.* (noting, however, that a postponement "would have better served all parties' interests"); see also *FCI Englewood*, 54 FLRA at 1512 (agency not required to postpone an examination to accommodate the attendance of the union's off-site designated representative where an on-site representative was available to attend the examination).

¹³² See, e.g., *DOJ, BOP, Metro. Corr. Ctr., N.Y.C., N.Y.*, 27 FLRA 874, 879 (1987) (*Metro. Corr. Ctr.*) (agency sought information from the employee about previous statements to management and asked for explanations of inconsistencies); see also *Dep't of Navy, U.S. Marine Corps Logistics Base, Albany, Ga.*, 4 FLRA 397, 403 (1980) (employee questioned about absences); *Lackland AFB*, 5 FLRA at 485 (employee questioned about cash shortages);

A meeting or hearing need not be mandatory to be considered an "examination" so long as it constitutes the employee's chance to be heard on the matter being investigated.¹³³ Unlike the representational rights related to formal discussions, the right to representation under section 7114(a)(2)(B) is "not contingent upon the subject matter of the examination – that is, whether it concerns a grievance, personnel policy or practice, or other general condition of employment."¹³⁴ An "examination" may relate to either a criminal or civil investigation.¹³⁵

Moreover, an examination does not have to occur on-site, nor does it have to occur on the employee's duty time, to implicate representational rights.¹³⁶ An "examination" can also take place via telephone¹³⁷ or pursuant to a request for a written response.¹³⁸ The Authority has held, however, that an agency's covert monitoring of an employee's telephone conversations with a customer did not constitute an "examination" because "there was no direct questioning or examination of the employee by agency management," and the employee did not feel compelled to respond to questions posed during the conversations.¹³⁹ On the other hand, an employee's questioning of another employee at the insistence of a special agent who was investigating the employee's misconduct "plainly" constituted an "examination"

where the questions were provided by the special agent for purposes of the investigation.¹⁴⁰

FAA, St. Louis Tower, Bridgeton, Mo., 6 FLRA 678, 686 (1981) (*FAA, Bridgeton*) (employee questioned about use of abusive language).

¹³³ *AFGE, Local 1941 v. FLRA*, 837 F.2d 495, 499 (D.C. Cir. 1988) (although physician was technically not required to appear and answer questions at meeting of hospital’s credentials committee, the meeting constituted an “examination” because as a “practical matter” the physician had no choice but to attend if he wished to be heard on matters concerning his professional competence); *VAMC Jackson*, 48 FLRA at 798 (although nurses were not ordered to attend a standards board hearing, they were required to appear if they wished to be heard regarding their retention following probationary period).

¹³⁴ *Charleston Shipyard*, 32 FLRA at 230-31 (noting further that “Congress intended that the focus of the right under section 7114(a)(2)(B) be on the timing of the examination and, more particularly, the employee’s need for protection due to the confrontational nature of the examination”).

¹³⁵ *DOJ, Wash., D.C.*, 56 FLRA at 560; see also *IRS, Jacksonville Dist. & Se. Reg’l Office of Inspection*, 23 FLRA 876, 878-79 (1986) (*IRS Jacksonville*).

¹³⁶ *IRS, L.A. Dist. Office*, 15 FLRA 626, 637 (1984) (a tax audit of an IRS employee that took place in an attorney’s office as part of an on-going investigation into employee’s misconduct was an “examination”).

¹³⁷ *NTEU v. FLRA*, 835 F.2d 1446, 1451 (D.C. Cir. 1987).

¹³⁸ *INS, Border Patrol, Del Rio, Tex.*, 46 FLRA 363, 363 (1992) (*INS, Del Rio*) (rejecting argument that memorandum required of border patrol agent explaining circumstances of a prisoner escape did not constitute an “examination” because it was not confrontational).

¹³⁹ *IRS Jacksonville*, 23 FLRA at 879-80 (further concluding that the presence of a union representative during such surveillance would be “utterly incongruous with the surreptitious nature of the agency’s surveillance activities”).

¹⁴⁰ *NTEU*, 835 F.2d at 1450-51.

b. Performance Meetings, Counseling Sessions, Desk Audits

The Authority has routinely held that performance counseling sessions and other meetings intended to convey concerns over the quality or timeliness of an employee’s work performance do not constitute “examinations” within the meaning of section 7114(a)(2)(B) where they are not designed to elicit information from the employee, but rather to inform and counsel the employee regarding performance deficiencies.¹⁴¹ It has reached the same conclusion regarding meetings to announce disciplinary actions,¹⁴² as well as meetings conducted for the purpose of giving the employee an assignment or a test¹⁴³ or as part of a non-disciplinary classification desk audit.¹⁴⁴ However, the title of a meeting or the way management characterizes it does not control whether the meeting is a counseling session or an investigatory examination.¹⁴⁵ Also, a meeting that starts off as a performance counseling session may turn into an examination in connection with an investigation depending upon the dialogue and dynamics of the meeting.¹⁴⁶

c. Physical Exams, Fitness for Duty Exams, Security Clearance Interviews

The Authority has affirmed an arbitrator's finding that *Weingarten* rights attached to an interview conducted with an employee to determine whether his security clearance should be withdrawn.¹⁴⁷ In reaching this conclusion, it rejected the agency's argument that section 7114(a)(2)(B) did not apply to security clearance examinations because the Executive Order and federal regulation governing such examinations do not incorporate *Weingarten* rights into the security-clearance process, holding that "nothing in those authorities indicates that §7114(a)(2)(B) is inapplicable to investigatory interviews that are conducted in connection with security-clearance investigations."¹⁴⁸

¹⁴¹ *SSA, Albuquerque, N.M.*, 56 FLRA 651, 655 (2000) (*SSA Albuquerque*) ("[t]he fact that a conversation occurs need not automatically convert a meeting into an 'exam'"); see also, *IRS*, 8 FLRA 324, 331 (1982) (meeting was not an "examination" and instead was "pure counseling" in nature where its sole purpose was to "highlight [the employee's] deficiencies ... and tell him how to raise the level of his performance to expected standards"); *Air Force 2750th Air Base Wing HQ, Air Force Logistics Command, Wright-Patterson AFB, Ohio*, 9 FLRA 871, 872 (1982) (*Wright-Patterson AFB*) (meetings were conducted "for the sole purpose of, and were limited to, informing the employee of a decision already reached" that improper conduct had occurred and to counsel the employee); *Air Force 2750th Air Base Wing HQs, Air Force Logistics Command, Wright-Patterson AFB, Ohio*, 10 FLRA 97, 99 (1982) (*Wright-Patterson AFB II*) ("counseling session during which [the employee] was made aware of performance deficiencies without being solicited for additional information" was "remedial rather than investigatory in nature"); *IRS*, 15 FLRA 360, 361 (1984) (meeting to warn employee about making threats to co-workers is not an "examination" where it was not designed to "ask questions, elicit additional information, have the employee admit his alleged wrongdoing, or explain his conduct").

¹⁴² *Wright-Patterson AFB*, 9 FLRA at 872.

¹⁴³ *Dep't of Navy, Portsmouth Naval Shipyard*, 7 FLRA 766, 780 (1982) (meeting where employee is informed that his work assignment was to take a test to determine where he needed help, but where "no questions of an investigatory nature were asked," is not an "examination").

¹⁴⁴ *OPM*, 20 FLRA 183, 184 (1985) ("section 7114(a)(2)(B) by its own terms does not apply to a nondisciplinary classification desk audit").

¹⁴⁵ *FAA, Bridgeton*, 6 FLRA at 686 (meeting where employee was questioned about use of abusive language is investigatory examination despite being called a "counseling session").

¹⁴⁶ *Wright-Patterson AFB II*, 10 FLRA at 107; *SSA, Albuquerque*, 56 FLRA at 658.

¹⁴⁷ *Nuclear Regulatory Comm'n*, 65 FLRA 79, 83 (2010) (*NRC*) ("the plain wording of § 7114(a)(2)(B) does not exclude security-clearance-related examinations from the definition of 'examination'").

The Authority has not explicitly ruled on whether a physical examination, a drug test or a car search can constitute an investigatory examination for purposes of section 7114(a)(2)(B).¹⁴⁹ Moreover, neither the Authority nor the NLRB has squarely decided whether *Weingarten* rights apply to interviews conducted in connection with physical exams, including fitness-for-duty examinations. The NLRB has held that a physical fitness-for-duty exam did not trigger *Weingarten* rights because it was not "part of a disciplinary procedure," even where it

was “promoted by personnel problems such as excessive absenteeism,” and even where the result of the exam “might lead to recommendations respecting the employee’s future work assignments.”¹⁵⁰ It premised this conclusion, however, upon its finding that the exams were not confrontational, and upon the “absence of evidence that questions of an investigatory nature were in fact asked at these examinations,” and suggested that in a different case “it might be appropriate and feasible to provide union representation during the interview portion of an examination while excluding the representative from the ‘hands on’ physical examination.”¹⁵¹

The Authority has adopted a similar approach by rejecting the premise that a fitness for duty examination could never qualify as an investigatory interview under section 7114(a)(2)(B), and instead remanding an arbitrator’s decision for further factual findings “relating to whether the specific fitness-for-duty examination in this case was conducted in connection with an investigation.”¹⁵² Towards this end, the Authority noted that the arbitrator had failed to make factual findings “concerning the nature of the questions asked during the fitness-for-duty examination that would allow the Authority to determine whether they were investigatory in nature.”¹⁵³ Because these issues were not addressed by the Authority upon its reconsideration of the case following its remand to the arbitrator, this issue remains unresolved.

3. Reasonable Belief of Discipline

To trigger the right to representation, an employee must reasonably believe that the examination may result in disciplinary action against the employee. The reasonable belief determination is based on objective – not subjective – factors.¹⁵⁴ The relevant inquiry is “whether, in light of the *external* evidence, a reasonable person would decide that disciplinary action might result from the examination.”¹⁵⁵ An employee need not be the subject of the investigation to have a reasonable belief that discipline could arise from his responses to interview questions.¹⁵⁶ Similarly, even where the purpose of the interview is not to determine possible disciplinary action against the employee, the employee may still harbor a reasonable belief that discipline could arise from the interview where the agency admits that information obtained during the interview could be used for a disciplinary action.¹⁵⁷

A reasonable belief of discipline can also be found even if the agency was not contemplating discipline at the time of the examination. It is the possibility, rather than the inevitability, of future discipline that determines the right to representation.¹⁵⁸

¹⁴⁸ *Id.* at 81.

¹⁴⁹ The NLRB has found that a drug test conducted as part of an investigation can constitute an investigatory examination under *Weingarten*. *Safeway Stores*, 303 NLRB 989 (1991); see also *Ralph’s Grocery Co.*, 361 NLRB No. 9 (July 31, 2014). Additionally, in *DOJ, BOP, FCI*, 14 FLRA 334, 351-52 (1984), the ALJ found that *Weingarten* rights apply to employee strip searches, but the Authority did not reach this issue on review of the decision.

¹⁵⁰ *USPS*, 252 NLRB 61, 61 (1980).

¹⁵¹ *Id.*

¹⁵² *DOJ, BOP, FCC, Coleman, Fla.*, 63 FLRA 351, 354 (2009).

¹⁵³ *Id.* On remand, the arbitrator found that *Weingarten* did not apply because the examination was not administered by agency representatives, but awarded damages to the grievant because he was harassed and constructively discharged. The Authority set aside this decision because it exceeded the arbitrator's authority, and did not further discuss the issue of whether the examination was in connection with an investigation within the meaning of section 7114(a)(2)(B). *DOJ, BOP, FCC, Coleman, Fla.*, 66 FLRA 300 (2011).

In some circumstances, an express grant of immunity from possible disciplinary action is sufficient to cure an employee's objective fear of discipline arising from the interview.¹⁵⁹ Grants of immunity, however, do not defeat an employee's reasonable fear of potential discipline where the employee has a reasonable basis for doubting the validity of the immunity.¹⁶⁰ Moreover, even where an administrative regulation places limits on the use of information obtained during an investigatory interview, an employee may still be found to have a reasonable fear of discipline arising from the interview where he is not informed of this limitation.¹⁶¹

¹⁵⁴ *Lackland AFB*, 5 FLRA at 485 (employee reasonably believed discipline could arise where she was informed at the outset of the interview that she is being investigated for cash register shortages); *IRS v. FLRA*, 671 F.2d 560 (D.C. Cir. 1982) (affirming ALJ's refusal to consider affidavit demonstrating that the employee did not actually fear discipline); *NTEU*, 835 F.2d at 1451 (employee who was asked questions by another employee at the secret behest of management "could not have had a reasonable apprehension of punishment").

¹⁵⁵ *AFGE, Local 2544 v. FLRA*, 779 F.2d 719, 724 (D.C. Cir. 1985) (emphasis in original); see also *BLM Portland*, 68 FLRA at 181 (employee reasonably feared discipline even if management told him meeting was to address safety concerns and was non-disciplinary where other factors, including the presence of three supervisors, supported the reasonable belief).

¹⁵⁶ *IRS, Hartford*, 4 FLRA at 250 (employee who was responsible for safekeeping and confidentiality of tax records of the investigated employee could have reasonably believed that discipline may result if his handling of the tax records was deemed improper); *DOJ, OIG, Wash., D.C.*, 47 FLRA 1254, 1282 (1993) (although only a witness, an employee who was interviewed as part of an investigation could have reasonably believed that discipline would result if he was found to have knowledge of the misconduct of others).

¹⁵⁷ *NRC*, 65 FLRA at 80 (affirming arbitrator's finding that even if revocation of a security clearance is not a disciplinary action, employee could reasonably fear discipline arising from a security clearance interview based upon agency's admission that "information obtained in the course of a security clearance interview could be used in a disciplinary proceeding").

¹⁵⁸ *Wright-Patterson AFB*, 9 FLRA at 880-81 (employee reasonably feared discipline based upon management's inquiry into his misconduct, even where management was not contemplating discipline at the time of the interview); *Dep't of Navy, Norfolk Naval Base, Norfolk, Va.*, 14 FLRA 731, 747 (1984) (*Norfolk*) (employee had a reasonable belief that discipline could arise from investigation into his alleged insubordination where possible administrative decisions were being formulated at the time of the interview); see also *AFGE, Local 2544*, 779 F.2d at 724 (noting that "disciplinary action will rarely be decided upon until after the results of the inquiry are known").

¹⁵⁹ *SSA, Albuquerque*, 56 FLRA at 658 ("a grant of immunity may eliminate reasonable fear of discipline").

¹⁶⁰ *AFGE, Local 2544*, 779 F.2d at 724-26 (employee could have reasonably harbored doubts about the ability of Office of Professional Responsibility agents to grant him administrative immunity, where neither the employee, the

4. Employee's Request for Union Representation and Agency's Response

The union's right to be represented at an examination is dependent upon the employee's request for representation.¹⁶² An employee's request must be sufficient to put the employer on notice of the employee's desire for representation but need not be made in any specific form.¹⁶³ An employee need not repeat an otherwise sufficient request for representation throughout different phases of an investigatory interview.¹⁶⁴ Absent a request by the employee for representation, however, the union does not have an independent right to attend the investigatory interview.¹⁶⁵

Whether the employee has adequately requested representation depends upon the facts of each case. An agency should seek clarification of a statement if it is uncertain a request has been made. The failure to do so has been viewed as a denial which effectively prohibits the employee from making the request clearer and forecloses further discussion to clarify the request.¹⁶⁶

union representative nor the disciplining officer had ever heard of such immunity; there was no "ascertainable policy for granting immunity"; and the employee had no way of knowing whether the grant was otherwise authorized by agency policy); *see also BLM Portland*, 68 FLRA at 181 (affirming arbitrator's decision that employee reasonably feared disciplined under the circumstances "[e]ven assuming the Agency told the grievant the meeting was for safety concerns and was non-disciplinary").

¹⁶¹ *VAMC Hampton, Va.*, 51 FLRA 1741, 1748-49 (1996) (also noting that an independent disciplinary investigation could have resulted from the interview).

¹⁶² *DOJ, BOP, Terre Haute, Ind.*, 38 FLRA 1438, 1441 (1991).

¹⁶³ *DOJ, BOP, Office of Internal Affairs, Wash., D.C.*, 55 FLRA 388, 394 (1999) (*BOP, OIA*) (employee who requests an attorney and then states "I want somebody to talk to" has sufficiently requested union representation); *see also Metro. Corr. Ctr.*, 27 FLRA at 880 (employee's statement that "maybe I need to see a union rep" was a valid request); *Norfolk Naval Shipyard, Portsmouth, Va.*, 35 FLRA 1069, 1074 (1990) (*Portsmouth*) (while no specific format is required, the request must put the employer on notice that the employee desires representation); *DOJ, INS & Border Patrol, Wash., D.C.*, 41 FLRA 154, 167 (1991) (employee's statement that "he would like to speak to a lawyer or somebody to advise him" is sufficient); *INS, Del Rio*, 46 FLRA at 373 ("I am officially requesting representation" is sufficient to trigger representation rights for two other employees where employee is acting as spokesperson for the other employees).

¹⁶⁴ *Lackland AFB*, 5 FLRA at 486-87 (employee was not required to repeat request for union representation to OSI agent where request was already made three times before to agency detectives); *Norfolk*, 14 FLRA 82, 83 (1984) (not necessary for employee to repeat request to supervisor who later attended the examination).

¹⁶⁵ *Portsmouth*, 35 FLRA at 1077 (where employee did not request representation, agency could order union steward to leave the examination).

¹⁶⁶ *BOP, OIA*, 55 FLRA at 394 (agency "effectively foreclosed further discussion to clarify whether [the employee] wanted a Union representative").

If an employee makes a valid request for representation, an agency has three options: (1) grant the request; (2) discontinue the interview; or (3) offer the employee the choice between continuing the interview without representation or having no interview and foregoing the benefits that might be derived from the interview.¹⁶⁷ If the agency has given an employee the option of continuing an interview without representation or having no interview at all, and the employee elects to continue without representation, the employee has waived the right to representation.¹⁶⁸ Where an employee requests union representation for only one line of questioning, the agency does not violate the Statute by ceasing that line of inquiry but proceeding with questioning on other issues.¹⁶⁹

Although an employee may waive the right to representation, the waiver must be “clear and unmistakable.”¹⁷⁰ Whether an employee has waived his or her right to representation is determined by objective factors, and a waiver is not valid if it is coerced by agency representatives.¹⁷¹ For instance, where an employee was informed by an agency investigator that he might be accused of criminal misconduct and it would therefore be in his best interest not to have a union representative present at an interview, the employee’s subsequent waiver was deemed to be a product of coercion.¹⁷² Moreover, an employee’s waiver of union representation in a prior interview does not prospectively apply to future interviews on the same subject.¹⁷³ On the other hand, where an employee requests union representation but then agrees to proceed with an interview prior to the representative’s appearance, the Authority has found that the employee validly waived his right to representation.¹⁷⁴ The Authority has also found no violation of the Statute where the agency postponed an interview to allow the employee to obtain his union representative but then proceeded with the interview after the employee returned without his representative.¹⁷⁵

¹⁶⁷ *Portsmouth*, 35 FLRA at 1077; see also *DOL, MSHA*, 35 FLRA at 804 (employee whose request for union representation is denied must be offered a choice between continuing the interview without a union representative or having no interview).

¹⁶⁸ *DOJ, U.S. Pen., Leavenworth, Kan.*, 46 FLRA 820, 822 (1992) (after employee’s request for union representation was denied, the employee’s continued participation in the interview was uncoerced where he was told that he did not have to answer any questions and was free to leave); but see *Metro. Corr. Ctr.*, 27 FLRA at 880 (employee did not abandon request for representation by failing to stop the investigatory interview where employee was “at no time informed that he could leave the room”).

¹⁶⁹ *SSA, Balt., Md.*, 19 FLRA 748, 748 (1985) (no violation because “when the employee indicated that, if the inquiry concerning his use of official time continued, he would wish to have a Union representative present, the Respondent’s official ceased this line of questioning”).

¹⁷⁰ *Portsmouth*, 35 FLRA at 1077.

¹⁷¹ *INS, El Paso*, 42 FLRA 834, 838 (1991).

¹⁷² *Id.*; but see *INS, El Paso v. FLRA*, 939 F.2d 1170, 1175 (5th Cir. 1991) (“The mere fact that an interview would benefit an employee is not sufficient to render the decision to participate involuntary”).

¹⁷³ *BOP, OIA*, 55 FLRA at 394 n. 10 (Statute affords right to representation “at each such examination”).

¹⁷⁴ *DOJ, BOP, FCI*, 14 FLRA at 336 (employee waived request for representation when, after being told the union representative would be there in ten minutes, the employee told management it could proceed with the interview); *Army & Air Force Exch. Serv., Rocky Mtn. Area Exch., Fort Carson, Nev.*, 16 FLRA 794, 802-03

(1984) (employee withdrew request for union representation when, after waiting for union representative who was en route, the employer suggested that the interview continue because it was close to quitting time and the employee merely shrugged and proceeded with the interview).

¹⁷⁵ *DOL, Emp't Standards Admin.*, 13 FLRA 164, 164 (1983) (finding that the agency took “every reasonable step” to provide the opportunity for representation).

Where all of the elements of section 7114(a)(2)(B) have been met, an agency commits an unfair labor practice by disciplining an employee for requesting and insisting upon union representation at an investigatory interview.¹⁷⁶

D. Union Representative’s Participation at the Examination

The union representative at an investigatory examination has the right to take an active role. This includes the freedom to assist and consult with the affected employee.¹⁷⁷ This also includes the right to speak or otherwise participate on the record in a formal proceeding.¹⁷⁸ The union representative’s role properly includes seeking clarification of questions and suggesting other avenues of inquiry.¹⁷⁹ The union representative can also elicit favorable facts from the employee.¹⁸⁰ Moreover, the Authority has found that a union representative did not engage in impermissible conduct during an investigatory exam where he made statements for the record, pointed to an employee’s previous answers in a document to refresh his recollection, and whispered in the employee’s ear to ensure that his answer to a question was complete.¹⁸¹ An agency commits an unfair labor practice by improperly disciplining a union representative for attempting to effectively and legitimately assist the employee during an interview.¹⁸²

¹⁷⁶ *Norfolk*, 14 FLRA at 748-49; *VAMC, Fort Wayne, Ind.*, 39 FLRA 717, 721 (1991).

¹⁷⁷ *NRC*, 65 FLRA at 84.

¹⁷⁸ *VAMC Jackson*, 48 FLRA at 799 (“precluding the Union representative from speaking or otherwise participating on the record in the formal proceedings does not equate to meaningful representation”); *BOP Safford*, 35 FLRA at 440 (violation where union representative told to remain silent); *see also NASA*, 50 FLRA 601, 609 (1995) (agency violated Statute by imposing ground rules on OIG examination relegating union representative to “role of a mere ‘witness’ at the examination” and instructing the employee not to speak or look at the representative), *enf’d sub nom. FLRA v. NASA*, 120 F.3d 1208 (11th Cir. 1997), *aff’d*, 527 U.S. 229 (1999); *see also Customs Serv., Region VII, L.A., Cal.*, 5 FLRA 297, 307 (1981) (*Customs Serv., Cal.*) (violation where a representative’s participation was limited to “practice” interview prior to actual taped interview); *FAA, Bridgeton*, 6 FLRA at 687 (union representative unlawfully disciplined for taking an active role during investigatory interview and for not abiding by an agency order to be quiet).

¹⁷⁹ *NRC*, 65 FLRA at 84 (noting that “some interruption by way of comments [regarding] the form of questions or statements as to possible infringements of employee rights, should properly be expected from the employee’s representative”) (quoting *Customs Serv., Cal.*, 5 FLRA at 307).

¹⁸⁰ *BOP, OIA*, 52 FLRA 421, 433 (1996) (union representative’s role includes the “right to assist the employee in presenting facts”).

¹⁸¹ *NRC*, 65 FLRA at 85-86 (explaining that, “[b]y not allowing the union representative to counsel the employee before he answered questions and then precluding the employee from adding to his answers after he had answered them without assistance, the Agency did not allow the union representative to assist the employee

in presenting facts in his own defense”).

¹⁸² *FAA, Bridgeton*, 6 FLRA at 687 (discipline unlawful where union representative’s actions were not of “such an outrageous and insubordinate nature to remove them from the protection of the Statute”).

¹⁸³ *NASA*, 50 FLRA at 607.

An agency, however, may limit the union representative’s participation if the representative is interfering in its ability to achieve the legitimate objectives of the investigation or if otherwise necessary to ensure the investigation’s integrity.¹⁸³ On this point, the Authority has favorably cited the principle that an employer “‘is free to insist that he is only interested, at that time, in hearing the employee’s own account of the matter under investigation.’”¹⁸⁴ It has also emphasized that the “presence of a Union representative at an examination does not interfere with management’s right to insist that the employee be responsive, or [with] its right to decide the scope of the examination.”¹⁸⁵ In addition, the union representative’s participation may be limited if the representative is verbally abusive or interferes with the interview by interrupting the employee’s answers.¹⁸⁶ An agency may also prohibit a union representative from tape recording an interview if doing so would be contrary to agency policy.¹⁸⁷

The Authority has held that, while the Statute does not grant a *per se* right to engage in private conferences outside the presence of an investigator during an investigatory examination, an agency should allow such conferences where they are necessary to afford the union representative the ability to effectively represent the employee and do not interfere with the integrity of the investigation.¹⁸⁸ Conversely, where the union representative and the employee were allowed to confer in the conference room during 15-minute hourly breaks, the agency was not required to allow additional conferences outside of the interrogation room.¹⁸⁹

Confidential communications between a union representative and an employee that occur during the course of representation constitute protected activity under the Statute. An agency may not interfere with the confidentiality of such information unless its confidentiality has been waived or the agency establishes an overriding need for the information.¹⁹⁰

¹⁸⁴ *NRC*, 65 FLRA at 84 (quoting *Weingarten*, 420 U.S. at 260)

¹⁸⁵ *IRS Jacksonville*, 23 FLRA at 878-79.

¹⁸⁶ *NRC*, 65 FLRA at 84; see also *AFGE, Local 2145*, 64 FLRA 661, 664-65 (2010) (applying the “flagrant misconduct” test in *Dep’t of Air Force, Grissom AFB, Ind.*, 51 FLRA 7, 11-12 (1995), to determine whether agency could legitimately discipline a union official for actions taken while representing a unit member during an investigatory hearing pursuant to section 7114(a)(2)(B)).

¹⁸⁷ *INS, San Diego, Cal.*, 13 FLRA 591, 604-05 (1993) (union representative could not insist upon tape recording an interview thereby obstructing the Office of Professional Responsibility in its conduct of the investigation), *enf’d sub nom. INS v. FLRA*, 760 F.2d 278 (9th Cir. 1985).

¹⁸⁸ *DOJ, Wash., D.C.*, 46 FLRA 1526, 1569 (1994) (brief conference outside of hearing room did not interfere with the integrity of the investigation), *vacated and remanded on other grounds, DOJ v. FLRA*, 39 F.3d 361 (D.C. Cir. 1994).

¹⁸⁹ *BOP, OIA*, 52 FLRA at 432-35.

¹⁹⁰ *Customs Serv., Ariz.*, 57 FLRA at 324-25 (finding that agency had established need to question employee about whether union representative told him to lie during an earlier investigatory examination, where the agency had no other way to ascertain this information).

E. Union's Right to Information About the Examination

Since effective representation at an investigatory examination often would be difficult or impossible without certain information, information requested in connection with a union's representation of an employee at such an investigation is relevant to a union's representational responsibilities under the Statute. The right to representation includes access to information that will allow the union to become familiar with the employee's circumstances and to effectively assist the employee and participate in the interview.¹⁹¹ In considering requests for such information, the Authority balances the right of a union to obtain relevant information for an investigatory examination against the interests of an agency in investigating and disciplining misconduct.¹⁹² Applying this standard, the Authority has held that a union was not entitled to copies of investigative reports, subpoenaed documents and other records contained in a special agent's investigatory file because it was already familiar with the employee's circumstances and its disclosure would have interfered with the agency's legitimate interests.¹⁹³

F. Remedies

1. Unlawful Denial of Union Representation

Remedies for violations of section 7114(a)(2)(B) include traditional posting and cease and desist orders. Where an agency has committed multiple violations of section 7114(a)(2)(B), the Authority has ordered a broad posting remedy extending to members of the bargaining unit beyond those who work at the site where the violations occurred.¹⁹⁴

Where an employee's union representative is unlawfully denied the ability to assist the employee in presenting a defense to the charges being investigated, the employee may have suffered an unjustified disciplinary action because the representative might have helped the employee to clarify the facts and circumstances involved in the investigation. Under these circumstances, the Authority has also held that a cease and desist order may not adequately recreate the conditions that would have existed in the absence of the *Weingarten* violation.¹⁹⁵

Accordingly, where an agency has denied representation rights under section 7114(a)(2)(B) and disciplinary action ensued, the Authority provides the agency with an opportunity to demonstrate that no discipline occurred or will occur based upon the interview and that no information will be retained in the employee's personnel records from the interview that could adversely affect the employee.¹⁹⁶ If the agency cannot demonstrate that no disciplinary action arose from information obtained during the interview, then the agency may be ordered, upon the union's and employee's request, to repeat the investigatory interview and afford the employee full rights to union representation.¹⁹⁷

¹⁹¹ *Id.*

¹⁹² *FAA, New Eng. Region, Burlington, Mass.*, 35 FLRA 645, 650-54 (1990).

¹⁹³ *Id.* at 654.

¹⁹⁴ *BOP, OIA*, 55 FLRA at 395 (“We note the multiple violations, combined with the fact that the investigators’ work is not limited to one facility but rather involves assignment throughout the locations of the bargaining unit. In these circumstances, it is reasonable to assume that the Respondent’s disregard for *Weingarten* rights is of import to unit employees well beyond the facility where the violations occurred”).

¹⁹⁵ *BOP Safford*, 35 FLRA at 446-47.

¹⁹⁶ *INS El Paso*, 36 FLRA at 52; *see also BOP, OIA*, 55 FLRA at 395 (ordering that employee is to be protected from future discipline based on any information obtained in the investigative interview and that his record be expunged of any adverse information obtained during the interview).

After repeating the investigatory interview, the agency must then reconsider the disciplinary action taken against the employee without reference to or reliance upon the information obtained in the unlawful interview. If the agency concludes the disciplinary action was unwarranted or mitigating the penalty is warranted, the employee is made whole for any losses suffered to the extent consistent with the agency’s decision. The agency is required to notify the employee of the results of the reconsideration, including any make-whole remedies to be afforded the employee and, if relevant, provide the employee any grievance or appeal rights that may exist under the parties’ negotiated agreement, law, or regulation with respect to the agency’s reconsideration.¹⁹⁸

2. Unlawful Discipline for Requesting Union Representation

Where a disciplinary action has been taken *because* the employee engaged in protected activity, a traditional make-whole remedy is appropriate. Thus, if an employee was disciplined for insisting upon union representation at an investigatory interview, the Authority will impose a traditional make-whole remedy, which includes rescission of the disciplinary action.¹⁹⁹ The Authority has also ordered an agency to rescind a suspension imposed on an employee based upon the misconduct of his union representative during an investigatory meeting.²⁰⁰ On the other hand, the Authority has held that “a make whole remedy will not be ordered where the disciplinary action taken relates solely to employee misconduct independent of the examination itself.”²⁰¹

¹⁹⁷ *BOP Safford*, 35 FLRA at 446; *DOJ, OIG, Wash., D.C.*, 47 FLRA at 1264-66; *VAMC Jackson*, 48 FLRA at 797; *BOP, OIA*, 55 FLRA at 395.

¹⁹⁸ *Id.*

¹⁹⁹ *Norfolk*, 14 FLRA at 732 (reprimand expunged where based on refusal to submit to unlawful interview); *Metro. Corr. Ctr.*, 27 FLRA at 884 (suspension revoked where it was based upon employee’s lawful refusal to submit memorandum as part of a meeting where he was denied union representation, where agency cannot demonstrate it would have imposed the same penalty for the incident being investigated); *VAMC, Fort Wayne*,

Ind., 39 FLRA at 721 (affirming arbitrator’s order revoking three-day suspension for requesting union representation during investigatory examination).

²⁰⁰ *INS, San Diego, Cal.*, 13 FLRA at 592.

²⁰¹ *Norfolk*, 14 FLRA at 84 (no restoration ordered for lost wages and benefits flowing from employee’s refusal to obey lawful management directives).

III. Bypass

A. Statutory Authority

Section 7114(a)(1) of the Statute provides:

A labor organization which has been accorded exclusive recognition is the exclusive representative of the employees in the unit it represents and is entitled to act for, and negotiate collective bargaining agreements covering, all employees in the unit.

B. Scope and Purpose of the Right

“[O]nce a union is certified as the exclusive representative of an appropriate unit of agency employees, the agency must ‘deal only with’ that representative concerning any matter affecting the conditions of employment of employees in that unit.”²⁰² An agency violates this obligation when it deals directly “with either another union or with unit employees on matters that are within the sole authority of that exclusive representative.”²⁰³ These matters include “grievances, disciplinary actions and other matters relating to the collective bargaining relationship.”²⁰⁴

Such conduct “constitutes direct dealing with an employee, and is violative of [section] 7116(a)(1) and (5) of the Statute, because it interferes with the union’s rights under [section] 7114(a)(1) of the Statute to act for and represent all employees in the bargaining unit.”²⁰⁵ It also constitutes an independent violation of section 7116(a)(1) of the Statute “because it demeans the union and inherently interferes with the rights of employees to designate and rely on the union for representation.”²⁰⁶

²⁰² *AFGE Nat’l Council of HUD Locals 222*, 54 FLRA 1267, 1276 (1998) (*AFGE HUD Locals 222*).

²⁰³ *Id.*

²⁰⁴ *DOJ, BOP, FCI, Elkton, Ohio*, 63 FLRA 280, 282 (2009) (*FCI Elkton*) (quoting *DOJ, BOP, FCI, Bastrop, Tex.*, 51 FLRA 1339, 1346 (1996)).

²⁰⁵ *Id.*

²⁰⁶ *Id.*; but see *AFGE HUD Locals 222*, 54 FLRA at 1283 n.20 (noting that the Authority’s test for an independent (a)(1) violation arising from a bypass allegation differs from the National Labor Relation Board, which “generally does not find an independent violation of section 8(a)(1) based on the fact of direct dealings alone”).

C. Matters Giving Rise to Bypass Violations

1. Grievances

Section 7121 of the Statute sets forth the framework and requirements for negotiated grievance procedures. With respect to an employee's right to representation during a grievance, subsection (b)(1)(C) requires that grievance procedures do the following:

- (i) assure an exclusive representative the right, in its own behalf or on behalf of any employee in the unit represented by the exclusive representative, to present and process grievances; [and]
- (ii) assure such an employee the right to present a grievance on the employee's own behalf, and assure the exclusive representative the right to be present during the grievance proceeding.

When a union represents an employee in grievance proceedings (either because the union filed the grievance on the employee's behalf, or because the employee otherwise designated the union as his or her representative), an agency may not bypass the union by dealing directly with the employee regarding the grievance.²⁰⁷

The obligation to deal with the union regarding grievances applies to all steps of the negotiated grievance procedure. Thus, an agency violates the Statute if it does not furnish, at the same time as the employee, "the written decision when rendered at each step of the negotiated grievance procedure, or if the employee, and not the Union, is voluntarily furnished information bearing on the grievance."²⁰⁸ The obligation also applies to an agency's solicitation of information regarding the grievance,²⁰⁹ and discussions involving settlement of the grievance.²¹⁰

In determining whether a meeting concerns a "grievance" for purposes of resolving a bypass allegation, the Authority has applied the same definition of "grievance" as it applies to allegations concerning "formal discussions" under section 7114(a)(2)(A) of the Statute. Thus, where the Authority found that an agency violated section 7114(a)(2)(A) by failing to provide the union with an opportunity to be represented at a discussion regarding a "potential" grievance – which the Authority found constituted a "grievance" within the meaning of section 7114(a)(2)(A) – it also found that the agency unlawfully bypassed the union by communicating directly with the employee regarding the grievance.²¹¹

An agency does not commit an unlawful bypass by dealing directly with employees regarding matters for which the union has no statutory right or obligation to represent the employee and the employee has not chosen the union to represent him or her in the matter.²¹²

²⁰⁷ *SSA, Balt., Md.*, 39 FLRA 298, 311 (1991) (*SSA, Balt.*); *Dep't of Air Force, 355th SPTG/CG, Davis-Monthan AFB, Ariz.*, 63 FLRA 635, 635 (2007) (*Davis-Monthan AFB*); see also *SSA, OHA*, 25 FLRA 571, 575 (1987) (the

union's statutory right "to be present during the grievance proceeding" includes the implied right to be notified when a grievance is filed by an employee on the employee's own behalf, and to be served, upon request, with copies of documents related to the grievance) (applying predecessor to Section 7121(b)(1)(C)(ii)).

²⁰⁸ *SSA*, 16 FLRA 434, 449 (1984); see also *Davis-Monthan AFB*, 63 FLRA at 641 (agency bypassed union by delivering first step grievance response directly to unit employee).

²⁰⁹ *SSA, Balt.*, 39 FLRA at 312 (agency bypassed union by sending letter to employee directing him to file grievance in a different forum and soliciting information regarding the grievance).

²¹⁰ *IRS, Memphis Serv. Ctr., Memphis, Tenn.*, 17 FLRA 107, 115 (1985) (*IRS, Memphis*) (agency bypassed union when it informed grievant’s husband that a previously rejected offer to settle the grievance was still available).

²¹¹ *DOJ, BOP, FCI, Bastrop, Tex.*, 51 FLRA 1339, 1344-46 (1996).

²¹² *GPO*, 23 FLRA 35, 40 (1986) (agency did not unlawfully bypass a union by dealing directly with an employee to informally adjust her EEO complaint where employee “had elected to pursue her complaint of discrimination as an appeal under the regulatory process of the EEOC, and the exclusive representative had no statutory rights or obligations to represent her in that process”); see also *VA, Wash., D.C.*, 48 FLRA 991 (1993) (adopting without precedential significance the ALJ’s conclusion that the agency bypassed the union by failing to provide copies of final decision letters to unit employees concerning their EEO complaints where the union was the employees’ designated representative).

2. Negotiable Conditions of Employment

An agency unlawfully bypasses the exclusive representative when it negotiates directly with bargaining unit employees regarding negotiable conditions of employment.²¹³ Agency communications with unit employees can also constitute an unlawful bypass if they are designed to put pressure on the union to take a certain course of action.²¹⁴

Applying these principles, the Authority has found that agencies unlawfully bypassed the exclusive representative by dealing directly with unit employees regarding the establishment of work schedules or hours,²¹⁵ seating arrangements,²¹⁶ last chance agreements,²¹⁷ alternative selection procedures,²¹⁸ and changes to agency policies.²¹⁹ An unlawful bypass was also found where an agency issued job solicitations to unit employees for positions at new hearing centers prior to meeting with the union regarding the establishment of the new centers.²²⁰

Conversely, an agency was found not to have unlawfully bypassed the union by conducting an orientation session for new employees regarding administrative matters – even where the session constituted a “formal discussion” – where there was no evidence the agency attempted to “deal or negotiate directly with employees, or urged employees to put pressure on the Union to take a certain course of action, or threatened or promised benefits to employees.”²²¹ The Authority has similarly held that an agency’s mere announcement of changes to a sick leave call-in procedure did not constitute an unlawful bypass, absent any indication that the supervisor “either attempted to negotiate or to otherwise deal directly with employees concerning the change.”²²²

²¹³ *SSA*, 55 FLRA 978, 982-83 (1999) (such conduct also constitutes an independent violation of section 7116(a)(1) because it “demeans the Union and inherently interferes with the rights of employees to designate and rely on the Union for representation”).

²¹⁴ *Dep’t of Transp., FAA, L.A., Cal.*, 15 FLRA 100, 104 n.3 (1984) (*FAA, L.A.*).

²¹⁵ *Air Force Accounting & Fin. Ctr., Lowry AFB, Denver, Colo.*, 42 FLRA 1226, 1239 (1991) (*Lowry AFB*) (agency bypassed the union when a manager gave unit employees permission to develop a schedule for providing late office coverage to address the effects of the agency’s decision to implement a rotating work schedule); *DOI*,

Bureau of Indian Affairs, Gallup, N.M., 52 FLRA 1442, 1442 (1997) (manager bypassed union by presenting unit employees three options to resolve a budget shortfall by reducing work hours, requiring them to choose

one option, and agency implemented their choice without notice or bargaining with the union); *FAA, L.A.*, 15 FLRA at 104 (agency “required unit employees to provide direct input concerning the development of a new watch schedule and solicited their assistance in establishing alternative schedules, one of which was adopted and put into effect” over the union’s objections).

²¹⁶ *IRS, Kansas City Service Ctr., Kansas City, Mo.*, 57 FLRA 126, 129-30 (2001) (*IRS, Kansas City*) (agency bypassed the union by soliciting bargaining unit employees to develop seating arrangements for employees affected by decision to discontinue night-shift).

²¹⁷ *SSA*, 55 FLRA at 982-83 (agency unlawfully bypassed the union when it negotiated a last chance agreement directly with an employee, on grounds that the agreement affected a condition of employment).

²¹⁸ *Dep’t of Treasury, ATF, Wash., D.C.*, 16 FLRA 528, 543 (1984) (manager bypassed union by meeting with unit employees regarding possible alternative selection procedures and informing them: “How do you guys want to handle this? It’s whatever you decide.”).

²¹⁹ *DOJ, INS*, 14 FLRA 578, 579 (1984) (agency bypassed union by meeting with unit employees to ascertain their views concerning changes to housing policy).

²²⁰ *SSA, ODA, Nat’l Hearing Ctr.*, 66 FLRA 193, 196 (2011).

²²¹ *SSA*, 16 FLRA 232, 243 (1984).

3. Polling and Information Gathering

While agencies may not negotiate directly with bargaining unit employees regarding negotiable conditions of employment, they “must have the latitude to gather information, including opinions, from unit employees to ensure the efficiency and effectiveness of [their] operations.”²²³ As part of its “overall management responsibility to conduct operations in an effective and efficient manner, an agency may question employees directly, provided that it does not do so in a way that amounts to attempting to negotiate directly with them concerning matters that are properly bargainable with their exclusive representative.”²²⁴

In determining whether a survey, poll or questionnaire constitutes an unlawful bypass, the Authority considers the nature of the information sought, the manner in which the survey is conducted, and whether the information was used in a way that would undermine the status of the exclusive representative.²²⁵ It also considers the extent to which the agency has involved the union in the process, including whether it gave the union notice or invited the union to bargain regarding any proposed changes resulting from the survey.²²⁶ Applying these principles, the Authority has found that the following agency actions constituted an unlawful bypass:

- While considering the union’s demand to bargain a proposal to change the tour of duty for the night shift, the agency polled unit employees regarding their views and decided not to negotiate based on the results; the agency did not seek the union’s agreement to the polling and the union did not consent to it.²²⁷
- Manager issued memos to unit employees soliciting their views on possibly eliminating evening shift on weekends and then conducted a mandatory meeting for the same purpose.²²⁸

²²² *DLA, Def. Depot Tracy, Tracy, Cal.*, 14 FLRA 475, 478 (1984); see also *HUD, Wash., D.C. Area Office*, 20 FLRA 374, 378 (1985) (no unlawful bypass for merely notifying employees of proposed reorganization after having so notified the union).

²²³ *NTEU v. FLRA*, 826 F.2d 114, 123 (D.C. Cir. 1987) (quoting *IRS (Dist., Region, Nat'l Office Units)*, 19 FLRA 353, 354 (1985)).

²²⁴ *IRS*, 64 FLRA 972, 977 (2010); see also *NTEU*, 826 F.2d at 123 (cautioning that the “search for reliable information may not be used as a screen behind which to subvert” the union’s role as exclusive representative).

²²⁵ *IRS*, 31 FLRA 832, 838 (1988); see also *IRS*, 64 FLRA at 977-78.

²²⁶ *AFGE HUD Locals 222*, 54 FLRA at 1279 (“Where an agency’s contacts with employees on matters affecting conditions of employment do not exclude the exclusive representative, and the agency recognizes its obligation to bargain only with the exclusive representative, the agency is not involved in direct dealing in violation of the Statute.”).

²²⁷ *SSA, Balt., Md.*, 28 FLRA 409, 430-32 (1987) (*SSA, Balt.*).

²²⁸ *Dep’t of Transp., FAA*, 19 FLRA 893, 895 (1985) (holding that the agency was “not merely attempting to gather information or opinions concerning its operations but directly sought the opinions of these bargaining unit employees as to proposed changes in their conditions of employment”).

The Authority has found that the following agency actions did *not* constitute unlawful bypass:

- Agency conducted meetings, with the union in attendance, to receive unit employee input regarding work processes and suggestions for work improvements; the agency’s representatives did not discuss implementation of the suggestions, and the agency instructed supervisors that they could not commit to implement a suggestion until the agency’s bargaining obligations had been met.²²⁹
- Agency polled unit employees to determine if they preferred to be assigned to a new satellite office; the poll contained no indication that expression of intent would result in reassignment and did not seek employees’ opinions regarding the manner in which employees should be chosen for assignment; the agency advised and requested comments from the union, which did not object, shared the results with the union, indicated it would negotiate on matters related to the new office, and negotiated with the union before the office was opened.²³⁰
- Agency issued a memorandum to unit employees announcing a reorganization which also solicited employee suggestions for improving the work plan; the union was provided advanced notice of the reorganization and an opportunity to bargain before it was implemented, and the agency did not seek to negotiate with employees or use any information obtained from employees to undermine the status of the exclusive representative.²³¹
- Agency issued a questionnaire to unit employees “merely [seeking] factual information in order to effectively avoid and prevent fraud and abuse” within an agency program.²³²
- Agency distributed a survey to employees gauging their reaction to possible use of new equipment and asking for recommended changes to work assignments; the

agency notified the union in advance of its intent to distribute the survey, provided the union with copies, and promised to bargain with the union if it determined that changes were necessary as a result of the study.²³³

- Agency distributed questionnaires to unit employees to determine how newly implemented appraisal system was working for purposes of a draft report; the agency was “not attempting to negotiate with unit employees concerning the establishment of performance standards, but rather was merely seeking information as to how the existing standards were working.”²³⁴

²²⁹ *IRS*, 64 FLRA at 977-78.

²³⁰ *IRS*, 31 FLRA at 837-38.

²³¹ *SSA, Balt., Md.*, 20 FLRA 768, 770 (1985).

²³² *SSA*, 20 FLRA 125, 127 (1985).

²³³ *IRS (Dist., Region, Nat’l Office Units)*, 19 FLRA 353, 354-55 (1985), *aff’d*, *NTEU v. FLRA*, 826 F.2d 114 (D.C. Cir. 1987).

²³⁴ *Customs Serv.*, 19 FLRA 1032, 1035 (1985), *aff’d*, *NTEU v. FLRA*, 826 F.2d 114 (D.C. Cir. 1987).

- Agency distributed questionnaires to newly hired employees soliciting suggestions for improvements in recruitment and processing practices; even though no notice was provided to the union, the survey was not an attempt to negotiate directly because, among other things, employees were assured that the information gathered would not be discussed with certain management officials and there was no evidence of actual negotiations with the employees.²³⁵
- Agency conducted “town hall” meeting to discuss employees’ suggestions or initiatives for improving conditions of employment of disabled or handicapped employees; the agency invited the union to attend and participate.²³⁶
- Agency conducted interviews of unit employees to assess the accuracy of a case assignment guide; the agency was “merely attempting to gather factual information to determine whether its case assignment procedures were working as envisioned.”²³⁷
- Agency conducted a poll assessing the morale of unit employees in response to an accreditation report saying it was low; the agency was “merely gathering information to enable it to respond to a finding by an independent agency so that it might overcome an evaluation report affecting its accreditation.”²³⁸

4. **Disciplinary Matters**

An agency unlawfully bypasses the exclusive representative when it deals directly with a unit employee concerning a disciplinary matter for which the agency knows the employee is being represented by the union.²³⁹ The Authority has concluded, however, that an agency did not unlawfully bypass the exclusive representative by conducting a post-termination meeting

with an employee represented by the union to discuss his retirement contributions, insurance, military service, leave and final paycheck. The meeting did not constitute a bypass because it had no influence or impact upon the “decision already made and tendered,” insofar as it dealt solely with administrative matters and neither the employee’s termination nor his appeal rights were discussed.²⁴⁰

²³⁵ *Dep’t of Def., Office of Dependent Schs.*, 19 FLRA 762, 764 (1985), *aff’d*, *NTEU v. FLRA*, 826 F.2d 114 (D.C. Cir. 1987).

²³⁶ *SSA*, 19 FLRA 415, 416-17 (1985).

²³⁷ *IRS (Dist., Region, Nat’l Office Unit)*, 14 FLRA 698, 699-700 (1984).

²³⁸ *Kaiserslautern Am. High Sch., Dep’t of Def. Sch., Ger. N. Region*, 9 FLRA 184, 186-87 (1982).

²³⁹ *438th Air Base Group, McGuire AFB, N.J.*, 28 FLRA 1112, 1112 (1987) (*McGuire*) (agency bypassed union by reading notice of suspension to employee and failing to provide a copy of the decision to the union); *see also Dep’t of Air Force, Sacramento Air Logistics Ctr., McClellan AFB*, 35 FLRA 345, 345 (1990) (*McClellan*) (agency bypassed union by refusing to allow it to attend meetings at which bargaining unit employees were provided final decisions on disciplinary actions for which they were represented by union).

²⁴⁰ *FCI Elkton*, 63 FLRA at 282.

5. Direct Dealings with Another Union

An agency also violates its obligation to deal only with an exclusive representative when it deals with another union on matters within the sole authority of the exclusive representative.²⁴¹ In determining whether an unlawful bypass arises under these circumstances, the Authority examines “whether the agency’s actions undermine the rights of the exclusive representative,” including whether the agency’s contacts with the other union “involve matters within the scope of the statutory authority of the exclusive representative” and whether the agency “preserve[d] the exclusive representative’s role in the determination of conditions of employment.”²⁴²

Applying these principles, the Authority concluded that an agency did not unlawfully bypass the exclusive representative by including another union on a reorganization task force.²⁴³ In that case, the exclusive representative was also a full participant on the task force, and any changes to unit employees’ conditions of employment were reliant on either (1) consensus of the task force as a whole, or (2) in the absence of consensus, separate bargaining between the agency and the exclusive representative.

D. Defenses to Bypass Allegations

The Authority has held that an agency may deal directly with bargaining unit employees regarding negotiable conditions of employment if it “first obtains the consent of their Union.”²⁴⁴ Mere notification to the exclusive representative is not enough.²⁴⁵ Instead, the agency must secure the union’s agreement. Moreover, the Authority has rejected an agency’s argument that a provision in the parties’ bargaining agreement committing the parties to “work together in minimizing the adverse impact on employees involuntarily reassigned” permitted the agency to deal directly with unit employees on such matters, where there was

no evidence the provision was intended to allow the agency to bypass the union and it did not address meetings between management representatives and unit employees.²⁴⁶

The Authority has similarly rejected arguments that a union waived its right to be present at meetings where disciplinary decisions are delivered by virtue of bargaining agreement provisions that do not clearly and unmistakably waive the right,²⁴⁷ or by virtue of past practice where the record failed to “establish a sufficient and consistent past practice to constitute a clear and unmistakable waiver.”²⁴⁸ An exclusive representative was, however, found to have “effectively consented” to an agency’s dealings with a unit employee regarding a last chance agreement where it was given a “full opportunity to negotiate over the terms” of the agreement but “did not evidence any interest in doing so.”²⁴⁹

²⁴¹ *AFGE HUD Locals 222*, 54 FLRA at 1276.

²⁴² *Id.* at 1280.

²⁴³ *Id.* at 1281-82 (citing *Central Management Co.*, 314 NLRB 763, 767 (1994) and *Allied-Signal, Inc.*, 307 NLRB 752, 753-54 (1992)).

²⁴⁴ *Air Force Logistics Command, Ogden Air Logistics Ctr., Hill AFB, Utah*, 43 FLRA 736, 737 (1991) (*Hill AFB*) (quoting *Toledo Typographical Union No. 63 v. NLRB*, 907 F.2d 1220, 1222 (D.C. Cir. 1990)).

²⁴⁵ *Id.* at 737. In *Dep’t of Navy, Pearl Harbor Naval Shipyard, Pearl Harbor, Haw.*, 29 FLRA 1236 (1987), the Authority adopted the ALJ’s conclusion that the establishment and implementation of a program which involves employees in discussions of negotiable conditions of employment is a permissive subject of bargaining which cannot be implemented absent the exclusive representative’s agreement.

²⁴⁶ *IRS, Kansas City*, 57 FLRA at 129-30.

²⁴⁷ *McGuire*, 28 FLRA at 1124 (finding that language in the parties’ collective bargaining agreement must “constitute ... a clear and unmistakable waiver” of the right to be present); *McClellan*, 35 FLRA at 356 (concluding that the union did not “clearly and unmistakably” waive its right to be present at meetings where final disciplinary

E. Remedies for Bypass Violations

Remedies for bypass violations include traditional posting and cease and desist orders. The affirmative action required in these orders is typically tailored to address the particular type of bypass found to have occurred.²⁵⁰ Where an agency has been found to have bypassed the exclusive representative by negotiating directly with unit employees regarding a change in conditions of employment, and is also found to have violated the Statute by failing to give notice to and bargain with the union regarding the change, the Authority has additionally ordered the agency to rescind any agreements that resulted from the bypass and to afford the union the opportunity to bargain.²⁵¹ Similarly, where an agency was found to have unlawfully bypassed the union with respect to its attempts to settle a grievance, the agency was ordered to, “[u]pon request, attempt to resolve [the employee’s] grievance by dealing directly” with the union.²⁵²

decisions are delivered to unit employees by virtue of bargaining agreement article providing employees with two copies of disciplinary notices).

²⁴⁸ [McGuire](#), 28 FLRA at 1124.

²⁴⁹ [Hill AFB](#), 43 FLRA at 737 (holding that “by its conduct, the Union evidenced the requisite consent”).

²⁵⁰ See, e.g., [McGuire](#), 28 FLRA at 1113 (ordering agency to “[f]urnish or deliver all decisions or other responses involving disciplinary proceedings to designated union representatives of employees at the same time as they are furnished or delivered to employees”); [SSA, Balt.](#), 39 FLRA at 314 (ordering agency to “[f]urnish or deliver all communications pertaining to grievances to designated Union representatives at the same time as they are furnished or delivered to employee grievants”); [SSA, Balt.](#), 28 FLRA at 410 (ordering agency to cease and desist from “dealing directly with [bargaining unit] employees by soliciting their opinions concerning personnel policies, practices, and matters affecting their working conditions”).

²⁵¹ [Lowry AFB](#), 42 FLRA at 1241.

²⁵² [IRS, Memphis](#), 17 FLRA at 108.