

# Celebrating 50 Years of Collective Bargaining



In 1962 President John F. Kennedy signed Executive Order 10988, granting collective bargaining rights to federal employees. Secretary of Labor, Arthur J. Goldberg looks on at right.

National Agreement

between the

United States

Department of Labor

and the

National Council

of Field Labor Locals,

AFGE, AFL-CIO

Effective October 1, 2012



## **Preamble**

This Agreement between the United States Department of Labor and the National Council of Field Labor Locals comes on the 50th Anniversary of Executive Order 10988, signed by President John F. Kennedy, granting collective bargaining rights to federal employees. Ours is the longest standing institutional relationship in the Department and we believe that the evolution of this progressive National Agreement honors the vision of that historic moment.

Positive labor-management relations are a priority and a necessity for our success as an agency. The Department recognizes that our dedicated employees are indispensable to the effective conduct of our mission. Their full support - and a constructive working relationship with their union - is essential to the achievement of our goals.

We share a desire that the Department serve as the model employer for America. We hope that our mutual respect for the collective bargaining process - by which this Agreement was forged - will set an example at every work site to promote a simple and just means for resolving disputes and to provide an effective mechanism for articulating employee concerns through their Union.

We are committed to building a family-friendly workplace that achieves the necessary balance between our work and our family obligations - a critical component of attracting and retaining the talent we need to perform our important mission. And above all, we intend to maintain a safe, healthy, and quality workplace, and to help create an atmosphere where employees are treated fairly and equitably, respect one another, and work together to fulfill the promise and accomplish the mission of the United States Department of Labor.

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# Article 1 – Coverage and Recognition

## Section 1 – Recognition

- A. The NCFLL is recognized as the sole and exclusive representative for all bargaining unit employees as defined in Section 2 of this Article.
- B. As the sole and exclusive representative, the NCFLL is entitled to act for and to negotiate agreements covering all employees in the bargaining unit. The NCFLL is responsible for representing the interests of all employees in the bargaining unit without discrimination.
- C. Management agrees that in regard to the NCFLL bargaining unit, it will not enter into any other agreement, understanding, or contract with any other organization, association, or union that shall contravene or violate this Contract except as required by law, higher regulation, or Executive Order. Management agrees that in regard to the NCFLL bargaining unit, it will not do anything by custom or practice that shall contravene or violate this Contract except as required by law, higher regulation, or Executive Order.
- D. The NCFLL shall be given the opportunity to be present at formal discussions between Management and bargaining unit employees concerning grievances, personnel policies and practices, and other matters affecting general working conditions of the employees in the bargaining unit. The parties agree that if a formal discussion between one or more representatives of the Department and one or more employees within the bargaining unit consists of mere reiteration of existing personnel policies and practices and other matters affecting general working conditions, the NCFLL need not be given the opportunity to be present.
- E. The following procedures will be used in providing notice to the NCFLL of a formal discussion and for the NCFLL to provide representation during any formal discussion.
  - 1. The NCFLL will specify a designated representative(s) in each DOL Region of the DOL-NCFLL Agreement, to be notified of a formal discussion initiated by the Department.
  - 2. The Department's notification will state the DOL Agency and component, date, time, location of the formal discussion, and include a brief description of the subject to be discussed.
  - 3. The designated NCFLL Representative(s) in 1. above will specify an NCFLL Representative (Steward, Regional Official, or National Official) normally from within the commuting area of the meeting site to attend any formal discussion for the purpose of representing the NCFLL and/or affected employee(s).

## Section 2 – Coverage

The bargaining unit to which this Agreement is applicable consists of all employees stationed throughout the Nation in field duty stations of the Department outside the Washington, D.C. metropolitan area, except non-clerical employees of the Office of Labor-Management Standards, employees serving in temporary appointments of less

than one year's duration, or employees excluded under Section 3 of this Article. Employees of the Employee Benefits Security Administration (EBSA) and Occupational Safety and Health Administration (OSHA) field offices in the Washington, D.C. metropolitan area are included.

### **Section 3 – Exclusions from Coverage**

The following employees are excluded from the bargaining unit covered by this Agreement in accordance with the Statute:

- A. All Management Officials as defined in the Statute;
- B. All supervisors as defined in the Statute;
- C. Employees who act in a confidential capacity with respect to an individual(s) who formulates or effectuates management policies in the field of labor-management relations;
- D. Employees engaged in personnel work in other than a purely clerical capacity; and
- E. Employees engaged in administering the provisions of the Statute.

### **Section 4 – Coverage of Agreement**

Management and the NCFLL agree that the terms and conditions of this Agreement apply to all employees in the bargaining unit.

### **Section 5 – Unit Clarification**

If the Department determines that a new or existing position is outside the bargaining unit, the Department will notify the NCFLL Executive Committee within 14 calendar days. The NCFLL will have 14 calendar days following the notification to challenge the Department's decision. Following a reply from the NCFLL, the Department will stay implementation for 21 calendar days to allow the parties an opportunity to informally resolve their disputes.

### **Section 6 – Employee Orientation**

- A. The NCFLL will be afforded the opportunity to have appropriate material included in the Department's on-line new employee orientation website.
- B. When formal orientation sessions are held for new bargaining unit employees, a designated Union Representative will be permitted to make a presentation to the employees. Such presentation shall be part of the formal session with Management present, shall be approximately 15 minutes in length, and shall be limited to factual matters concerning employees' rights under the Collective Bargaining Agreement and the Federal Service Labor-Management Relations Statute. The presentation shall neither deal with internal Union matters nor be used for recruitment of Union membership.

- C. Formal orientation sessions are those coordinated, sponsored, or put on by the Regional OASAMs or any other DOL Agency. Icons/hyperlink or equivalent will be placed on the union information page on LaborNet linking new employees to the NCFLL website.
- D. If the NCFLL Representative designated to attend the orientation session and make the presentation is not from the local commuting area of the orientation site, the provisions of Article 8 with respect to official time and travel expenses apply.
- E. In regard to a new bargaining unit employee who does not participate in a formal orientation session, the designated office Steward and new employee will be provided 15 minutes on official time to meet privately soon after the new employee comes on board.

## **Section 7 – Bargaining Unit Lists**

Management will furnish annually to the NCFLL, during the month of February, for its internal use only, an electronic spreadsheet by Region capable of being sorted by names, position titles, grades, bargaining unit status, dues check-off status, Agency duty station, and local affiliation of all employees in the bargaining unit.

## **Article 2 – Governing Laws and Regulations**

### **Section 1 – Precedence of Laws and Regulations**

In the administration of all matters covered by this Agreement, officials and employees are governed by existing or future laws and regulations of appropriate authorities; by published Department and/or Agency policies and regulations in existence at the time this Agreement was approved; and by subsequently published Department and/or Agency policies and regulations required by law or by the regulations of appropriate authorities.

### **Section 2 – Prescribing Regulations**

In prescribing Department and/or Agency regulations relating to personnel policies and practices and matters affecting working conditions, Management shall have due regard for the obligation to meet and confer with the NCFLL. The obligation, however, to meet and confer does not include matters with respect to the mission of the Department; its budget; its organization; the number of employees; or its internal security practices; and consistent with Article 54, Management Rights, the numbers, types, and grades of positions or employees assigned to an organizational unit, work project, or tour of duty; or the technology of performing its work. This does not preclude Management or the NCFLL from negotiating agreements providing appropriate arrangements for employees adversely affected by the exercise of any authority under this Section by Management.

### **Section 3 – Agreement Governs**

Where existing provisions of Department and/or Agency regulations are in conflict with this Agreement, the provisions of this Agreement shall govern.

### **Section 4 – Mandated Changes of Agreement or Regulation**

- A. Management agrees to issue no regulation which alters the terms or conditions of this Agreement without being mandated by law, Executive Order, higher regulation, judicial decision by a court of appropriate jurisdiction, or other higher authority.
- B. Amendment(s) to this Agreement or Departmental and/or Agency regulations may be required by mandated changes after the effective date of this Agreement. Amendment(s) to this Agreement or published Departmental and/or Agency regulations may be required by changes in applicable laws, Executive Orders, higher regulations, judicial decision by a court of appropriate jurisdiction, or other higher authority made after the effective date of this Agreement. The Department agrees to transmit to the NCFLL changes proposed during the term of the Agreement but not specifically covered by the Agreement which relate to conditions of employment of employees in the bargaining unit and/or which may adversely affect such conditions.



- C. Management will notify the NCFLL after receipt of notice of a required change. Upon receipt of such notification from Management, the NCFLL may, within fourteen (14) calendar days, request negotiations concerning the amendment.
- D. Upon timely request from the NCFLL, the parties shall meet and confer within 30 calendar days concerning any negotiable aspects of the required change and/or its impact on bargaining unit employees.
- E. Any changes of regulations or amendments to this Agreement which are negotiated and agreed to pursuant to this Section will be duly executed by the parties and will become an integral part of this Agreement and subject to all of the terms and conditions of this Agreement.

## **Section 5 – Management Proposals for Change During the Term of the Agreement**

- A. Management agrees to transmit to the NCFLL proposed changes relating to personnel policies, practices, and matters affecting working conditions of bargaining unit employees, or which impact them, proposed during the term of this Agreement and not covered by this Agreement, as far in advance as possible.
- B. Upon receipt of such a proposed change from Management, the NCFLL may, within fourteen (14) calendar days, request negotiations concerning the proposed change.
- C. Upon timely request from the NCFLL, the parties shall meet and confer within 30 calendar days concerning any negotiable aspects of the proposed change and/or its impact on bargaining unit employees.
- D. Any changes of regulations or amendments to this Agreement which are negotiated and agreed to pursuant to this Section will be duly executed by the parties and will become an integral part of this Agreement and subject to all of the terms and conditions of this Agreement.

## **Section 6 – Past Practices**

It is agreed and understood that any prior working conditions and practices and understandings which are not specifically covered by the Agreement or in conflict with it shall not be changed unless mutually agreed to by the parties

## **Article 3 – Labor-Management Relations Committees**

### **Section 1 – Purpose and Function**

The parties recognize that the entrance into a formal collective bargaining agreement with each other is but one act leading toward a constructive labor-management relationship. The success of a labor-management relationship is further assured if a forum is available and used to communicate with each other during the life of the agreement.

The Department and the NCFLL, therefore, agree to continue and improve upon both the National Labor-Management Relations Committee and Regional Labor-Management Relations Committees for the purpose of exchanging information and discussing matters of mutual concern or interest in the broad area of personnel policy and practices and other matters affecting working conditions. The parties will strive to have these committees be an effective forum for meaningful dialogue and exchanges in a manner that will benefit both labor and management and promote an effective and efficient government.

### **Section 2 – Labor-Management Relations Committee Meetings**

- A. Frequency of LMR Committee Meetings.
  - 1. National Committee: The National Labor-Management Relations Committee meetings shall be held semi-annually.
  - 2. Regional Committee: The Regional Labor-Management Relations Committee meetings shall be held semi-annually.
  - 3. Committee Meeting: National and Regional Labor-Management Relations Committee meetings may be held more frequently or deferred by mutual consent of the parties.
- B. Ground Rules for Labor-Management Relations Committees Meetings.
  - 1. It is the intent of the parties that LMR Committee meeting time be removed from and be mutually exclusive of mid-term bargaining.
  - 2. The discussion of agenda items should be coordinated to minimize, if not eliminate, "down" time.
  - 3. Agenda items should comprise topics conducive to meaningful dialogue, exchange of ideas, joint initiatives, and problem solving; and not comprise merely of questions asked by one party to be answered by the other. The agenda should serve the purpose of discussion by the parties of specific interests and concerns and for enhancing the labor-management relationship.
  - 4. As a rule, the NCFLL will request information no later than 30 calendar days prior to the LMR committee meetings. Management will endeavor to respond prior to the twenty-one (21) calendar day deadline for the submission of the agenda in order that the NCFLL may frame meaningful items for follow-up discussion. When circumstances preclude a timely

exchange, late information request agenda items may provide an opportunity to discuss important issues.

5. An agenda should comprise both standardized issues and ad hoc issues as appropriate, and management is encouraged to provide regular or periodic updates on its initiatives. The regional committee meetings should address only regional issues. National issues are appropriate for the National committee meetings and should not have to be repeated on agendas at regional committee meetings.
6. All agenda items (Department-wide as well as individual Agency issues) shall be arranged for and scheduled in advance. With respect to both National and Regional Committee meetings, the parties agree to submit their respective agenda items to each other no less than twenty-one (21) calendar days prior to the scheduled date of the meeting. As necessary, the parties will continue their coordination to finalize the agenda no later than five calendar days prior to the meeting.
7. Either party will provide any necessary follow up to the other party within 14 calendar days after the conclusion of the meeting.

### **Section 3 – Coordination of Regional LMR Committee Meetings**

- A. The agenda, schedule, and attendees will be coordinated through the NCFLR Regional Executive Committee (NREC).
- B. Recognizing that Regional configurations vary among agencies, the parties agree that Regional management will participate in all Regional LMR meetings within their jurisdictions. Accordingly, for Regional Managers not located in the city where the LMR meeting is held, alternative means (such as video conferencing) may be utilized to facilitate participation in the Regional Labor Management Committee meetings.
- C. If the parties agree, Regional LMR Committee meetings can encompass joint training.
- D. To further enhance the Labor Management relationship, when Regional management officials are otherwise in a travel status for such purposes as REC meetings, District Office meetings, etc. they are encouraged to communicate with local Union officials to have impromptu Labor Management discussions.
- E. The number of persons entitled to official time and travel expenses to attend Regional LMR Committee Meetings will not exceed 50 nationwide two times a year. The NCFLR will determine the appropriate representation at any scheduled LMR meeting. In the interest of conducting a fully informed discussion, a local Union representative may participate during a specific agency meeting. Their participation will not result in travel or per diem expenses.
- F. An NCFLR National Officer may, on an as needed basis, attend a Regional Semi-Annual meeting at no cost to the Department.

## **Section 4 – National Meetings**

- A. NCFLL membership on the National Labor-Management Relations Committee shall normally consist of elected officials of the NCFLL, not to exceed a total of 11 persons.
- B. The Department recognizes that the NCFLL may request an AFGE, AFL-CIO, National Representative to attend Labor-Management Relations Committee meetings from time to time.
- C. The National Labor-Management Relations Committee meetings shall normally be in Washington, DC. The parties mutually can agree to hold any particular meeting at an alternate site.
- D. For the National meeting, each party's respective agenda will be coordinated and shared between the NCFLL President or his designee (for the Union) and the Office of Departmental Labor Relations and Negotiations (for the Department).

## **Article 4 – Midterm Bargaining**

As used in this Article, bargaining during the term of the Agreement, otherwise referred to as “midterm bargaining” includes all aspects of negotiations from preliminary meetings on ground rules, if any, through mediation and impasse resolution processes when needed. The parties will utilize information technology and electronic resources to communicate prior to bargaining. The parties also agree to utilize available technology in the bargaining process where efficient and cost effective.

### **Section 1 – National Bargaining**

#### **A. Notice of Change and Request to Bargain**

1. Midterm collective bargaining between the Department of Labor and the National Council of Field Labor Locals (NCFLL) is governed, in part, by the provisions of Article 2 of the DOL-NCFLL Agreement.
2. Article 2, Section 4, provides that the Department agrees to issue no regulation which alters the Agreement without being mandated by a change in law, Executive Order, Government-wide rules or regulations, judicial decision by a court of appropriate jurisdiction, or other higher authority.
3. Amendments to this Agreement or Departmental and/or Agency regulations may be required by mandated changes after the original effective date of the master labor Agreement. In Article 2, Section 5, the Department also agrees to transmit to the NCFLL changes proposed during the term of the Agreement but not specifically covered by the Agreement which relate to conditions of employment of employees in the bargaining unit and/or which may adversely affect such conditions. The NCFLL will also be notified of any other proposed changes which may impact upon working conditions.
4. In the circumstances described above, the parties agree that the NCFLL has 14 calendar days from receipt of notice of a change in which to request bargaining concerning the proposed changes in the conditions of employment not specifically covered by the Agreement. The Union may be granted an extension to request bargaining for a specified number of days if agreed to by management.

#### **B. Scheduling Midterm Bargaining Sessions**

The parties will meet to bargain no later than 30 calendar days from the Department’s receipt of a timely NCFLL request to bargain or unless a later time is mutually agreed to by the parties. Official time and travel for midterm bargaining are covered in Article 8. When bargaining is face-to-face, the bargaining site will be based on cost and efficiency unless mutually agreed otherwise.

### C. Number of Members on Midterm Bargaining Teams

The number of employees representing the NCFLL at midterm bargaining for whom official time and travel expenses are authorized, normally not less than three, shall not exceed the number of members designated by the Department on its bargaining team (5 U.S.C. 7131(a)), unless otherwise agreed to by the parties.

### D. Midterm Bargaining Proposals

Following the NCFLL initial bargaining request, the NCFLL shall state in writing its specific concerns or interests with regard to the Management proposed change and/or provide the Department with a counterproposal in contract language format. The NCFLL will provide the Department with its specific concerns and/or counterproposals as soon as possible but no later than 14 calendar days prior to the scheduled commencement of the bargaining.

### E. Other Services to the NCFLL

The Department will provide the NCFLL with the use of a caucus room, telephone and on an as-needed basis, the use of duplicating equipment.

## **Section 2 – Regional Bargaining**

### A. Notice of Change and Request to Bargain

For efficient and uniform communication between the parties to facilitate regional midterm bargaining, on the effective date of this Agreement, the NCFLL President or designee will submit to each of the six regional Offices of the Assistant Secretary for Administration and Management (OASAM) the NCFLL's regional representatives to whom management will send notifications of changes which may impact working conditions of bargaining unit employees. The designated Union representatives will not exceed 50 nationwide in totality and will not exceed 10 for any single regional OASAM.

At the same time the NCFLL submits its designated representatives, it will also submit to each of the six regional OASAMs the names of designated Union representatives who are the only union representatives authorized to request bargaining within the OASAM region. These designated Union representatives may, or may not, be part of the group of Union representatives designated to receive the notifications of changes which may impact working conditions of bargaining unit employees.

1. Within a Region, when the Department or a DOL Agency decides to change the manner in which it exercises its reserved rights under 5 U.S.C. 7106(a) or (b) and where such change will impact upon working

conditions, the Department, through the Office of the Regional Administrator-OASAM, will notify the NCFLL, through its Regional designated representative(s), in writing of the proposed change. The representative(s) will also be notified of any other proposed changes which may impact upon working conditions.

2. In the circumstances described above, the parties agree that the NCFLL has 14 calendar days from receipt of notice of a change in which to request bargaining to the fullest extent allowable by law, rule, regulation, and this Agreement. The Union may be granted an extension to request bargaining for a specified number of days if agreed to by management. When the Union requests bargaining, it shall at the same time designate the individual with whom management is to coordinate for purposes of scheduling, location, identification of Union participants, etc.

#### B. Scheduling Midterm Bargaining Sessions

The parties will meet to bargain no later than 30 calendar days from the Department's receipt of a timely NCFLL request to bargain unless a later time is mutually agreed to by the parties.

#### C. Midterm Bargaining Forum and/or Site

Regional midterm bargaining may be conducted by the parties at its Regional Labor-Management Relations Committee (RLMRC) meeting. If bargaining is not conducted at RLMRC meetings, any face-to-face bargaining will be conducted at a bargaining site based on cost and efficiency unless mutually agreed otherwise. Official time and travel for midterm bargaining are covered in Article 8.

#### D. Number of Members on Midterm Bargaining Teams

The number of employees representing the NCFLL at midterm bargaining for whom official time and travel expenses are authorized shall not exceed the 5 U.S.C. 7131(a)), unless otherwise agreed to by the parties. Management will inform the Union of the number of management team members within seven (7) calendar days of receipt of a timely request to bargain.

#### E. Midterm Bargaining Proposals

Following the NCFLL initial bargaining request, the NCFLL shall state in writing its specific concerns or interests with regard to the Management proposed change and/or provide the Department with a counterproposal in contract language format. The NCFLL will provide the Department with its specific concerns and/or counterproposals as soon as possible but no later than fourteen (14) calendar days prior to the scheduled commencement of the bargaining.

## **Article 5 – Rights of Employees**

### **Section 1 – General**

Each employee of the Department has the right, freely and without fear of penalty or reprisal, to form, join, or assist the NCFLL or to refrain from any such activity. Employees shall be protected in the exercise of this right.

### **Section 2 – Employee Right to Participate**

Except as otherwise expressly provided in this Agreement and in Title VII of the Civil Service Reform Act, as amended, the right to assist a labor organization extends to participation in the management of the organization and acting for the organization in the capacity of an organization representative, including presentation of views to officials to the Executive Branch, the Congress, or other appropriate authority.

### **Section 3 – Employee Concerns**

Each employee shall have the right to bring matters of personal concern to the attention of appropriate officials of the Department and/or the NCFLL.

### **Section 4 – Employee Right to Grieve**

The initiation of a grievance by an employee will not cause any reflection on his/her standing with his/her supervisor or on his/her loyalty or desirability to the Department. Employees and NCFLL Representatives who have relevant information concerning any matter for which remedial relief is available under this Agreement will, in seeking resolution of such matter, be assured freedom from restraint, interference, coercion, discrimination, intimidation, or reprisal. Management will not impose any restraint, interference, coercion, or discrimination against any employee in the exercise of his/her right to designate an NCFLL Representative for the purpose of representing to Management any matter or job related concern or of representing the employee to any Government agency or official of the Department. The extent to which official time is granted to employees and NCFLL Representatives is as provided in Article 8 of this Agreement.

### **Section 5 – Employee Membership**

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



## **Section 6 – No Discrimination**

Management and the NCFLL will not discriminate against any bargaining unit employee because of age, sex, race, religion, color, national origin, disability, sexual orientation, parental status or because of veteran status.

## **Section 7 – Unit Employee Right to Representation**

- A. A meeting between an employee and his/her supervisor and/or any other Management Official, during which the principal topic of discussion is to be discipline or potential discipline, will entitle the employee involved to request to be accompanied by his/her NCFLL Representative during the meeting. The employee will be informed in advance if discipline or potential discipline is to be the principal topic of discussion. If such request is made, the supervisor or other Management Official will honor the request. If the employee requests an NCFLL Representative, the meeting will be held or rescheduled when an NCFLL Representative can be present.
- B. If during a meeting between an employee and his/her supervisor and/or any other Management Official, discipline or potential discipline enters into the discussion, the employee may request to be accompanied by his/her NCFLL Representative. If such a request is made, the supervisor or other Management Official will honor the request. The meeting will be suspended until an NCFLL Representative can be present.
- C. The NCFLL shall be given the opportunity to be represented at any examination of an employee by a representative of the Department in connection with an investigation if:
  - 1. the employee reasonably believes that the examination may result in disciplinary action against the employee; and
  - 2. the employee requests representation.
- D. Any employee who has been subject to an internal Departmental administrative investigation in which he/she was entitled to representation under Subsection C of this Section shall be notified of the disposition of said investigation.

## **Article 6 – NCFLL Stewards**

### **Section 1 – Designation of Stewards**

The NCFLL shall provide the Regional Administrator-OASAM, with a list of designated Stewards in each OASAM Region. These designated Stewards shall be recognized as employee representatives for bargaining unit employees in the offices to which they are designated and shall be entitled to the use of official time under provisions of this Agreement. Normally, the areas of representational responsibility for designated Stewards should be separate but may overlap.

### **Section 2 – Allocation of Stewards**

- A. The parties agree that the existing steward positions will remain as of the effective date of this agreement.
- B. If there are up to 50 bargaining unit employees, one steward will be designated to represent that Office. Two Stewards may be designated if there are from 51 to 100 bargaining unit employees in the Office. If there are 101 to 150 bargaining unit employees in the Office, a third Steward may be designated. If there are more than 150 bargaining unit employees in the Office, a fourth Steward may be designated. No office having fewer than 50 bargaining unit employees will have more than two stewards designated from its staff.
- C. Any proposed changes of steward placement positions in A. and B. will be discussed between the Local President and the Regional Labor Relations Officer. Any unresolved issue(s) will be forwarded to the Director of the Office of Departmental Labor Relations (ODLRN) and the NCFLL President for resolution.

### **Section 3 – Notification to Management and Posting**

The NCFLL shall provide each Regional Administrator-OASAM with a complete list of Stewards for that Region and identify the Agency or segment thereof that each Steward is designated to represent. The lists of Stewards shall be posted on LaborNet. The Union shall be entitled to post the lists of Stewards on appropriate bulletin boards.

## **Article 7 – Regional and National Union Officials**

### **Section 1 – Regional NCFLL Officials**

- A. The NCFLL may designate up to 33 Regional Officials nation-wide, who shall be entitled to serve as the representative of bargaining unit employees.

Official time and/or travel expenses will be granted under the provisions of this Agreement and consistent with the provisions of Article 8. Only one designated Regional NCFLL Official at a time may be entitled to official time in connection with a given representational matter (e.g., grievance, adverse action, disciplinary action, statutory appeal, EEO representation, etc.)

- B. The NCFLL shall provide the Regional Administrator-OASAM with the names of the Regional NCFLL Officials in that Region who are designated pursuant to Subsection A. above.

### **Section 2 – National NCFLL Officials**

- A. The NCFLL may designate up to 11 National NCFLL Officials who shall be entitled to serve as representatives of bargaining unit employees on official time (if Departmental employees) under the provisions of this Agreement and consistent with the provisions of Article 8. Only one National Official may be designated at a time in connection with a given representational matter (e.g., grievance, adverse action, disciplinary action, statutory appeal, EEO representation, etc.).
- B. The NCFLL shall provide the Labor-Management Relations Center with the names of its National Officials who are designated pursuant to Subsection A. above.

## **Article 8 – Official Time and Travel Expenses**

### **Section 1 – General**

- A. Management recognizes that official time and travel expenses spent by bargaining unit employees in the conduct of labor-management business is spent as much in the interest of Management as that of the NCFLL and bargaining unit employees.
- B. Official duty time and travel expenses shall not be allowed for internal Union business.
- C. Official time and travel expenses for the conduct of labor-management relations business will be granted to NCFLL Stewards and Officials, and to affected employees as specified in this Article. Official time and travel expenses will be granted to NCFLL Stewards and Officials in accordance with their designation in Articles 6 and Articles 7 of this Agreement.
- D. It is recognized by the parties that advances in technology are changing the way representational activities occur. To the extent practicable, the parties agree to evaluate and utilize available technology in the most efficient and cost effective method. When the parties are not located in the same geographical area, meetings may be accomplished utilizing web based technology in a real time exchange. The use of any other available technology will be by mutual agreement.

### **Section 2 – Official Time for Stewards and NCFLL Officials**

- A. Grievances and Appeals
  - 1. An NCFLL Steward or Regional NCFLL Official may utilize a reasonable amount of official time to confer with an affected bargaining unit employee(s) with respect to any matters for which remedial relief may be sought pursuant to the terms and conditions of this Agreement or pursuant to a statutory appeals procedure or labor-management relations appeals procedure, provided that only one representative at a time may be entitled to official time in connection with a given representational matter. An NCFLL Steward or Regional NCFLL Official may utilize a reasonable amount of official time to communicate with other Stewards or Officials in connection with a representational matter.
  - 2. Subsection 1 above includes time to counsel a bargaining unit employee(s), to investigate a potential grievance, and to prepare and present a grievance at the Steps of the grievance procedure specified in Article 15, Grievance Procedure, of this Agreement. Also included is time to investigate, prepare, and present a reply to a notice of proposed adverse action or performance based action; an adverse action, performance based action, or RIF appeal; an EEO discrimination complaint; a request for reconsideration or an appeal of an acceptable level of competence determination; and a classification appeal. In addition, Subsection 1 above includes time to investigate, prepare, and, if required,

participate in an FLRA (ULP or Unit Clarification), FSIP, OWCP, or EEO proceeding, ADR procedure, or mediation.

#### B. Meetings with Management

An NCFLL Steward or Regional NCFLL Official may utilize a reasonable amount of official time to prepare for and be present at meetings with Management, including Safety and Health Committee meetings, Labor-Management Relations Committee meetings, etc., concerning personnel policies, practices, and other matters affecting working conditions of employees in the bargaining unit. Such meetings may be initiated by either the Union or Management. An NCFLL Steward or Regional NCFLL Official may utilize a reasonable amount of official time to communicate with other Stewards or Officials in connection with such meetings. The Department and the NCFLL encourage informal meetings to resolve potential problems at the work site and preclude, if at all possible, the need for formal dispute procedures to be initiated.

#### C. Preparing LM Forms

Union Officials (one per Local) may utilize up to eight hours of official time annually to prepare the annual financial report which must be filed with the Department of Labor pursuant to 5 U.S.C. 7120, Standards of Conduct for Labor Organizations. Union officials may also utilize up to eight hours of official time to prepare IRS Form 990.

#### D. Review of Bi-Weekly Dues Deduction Reports

Union Officials may utilize a reasonable amount of time for review and initiation of corrective action related to the bi-weekly dues deduction report.

#### E. Formal Discussions

The NCFLL shall be given the opportunity on official time to be represented at any formal discussion, as prescribed in Article 1, Section 1D.

#### F. Midterm Bargaining

Union Representatives will be on official time for all midterm bargaining.

### **Section 3 – Official Time for Bargaining Unit Employees**

#### A. Grievances and Appeals

A bargaining unit employee(s) may utilize a reasonable amount of official time to confer with a Steward, Regional NCFLL Official, or National NCFLL Official.

B. Meetings with Management and Third Party Proceedings

A bargaining unit employee(s) may utilize a reasonable amount of official time to attend meetings with Management and third party proceedings when he/she is the affected employee or a witness in a grievance or statutory appeal proceeding.

C. Representation of Multiple Grievants

If two or more bargaining unit employees file a group grievance, the following number of those employees will be granted official time to discuss the matter(s) with an NCFLL Steward or Official, and to attend grievance meetings pursuant to Article 15, Grievance Procedure.

Number of Grievants	Number of Grievants Entitled to Official Time
2-10	1
11-20	2
more than 20	3

This Section applies to persons who are currently employed by the Department.

**Section 4 – Definition of Reasonable Amount of Time**

- A. The determination of what constitutes a reasonable amount of time; under this Article is a matter requiring mutual agreement between the employee and his/her supervisor prior to the employee’s release under Section 5 of this Article, taking into account the need to balance the effective conduct of the Department’s business with the rights of employees to be represented in matters relating to their employment. A factor to be considered by the parties in determining what constitutes a “reasonable amount of time” is the amount of time that is necessary to accomplish the specific task for which time is requested.
- B. If there is a dispute between an NCFLL representative and his/her supervisor concerning what constitutes a “reasonable amount” of time, the matter will be referred to the Regional Labor Relations Officer and the Local President for resolution. If the dispute is not resolved, the matter will be referred to the Director of ODLRN and the NCFLL President for resolution.

**Section 5 – Use of Official Time: Check-Out, Check-In**

A bargaining unit employee(s) or the designated Union Representative who desires to use official time under this Article may be authorized a “reasonable amount of time as follows:

- A. A designated Union Representative or employee(s) who wishes to use official time under this Article will request permission of his/her immediate supervisor. Such request should be made as early as possible, i.e., generally as soon as the need for the official time is known.
- B. A Union Representative or employee(s) who wishes to use official time under this Article in an organizational unit not under the direction of his/her own supervisor will request permission of the supervisor of the organizational unit involved before engaging in such activity. Management will reply to such request as soon as possible.
- C. Permission as described in Subsections (A) and (B) above will be granted unless compelling reasons require the presence of the Union Representative or employee(s) at Agency tasks which he/she is then performing. If such permission is denied, the manager or supervisor refusing such permission will give the reasons for refusal in writing, to the representative or employee(s) who was so denied. If the supervisor denies or delays the use of official time for any representational activity, such activity will be delayed and/or an extension granted for a reasonable amount of time until the designated NCFLL representative is available or another NCFLL representative is designated. Disputes regarding this section of the contract will be handled in accordance with Section 4(B) of this Article.
- D. The Union Representative or employee(s) will report his/her return to work to his/her immediate supervisor upon conclusion of use of official time under this Article.

## **Section 6 – NCFLL National Officials**

NCFLL National Officials (as designated in Article 7) will be on 100% official time. When employees are newly elected or appointed to the National Council, the NCFLL will notify the Department and there will be a 90-day transition period from the date of receipt of such notice before the employee begins utilizing 100% official time. There will be a 90-day transition period from the date of notice when an NCFLL National Officer leaves office to resume the duties of his/her position. When an NCFLL National Official leaves office, he/she will normally have a right to return to the position of record in the commuting area.

## **Section 7 – Travel Expenses**

The Department and the NCFLL have a mutual commitment to contain travel expenses in connection with representation. Therefore, the parties agree to the following provisions.

- A. Union Representatives
  - 1. The Department and the NCFLL agree that, ordinarily, representation of employees or the Union on official time will be performed by Union Representatives from within the commuting area.

2. If there is no Union Representative in the commuting area, the Department will pay appropriate travel expenses of the nearest representative. This includes representation at Steps 1 and 2 of the grievance procedure and for institutional grievances.
3. If the Union designates a representative from outside the commuting area when one exists within, the Department will have no obligation for the representative's travel expenses. Where there is no representative in the commuting area and the Union does not designate the nearest representative, the Department will pay constructive or comparable cost travel expenses. This includes representation at Steps 1 and 2 of the grievance procedure and for institutional grievances.
4. For arbitrations, the Department will pay travel expenses of an NCFLL representative from within the OASAM Region of the hearing site or the nearest National NCFLL official if there is not one within the region. Should the NCFLL designate any other representative, the Department will pay constructive or comparable travel expenses based on the nearest National NCFLL official.
5. Exceptions to Subsections 2 and 3 above
  - a. The Department will pay travel expenses for the NCFLL Representative within a Region at other third party proceedings (as delineated in Section 2A.2. of this Article) when an employee has designated a Union Steward or Official as his/her personal representative.
  - b. If any question arises over travel expenses concerning representation in connection with third party proceedings, it shall be referred to the Regional Labor Relations Officer and the Local President for resolution. If the dispute is not resolved, the matter will be referred to the Director of ODLRN and the NCFLL President for resolution. The Department will pay travel expenses for the NCFLL Representatives for midterm bargaining.
6. The Department will pay travel expenses for the NCFLL Representatives for midterm bargaining.
7. The Department will pay for travel to Labor-Management Relations Committee meetings.

#### B. Bargaining Unit Employees

Bargaining unit employees will be reimbursed for travel expenses in connection with meetings with Management, face-to-face oral responses to proposed disciplinary suspensions or adverse actions, or participation in grievances or arbitrations or other third party proceedings (as delineated in Section 2A.2 of this Article).



## **Article 9 – Use of Official Facilities**

### **Section 1 – Bulletin Boards**

- A. The Department agrees to furnish appropriate bulletin board space(s) in DOL offices to be used for notices as provided in Section 2.
- B. Notices placed by the NCFLL on bulletin boards or distributed as provided in Section 2 of this Article may not contain material which would appear to identify it as the Department's material or that it is sponsored or endorsed by the Department; nor contain any scurrilous or libelous material.

### **Section 2 – Distribution**

- A. The NCFLL may distribute printed material, other than labor-management relations information, to individual employees on the Department's premises. NCFLL representatives may distribute printed materials before and after their workdays and during rest breaks and meal breaks. Printed materials may be dropped at employees' desks or may be placed in employees' mailboxes. Employees may use the Department's technology to access the NCFLL website ([www.NCFLL.org](http://www.NCFLL.org)) consistent with the Department's appropriate use policy as prescribed in DLMS 9, Chapter 900.
- B. The Department agrees that the NCFLL may distribute quarterly the NCFLL Courier through the Department's email system to all employees in the bargaining unit. The Courier shall be clearly identified as NCFLL material and contain nothing that identifies it as Department material or implies that it is sponsored or endorsed by the Department. Prior to distribution, the NCFLL Courier must be cleared for release by the Department.

### **Section 3 – Meeting Rooms**

- A. Management, with an advance request from the NCFLL, will provide meeting space for meetings of bargaining unit employees before or after working hours or during lunch periods. The NCFLL agrees to comply with all security and housekeeping rules in effect at that time and place.
- B. Management, with an advance request from the NCFLL, will provide a meeting room, equipped where practicable with a telephone if included in the request, for preparing or discussing a grievance and preparing for meetings with Management.
- C. Management will provide the NCFLL Executive Committee Officials with a meeting room in the National Office when they are meeting with Management.

## **Section 4 – Telecommunications Equipment and Systems**

- A. NCFLL Officials and Stewards shall have access to the Departmental Telecommunications System and where this system is unavailable NCFLL Officials and Stewards shall have access to the commercial telephone system for the conduct of labor-management relations business, but not for internal Union business.
- B. Management will provide National NCFLL Officials with access to the Departmental Telecommunications System for the conduct of labor-management business during the time they are meeting in the National Office.
- C. NCFLL Officials and Stewards shall have access to Departmental facsimile equipment for the conduct of labor-management relations business, but not for internal Union business.
- D. Consistent with Departmental security requirements, the NCFLL representatives will have access to the Department of Labor electronic mail system for the conduct of labor-management relations business, but not for internal Union business.
- E. NCFLL Representatives shall have access to a computer with internet access and a printer to conduct labor-management relations business, but not for internal Union business.

## **Section 5 – Use of Government Mail**

NCFLL Officials and Stewards shall have use of Government mail and/or premium delivery service under contract for the conduct of labor-management relations business, but not for internal Union business. All use of Government mail and premium delivery service shall be in accordance with DLMS 2, Chapter 560.

## **Section 6 – Office Equipment**

- A. National Office

Management agrees to provide the NCFLL with the use of a lockable file cabinet in the National Office, conveniently located, for the use of the National NCFLL Executive Committee Officials, plus one in each National NCFLL Official's field office.

- B. Regional Offices

Management agrees to provide the use of one lockable file cabinet in each Regional Office for the use of Regional Union Officials.

### C. Use of Photocopying Equipment

NCFLL Officials and Stewards shall have access to Departmental photocopying equipment for the conduct of labor-management relations business but not for internal Union business.

### D. Appropriate Use

The NCFLL's use of the Department's equipment for Labor-Management business is considered official use and is not subject to the appropriate use policy regarding personal use contained in DLMS 9 Chapter 900.

## **Section 7 – Telephone Listings**

- A. Subsequent publications of the Department of Labor telephone listing will include a list of the members of the NCFLL Executive Committee, their addresses, and their telephone numbers. Additional information may be included by mutual agreement.
- B. In subsequent publications of the Regional Department of Labor telephone listing, the names, addresses, and telephone numbers of the Presidents of the Locals in that Region will be included. Additional information may be included by mutual agreement.

## **Section 8 – Office Space Privacy for NCFLL Executive Committee**

- A. The Department will make good faith efforts to obtain private space for Executive Committee Officials who are not so situated. Ideally, such efforts will result in the provision of an office, but it is recognized that such facilities cannot be guaranteed.
- B. In any case, where a member of the Executive Committee acquires or has acquired the use of space, any right to the use will cease when that official has relinquished the position on the Executive Committee.

## **Section 9 – Identification of Equipment and New Technology**

This Article identifies the use of facilities and equipment to which the parties have agreed. However, with the introduction of new technology into the Department's work environment, either party may initiate bargaining on the new technology

## **Article 10 – Dues Withholding**

### **Section 1 – Eligibility**

- A. Bargaining unit employees, who are members of Locals affiliated with the NCFLL, may have their dues withheld through payroll deductions. Dues withholding is to be voluntary on the part of the individual employee. The Locals affiliated with the NCFLL will undertake to inform members of the voluntary nature of dues withholding and of the conditions governing a member's cancellation of dues withholding.
- B. Any member of a Local affiliated with the NCFLL within the bargaining unit who is in good standing and who is currently employed on a regularly scheduled tour of duty by the Department of Labor may authorize dues withholding at any time during the life of this Agreement provided that his/her regular biweekly salary is sufficient to cover the amount of the deduction.
- C. Dues are defined as the regular, periodic amount of money required to maintain the member in good standing in a local affiliated with the NCFLL. The Department shall honor the assignment and make allotments required to maintain the member in good standing in an NCFLL Local.
- D. Information as to which employees elect to pay dues will only be used in conducting official business and will not be disseminated to any individual without a need for this information.

### **Section 2 – Procedure for Authorizing Dues Withholding**

- A. All authorizations must be made on Standard Form 1187, Request For Payroll Deductions For Labor Organization Dues. The current form shall be made available through the Department's website.
- B. Each Local President will notify the RA-OASAM of the person(s) authorized to certify the SF 1187. OASAM will ensure that the correct dues amount will be withheld from the employee in accordance with the dues structure transmitted under Section 5 of this Article. The form may be submitted electronically, by facsimile or other means.
- C. Deductions will be made beginning with the first full pay period after the form is received in the Office of the RA-OASAM. All regular and periodic dues allotments will be processed by the parties in a timely manner. If the Department fails to honor a certified Request for Payroll Deductions for Labor-Organization Dues, SF 1187, the Department may reimburse the Union for the amount the Union should have received. The Department may grant waivers pursuant to the provisions of 5 USC 5584. Deductions will continue to be made in each subsequent pay period until terminated as provided in this Article.

### **Section 3 – Automatic Continuation of Dues Withholding**

- A. The Department will automatically reinstate the dues withholding of bargaining unit employees who are returning to a bargaining unit position from a temporary reassignment or temporary promotion to a position outside the bargaining unit.
- B. The Department will automatically reinstate the dues withholding of bargaining unit employees returning to a pay status from a non-pay status (e.g., LWOP).
- C. When a dues paying bargaining unit employee transfers from one duty station in the bargaining unit to another, the employee's dues will continue to be withheld pursuant to the existing SF 1187 until such time that a new SF 1187 is executed. The designated regional NCFLL representatives of the gaining and losing locals will be notified of transfers of bargaining unit employees at least two weeks in advance.

### **Section 4 – Revocation or Termination of Dues Withholding**

- A. Members may revoke their authorization at any time by sending written notice or Form 1188 (Cancellation of Payroll Deduction for Labor Organization Dues) to the Office of the RA-OASAM. Revocations should be submitted in duplicate. Revocations will not become effective until the beginning of the first pay period which starts after January 11, provided that the revocation has been received in the Office of the RA-OASAM by that date. The Department will also send copies of revocation notices to the respective Local Presidents and Treasurers as they are received.
- B. Authorizations will be automatically terminated if the member leaves the Department for any reason.
- C. Any employee who is reassigned or promoted to a position outside the bargaining unit shall cease to be eligible for dues withholding. Deductions will be terminated at the beginning of the pay period in which the action becomes effective. The affected employees will be provided with the following notice:

#### **NOTICE OF TERMINATION OF DUES WITHHOLDING**

**Regulations governing dues withholding to a labor organization require that dues withholding be automatically cancelled whenever an employee is reassigned or promoted to a position outside the bargaining unit.**

You were recently subject to a reassignment or promotion which will automatically terminate your dues withholding. The final dues withholding will be made for the last pay period in your old position.

If this is a temporary assignment or promotion, your dues will be reinstated upon your return to the bargaining unit.

If you have any questions regarding the termination of your dues withholding, you may wish to contact your steward or Local President. You may continue your membership by direct payment of dues.

- D. The individual Local Union Treasurer will notify the RA-OASAM within five calendar days when a member of a Local affiliated with the NCFLL who has authorized dues withholding and is currently employed by the Department is expelled or ceases to be in good standing. Deductions in this situation will be stopped at the beginning of the first full pay period after the notice is received.

## **Section 5 – Changes in Dues Structure**

In the event of a change in the regular dues of a Local affiliated with the NCFLL, the deduction from the salaries of those members who have previously authorized dues withholding for the NCFLL Local will be adjusted upon certification of the dues change by the NCFLL Local Union to the RA-OASAM. Certification may be provided electronically, facsimile or by other means. This change will be made beginning with the first full pay period which starts after the certification is received. A change in deductions under this Section may not be made more frequently than once every 12 months.

## **Section 6 – Remittance to the NCFLL and Cost of Service**

- A. Dues will be transmitted electronically to the bank account designated by the Union. There will be no cost to the NCFLL or individual Local Unions for dues deductions.
- B. The Department will provide to the individual Local Union Treasurer an electronic biweekly Union Roster and Activity Report for that local. The reports will include the name and the Agency of each member from whose salary dues have been withheld and the amount withheld for each person listed. The biweekly listing will provide annotated explanations of cases in which dues are not withheld (such as no payment, cancellation, LWOP, separated, etc.)
- C. If the Department changes or replaces its existing payroll and/or personnel system(s), the NCFLL reserves the right to reopen this section.

## **Section 7 – Correction of Errors**

- A. Administrative errors in remittance amounts will be corrected and adjusted in the next remittance to be issued to the individual Local Union Treasurer. If the individual Local Union Treasurer is not scheduled to receive a remittance after discovery of the error, the individual Local Union Treasurer agrees to refund the amount of erroneous remittance as soon as practicable.
- B. Management agrees that the total error in the amount of dues withheld from individual employees shall be adjusted as soon as practicable after Management has discovered or has received written notification from the individual Local Union Treasurer of an error.

- C. If the Department removes an employee from dues withholding based on a change in the employee's position description that places the employee outside of the bargaining unit or if bargaining unit status changes for any other reason, and the Federal Labor Relations Authority determines that the Department acted improperly, the Department will promptly reinstate the employee's dues withholding authorization and make the Union whole for all lost income.

## **Section 8 – Duration of Dues Withholding Article**

- A. This Article will remain in effect after the termination of this Agreement and until completion of negotiations or until 30 calendar days beyond the completion of any third party procedure there under.
- B. The parties to this Agreement may mutually agree in writing to extend this Article at any time.
- C. Should the NCFLL, for any reason, lose its exclusive recognition status under the Statute, deductions for all members will be terminated at the beginning of the first full pay period following loss of such recognition.
- D. When a bargaining unit employment requests and/or submits paperwork for retirement from the Agency, the employee may be supplied with the appropriate material from the NCFLL. The material may not contain anything that would appear to identify it as the Department's material or that it is sponsored or endorsed by the Department; nor contain any scurrilous or libelous material

## **Article 11 – Space Management**

### **Section 1 – Informal Process**

The NCFLL and Department of Labor recognize that employee workspaces are an important condition of employment and that potential changes should be handled at office locations between the affected employees, the designated local union Steward, and local management to the fullest extent possible. When management makes a decision that a change in employee's work space (including relocations and renovations), management will inform the NCFLL Regional Executive Committee. It is desirable that issues concerning space be resolved informally through discussion between the office Steward and local management with the understanding that any unresolved issues can always become the subject of formal bargaining.

### **Section 2 – Formal Process**

After the informal process, as described above has concluded, the Office of the Regional Administrator — OASAM, will provide formal notification to the union of the final disposition of the informal process. The NCFLL may then request bargaining in accordance with the terms of Article 4 of the Agreement.

Midterm bargaining concerning space will normally be held at the site in question or at a location where minimal travel expenses will be incurred by the parties.

### **Section 3 – Rights of NCFLL Representatives and Stewards**

When the space change involves an office move or when a new office is established, the designated NCFLL Steward shall be allowed to have input into the requirements that are included in the SF 81 and participate in market surveys and site visits scheduled by GSA provided that the steward agrees to follow all GSA requirements.

### **Section 4 – Information**

Regional OASAM will provide the NCFLL with the inventory of space actions on no less than a semi-annual basis, at each Regional LMR meeting. The inventory shall include the agency, city/state, lease expiration date, considered action, justification, estimated timeframe and status of the renovation/move. Updates of the inventory will be provided upon request.

Upon written request, management will provide the Union with the following information:

- A. Copies of the Building Lease Agreement and all Addenda, if available.
- B. The Department's request for space, SF-81, and floor plans with detailed specifications.



- C. Any other material necessary to provide the Union with information on a space change.

## **Section 5 – Workspace**

The parties recognize the need to efficiently manage space, which in turn is a financial savings. Alternative workspace may be utilized for DOL workspaces. This includes, but is not limited to open space, carrels, hot desking, collaboration rooms and shared workspace. Employees that telework three (3) days or more a week may be required to utilize alternative workspaces subject to local bargaining.

## **Article 12 – Performance Based Actions**

### **Section 1 – General**

- A. This Article pertains to reduction in grade and removal based on unacceptable performance.
- B. The Department will administer actions based solely on unacceptable performance in accordance with law, applicable Government-wide and DOL regulation, and this Article.

### **Section 2 – Initial Procedure**

- A. At any time during the performance appraisal cycle that an employee's performance becomes unacceptable in one or more critical elements, Management shall inform the employee as provided in Article 43 of this Agreement. Management 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, as defined in 5 CFR 432, the employee may be reduced in grade or removed.
- B. The employee will be afforded a reasonable opportunity to demonstrate acceptable performance in accordance with Article 43 of this Agreement.

### **Section 3 – Notice of Proposed Action**

An employee will be given written notice of a proposed reduction in grade or removal based on unacceptable performance at least thirty (30) calendar days in advance of the action. The employee has a right to representation and will be given a reasonable amount of time to respond orally and/or in writing to the proposed action prior to a decision.

### **Section 4 – Notice of Decision**

- A. Management shall make its final decision within thirty (30) calendar days after expiration of the advance notice period and shall issue written notice of the decision to the employee. An employee against whom the action is taken will be informed of any applicable appeal rights in writing in accordance with 5 CFR 432 and 5 CFR 752.
- B. If the reasons are sustained in the notice of decision and a performance-based action will be imposed, the decision notice shall include 1) a statement of the employee's EEO complaint, individual grievance and MSPB appeal rights; and 2) a statement that the employee may appeal to the MSPB or may file a grievance, but not both. The notice of decision shall include an explanation that any appeal to arbitration may be invoked only by the NCFLL within thirty (30) calendar days from the effective date of the adverse action, and the name, address, and telephone number of the Chairperson of the NCFLL Arbitration Committee. The

employee will be given an original and one copy of the notice for referral, at the employee's option, to the Chairperson of the NCFLL Arbitration Committee. If the NCFLL invokes arbitration, notice will be provided to the Office of Departmental Labor Relations and Negotiations.

## **Article 13 – Disciplinary Actions**

### **Section 1 – General**

The objective of discipline is to correct and improve employee behavior so as to promote the efficiency of the service. The concept of progressive discipline will guide managers in making decisions regarding discipline.

- A. A disciplinary action, for the purposes of this Article, is defined as an oral admonishment confirmed in writing, a written reprimand, or a suspension for fourteen (14) calendar days or less. In order to ensure a common understanding of how the Department effects disciplinary actions, Regional Labor and Employee Relations staff will be made available to conduct training at NCFLL Stewards training.
- B. The parties are mutually committed to Alternative Approaches to Discipline (AAD) for addressing employee conduct matters. The policy, goals, and procedures are contained in Department of Labor Policy Guidance for Alternative Approaches to Discipline of November 1999 posted on LaborNet.
- C. No bargaining unit employee will be the subject of a disciplinary action except for just and sufficient cause and for reasons which will promote the efficiency of the Department.
- D. A meeting between an employee and his/her supervisor and/or any other Management Official, during which the principal topic of discussion is to be discipline or potential discipline, will entitle the employee involved to request to be accompanied by his/her NCFLL Representative during the meeting. The employee will be informed in advance if discipline or potential discipline is to be the principal topic of discussion. If such request is made, the supervisor or other Management Official will honor the request. If the employee requests an NCFLL Representative, the meeting will be held, or rescheduled, when an NCFLL Representative can be present. A reasonable period of time should elapse between the date of receipt of the decision to suspend and the effective date of the suspension.

Nothing in this Article confers a right to representation during a counseling session.

- E. A reasonable period of time should elapse between the date of receipt of the decision to suspend and the effective date of the suspension.

### **Section 2 – Procedures for Suspension**

When Management proposes to suspend an employee for fourteen (14) calendar days or less, the following procedures will apply:

- A. Management will provide the employee with fifteen (15) calendar days advance written notice of the proposed suspension.

- B. The notice must state reasons for the proposed discipline specifically and in detail, in order to allow the employee to respond, and must clearly state the employee's right to make a response to the proposal and his/her right to be represented by the NCFLL. The employee will be given an original and one copy for referral to the Chairperson of the NCFLL Arbitration Committee, at the employee's option.
- C. The employee may file a written response and/or make an oral response to the notification prior to the end of the fifteen (15) calendar day notice period.
- D. After receipt of the written and/or oral response or the termination of the notice period, management will issue a final written decision to the employee which shall include a statement of the employee's grievance/arbitration rights, including a statement that any appeal is only to arbitration, which may be invoked only by the NCFLL within thirty (30) calendar days from employee receipt of the final written decision, and the name, address, and telephone number of the Chairperson of the NCFLL Arbitration Committee. The employee will be given an original and one copy for referral to the Chairperson of the NCFLL Arbitration Committee, at the employee's option.

### **Section 3 – Grievance/Arbitration Rights**

- A. An employee who is dissatisfied with an oral admonishment confirmed in writing or with a written reprimand may file a grievance pursuant to Article 15 of this Agreement.
- B. If the final written decision provided for in Section 2 of this Article involves a suspension for fourteen (14) calendar days or less, the matter may be appealed directly to arbitration, in accordance with Article 16 of this Agreement, by notifying management within thirty (30) calendar days from receipt of the final written decision. Such notification shall be sent electronically to the Director, Office of Departmental Labor Relations and Negotiations (ODLRN), with a copy to the appropriate Regional Agency Head.
- C. The arbitrator's decision will be in accordance with the provisions of Article 16.

### **Section 4 – Evidence**

- A. An employee will, in any disciplinary action, be furnished a copy of all material relied on by Management which formed the basis for the reasons and specifications.
- B. If the discipline is based on an investigative report, the employee will be furnished all written documents from the investigation which are disclosable in accordance with applicable law, rule, or regulation.
- C. The documentation specified in Subsections A and B above will be attached to the notice of proposed disciplinary action.
- D. Evidence which Management is not permitted to divulge to an employee under applicable law, rule, or regulation will not be used against the employee.

## **Section 5 – Exception to Disciplinary Action Appeals**

If a matter is pending before a court of law or the employee involved is under arrest or indictment, and the matter is otherwise appealable to arbitration under this Agreement, the arbitration will be postponed pending the conclusion of that legal process.

## **Article 14 – Adverse Actions**

### **Section 1 – General**

- A. An adverse action, for the purpose of this Article, is defined in 5 CFR 752. In order to ensure a common understanding of how the Department effects adverse actions, Regional Labor and Employee Relations Staff will be made available to conduct training at NCFLL Stewards training.
- B. This Article applies to bargaining unit employees who have completed their probationary or trial period.
- C. No bargaining unit employee will be subject to an adverse action except for reasons which will promote the efficiency of the Department.
- D. A meeting between an employee and his/her supervisor and/or any other Management Official, during which the principal topic of discussion is to be an adverse action or a potential adverse action, will entitle the employee involved to request to be accompanied by his/her NCFLL Representative during the meeting.
- E. The employee will be informed in advance if an adverse action or a potential adverse action is to be the principal topic of discussion and his/her rights to have an NCFLL Representative present during any such discussions. If such request is made, the supervisor or other Management Official will honor the request. If the employee requests an NCFLL Representative, the meeting will be held, or rescheduled, when an NCFLL Representative can be present. Nothing in this Article confers a right to representation during a counseling session.
- F. Once the employee requests an NCFLL Representative, that representative will be present at all subsequent meetings and a copy of all subsequent written communications will be provided to the NCFLL Representative.

### **Section 2 – Written Notice**

In all cases of proposed adverse action, the employee will be given written notice, which will state any and all reasons for the proposed action specifically and in detail, at least thirty (30) calendar days in advance of the action, except when there is reasonable cause to believe that an employee is guilty of a crime for which a sentence of imprisonment can be imposed. The employee will be given the opportunity to respond orally and/or in writing to the reasons for the action prior to a decision. The response may include written statements of persons having relevant information.

### **Section 3 – Evidence**

- A. An employee will, in any adverse action, be furnished a copy of all material relied on by Management which formed the basis for the reasons and specifications.
- B. If the adverse action is based on an investigative report, the employee will be furnished all written documents from the investigation which are disclosable in accordance with applicable law, rule, or regulation.
- C. The documentation specified in Subsections A and B above will be attached to the notice of proposed adverse action.

- D. Evidence which Management is not permitted to divulge to an employee under applicable law, rule, or regulation will not be used against the employee.

#### **Section 4 – Notice of Decision**

- A. An official who sustains the proposed reasons against an employee in an adverse action will set forth his/her findings with respect to each reason and specification against the employee in his/her notice of decision.
- B. If the reasons are sustained in the notice of decision and an adverse action will be imposed, the decision notice shall include a statement of the employee's EEO complaint and MSPB appeal rights. The decision notice shall also include 1) a statement of the employee's grievance rights, and 2) a statement that the employee may appeal to the MSPB or may file a grievance, but not both. The notice of decision shall also include an explanation that any appeal to arbitration may be invoked only by the NCFLL within thirty (30) calendar days from the effective date of the adverse action, and the name, address, and telephone number of the Chairperson of the NCFLL Arbitration Committee. The employee will be given the original decision and with the employee's consent a copy will be sent electronically to the members of the NCFLL Arbitration Committee. If the NCFLL invokes arbitration, the grievance form signed by the employee will be provided to ODLRN as an attachment to the written invocation of arbitration or at a later date if it is not readily available at the time of the arbitration invocation.

#### **Section 5 – Records Retention**

If the Deciding Official does not sustain the proposal as at least a disciplinary action, all information related to the proposed adverse action will be expunged from the eOPF, and the proposal notice from the employee's working file.



## **Article 15 – Grievance Procedure**

### **Section 1 – Purpose**

The purpose of this Article is to provide a mutually acceptable method for prompt and equitable settlement of grievances. The parties have a mutual interest in resolving grievances at the lowest level in a timely manner. To promote conflict resolution, supervisors, stewards, and employees should deal with the issue(s) and not personalities.

- A. Efforts should be made to resolve disputes informally prior to filing a formal grievance. Education and training in dispute resolution is a means to achieve this interest.
- B. Interest-based problem solving should be utilized as much as possible to resolve disputes. Both managers and Union Representatives should become familiar with interest-based problem solving techniques. The parties remain committed to forging new Alternative Dispute Resolution (ADR) procedures. See Article 17.
- C. Supervisors and NCFLL Stewards are encouraged to meet regularly to discuss matters of mutual concern. If informal discussions do not resolve the issue(s) and a grievance is filed, a face-to-face meeting at Step 1 may be unnecessary and can be waived by mutual agreement. In reaching the agreement, the parties will consider the complexity of the grievance and travel related costs. At any step of the process, the use of a facilitator may be useful and agreed to mutually.
- D. Nothing in this Agreement shall be construed as precluding discussion between a bargaining unit employee and/or his/her designated NCFLL Representative and his/her immediate supervisor about a matter of concern to either of them.
- E. Once a matter has been made the subject of a grievance under this procedure, nothing in this Agreement shall preclude either party to this Agreement from attempting to resolve the grievance informally.
- F. The parties agree to utilize technology to the maximum extent possible. Absent unusual circumstances, grievances will be filed, acknowledged, and responded to electronically. Grievances submitted electronically will be considered to have been signed.

### **Section 2 – Definition of a Grievance (Coverage and Scope)**

- A. A grievance by a bargaining unit employee(s), including probationary employees, is a request for personal relief in any matter of concern or dissatisfaction to the employee or group of employees concerning the interpretation, application, and/or violation of this Agreement; or the interpretation or application of Departmental regulations, and the application of Government-wide regulations with respect to personnel policies, practices, and other matters affecting working conditions.

B. Exclusions from the Grievance Procedure

1. This Article does not apply to:
  - a. A matter which is subject to a statutory appeal procedure (except as provided in Subsection 2. below) outside the Department under law or regulations including but not limited to the following:

<b>Actions or Decisions</b>	<b>Available Procedure</b>
EEO Discrimination	29 CFR 1614
Reduction in Force	5 CFR 351
Personnel Security	5 CFR 732 & 736
Classification	5 CFR 511

- a. a binding decision made by an authority outside the Department,
  - b. non-selection from a properly prepared Merit Staffing Certificate,
  - c. failure to recommend or disapproval of a recommended quality step increase, individual performance award, or other kind of honorary or other discretionary award,
  - d. failure to adopt a suggestion submitted under the Incentive Awards Program,
  - e. summary rating on appraisal of Highly Effective or Outstanding,
  - f. termination and/or separation of probationary employees, and
  - g. decisions of the Leave Bank Board.
2. The Article does apply to coverage, status, and back pay claims under the Fair Labor Standards Act and to the denial of a within-grade increase.
3. With regard to filling any position outside the bargaining unit, employees must utilize the Department's Administrative Grievance Procedure. (See DPR 771).

B. Matters Subject to Pending EEO Complaint

In the event that an employee files a grievance and also files or pursues an informal EEO complaint concerning the same matter, the grievance will be held in abeyance. If the matter is not resolved during the informal EEO process, the employee can resurrect the grievance or pursue a formal EEO complaint. If the employee files a formal EEO complaint, the grievance will be terminated.

Should the EEO complaint be dismissed on a technicality or for a non-substantive reason, the Union or the affected employee may resurrect the grievance in connection with any non-EEO issues within thirty (30) calendar days of receipt of the Department's EEO complaint decision by notifying the appropriate Management Official at the last processed step of the grievance procedure.

### C. Matters Subject to Other Statutory Appeals

If the Department determines that the issue(s) raised in a grievance under this negotiated procedure is subject to a statutory appeals procedure, and is therefore not grievable under this procedure, it shall immediately notify the grievant(s) and/or his/her designated NCFLL Representative.

## **Section 3 – Exclusive Procedure**

This shall be the exclusive procedure available to unit employees for the resolution of grievances as defined in Section 7 of this Article and for the Union as defined in Section 7D of this Article. With respect to adverse actions as defined by 5 CFR 432 and 5 CFR 752, if the Department's final decision is to effect an adverse action against a bargaining unit employee, the employee may elect either to appeal the decision to the Merit Systems Protection Board (MSPB) or to file a grievance as clarified in Article 15. Under no condition may an employee appeal an adverse action to the MSPB and file a grievance.

## **Section 4 – Representation**

### A. Filing a grievance:

1. Bargaining unit employee(s), filing a grievance under this procedure, may be represented only by a designated NCFLL Steward, Regional NCFLL Official, or National NCFLL Official, or a personal representative endorsed by the NCFLL.
  2. Any bargaining unit employee or group of bargaining unit employees may present a grievance under this procedure without representation as long as the resolution is not inconsistent with the terms of this Agreement and the NCFLL is given an opportunity to be present at any discussion or attempts at resolution of the grievance with the grievant(s). Official time will be granted and travel expenses will be paid in accordance with Article 8.
- B. At each step of the grievance procedure, one representative at a time shall be entitled to official time for purposes of preparation and presentation of the grievance. Travel expenses will be paid in accordance with Article 8.
- C. Where the grievant(s) has designated an NCFLL Representative, all communications with regard to the grievance and attempts at resolution of the grievance shall be made through the designated NCFLL Representative or simultaneously to the representative and the grievant(s).
- D. The grievance meeting will be with the contractually designated Management Official and the employee with his/her designated Union Representative. The designated Management Official may have necessary staff support for a full and accurate discussion of the grievance.

## Section 5 – Who May Initiate Grievance

- A. **Employee** – A grievance under this Article may be initiated by unit employees either singly or jointly. Any such grievance must bear the signature(s) of all the aggrieved employee(s).
- B. **Union (Institutional/Employee)** – The NCFLL or its designee may initiate a grievance on its own behalf. Any such grievance must bear the signature of the grievant. The NCFLL will provide to the Director, ODLRN, the names of all NCFLL Representatives authorized to file a Union grievance as defined in Section 7, Union Grievances.
- C. **Department of Labor** (See Section 7)

## Section 6 – Grievance Form

The grievance form is a critical component to the grievance process. It is intended to put the agency on notice of all the issues and the specific allegations of the grievance so that it may resolve the dispute at the lowest possible level.

- A. An employee grievance shall be presented on the negotiated standard grievance form. The filing of grievances can be done electronically. It shall be signed by the grievant(s), dated, and to the extent practicable shall contain:
  - 1. Date filed,
  - 2. The names(s) of the grievant(s),
  - 3. The name of the NCFLL Representative, if any,
  - 4. Specification of the Article(s), Section(s), and Subsection(s) of this Agreement or the Department regulations or working conditions which are alleged to have been violated,
  - 5. The nature and facts of the grievance,
  - 6. The remedy desire,; and
  - 7. Signature(s) of grievant(s).
- B. An appeal of a grievance to a higher Step of this procedure shall include a copy of the grievance form.
- C. Except by mutual consent of the parties, no allegations shall be raised in the appeal of a grievance which were not contained in either the Step 2 or institutional grievance procedures.

<b>DOL/NCFLR GRIEVANCE FORM</b>	
Name of Grievant(s):	Region:
	Agency:
Name of NCFLR Representative (If Any):	Date of Alleged Violation:
Alleged Violation(s) – Contract Article(s), Section(s), Subsection(s), Regulation(s), or Working Condition(s):	
Nature and Facts of Grievance:	
Remedy Desired:	
Step 1 Grievance – Signature(s) of Grievant(s):	Date:
Step 2 Grievance – Signature(s) of Grievant(s) or NCFLR Official:	Date:

## **Section 7 – General Procedures**

The parties to a grievance at either Step 1 or Step 2 may mutually agree to use ADR to assist them in resolving the grievance. Official time and travel expenses for the NCFLR Representative and bargaining unit employees will be in accordance with Article 8.

### **A. Step 1**

1. A grievance must be presented in writing on the negotiated grievance form within thirty (30) calendar days of when the bargaining unit employee or

NCFLL has learned or may reasonably have been expected to have learned of its cause.

2. Unless mutually agreed otherwise, a grievance shall be discussed at a meeting between the grievant, the NCFLL Representative, and the immediate supervisor (who prepares the aggrieved employee's performance evaluation) or with the manager whom it is alleged has violated this Agreement. The supervisor/manager shall have ten (10) calendar days in which to attempt to resolve the grievance with the aggrieved employee and/or designated NCFLL Representative and provide a written response addressing all the issues raised in the grievance.
3. If the grievance involves merit staffing procedures which prevent an applicant from being considered, the grievance shall be filed with the Regional Human Resources Officer. The grievant will discuss the issue telephonically with the Regional Human Resources Officer within thirty (30) calendar days of when the bargaining unit employee or NCFLL has learned of its cause. The Regional Human Resources Officer will have ten calendar days in which to respond telephonically to the grievance. The grievance may be filed at Step 2 with the OASAM Regional Administrator on the negotiated grievance form within ten calendar days of the response from the Regional Human Resources Officer. The procedures set forth below for processing Step 2 grievances must be followed.

#### B. Step 2

1. A grievance may be appealed to Step 2 of this procedure within ten (10) calendar days of receipt of the written response to the aggrieved employee(s) at Step 1 or, if no timely reply is made at Step 1, within twenty (20) calendar days after the grievance was presented at Step 1.

The time limit requirement of this Section will be satisfied if the grievant does any of the following:

- a. Electronically transmits or delivers to the Step 2 Official by hand the Step 2 appeal within ten (10) calendar days or twenty (20) calendar days, as the case may be, of receipt of the Step 1 reply;
  - b. Mails by Government certified mail, to the Step 2 Official, an appeal within ten (10) or twenty (20) calendar days, as the case may be, and the mailing envelope shows a postmark with a date indicating that the appeal was mailed within the ten (10) or twenty (20) calendar day period; or
  - c. Notifies the Step 2 Official by telephone within the ten (10) or twenty (20) calendar day time period, as the case may be, that an appeal is being filed, followed immediately by a written appeal mailed or electronically transmitted to the Official.
2. The Step 2 grievance appeal shall be submitted utilizing the negotiated standard grievance form to the appropriate Agency Regional Administrator

(or equivalent). The Regional Administrator (or equivalent) or designee shall have ten (10) calendar days in which to discuss and resolve the grievance with the aggrieved employee and/or the designated NCFLL Representative and to issue a reply.

3. Upon receipt of the reply of the Step 2 Official, the NCFLL may, within thirty (30) calendar days, invoke arbitration as provided in Article 16 of this Agreement with the Director, ODLRN.
4. If no timely reply is issued by the Step 2 Official, the NCFLL may within forty-five (45) calendar days from the date that the Step 2 decision was due, invoke arbitration as provided in Article 16 of this Agreement with the Director, ODLRN.

#### C. Adverse Actions

In the case of an employee electing to grieve an adverse action, within thirty (30) calendar days of the effective date of the decision, the employee shall file a signed grievance form with the Deciding Official. Steps 1 and 2 of the negotiated grievance procedure are automatically waived, and the Union may invoke arbitration. The time frame for the Union to invoke arbitration is the same time frame the employee has to file with the MSPB, namely thirty (30) calendar days. Therefore, it is incumbent upon the affected employee to coordinate with the Union well in advance of the deadline.

#### D. Union Grievances

This shall constitute the exclusive procedure available to the Union for the resolution of grievances. A grievance initiated by the Union must bear one signature of an official(s) or representative(s) designated by the President or Executive Vice President of the NCFLL.

For the purpose of filing this type grievance, it must be submitted within thirty (30) calendar days of when the incident occurred, or the NCFLL has learned or may have reasonably been expected to have learned of its cause.

##### 1. Union-Filed Institutional Grievances

A grievance by the NCFLL is a request for institutional relief over the interpretation or application of this Agreement or the interpretation or application of Departmental regulations, and the application of Government-wide regulations covering personnel policies and practices and other matters affecting working conditions. In the case of a Union grievance, the parties will waive Steps 1 and 2 of this negotiated procedure; however, the parties will make an informal effort to resolve the grievance at the level of dispute. If within ten (10) calendar days the matter cannot be resolved, it will be transmitted to the Department's Office of Departmental Labor Relations and Negotiations, (ODLRN) Washington, D.C. The Director, ODLRN will issue a written decision within thirty (30)

calendar days. Upon receipt of the reply, the NCFLL, may, within thirty (30) calendar days, invoke arbitration as provided in Article 16 of this Agreement, with the Director, ODLRN. If no timely reply is issued, the NCFLL may, within forty-five (45) calendar days from the date the decision was due, invoke arbitration.

## 2. Union-Filed Employee Grievance

A Union-filed employee grievance seeks personal relief for an individual employee or group of employees. The grievance(s) should be filed in accordance with the procedures and time frames delineated in Section 7, just as if the affected employee(s) had initiated the grievance(s).

- a. Union-filed grievances on the same matter on behalf of one (1) or more employees may be processed as a single grievance for the purpose of resolving the grievances.
  - i. If the employee grievant(s) is under the supervision of a single supervisor, the Step 1 grievances may be consolidated as a single grievance with that supervisor.
  - ii. If the employee grievant(s) are under the supervision of different supervisors within a single DOL agency, the grievances may be consolidated with the Regional Administrator, (or equivalent) or designee, at Step 2.
  - iii. If the employee grievant(s) are under the supervision of different supervisors in more than one DOL Agency within a specific region, the grievances may be consolidated and filed with the OASAM Regional Administrator at Step 2.
  - iv. On a matter crossing Regional lines, the grievance shall be filed with the Director, ODLRN, at Step 2.

## E. Department of Labor Grievances

If the Department of Labor wishes to file a grievance, the Director, ODLRN, will sign and file a written grievance with the NCFLL President within thirty (30) calendar days of when the Department knew or should have known of the alleged violation. The grievance will detail the nature of the harm, the violation of law, rule, regulation, and/or collective bargaining agreement violated, and the relief requested. If the grievance is not resolved, the NCFLL President shall issue a written decision within fourteen (14) calendar days. Upon receipt of the decision, the Director may, within thirty (30) calendar days, invoke the grievance to arbitration. The Director may also invoke the grievance to arbitration within forty-five (45) calendar days of when the decision of the NCFLL President is due.



## **Section 8 – Failure to Meet Requirements**

- A. Failure on the part of an aggrieved employee to prosecute his/her grievance within the stated time periods at any Step of this procedure will have the effect of nullifying the grievance unless the parties mutually agree otherwise.
- B. Failure on the part of the NCFLL to prosecute a grievance, filed in its own behalf within the stated time periods at any Step of this procedure will have the effect of nullifying the grievance unless the parties mutually agree otherwise.
- C. Failure on the part of Management to meet any of the time requirements of this procedure will permit the aggrieved employee or the NCFLL to move to the next Step.

## **Section 9 – Modification of Procedures**

- A. The time limits delineated in this Article may be extended by mutual written agreement of the parties at that Step. Absent such mutual consent, the failure to timely file an initial grievance, timely appeal the grievance to Step 2, or timely invoke the grievance to arbitration shall result in a dismissal of the grievance.
- B. The parties may mutually agree in writing to waive Step 1 or 2 of this procedure.
- C. For expeditious processing of grievances, the parties, by mutual agreement, may consolidate grievances concerning similar issues into a single grievance.
- D. No issues/allegations shall be raised in that appeal/arbitration of a grievance which were not contained in the Step 2 grievance process.

## **Section 10 – Statement of Grievability**

Management agrees to furnish the NCFLL with a final written statement of grievability / arbitrability of a grievance prior to the invocation of arbitration

## **Article 16 – Arbitration**

### **Alternate Dispute Resolution**

The invocation of a grievance to arbitration does not preclude the parties from mutually agreeing to achieve resolution through the use of ADR. Both parties recognize that ADR achieves the Department's goals and objectives for resolving workplace disputes at the lowest possible level and promotes the mission of the Department. Therefore, prior to a case being heard at arbitration, the parties will identify and schedule those cases which should be resolved through mediation, settlement, or other means of alternate dispute resolution. If a party opts not to use the ADR process then it must notify the other party of this decision in writing.

If the parties agree to use ADR prior to having a scheduled arbitration hearing date, all time frames in the Agreement will be suspended until the completion of the ADR process. Once an arbitration hearing has been scheduled it may be delayed for ADR only by mutual agreement. If the matter is not resolved by ADR, the case will be placed on the calendar for hearing.

### **Section 1 – Selection of Arbitrators**

- A. When the NCFLL invokes arbitration, it will request the Federal Mediation and Conciliation Service (FMCS) to provide a list of seven (7) arbitrators with copies to each of the parties. The Department will be responsible for the direct payment of all fees associated with getting lists of arbitrators from FMCS.
- B. Within ten (10) calendar days from receipt of the list from FMCS, the parties shall choose an arbitrator. If the parties cannot mutually agree on one name from the list, they will alternately strike one name from the list until only one name remains. The FMCS case numbers will be used to determine which party strikes first. The NCFLL will strike first if the last digit of this number is an even number. The Department will strike first when the last digit of this number is an odd number. The remaining name on the list shall be the duly selected arbitrator. The NCFLL shall immediately notify the FMCS of this selection.
- C. The FMCS shall be empowered to make a direct designation of an arbitrator to hear the case in the event that:
  1. Either party refuses to participate in the selection of an arbitrator, and/or
  2. There is inaction or a delay of more than forty-five (45) calendar days on the part of either party.

Prior to requesting a direct designation, the requesting party must notify the other party seven (7) calendar days in advance.

## **Section 2 – Cost of Arbitrator Fees and Travel Expenses**

The parties agree to share equally the arbitrator's expenses and fees, including reasonable travel expenses. The parties may wish to consult on the “reasonableness” of the arbitrator’s charges.

## **Section 3 – Scheduling, Date and Site of Arbitration Hearing**

- A. Within ten (10) calendar days of the selection of the arbitrator, the representatives for the parties will jointly communicate with the arbitrator and each other in order to select a mutually agreeable date for the arbitration hearing.
- B. The parties will schedule arbitration cases on the following priorities within an OASAM region or the National Office: (1) adverse actions and disciplinary actions, (2) institutional grievances, and (3) other grievances, including union-filed employee grievances. Arbitration hearings will not be rescheduled to achieve compliance with the priority list.
- C. Arbitration hearings will normally be held on the Department’s premises at a location where minimal travel expenses will be incurred by the parties.
- D. Once an arbitration hearing has been scheduled in accordance with the provisions of this Article, either party may postpone based on emergencies or other instances where there are extenuating circumstances. The postponing party will pay any postponement fee.

## **Section 4 – Official Time and Expenses**

- A. When the witnesses are not located in the same commuting area of the hearing site, testimony may be accomplished utilizing web based video technology in a real time exchange. The use of any other available technology will be by mutual agreement.
- B. The grievant, his/her NCFLL representative, a technical assistant and all employees who are called as witnesses, in accordance with Section 5 of this Article, will be excused from duty to the extent necessary to participate in the arbitration proceedings without loss of pay or charge to annual leave. Travel expenses of the grievant and an NCFLL Representative, if employed by the Department of Labor, will be reimbursed in accordance with the provisions of Article 8 of this Agreement.

Travel expenses for witnesses approved in accordance with Section 5 of this Article will be reimbursed for travel expenses where mutual agreement has been reached by the parties that a witness will travel to the site of the arbitration hearing to provide his/her testimony.

- C. The travel expenses of the technical assistant will be the responsibility of the Department if located within the OASAM Region of where the arbitration hearing is being held. If the technical assistant is located outside that OASAM Region, travel expenses will be paid by the NCFLL. If the arbitration hearing is held in the

Washington, DC metropolitan area, travel expenses of the technical assistant will be paid by the Department.

- D. The Department will issue travel accounting codes, and enter those codes in the Department's electronic travel management system as soon as possible (but no later than 14 calendar days prior to the hearing) after the list of witnesses has been submitted and approved consistent with the terms of Article 16, Section 5.
- E. Transcripts
  - 1. Representatives of both parties will consult no later than 30 calendar days before the beginning of the hearing regarding the desirability of transcripts.
  - 2. Either party may request verbatim transcripts of the arbitration hearing. The requesting party will pay the cost of the transcripts for itself and the arbitrator. The other party may order a copy of the transcript at their own expense. Where there is mutual agreement to request transcripts, the parties will split the costs equally.

## **Section 5 – Witnesses**

- A. At least thirty (30) calendar days before the opening of the arbitration hearing, the parties shall exchange lists of witnesses whom they expect to testify. The parties shall provide the arbitrator with a copy of the list at the same time they exchange lists. The lists shall contain a summary statement concerning the proposed testimony of each proposed witness and the manner in which she/he will testify.
- B. If the parties cannot agree, the arbitrator shall determine who may testify. Upon request of either party, the arbitrator may be asked to make a ruling prior to the hearing via a teleconference and/or video conference on disputes involving witnesses.
- C. Except in unusual situations, the arbitrator will not have the authority to keep the record open in order to hear testimony of additional witnesses.

## **Section 6 – Authority of Arbitrator**

- A. Management and the NCFLL agree that the jurisdiction and authority of the chosen arbitrator and his/her opinions as expressed will be confined exclusively to the interpretation and application of the provision(s) of this Agreement, Departmental regulations and government-wide regulations. However, regulations and decisions of higher authorities may be introduced as evidence regarding the interpretation and application of the provision(s) of this Agreement and/or Departmental and government-wide regulations.
- B. The arbitrator will have no authority to add to, subtract from, alter, amend, or modify any provision of this Agreement.
- C. The arbitrator will have the authority to make an aggrieved employee whole to the extent such remedy is not prohibited by statute, higher level regulations, decisions of appropriate higher authority, or this Agreement.
- D. The arbitrator's decision will be final and binding. However, the parties reserve the right to take exceptions to any award to the Federal Labor Relations Authority

in accordance with its rules and regulations or the U.S. Federal Circuit Court, as appropriate.

- E. The arbitrator should render and serve the written award on both parties within thirty (30) calendar days of the close of the record.
- F. The arbitrator will have no authority to consider new issues, allegations and defenses raised by the grievant or management that had not previously been raised at or before the Step 2 grievance meeting.

## **Section 7 – Grievability/Arbitrability Decisions**

The Arbitrator shall have the authority to make all determinations regarding grievability and arbitrability. If the Department considers a grievance non-grievable or non-arbitrable, it shall furnish the NCFLL with a final written statement of grievability/arbitrability as soon as possible, but no later than the invocation of arbitration. Either party raising a threshold issue of grievability and/or arbitrability may do so in a separate teleconference and/or video conference with the arbitrator.

## **Section 8 – Time Limits**

Time limits in this Article may be extended by mutual written consent of the parties.

## **Section 9 – Stipulations of Fact**

The parties shall endeavor, wherever possible, to stipulate the facts involved in a case prior to the opening of the arbitration hearing.

The parties may, by mutual agreement, stipulate the facts of the arbitration case and argue their respective positions in briefs without a hearing.

## **Section 10 – Hearing Process**

- A. Either party may submit a written opening and/or closing statement.
- B. Parties are encouraged to submit joint exhibits prior to commencement of the hearing.
- C. Either party may file a brief in adverse and disciplinary action arbitrations. The parties and the arbitrator, at the conclusion of the hearing, will determine when such briefs will be due.
- D. At the conclusion of the non-adverse and non-disciplinary action arbitrations, the parties and the arbitrator will determine whether briefs will be submitted. The arbitrator will have final say on whether briefs should be submitted and when such briefs will be due.
- E. The parties may have observers at the hearing for training purposes only. The number of union observers on official time will not exceed the number of management observers. The NCFLL is responsible for travel expenses for union designated observers.

- F. OASAM Labor Relations Officers shall be responsible for communicating with the arbitrator about her/his assignment and the scheduling of the assigned cases.

## **Section 11 – Review of Outstanding Arbitration Cases**

At the beginning of each fiscal year, but not later than October 30, the NCFLL Arbitration Committee will meet with Departmental management to address outstanding cases. These cases will be scheduled for hearing, scheduled for mediation, settled or withdrawn. Any arbitration invoked thirty (30) calendar days prior to the end of the fiscal year that are not scheduled for hearing are not subject to this provision.

## **Article 17 – Alternative Dispute Resolution (ADR)**

- A. The department and the NCFLL recognize that ADR can serve as an effective tool to resolve labor management disputes. The benefits of ADR can be avoiding protracted and costly litigation, improving working relationships between management and labor, and enhancing communications between employees and their supervisors. Therefore, the parties agree to implement ADR as stipulated in this Article.
- B. ADR may be utilized to resolve workplace disputes at any time by mutual agreement between the parties, to include within the grievance procedure prior to an arbitration hearing.
- C. If a grievance is submitted to ADR, the timeframes for further processing the grievance will be suspended commencing from the day on which the parties agree to proceed to ADR.
- D. The ADR process will be grievance mediation, utilizing mediators from the Federal Mediation and Conciliation Services (FMCS). The Department's Office of Departmental Labor Relations and Negotiations or Regional Labor Management Relations Office, as appropriate, will work together with the NCFLL to coordinate the responsibility of communicating with mediation services for obtaining the mediators.
- E. The aggrieved employee, a union representative, the supervisor/manager and a management representative may participate during the mediation. The parties agree that all information shared during the mediation shall be kept confidential and will not be admissible before an arbitrator or other administrative or judicial court. The mediation shall proceed for no longer than two consecutive days unless the parties mutually agree otherwise. Any settlement agreement shall be reduced to writing and signed by Management, the aggrieved employee, and the Union.
- F. If the matter is not resolved through the ADR process, the employee or the Union retains the right to file a grievance. If the ADR process occurred during the grievance procedure, the timeframes for the Union to pursue or continue the grievance process are resumed

## **Article 18 – Equal Pay for Equal Work – Position Classification**

### **Section 1 – Equal Pay for Equal Work**

Management and the Union agree to the principle of equal pay for equal work.

### **Section 2 – Position Description**

Management will maintain an accurate position description for each position, reflecting the significant duties of the employee filling the position.



## **Article 19 – Equal Employment Opportunity**

### **Section 1 – General**

The Department and the NCFLL agree to cooperate in providing equal opportunity for all qualified persons to prohibit discrimination because of:

- race
- color
- religion
- national origin
- sex, including sexual harassment and gender-based wage discrimination, pregnancy and gender identity
- age (40 and up)
- sexual orientation
- genetic information
- disability
- parental status

to promote the full realization of equal opportunity through a continuing affirmative program where all employees have the freedom to compete on a fair and level playing field; and to maintain a workplace free of discriminatory practices and policies.

### **Section 2 – No NCFLL Discrimination**

It is agreed between the parties that in the policies and practices of the NCFLL there shall continue to be no discrimination against any employee on account of age, sex (including pregnancy and gender identity) race, religion, color, national origin, disability, sexual orientation or status as a parent, and the NCFLL invites all employees to share in the full benefits of Union membership and organization.

### **Section 3 – Exchange of Information**

Through the procedures established for labor management cooperation, each party agrees to advise the other of outstanding equal opportunity problems of which they are aware. The Department and the NCFLL will jointly seek solutions to such problems through personnel management procedures and programs provided in this Agreement and in Department regulations. This Section does not apply to individual complaints of discrimination.

### **Section 4 – EEO Committees**

- A. In each Region, there may be a Regional EEO Committee whose membership shall include one representative from each NCFLL Local Union in the Region, who is a bargaining unit employee in that Region.

- B. The functions of these Committees shall include recommendation of necessary changes in new or revised EEO Plans; review of the effectiveness of applicable EEO Plans and Affirmative Action Programs in the Region; and recommendation of actions to remedy shortcomings in existing EEO Plans and Programs insofar as may be appropriate under the Civil Service Reform Act of 1978.

## **Section 5 – Special Emphasis Program Committees**

Wherever Management meets with these Committees (for example, the Federal Women's Program and Hispanic Employment Program Committees) concerning matters which affect personnel policy and practices and other matters affecting working conditions of employees in the bargaining unit, the NCFLL shall be informed in advance and shall have an opportunity to be present and participate at such meetings.

## **Section 6 – Meetings with Outside Groups on EEO Matters**

- A. Management may from time to time meet with groups or associations other than the NCFLL (for example the NAACP, Urban League, LULAC, GI Forum, IMAGE, NOW, FEW, and SER) concerning EEO matters that affect personnel policy and practices and other matters affecting working conditions of employees in the bargaining unit. The NCFLL shall be informed in advance and shall have an opportunity to be present at such meetings.
- B. Management may from time to time engage in consultation or dealings with religious, social, fraternal, professional, or other lawful associations, not qualified as a labor organization, with respect to matters or policies which involve individual applicability to it or its members provided that such consultation or dealings shall be so limited that they do not assume the character of formal consultation on matters of general employee-management policy covering employees in the bargaining unit, or extend to areas where recognition of the interests of one employee group may result in discrimination against or injury to the interests of other employees.
- C. This Section does not apply to meetings with individual employees concerning an individual complaint of discrimination.

## **Section 7 – EEO Counselors**

- A. The Department will appoint and train EEO Counselors.
- B. EEO Counselors will be selected from a list of nominees which shall include the names of any employees who have been nominated by the NCFLL.
- C. Counselors may not be NCFLL Stewards or Officers and may not be supervisors or Management Officials.
- D. The Department will issue notices at least annually or as needed to NCFLL Bargaining Unit Employees concerning the availability of EEO Counselor positions.
- E. The duties of an EEO counselor include: explaining the EEO complaint process and informing the complainant about his or her rights and responsibilities; making

whatever informal inquiry she/he believes is appropriate to define the issue and aids in an attempt to resolve the complaint (this could include contacting the alleged discriminating official and/or witnesses to the alleged discriminatory action); and maintaining a record of counseling in order to provide the required EEO Counselor's Summary Report to the CRC upon completion of counseling.

## **Section 8 – EEO Complaint Resolution**

If requested by the complainant, NCFLL Stewards may represent EEO complainants in all phases of the EEO complaint process, both informal and formal. With a written release from the EEO complainant, the NCFLL shall be provided written copies of all proposed remedial or corrective actions covered by that release relating to that bargaining unit employee taken as the result of informal or formal resolution of EEO complaints. The NCFLL shall be notified of all proposed remedial or corrective actions, which impact on bargaining unit employees, to be taken as the result of informal or formal resolution of EEO complaints.

## **Section 9 – Reasonable Accommodation**

- A. The Department shall provide reasonable accommodations for qualified individuals with disabilities as required by the Rehabilitation Act of 1973, as amended, (29 U.S.C. 791). In accordance with 29 C.F.R. 1630.2(o), the term reasonable accommodation may include:
  - 1. Modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires; or
  - 2. Modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or
  - 3. Modifications or adjustments that enable an employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees without disabilities
- B. In accordance with 29 C.F.R. 1630.2(o), reasonable accommodation may include but is not limited to:
  - 1. Making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and
  - 2. Job restructuring; part time or modified work schedules; reassignment to a vacant position; acquisition or modifications of equipment or devices; appropriate adjustment or modifications of examinations, training materials, or policies; the provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities.
- C. Upon request, the Department shall provide visually disabled employees with access to this Agreement.

- D. When the results of a medical examination reveal that a disabled employee cannot satisfactorily perform his/her job, the Department will consider reasonable accommodation for the employee under the applicable regulations.

# Article 20 – Merit Staffing

## Section 1 – General

### A. Policies/Procedures

1. It is the policy of the Department and the NCFLL to fill all positions in the bargaining unit in the Competitive Service with the best qualified candidates for the positions to be filled and to assure that employees have an opportunity to develop and advance to their full potential according to their capabilities. The Department will administer this Article in accordance with DPR 335, dated October 01, 2007, unless modified or supplemented in this Article. The Department will notify the NCFLL of its intent to modify DPR 335 during the life of the Agreement. The Union may exercise its right to bargain to the fullest extent of the law.
2. The parties agree that all positions in the bargaining unit shall be filled in accordance with procedures outlined in this negotiated Agreement and subject to court order, law, or regulation.
3. The parties agree that electronic filing is the required method for NCFLL bargaining unit employees to apply for Department of Labor positions. Employees may use the alternative paper filing method when they can demonstrate to the Human Resources Officer, or the HR Officer declares significant difficulties to their being able to electronically file in a timely manner. All timely applications will be processed by the Department. The parties agree to monitor the effectiveness of the Department's electronic filing process as specified in Section 11.

### B. The Department and the NCFLL agree to the following practices and principles applicable to all merit staffing actions filling competitive positions in the bargaining unit.

1. Based on the criteria and standards of the Merit Staffing Plan, selection will be made from a properly prepared Certificate. Selection will be based on the judgment of the selecting official as to who will best perform in the job to be filled in accordance with the announced requirements.
2. Bargaining unit employees may not file grievances based solely on non-selection.
3. Employee appeals will be handled in accordance with Statute, regulation and/or applicable guidance.
4. Employees detailed to, or assigned to perform the full range of duties of, higher graded positions for longer than thirty (30) calendar days will have these details converted to temporary promotions after serving thirty (30) calendar days, or their detail will be terminated. Normally, when it is known in advance that a detail to a higher graded position for any employee will substantially exceed 30 days, a temporary promotion is a preferred alternative. Employees will be rotated, to the extent possible, to ensure fairness and equal promotional opportunities.
5. As an exception to merit staffing, an employee may be re-promoted to a grade previously held on a permanent basis in the competitive service (or

similar OPM-approved system) from which the employee was separated or demoted for other than performance or conduct reasons as provided at 5 CFR 335.103. Special consideration for re-promotion is consideration prior to the use of competitive merit staffing procedures for vacancies at the employee's former grade or at any intervening grades for positions for which he/she meets minimum qualification requirements. The area of consideration for re-promotion for these employees is the same as the merit staffing minimum area of consideration. If the merit staffing area of consideration is extended, the area of special consideration must be extended as well. The employing agency will provide special consideration for re-promotion for employees whose positions are downgraded and/or entitled to grade and/or pay retention for a period of two (2) years.

6. Selection certificates are valid for thirty (30) calendar days beginning with the date the Certificate is issued. If no selection has been made within this thirty (30) calendar day period, the certificate is canceled unless an extension is approved by the Director of Human Resources. Such extensions should only be requested in rare and unusual circumstances when a selection official cannot make a decision within the required time period. The designated NCFLL official within each OASAM Region will be notified when an extension is approved.
7. Details to positions at the same or lower grade levels with no "known promotional potential" are excepted from competitive merit staffing procedures. Employees will be rotated to the extent possible. Volunteers will be solicited and considered for details of sixty (60) calendar days or longer.
8. Application procedures: a. Employees may register through USA JOBS to be electronically notified of specific future job opportunities so that they can apply online. b. The Department and the NCFLL recognize that there may be unusual circumstances in which an employee should be allowed to submit an advance application for possible future vacancies. An employee who will be unable to receive or respond to vacancy announcements for fifteen (15) calendar days or more due to military service, service during a national emergency, or other similar situation may provide a written or electronic application to the OASAM Regional Human Resources Officer. The employee's request for advance application consideration must specify the title(s), grade level(s), and location(s) of positions for which the employee wants to be considered. The advance application expires upon the employee's return to normal duty status.
9. A Career Enhancement Program trainee who does not satisfactorily complete the training period will be assigned to a different position or back to a former or similar position and grade level.
10. Vacancy announcements will be opened for a minimum of fourteen (14) calendar days.
11. The conditions for submission of supplemental materials will be stated on the vacancy announcement.

## **Section 2 – General Requirements**

- A. Equal Opportunity - Actions under a promotion plan, whether in identification, qualification, evaluation, or selection of candidates or any other phase of the promotion process shall be made without regard to political, religious, or labor organization affiliation or non-affiliation; marital status, race, color, sex, national origin, disability, or age, and shall not be based on any criteria that are not job related, including favoritism based on personal relationship, patronage, or nepotism.
- B. Procedural Practices and Preferential Management Action - The Department will avoid preferential management practices which may lead employees to believe that a person was preselected for a vacancy or that selection was based on favoritism. These practices include actions taken by Management designed to give preference in promotion to a predetermined individual or group of individuals such as assigning an employee to serve as an understudy, without competition, singling out one or a group of employees for special training or assigning certain employees to more difficult duties with the intent of training them for higher grade work. These practices tend to undermine employee confidence in the system and give rise to complaints even though the selection was proper.
- C. Special Assignments - Mine Inspection Work - Special assignments for mine inspection work such as but not limited to roof control, ventilation, special investigator, accident investigator, electrical investigator, health specialist, etc., will be posted within each Mine Safety and Health District so that those interested may apply. The Agency reserves the right to make the final selection.

## **Section 3 – Candidates to be Considered**

In accordance with the provisions of this Agreement, all candidates considered under this article who are to be evaluated must be evaluated and certified by the same criteria using the same methods and forms. All evaluation criteria must be job related.

## **Section 4 – Merit Staffing Reevaluations**

Electronic notification will be sent to bargaining unit applicants who were not referred at the same time the electronic certificate is issued. A written request for reevaluation will be granted within five (5) calendar days after the Certificate is issued and before the selection is made if a question regarding qualifications and/or certification has been raised by an employee who applied for the position and did not make the Certificate.

## **Section 5 – Selection**

- A. Action by the Selecting Official The selecting official may make a selection no sooner than the sixth calendar day after the issue date of the Certificate unless a request for reevaluation has been received at which point the selection must be delayed until the reevaluation is completed and the Certificate revalidated.

- B. Interviewing Candidates The selecting official must interview each DOL bargaining unit candidate on the Certificate. The interview may be done face-to-face, by telephone, or by other state of the art technology as available. When the selecting official and the candidate are in the same commuting area, the interview will be face-to-face. Supervisors must release DOL employees for such interviews for the necessary length of time.

## **Section 6 – Keeping Employees and the NCFLL Informed**

- A. General Information on the Department of Labor Merit Staffing Plan
1. Copies of the Plan – Copies of this negotiated Merit Staffing Plan shall be maintained by each personnel office for consultation by employees upon request.
  2. Periodic Issuances – Periodically, information on the Plan will be issued in the form of Spotlights, articles in internal publications, and booklets, including information on how employees may file for vacancies.
  3. Information on Qualification Requirements – Summaries of the qualification requirements for vacancies are included in vacancy announcements. Complete qualification standards shall be available for employee review in personnel offices.
  4. Merit Staffing Tests – Merit Staffing tests (electronic, paper, etc.) developed for use in the evaluation of candidates will be shared with the NCFLL in accordance with Article 3.
  5. Career Planning and Counseling – Agencies are responsible for providing career planning and counseling for their employees. An employee should be informed of what jobs are in his/her career ladder; what he/she can do if he/she is in a job with limited promotion opportunities; what additional experience and education he/she needs to meet qualification requirements for higher-level positions; what education and training would be useful to him/her; and what he/she should do to improve his/her chances for promotion.
  6. Information on Certificates – A copy of each Certificate from which selections may be made will be sent to the designated NCFLL Representative at the same time it is sent to the selecting official for positions in the bargaining unit.
- B. Information on Selection – Informing the NCFLL Representatives The designated NCFLL Representatives will be notified of the names of candidates selected for positions within the unit. Such notification will be made by the personnel office processing the personnel action as soon as a selection has been made, and it is determined that the selection meets requirements (with respect to procedural compliance and adherence to this Agreement as well as law and regulation) and the candidate is available.
- C. Information on Specific Actions
1. Information Available to Employees The following additional information about specific actions is available to employees, or their NCFLL Representative from the personnel office upon written request:



- (a) sources used to consider candidates for a specific position; (b) in what areas, if any, the employees should improve to increase their chances for future promotion or entrance into the occupation; (c) if the vacancy was not filled, the reason it was not filled; and (d) who was selected for promotion.
2. NCFLL Request for Specific Information Where it is alleged that a specific violation, or concern, of the Merit Staffing Article has occurred, the designated NCFLL Representative shall notify the RA-OASAM in writing that a preliminary examination of record is being requested and cite the alleged violation. Such a request must specify the name of the individual or individuals directly involved. The representative designated by the NCFLL in writing, in the presence of a personnel office representative, shall be given access to the merit staffing records of the particular action, sanitized as appropriate.

## **Section 7 – Merit Staffing Reviews**

The NCFLL Representative will be notified in advance of any scheduled reviews of Regional Human Resources Office operations. A sanitized copy of the Merit Staffing Review conducted at Regional Human Resources Offices will be provided to the affected NCFLL Representatives within 30 days after the review is finalized. In the event that a review is not performed within two years the following structure for the review will apply:

A. Merit Staffing Review Schedule

A Merit Staffing Review will be conducted within one year to appraise the effectiveness and degree of compliance with the provisions, intent, and purposes of the negotiated Merit Staffing Plan. The NCFLL Representative will be advised 30 days in advance of the review.

B. Coverage

The review will cover completed personnel actions effected in accordance with the merit staffing provisions of the DOL-NCFLL Agreement. Actions effected under the exception provisions of the Merit Staffing Plan which were negotiated with the NCFLL may be examined for proper application of the exception.

C. NCFLL Input

The review will be conducted by Management. The NCFLL may provide input to Management on significant issues they want reviewed. Management must receive the significant issues no later than two weeks prior to the review.

D. Review Sample

A representative sample selected at random from completed actions which were effected between review periods will be reviewed. A reasonable sample should consist of a minimum of 20 actions where 100 or fewer merit staffing actions are effected during the period reviewed. When fewer than 20 actions were effected, a total review should be made. Where more than 100 actions were effected, the review should include a minimum of 20 actions or a maximum of ten percent of

the total number of actions effected, whichever is greater.

E. Effecting the Review

1. The reviewers will examine Merit Staffing files to include; announcements, Lists of Eligibles, Certificates, evaluation sheets, performance requirements, evaluation applications, or relevant material from personnel files and any other related documents to determine the degree of compliance with the provisions of this Contract.
2. Statistical data of value to both Union and Management will be collected.

F. Confidentiality of Review

It is understood that all actions and records reviewed are confidential and are not to be discussed outside of official channels within the Union and Management areas.

## **Section 8 – Corrective Actions**

Violations of this Article shall be corrected in a manner appropriate to the nature of the violation and the circumstances surrounding it. Such corrective actions may include but are not necessarily limited to: program or procedural changes in the organization; removal of an erroneously promoted employee from the position; priority consideration of employees who were not given proper consideration because of the violation; and other remedies as stated in 5 CFR 335 or awarded by third party process and not in violation of the law, higher regulations, or the provisions of this Agreement. Corrective action will be taken as soon as possible but no later than two pay periods after a decision has been made.

## **Section 9 – Cancellation of Vacancy Announcements**

- A. A cancellation notice will be issued to all applicants and the NCFLL Representative.
- B. Upon request, the NCFLL Representative will be advised in writing of the reason for the cancellation.

## **Section 10 – Career Ladder Promotions**

- A. A career ladder is a series of positions of increasing difficulty in the same line of work through which an employee may progress from the entrance levels to the journey level of full performance. Employees are all given grade-building experience and are promoted as they demonstrate ability to perform at the next higher level, and meet all eligibility requirements.
- B. Career ladder positions are developmental in nature. To be promoted, an employee in a career ladder must meet the following criteria, in the supervisor's judgment:
  1. Meet all performance requirements for the duties and responsibilities of the current position, and also carry out specific assignments or projects typical of the next higher grade position in the career ladder.

2. Regularly demonstrate, through assigned work, performance in the current position that clearly indicates the probability of satisfactory performance in the next higher graded career ladder position.
  3. Perform in the position for a sufficient length of time to allow adequate observation of the work performed.
- C. If an employee is not to be promoted upon initial eligibility for a career ladder promotion, the supervisor will have a discussion with the employee within 2 pay periods of the eligibility date. At this discussion, the supervisor will explain what is necessary for that employee to be promoted.
- D. If an employee is not promoted upon initial eligibility for a career ladder promotion, the supervisor will meet and discuss with the employee what is necessary for the employee to be promoted at every subsequent annual rating of record and at every mid-year performance discussion. Upon written request from the employee, the supervisor will provide this guidance in writing.

## **Section 11 – Electronic Filing Procedures**

Employees shall be provided specific e-mail notification of actions taken on applications to include notice of receipt, certification status, and final outcome.

The parties agree to use both the national LMR meetings (Article 3) and the Information Technology Committee (Article 50) as the primary means to monitor the effectiveness of the Department's electronic filing system.

## **Section 12 – Appropriate Use of Equipment**

Employees will be allowed use of Department equipment in accordance with appropriate use policy to prepare and file job applications

## **Article 21 – Personnel Records**

### **Section 1 – Official Personnel Folders**

- A. The Department shall maintain the Official Personnel Folder of each unit employee, on behalf of the Office of Personnel Management in the appropriate Regional-OASAM or at the National Office. Official Personnel Folders are subject to the Privacy Act and Freedom of Information Act.
- B. Material placed in the employee's Official Personnel Folder, as allowed by applicable law, rule, or regulation may be discussed with the employee. The employee will receive an automatic email notice when electronic personnel actions are added to their Official Personnel Folder.
- C. Unfavorable material placed in an employee's Official Personnel Folder shall be discussed with the employee to the extent disclosure of the material is required under applicable law, rule, or regulation.
- D. Employees shall be advised of the length of time the Department intends to maintain unfavorable material in the Official Personnel Folder. If the Department reduces the time in which it maintains such material in the Official Personnel Folder, the employee shall be so notified.

### **Section 2 – Employee Performance Files**

Employee performance records shall be maintained in accordance with applicable law and regulation. Employee performance records shall not be made available to persons who do not have an official need for them. Performance ratings will be disposed of in accordance with OPM requirements.

### **Section 3 – Working Files**

- A. Working files, if maintained by supervisors, shall be limited to dated documents and records of immediate concern to the supervisor and the employee. Such files are subject to the Privacy Act.
- B. The working file maintained by a supervisor on an employee shall be made available at reasonable times upon request to that employee for review. Working files shall not be made available to Merit Staffing Panels or Qualification Rating Examiners.
- C. Material will not be maintained in an employee's working file indefinitely. Working files should be reviewed at least once a year for disposal of non-current material. In the event material in the employee's working file is used as backup for a proposed adverse or performance-based action or is the subject of a grievance or other appeal, that material shall be placed in the appropriate official file and retained for the time required by Privacy Act regulations.

## **Section 4 – Employee’s Review of Files**

The right of the employee to review his/her personnel records, at reasonable times and upon request to the appropriate official, is subject to the provisions in Section 1 of this Article.

## **Article 22 – Training**

### **Section 1 – General**

The Department and the NCFLL agree that the training and development of employees within the bargaining unit is a matter of importance. The NCFLL and Department further agree that bargaining unit employees should benefit from lifelong training consistent with the policies of the Department of Labor. Consistent with its needs, and in keeping with the principles of equal employment opportunity, Management agrees to develop and maintain forward-looking, effective policies and programs designed to:

- A. Aid employees in improving their performance in their current positions to provide an internal pool of qualified candidates for consideration for anticipated future vacancies in the Department; and
- B. Provide general career mobility opportunities within the Department.

The Department and the NCFLL further agree to use the Regional Labor-Management Relations Committee meetings with each Agency as the forum for Union and Management discussions regarding employee technical training needs and programs. General and cross-Agency employee training needs and programs may be discussed, as appropriate, at the meetings.

### **Section 2 – Official Time and Travel, Labor Relations Training**

The parties are committed to enhancing labor relations. Both sides recognize the need for professional labor relations training that is cost effective and enhances the mission of the Department. Each party will commit to providing adequate resources. Continuing education/training will develop an effective group of leaders in labor relations. This will enable the Department to be on the cutting edge of Labor Management Relations.

Labor Relations training develops knowledge of Departmental policies and procedures, representational responsibilities, and enhances understanding of the labor relations process. Effective training in problem solving strategies and dispute resolution will increase the use of informal processes such as mediation and settlements.

- A. During each year of this Agreement, up to 40 hours of official time will be granted upon written request to all certified NCFLL Stewards, as described in Article 6 for labor relations training. This training will be held within the DOL Region in a location that is both cost effective and appropriate.

The Department and the NCFLL Locals will share travel costs related to Labor Relations Training every year.

The parties will generate a biannual schedule of training delineating the locals and their responsibility for travel costs. The Department will bear the cost for individual locals every other year on a reasonably equitable basis. If any

questions arise over travel expenses the matter will be referred to the Director of ODLRN and the NCFLL President for resolution.

- B. Agendas for Labor Relations training will be developed and shared with the Department annually prior to the training.
- C. Annually up to 40 hours of official time will be granted upon written request of the President of the NCFLL to the Director, ODLRN for up to 50 NCFLL designated representatives to attend conferences. The conferences are designed primarily to deal with labor-management issues affecting the NCFLL and the Department and to train Union Representatives to be more effective leaders in administering the labor-management relationship for the Union.

### **Section 3 – Travel**

NCFLL designated representatives may use the Government travel system at no cost to the Government to attend meetings and conferences which relate to the maintenance of an effective labor-management relationship.

### **Section 4 – DOL Paid Tuition**

Where an employee pursues courses which meet the criteria under the appropriate organization's Employee Training and Development Plan, the costs of registration, tuition, books, and materials will be borne by the employee's Agency, subject to the availability of funds and prior approval by the necessary authority, subject to 5 U.S.C. 41 and Executive Order 11348. Approval may be made retroactively if the request is submitted prior to the beginning of training.

### **Section 5 – Equipment and Time for Continuing Education**

- A. Bargaining unit employees may use the Department's computers to enroll and take approved electronic courses.
- B. The Department will allow limited duty time to take course work that is in the best interest of the employee and the Department. Employees may enter into an approved training plan with their supervisor and be granted duty time to pursue lifelong training courses and electronic courses. The plan will specify the number of regular duty time hours an employee can spend on course work. Employees who voluntarily take courses outside of regular duty time hours during their own time will receive no compensation for this time.

### **Section 6 – Ad-Hoc Training Advisory Groups**

As the Department initiates new programs and services, ad hoc advisory groups may be established to assist the Department in the design and implementation of these initiatives. These ad hoc working groups will be composed of clerical, supervisory, and management employees of the Department. In those cases where the work of a group

will impact upon bargaining unit employees, representatives of the NCFLL will be given the opportunity to be included on these committees



## **Article 23 – GSA Vehicles or Leased Vehicles**

### **Section 1 – Assignment of GSA Vehicles or Leased Vehicles; or Recall**

- A. Employees may be assigned GSA vehicles or leased vehicles in accordance with GSA usage objectives which for passenger carrying vehicles is a minimum of 3,000 miles per quarter or 12,000 miles per year, or the use of a vehicle is required on a daily or an almost daily basis to conduct Government business, provided, however, that management is not required to buy, lease, or rent additional vehicles.
- B. GSA or leased vehicles may be made available by the supervisor to those employees who do not wish to drive their Privately Owned Vehicle (POV) and are required to travel on official business on a daily or almost daily basis and/or there is no public transportation available, or when an employee is required to carry heavy and/or bulky equipment for the performance of his/her job.
- C. It is agreed and understood that no employee shall be required to provide a POV for use on Department business or to maintain a POV as a condition of employment.
- D. In the event management makes changes concerning the utilization of GSA or leased vehicles, management will notify the Union and bargain with it on appropriate procedures and any adverse effect in accordance with Article 2 of the Agreement.

### **Section 2 – Use of GSA Vehicles**

In accordance with GSA requirements that Government-owned or leased vehicles be used only for official purposes, vehicles assigned to employees on either a specific trip or regular basis may be parked at or near the employee's residence during non-duty hours only if the employee is required by his/her supervisor to travel to a temporary duty post in the morning or return home at night without first reporting to his/her duty station, and/or the supervisor has determined that it is more advantageous to the Government to do so. In such event the supervisor will give the employee prior written approval to park the Government-owned or leased vehicle at or near his/her residence during non-duty hours. Where parking is provided for GOVs, employees may park their POVs in vacant Agency spaces, provided that such use is not prohibited by law, regulation, or lease.

### **Section 3 – Unsafe Vehicles**

Any GSA vehicle or leased vehicle which is reported to be unsafe by the operator shall be returned immediately to GSA or the leasing company (or such facility contacted for instructions) for repair or replacement. If the vehicle cannot be repaired or replaced, the employee will, as soon as practicable (within an hour if possible), provide the supervisor with an estimate of the situation and obtain appropriate instructions.

## **Article 24 – Official Travel**

### **Section 1 – General**

Management and the NCFLL recognize that the nature of the mission of the Department is such that bargaining unit employees may be required to travel from their official duty station. Time spent in travel will be compensated according to 5 CFR 550 and 5 CFR 551 as well as other applicable government wide laws, rules and regulations.

### **Section 2 – Scheduling Official Travel**

- A. Management agrees, if administratively controllable, to schedule and arrange for travel of bargaining unit employees (for TDY jobs, meetings, conferences, seminars, audits, training sessions, etc.) to occur within each employee's work schedule, to the extent practicable.
- B. Insofar as practicable, travel during non-duty hours shall not be required of an employee.
- C. A separate form of compensatory time off for time spent traveling, pursuant to 5 CFR 550 Subpart N, exists to compensate employees for time spent in traveling, when the time is not compensable under any other authority. Employees can earn compensatory time off for time actually traveling as defined in the regulations, and for the usual waiting time that precedes or interrupts such travel.
- D. When travel results from an event which cannot be scheduled or controlled administratively, such travel is hours of employment for pay purposes. The parties agree that disputes arising under this Section may be adjusted through the use of the grievance procedure provided in Article 15 of this Agreement.
- E. The Agency shall avoid requiring employees to perform continuous automobile travel for more than eight hours in any workday.
- F. If an employee incurs POV mileage or out of pocket expenses as a result of local travel, the voucher may be submitted when the total expense is at least \$50, or one month's worth of expenses, whichever occurs first.
- G. If a trip involves an overnight stay and otherwise qualifies as Temporary Duty Travel, a voucher should be submitted within five (5) calendar days of completion of travel. All procedures for filing and processing travel authorizations and vouchers will conform to the Department's electronic travel system.
- H. The Department's policy is to pay travel vouchers within twenty (20) calendar days of submission by the traveler.

### **Section 3 – Notification of Temporary Duty**

Employees who are assigned from their present official duty station for extended temporary duty elsewhere shall be notified at least two weeks in advance. In unusual circumstances, employees will be notified at the earliest possible time.

## **Section 4 – Alternative Travel**

When an employee on TDY voluntarily returns to the official duty station or place of abode for non-workdays, the maximum reimbursement for the round trip transportation and actual subsistence incurred en-route shall be limited to the actual subsistence and transportation expenses which would have been allowed had the employee remained at the TDY station. Such voluntary travel will be on the employee's own time.

Additional information regarding alternative travel is available in DLMS-7 which covers travel and transportation.

## **Article 25 – Hours of Work / Flexible Schedules**

The Department will adhere to all applicable Government-wide rules and regulations and the provisions in this Article in the administration of hours of work and flexible, compressed or other work arrangements. Moreover, the Department shall administer this article in accordance with DPR 610, as specified or except as provided herein.

### **Section 1 – General**

- A. All DOL field organizations, except for the Mine Safety Health Administration employees who work a first 40-hour tour of duty will come under a Variable Week work schedule except that any employee may work a standard workday/workweek schedule or a compressed work schedule. Supervisory approval will not be required for an employee to opt out of the variable work schedule to a compressed or standard work schedule. However, the specific fixed hours and days to be worked are subject to the approval of the supervisor.
- B. Based on agency needs, management may allow part-time employees to participate in flexi-time.
- C. In the event of a conflict of flexi-time scheduling among employees at a given organizational unit, length of Agency service will govern, in the absence of personal hardship or mission needs.
- D. This Article and any supplemental agreements will be administered according to Title 5 U.S. Code, Chapter 61, Subchapter 2, and 5 CFR 610, Subpart D.

### **Section 2 – Types of Schedules**

- A. The Standard Workweek

For all Agencies, the basic workweek shall consist of five consecutive eight-hour work days, Monday through Friday (with the same starting and finishing time each day) except for those employees with rescheduling authority as agreed upon by the NCFLL and Management, first 40-hour tour of duty, a compressed work schedule or flexi-time. Part-time Economic Assistants in BLS may be scheduled for up to five days of work in any calendar week. Daily hours may be scheduled by the supervisor. The function of these exceptions is to enhance the ability of the Agencies to carry out their missions and to address employee needs.

- B. Variable Week

Variable Week is a flexible schedule containing core time on each workday in the biweekly pay period in which a full-time employee has a basic work requirement of 80 hours for the biweekly pay period. An employee may vary the number of hours worked on a given workday or the number of hours each week, within the

limits established for the organization. Credit hours are applicable to this schedule.

#### C. MSHA First 40-Hour Tour of Duty

The basic workweek for first 40-hour tour of duty for MSHA Authorized Representatives and Right of Entry employees shall be the first 40-hours worked within a period of five consecutive days in the Sunday through Saturday administrative workweek, beginning as early as Sunday, but no later than Tuesday unless requested by the employee and approved by management. In accordance with 5 CFR 610.111(b), a first 40-hour tour of duty is the basic workweek without the requirement for specific days and hours within the administrative workweek. An employee may vary the number of hours worked on a given workday within the week. This scheduling may be subject to the mission needs of the Agency and will be consistent with applicable laws and regulations.

An exception to the above may be made for professional technical staff in district offices that elect to work a different schedule. Such election is subject to Management approval, Agency mission, and must be in accordance with applicable law, regulation, and consistent with other provisions of this Agreement.

#### D. Compressed Schedule

Compressed Schedule is a fixed, non-flexible schedule constituting an 80-hour bi-weekly basic work requirement which is scheduled for less than ten workdays. The Compressed Schedules used most often are the 5-4/9 and the four-day week. In the 5-4/9, full-time employees work eight daily 9 1/2-hour fixed tours of duty days and one 8 1/2-hour day fixed tour of duty in a pay period. In the four-day week, full-time employees work four daily 10 1/2-hour fixed tours of duty each week.

Since a compressed schedule, like a standard workweek, is a fixed schedule, the concepts of flexible time bands, core time, and credit hours do not apply to a compressed schedule. Overtime hours in a Compressed Schedule are any hours of work, approved in advance, in excess of those specified hours which constitute the Compressed Schedule.

#### E. Rescheduling Authority

1. The basic workweek for rescheduling authority shall be five (5) workdays, Monday through Friday of each calendar week. The work hours of an employee may be rescheduled by the employee or the employee's supervisor in furtherance of the mission of the agency and consistent with applicable laws and regulations. The full, applicable workday for employees on standard and compressed work schedules may be rescheduled. For employees on flexi-time, the supervisor shall not

reschedule a work day exceeding eight (8) hours. However, an employee on flexi-time may elect to work the full range of hours under the flexi-time work schedule. Under this election by the employee, the total daily hours worked (including scheduled hours) cannot exceed the maximum daily hours under the flexi-time plan. On days when this election is invoked, core hours do not apply. An employee on flexi-time, who elects to work more than eight hours on a rescheduled day, will notify their supervisor in advance. Split shifts may not be worked when workdays are rescheduled.

2. If an employee abuses his/her rescheduling authority, management may withdraw this authority upon advance notice to the employee.

F. Evening/Night Shifts- see Section 13 of this Article.

### **Section 3 – Definitions**

In the above schedules, the following definitions shall apply:

- A. Credit hours are applicable to Variable Week Schedule and are earned for the time voluntarily worked in excess of an employee's basic work requirement. Management may not require employees to work credit hours. Employees may not "borrow" credit hours or use credit hours unless they have been accrued during a previous pay period. Employees may carry over up to 24 credit hours from pay period to pay period. Credit hours are earned and may be used in 15-minute increments. However, time spent in AWOL status will not count toward the basic work requirement for the purpose of accumulating credit hours.
- B. Core hours are those designated times and days during the biweekly pay period of the Variable Week schedule when an employee must be present for work. Core hours shall be 5-1/2 hours a day. Core hours will be 9:30 a.m. until 3:00 p.m. With the supervisor's approval, an employee may use credit hours or leave during core hours, as well as absences outside of core hours.
- C. Overtime hours in flexible schedules (except First 40 Tour of Duty employees) are all hours in excess of eight hours in a day or 40 hours in a week which are officially ordered in advance, but does not include credit hours.
- D. Rest periods will not be continuations of lunch periods, and rest/lunch breaks may not be granted immediately after the beginning of the workday or immediately prior to quitting time, nor shall they be accumulated.
- E. Normally, the time period for all employees to take their lunch break is between the hours of 11 a.m. and 2 p.m. The exigencies of the work may prevent an employee from taking a lunch break. Evenings/night shifts see Section 13 of this Article.

## **Section 4 – Changing Work Schedules**

### **A. General Changes**

Management agrees to notify the NCFLL at least three weeks in advance of any management initiated proposal to make a general change in regularly scheduled hours of work.

### **B. Intermittent Changes**

Management agrees that short-term changes in an employee's scheduled hours of duty shall be kept to the minimum necessary to accomplish the mission of an Agency. When Management has advance knowledge of the need for such changes, management shall notify the designated NCFLL Official and the employee as soon as possible.

## **Section 5 – Split Shifts**

Management will not schedule breaks of more than one hour in a workday, as provided in 5 CFR 610.121.

## **Section 6 – Timekeeping**

- A. Employees who work the Variable Week Schedule and who are assigned to office work or physically report to an office at the beginning and end of each day will use serial sign-in/sign-out sheets showing times of arrival and departure to record and report attendance. Under the serial sign-in/sign-out method, employees sign their name and record their time of arrival in order, one after the other. When departing from work at the end of the employee workday, employees again sign their name and record their time of departure in order, one after the other. The serial sign-in/sign-out sheet will be adjacent to a centrally located clock which will be used to determine the time recorded.
- B. For each pay period, all employees will report and record all hours worked and not worked in the Department's automated time and attendance system. For employees who work the Variable Week schedule, total time will be rounded to the nearest 15 minutes consistent with the FLSA.
- C. It is understood by the parties that any Agency program time distribution tracking system is for purposes of tracking program activity and not for tracking employee time and attendance for pay purposes.

## **Section 7 – Hours of Work**

- A. Under the Variable Week schedule, employees assigned to work in the office for the day may begin work as early as 6:00 a.m. and may work as late as 7:00 p.m., Monday through Friday. Each employee (except Compressed time or First 40 employees) will orally inform their supervisor of their plans to work more than

eight hours or beyond the end of the official workday of their immediate supervisor. This notification shall be made no later than the end of the core hours of the day on which the hours are to be worked. Such notification will allow the supervisor to make or alter the employee's work assignment as needed.

- B. An exception to the advance authorization requirement for an employee will be made when the exigencies of the situation prevent advance authorization of work. In case of abuse, Management may withdraw this discretion of an employee to work more than eight hours in a day without advance approval. For evenings and night shifts see Section 13.

## **Section 8 – Pay Administration**

Employees will be paid for the number of hours worked plus the amount of paid leave used. For pay purposes, credit hours will be treated as a type of leave.

## **Section 9 – Coverage of Mission Needs**

- A. Management is responsible for seeing that the mission of the Department is carried out. Management will determine mission need requirements after discussions with employees/representatives at the local level. Some examples of the principal forms of coverage are:
  - 1. answering phones;
  - 2. providing clerical, technical, and professional support;
  - 3. providing office representation at essential meetings;
  - 4. handling inquiries from the public; and
  - 5. providing program needs based on business necessity.
- B. Coverage requirements, once established by the supervisor in accordance with Subsection 1 above, will remain in full force and effect until altered, amended, or revised. Management will explore all options available for office coverage to allow flexibility for all participants.
- C. When the supervisor establishes coverage requirements, all employees are obliged to meet the coverage requirements. The determination of who will work particular days or hours to ensure such coverage is within the authority of the supervisor. Where practical, personal preference will be honored in scheduling coverage. Where personal preference conflicts with the equitable sharing of the burden of coverage, personal preference shall give way.
- D. Employees assigned to training or any other temporary duty assignment with an established schedule will adhere to the established schedule of the temporary assignment for the duration of the assignment.

## **Section 10 – Abuse**

- A. If an employee abuses his/her flexi-time schedule, Management may remove the employee from participation in the flexi-time plan upon advance notification to the employee. Abuse is defined as including but not limited to:
  - 1. Abuse of timekeeping system.



2. Continued failure to accurately record hours worked in serial and individual logs.
  3. Failure to adhere to office coverage requirements.
  4. Failure to arrange schedules so that work hours, including approved absences and credit hour use, total to 80 hours of work per pay period.
  5. Falsification of time reporting records.
- B. Removal from flexi-time for abuse of its requirements is not a disciplinary action, but does not preclude other action by the employer within its authorities to effect disciplinary action including removal from employment.
- C. Normally employees will be given at least five (5) calendar days notice before being removed from the plan.
- D. Removal of an employee from flexi-time for abuse does not preclude that employee from requesting and being allowed to participate in flexi-time at a future date.

## **Section 11 – Rest Breaks**

- A. There will be a 15-minute rest break in the first half of an 8 hour day and a 15-minute rest break in the second half of an 8 hour day. Employees will be able to schedule their own breaks consistent with office coverage.
- B. Breaks will be scheduled by the employee, subject to supervisory approval, so that the operations of the Department are not interrupted. Rest periods will not be continuations of lunch periods, and they may not be granted immediately after the beginning of the workday or immediately prior to quitting time, nor shall they be accumulated.

## **Section 12 – MSHA Cleanup Time**

- A. Mine inspection personnel on duty at mine sites, or upon returning to the office, will be granted time to cleanup, not to exceed 15 minutes, prior to the end of the workday, where facilities are available.
- B. When MSHA requests new or additional space from GSA, shower facilities will be included in the request. This requirement can be waived by mutual agreement between the Department and the NCFLL National Executive Committee.
- C. The MSHA Academy will provide a reasonable amount of time when necessary and limited to 15 minutes, consistent with the nature of the work performed, for employees to change clothes at the beginning and end of the workday and to cleanup prior to the lunch period and at the end of the workday. In the same manner, a reasonable amount of time will be allowed for employees for the storage, cleanup, and protection of Government property, equipment, and tools prior to the end of the workday.

### **Section 13 – Evenings/Night Shifts**

The parties agree that evening and night shift scheduling may occur for the MSHA Lab Employees. Prior to implementation, the parties will bargain appropriate arrangements for the proposed scheduling.

### **Section 14 – Grievability**

- A. Any employee being removed from flexi-time for performance reasons may grieve that decision.
- B. Any employee denied the right to participate in flexi-time may grieve the denial.

## **Article 26 – Overtime**

### **Section 1 – General**

- A. Management, at its discretion, may require employees to work overtime.
- B. Employees shall have advance authorization from Management to work overtime.

### **Section 2 – Distribution of Overtime**

Overtime will be distributed as equitably as possible among qualified employees. First consideration will be given to those employees who are permanently assigned to the job.

### **Section 3 – Overtime Compensation for Non-Exempt Employees**

All non-exempt employees who have been authorized in advance to work overtime will be compensated in accordance with applicable laws and regulations. Employees and supervisors shall use DOL Form DL-1-105 to document supervisory approval of overtime work.

### **Section 4 – Compensation for Exempt Employees**

- A. All exempt employees who have been authorized in advance to work overtime will be compensated in accordance with applicable laws and regulations.
- B. An exception to the advance authorization requirement will be made when the exigencies of the situation require overtime work. In case of abuse, Management may withdraw this discretion of an employee to perform overtime work without advance approval.
- C. Employees and supervisors shall use DOL Form DL-1-105 to document overtime work and compensatory time.

### **Section 5 – Call-Back Overtime**

Unscheduled, irregular, or occasional overtime performed on a day when work is not ordinarily scheduled in duty status, or for which the employee is required to return to his/her place of employment, is at least two hours in duration for pay purposes.

## **Article 27 – Work Schedules for Religious Observances**

### **Section 1 – Modifications to Work Schedules**

An employee whose personal religious beliefs require the abstention from work during certain periods of the workday or workweek may elect to make up time for time lost for meeting those religious requirements.

### **Section 2 – Compensatory Overtime/Time Off**

To the extent that such modifications in work schedules do not interfere with the efficient accomplishment of the Agency's mission, the Agency shall afford the employee the opportunity to work compensatory time and shall grant compensatory time off to an employee requesting such time.

### **Section 3 – Granting and Repaying Compensatory Time Off**

The employee may work such compensatory time before or after the granting of compensatory time off. A grant of advance compensatory time off should be repaid by the appropriate amount of compensatory time worked within a reasonable amount of time. Compensatory time shall be credited to an employee on an hour for hour basis or authorized fractions thereof. Appropriate records will be kept of compensatory time earned and used.

### **Section 4 – Non-Applicability of Premium Pay**

The premium pay provisions for overtime work do not apply to compensatory time worked by an employee for this purpose.

## Article 28 – Job Sharing

In today's labor market, the NCFLL and Management recognize that more flexible work schedules are necessary to attract and maintain a quality work force. Job sharing is a way to permit employees to work part-time in positions where full-time coverage is required.

- A. **Definition** – Job Sharing is a form of part-time employment in which the tours of duty of two (or more) employees are arranged in such a way as to cover a single full-time position.
- B. **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 ceilings.
- C. **Tour of Duty** – Specific work schedules depend on the nature of the job and the needs of the office and the job sharing team. Almost any reasonable arrangement is possible if it meets the needs of the supervisor and the job sharers. Scheduling should take advantage of the fact two people rather than one are filling the job; these possibilities include overlapping time, split shifts, or working in different locations at the same time. Work schedules for job sharers can be from sixteen (16) to thirty-two (32) hours per week and can be varied in the same way as other part-time employees. The amount of scheduled overlap time depends on the needs of the particular position.
- D. **Other** – A proposal can come from a full-time employee who wants to reduce work hours, from a team of job sharers, or from a supervisor who wants to consider filling a vacancy with job sharers. When an employee's request for part-time cannot be accommodated because of the need for full-time coverage, job sharing may well be an option. Any job sharing arrangement is subject to management approval based on workload and mission requirements.

## **Article 29 – Telework**

### **Section 1 – Purpose**

The NCFLL and the Department recognize circumstances where it is mutually beneficial for employees to perform work at approved alternate worksites other than the traditional office or at locations other than where typical fieldwork is performed. Such circumstances include, but are not limited to, accommodation of special needs, disabilities, energy or environmental conservation, savings in commuting costs, the need for an uninterrupted work environment, cost or space savings. Employees and their supervisors may make telework arrangements for purposes of promoting the efficiency of the government and fostering a family friendly DOL. While telework is not intended to be a substitute for family care, it may enhance the quality of family life through savings in commuting time.

Telework is voluntary and must be consistent with mission accomplishment and customer service without diminishing employee performance or the operations of the agency. Union activities performed while on official time, in accordance with Article 8 “Official Time and Travel Expenses for Representational Activity”, may be performed at telework sites.

Consistent with the Telework Enhancement Act of 2010 (TEA), teleworkers and non-teleworkers will be treated the same for purposes of:

- A. Periodic appraisals of job performance of employees;
- B. Training, rewarding, reassigning, promoting, reducing in grade, retaining, and removing employees;
- C. Work requirements;
- D. Other acts involving managerial discretion;
- E. Determining what constitutes diminished employee performance; or
- F. Daily work assignments.

The Department agrees that there will not be any discrimination against, or disparate treatment toward, any employee exercising their rights under this Article.

### **Section 2 – Employee Rights**

Employees have the right to contact and consult with a union representative regarding any step in the telework process. Nothing in this article will alter the NCFLL’s rights under Article 1, Section 1 and Article 5, Section 7 of this Agreement.

### **Section 3 – Types of Arrangements**

In accordance with the Telework Enhancement Act, all telework arrangements require a written agreement between the employee and his/her supervisor. There are two basic types of telework arrangements:

- A. Informal arrangements are episodic in nature and may include telecommuting centers or home-office sites. Informal arrangements may be used as trial periods to determine the practicality of formal arrangements.
- B. Formal arrangements are regular and recurring in nature, and may include telecommuting centers or home-office sites.

Employees on formal telework agreements can adopt a formal telework schedule with variable telework days in which the employee can vary the number of days and which day(s) they telework in a work week according to the business needs of their assignment. Employees working a variable telework schedule will discuss with their supervisors their anticipated work schedule prior to the start of the workweek to allow supervisors sufficient time to assign work and ensure the necessary office coverage.

It is agreed that probationary employees are not eligible for a formal telework arrangement; however, they are eligible to participate in an informal telework arrangement. Employees who are engaged in formal arrangements will not be precluded from working additional informal telework as approved by their supervisor.

### **Section 4 – Eligibility and Participation**

Consistent with the parties' goals of fostering a family-friendly workplace, all or parts of many positions could be considered eligible to participate in telework. When a position is determined ineligible, management will provide justification upon request.

Management must consider the following criteria when deciding an employee's eligibility to participate in telework:

- A. Required daily access to or direct handling of classified/secured or sensitive information which cannot be transported or accessed remotely;
- B. Required daily in-person contact with customers or members of the public at the regular office;
- C. Required daily use of equipment at the regular office; or
- D. Required daily activity that is otherwise infeasible away from the regular office.

In accordance with the Telework Enhancement Act, employees occupying telework eligible positions may not participate in telework if:

- A. The employee has been officially disciplined for being absent without permission for more than five (5) days in any calendar year after December 9, 2010, the enactment of the Telework Enhancement Act; or
- B. The employee has been officially disciplined for violations of subpart G of the Standards of Ethical Conduct for Employees of the Executive Branch for viewing, download, or exchanging pornography, including child pornography, on a Federal Government computer or while performing official Federal Government duties, after December 9, 2010, the enactment of the Telework Enhancement Act.

When an employee who meets the conduct requirements outlined above wishes to participate in telework, the employee will complete the required telework training, complete the employee section of the Telework Agreement, and submit it to their supervisor who will evaluate requests by considering aspects such as:

- A. Whether the employee's work can be performed at an alternate work site;
- B. Whether the arrangement would be consistent with the mission of the agency;
- C. Costs of such arrangement;
- D. Existing performance, conduct, or leave restrictions situations;
- E. Technological and equipment needs;
- F. Communication methods;
- G. Office coverage, access to customers, team involvement, and access to the supervisor.

The telework agreement does not become official until both the employee and his/her supervisor sign the agreement.

Upon request, OASAM will notify the NCFL at the Regional Labor Management Committee meetings of the names of the individuals approved for telework arrangements and the effective dates.

After receiving a request to participate in telework the manager may meet with the employee to discuss and review the request. The supervisor's decision will be provided within seven (7) calendar days. If participation is approved, the supervisor and the teleworker will complete and execute the Telework Agreement. The original signed agreement will be retained by the supervisor, a copy of the signed agreement will be provided to the employee, and the supervisor must provide a copy of the signed agreement to the respective Regional Telework Coordinator to be retained at the regional level by OASAM. The employee will begin working at the alternate worksite within fourteen (14) calendar days after completion of the agreement unless circumstances agreed upon by the supervisor and employee dictate otherwise.

If participation is denied, the supervisor will explain the reason(s) for denial in writing. A denial must be based on mission related reasons.

Management will explore all options available for office coverage to maximize the opportunity for telework for employees. When coverage requirements are established



for any given function, all employees with such responsibilities will be obligated to meet coverage needs. The supervisor will determine coverage. Where practical, personal preference will be honored in scheduling office coverage. Where personal preference conflicts with the mission or equitable sharing of office coverage, office coverage takes precedence. All other factors being equal, seniority shall prevail in scheduling office coverage.

Telework may be requested as a reasonable accommodation for disability through following the process outlined in DLMS 4, Chapter 306 - Reasonable Accommodation for Employees and Applicants with Disabilities, dated December 5, 2005.

## **Section 5 – Recall**

Employees participating in telework programs must be accessible and available for recall to their duty station for work needs and requirements that cannot be performed at the telework site. Recall examples include, but are not limited to, training, special assignments or meetings, new work requirements, unanticipated short-term staffing shortages, and emergencies.

Management will take full advantage of existing technology (teleconference, email, fax, collaborative tools, etc.) where possible to minimize recall. A recall shall last no longer than is reasonable to complete the task or purpose of the recall. When possible, management will provide reasonable advance notice for all recalls; however depending on the circumstances, there may be times when advance notice cannot be given. In these cases, management will provide notification as soon as possible, and employees will be provided a reasonable time to report to the employee's normal work location.

A recall is not a termination of the telework arrangement.

## **Section 6 – Modification and Termination of Agreement**

- A. Any changes to existing telework agreements must be agreed upon by the supervisor and employee. Changes should be documented on the original telework agreement and initialed/dated by both the supervisor and employee. A copy of the revised telework agreement should be kept on file by the supervisor and employee, and forwarded to the appropriate Regional Telework Coordinator.

Supervisors may terminate agreements whenever one or more of the following conditions occur:

1. The arrangement no longer supports the mission.
2. Reassignment causes a change of work.
3. Individual performance standards are not being met or conduct is unacceptable.
4. An individual's normal production and quality of work are not being maintained.

5. Costs of the agreement become impractical.
  6. Technology changes require return to the regular worksite.
  7. Employees do not conform with the terms of their agreement.
- B. When Terminating a telework arrangement, the following must occur:
1. To the extent practicable, management will provide at least ten (10) calendar days advance notice of the termination of an arrangement.
  2. The Notice of Termination must be in writing and indicate the mission related reason(s) for termination.
  3. When a telework arrangement is terminated, supervisors must notify the appropriate Regional Telework Coordinator.
- C. Employees may voluntarily terminate participation in the telework agreement at any time. If feasible, advance notice will be provided to the supervisor.
- D. Termination of a telework agreement does not prevent an employee from reapplying as soon as the required criteria are met.

## **Section 7 – Pay Status**

- A. Overtime and night pay differential agreements will conform to regulations and this contract. Employees will not perform overtime or night work at telework site without prior approval. The governing rules, regulations, and policies concerning time and attendance, leave, and overtime are unchanged by an employee's participation in telework.
- B. Agreements will conform to time and attendance regulations and this Agreement. Employees will adhere to the work schedules selected (Standard, MSHA First-40, Variable Week, and Compressed – as defined in Article 25, Hours of Work/Work Schedules).
- C. With management approval, employees may be allowed an alternate telework day if their regularly scheduled telework day occurs on a Federal holiday.
- D. In accordance with the Fair Labor Standards Act, it is the responsibility of the supervisor to exercise appropriate supervision to ensure that only work for which it intends to make payment is performed.
- E. An employee must obtain advance supervisory approval to depart the telework site and complete the remainder of the workday at the duty station or in the field. Under 5 U.S.C. 5542(b)(2) and 5 CFR 550.112(g), travel to and from an employee's official duty station may be considered hours of work if the travel is within the days and hours of the employee's regularly scheduled administrative workweek.
- F. Bargaining unit employees must check the "telework box" in the time and attendance system for those days that they work at their telework locations. Entering this data will ensure accurate reporting of hours worked in the DOL Telework Program.

## **Section 8 – Dispute Resolution**

Supervisors and bargaining unit employees are encouraged to resolve disputes related to the program informally.

Disputes related to eligibility, denial of participation, or termination of formal telework arrangements, which cannot be resolved informally, may be grieved and arbitrated using the procedures set forth in Article 15 Grievance Procedure and Article 16 Arbitration of this agreement.

Disputes related to an individual's eligibility to participate in informal telework or termination of an informal telework agreement that cannot be resolved informally, may be grieved. Any other disputes related to an individual's informal telework arrangement are not grievable.

Any telework dispute which is not grievable is subject to the following:

- A. Dispute will be submitted in writing directly to the Regional Head of the Agency.
- B. The Regional Head of the Agency will meet with the employee and his/her Union Representative within five (5) calendar days to hear the appeal of actions taken by management.
- C. The Regional Head of the Agency will make a written determination to all parties within two (2) calendar days after the meeting.
- D. Time extensions will be made by mutual consent of the Union and Regional Head of the Agency.
- E. The Regional Head of the Agency's decision is final and binding.

The NCFLL reserves the right to file an institutional grievance on telework arrangements as described in Article 15 Grievance Procedure.

## **Section 9 – Sensitive and Personally Identifiable Information**

NCFLL bargaining unit employees may routinely handle secure and sensitive materials including personally identifiable information (PII). When handling PII, secure, sensitive information during telework, bargaining unit employees must apply approved safeguards to protect Government/Agency records from unauthorized disclosure or damage and must comply with requirements set forth in the Privacy Act of 1974, Public Law 93-579, as well as any other applicable regulation or specific DOL and sub-agency confidentiality requirements.

Supervisors must ensure employees are properly trained on the approved safeguards to protect information when transporting, reviewing, and processing secured and sensitive materials at telework locations prior to executing a telework arrangement.

## **Section 10 – Operating Principles and Responsibilities**

- A. Employees who are regularly scheduled to telework on a day when there is a building closure due to inclement weather or other emergency situations are expected to continue working unless they are excused from duty as determined by their supervisor on a case-by-case basis.

A supervisor may excuse a teleworker from duty during an emergency situation if the emergency adversely affects the telework site (e.g., disruption of electricity, loss of heat, etc.), if the teleworker faces a personal hardship (including unexpected childcare or eldercare responsibilities due to school or center closings) that prevents him or her from working successfully at the telework site, or if the teleworker's duties are such that he or she cannot continue to work without contact with the regular office.

- B. Communication between supervisors and teleworkers is essential. Email, telephone, voicemail, facsimile, or other means of communication may be used to effect communication between supervisors and teleworkers. Management and the bargaining unit employee should agree in advance which methods will be utilized.
- C. Employees are responsible for notifying their supervisor if conditions at the telework site impact their ability to successfully complete work assignments, e.g. interruption of electricity or internet service, or unexpected dependent care situations.
- D. The Government is not responsible for operating costs, home maintenance, or any other incidental costs to the employee (e.g., utilities) while teleworking, except where authorized by law and approved by management.
- E. For employees who use government furnished equipment during telework; the employee will use and protect the equipment in accordance with 5 CFR 2635.704. Teleworkers may be recalled to permit maintenance on government furnished equipment. If the employee uses his/her own equipment, the employee is responsible for its service and maintenance. Employees are responsible for applying the necessary safeguards to protect government records from damage or unauthorized disclosure.
- F. Teleworkers are responsible for providing a safe and healthful working environment at the telework site.
- G. The employee may be covered under the Federal Employee's Compensation Act if injured while performing official duties at the official duty station or alternate work site. The employee will notify the supervisor immediately of any accident or injury that occurs at the alternate work site.

## **Section 11 – Accountability Statistics**

The Department will share with the NCFLL the information reported to OPM on the use of Telework on an annual basis.

## **Article 30 – Dependent Care Programs**

### **Section 1 – General Statement**

Recognizing that balancing home and workplace needs is important to the well-being of employees and therefore the productivity of the Department, Management, and the NCFLL support DOL dependent care programs designed to assist employees in meeting their child care, adult and elder care needs. General programs and practices which serve to assist DOL employees in meeting these concerns and needs have been incorporated by the Department and the NCFLL into this Agreement in other Articles: Flexi-time, Job Sharing, Family Leave, and Telework. The intent of this Article is to encourage development of innovative and cost effective approaches to providing additional assistance in meeting employee childcare, adult and elder care needs. The Department, to the extent permitted by Government rules and regulations and budget, will support these programs.

### **Section 2 – Types of Programs**

- A. Dependent care assistance at the Regional/local level may include, but is not limited to the following:
  - 1. Child care, adult and elder care referral services;
  - 2. Seminars, workshops, and exhibitions;
  - 3. Periodic newsletters and brochures;
  - 4. Family resource centers;
  - 5. Consultants to assist employees with dependent care problems; and
  - 6. DOL cooperation with other agencies regarding Dependent Care Programs, including Infant and Childcare Centers.
- B. Employees are encouraged to take advantage of Dependent Care Programs. New employees should be informed about the availability of Dependent Care Programs during orientation. Employees will be permitted to contact childcare, adult and elder care providers during duty hours consistent with DLMS Chapter 9-900, Appropriate Use of Information Technology.

### **Section 3 – NCFLL Involvement**

The Department will keep the NCFLL advised of the status of Departmental Dependent Care Programs. The NCFLL will be afforded the opportunity to provide input on the operation of the Department's Dependent Care Programs and to participate in Regional task groups or committees involved in developing and formulating such programs as appropriate.

## Section 4 – Child Care Subsidy

- A. The Department of Labor Child Care Subsidy Program, conditional upon and in accordance with authorizing legislation, is intended to foster a quality work place for employees through the use of licensed and/or regulated child care by subsidizing costs for low family income employees while at the same time improving recruitment efforts, improving retention, reducing absenteeism, and improving morale. The DOL Program provides assistance to lower income working families in their efforts to obtain quality, licensed and/or regulated day care for dependent children through age 13 and disabled children through age 18. Qualified participants must be utilizing licensed and/or regulated childcare, meet income level definitions, and maintain a full-time or part-time permanent position status. This subsidy may apply for federal childcare centers, non-federal child care centers, in family child care homes, and care in the home of participants for both full-time and part-time programs, and to include after school programs and daytime summer programs.
- B. The Department of Labor Child Care Subsidy Program will be administered in such a manner that is cost efficient, manageable, accessible, and will serve to support valid performance data that will provide for meaningful program review and enhancement of the program.
- C. This agreement is made pursuant to the government-wide regulations of the Office of Personnel Management. Appropriated funds, otherwise available for salaries, will be utilized to fund the program.

The subsidy payment plan is as follows:

<b>Total Family Income</b>	<b>Percentage of Actual Child Care Costs</b>	<b>Monthly Not To Exceed</b>
< \$40,580	75%	\$700
\$40,581 - \$49,999	60%	\$600
\$50,000 - \$59,999	50%	\$575
\$60,000 - \$69,999	40%	\$550
\$70,000 - \$79,999	35%	\$450

- A. Any annual subsidy received in excess of \$5,000 (\$2,500 in the case of a separate return by a married individual) must be included as part of gross income for tax purposes, in accordance with 26 USC 129.
- B. Employees already participating in the program need not reapply. However, their records will be reviewed annually in January for subsidy adjustment based upon the foregoing formula. Applications received and approved will be effective the beginning of the month in which approved.
- C. The parties will make every effort to ensure overall employee awareness of the provisions of the Department of Labor Program for Use of Appropriated Funds for Child Care Costs for Lower Income Employees. Mechanisms to be used to

support this effort, although not all inclusive will include the NCFLL Courier, LaborNet, Labor Exchange, and Spotlight publications.

- D. The DOL will collaborate with the NCFLL in the development of any required report to Congress that is due pursuant to the legislation. The Department, in the administration of this program, will collect information and share such information with the NCFLL. The information will be in regard to matters such as employee participation in connection with their duty station, total family income, amount of subsidy, eligibility/ineligibility of applicants, and number and age of children coming under the program.
- E. The Department may reduce or suspend the child care subsidy for all bargaining unit employees when it deems funding to be insufficient. Each year when DOL has a final budget the dollars will be examined to ascertain if sufficient funds for child care subsidy exists. The NCFLL will be provided the opportunity to consult with respect to the possibility of an adverse determination. The Department will subsequently notify the NCFLL of any determination that childcare subsidies must be discontinued for all or any part of the fiscal year. Any such determination(s) by management that child care subsidies are no longer viable within its budgetary limitations may be contested by the Union by invoking arbitration with the Department's Labor-Management Relations Center within 30 calendar days of notification to the Union.

## **Section 5 – Nursing Mothers**

During the time a mother nurses her child the Department will provide a reasonable amount of time to express milk. The Department will provide appropriate time and space. The place provided for this purpose cannot be a bathroom and/or laboratory and it must be shielded from view and free from intrusion by coworkers and the public.

## **Article 31 – Mass Transit Subsidy and Pre-Tax Parking Benefit**

### **Section 1 – Mass Transit Benefit**

- A. Within budgetary limitations, all bargaining unit users of eligible mass transit or eligible commuter highway vehicles (CHVs) shall receive 100% of their actual monthly commuting costs, not to exceed the statutory maximum (currently \$125), as authorized by law or regulation, which may be in the form of an electronic transit benefit.
- B. An employee's monthly subsidy cannot exceed the employee's actual cost of commuting by eligible mass transit or CHV.
- C. Employee participants must certify monthly or annually that they use eligible mass transit or eligible CHV as their regular and recurring means of commuting. Whenever an employee with an annual transit pass ceases to use eligible mass transit or eligible CHV as their regular and recurring means of commuting, the employee must promptly return the transit pass to the designated OASAM official.
- D. "Mass Transit Check" or equivalent is not transferable and must be used exclusively by the employee for the cost of commuting by mass transit or eligible CHV.
- E. The Department may reduce or suspend the transit subsidy for all bargaining unit employees when it deems funding to be insufficient. The NCFLL will be provided the opportunity to consult with respect to the possibility of an adverse determination. The Department will subsequently notify the NCFLL of any determination that transit subsidies must be discontinued for all or any part of the fiscal year. Any such determination(s) by management that transit subsidies are no longer viable within its budgetary limitations may be contested by the Union by invoking arbitration with the Department's Labor-Management Relations office within thirty (30) calendar days of notification to the Union.
- F. The parties' National or Regional Labor-Management Relations Committees will jointly oversee/monitor the program to deal with systemic problems or issues as they arise.

### **Section 2 – Pre-Tax Parking Benefit**

The Department agrees to develop and implement a pre-tax parking benefit program consistent with IRS regulations and guidelines. The program will be implemented within six months of the date of this Agreement. Prior to implementation, the Department will provide notice to the NCFLL and the opportunity to bargain impact and implementation of the program.

- A. This program allows employees to allot pre-tax money to pay for eligible parking expenses (also known as qualified parking) as defined by the Internal Revenue Service.



- B. All employees are eligible to participate on a voluntary basis provided that they meet the eligibility requirements for the Program.
- C. Employees may voluntarily participate in both the Mass Transit Subsidy Program and this Program provided that the employee independently meets the eligibility requirements for each program, including the requirement that transit subsidy participants use mass transit as their regular and recurring means of commuting.
- D. Each month the amount of the compensation deduction cannot exceed the applicable statutory limit for qualified parking. For 2012, the IRS limits the amount of money an employee can deduct on a pre-tax basis to pay for eligible parking expenses to \$240 per month. If the IRS changes the maximum amount of money that may be excluded from taxable income to pay for eligible expenses, the Department will make changes to align with the revised limits.

## **Article 32 – Employee Assistance Program**

### **Section 1 – General**

Management and the NCFLL support the objective of assisting employees with personal problems that may or may not affect their job performance. This assistance includes finding treatment for employees, following up during their recovery, and helping them return to full productivity.

Given this common objective, Management and the NCFLL agree to work together to promote the DOL Employee Assistance Program (EAP), which is designed to assist employees and their families affected by problems including alcoholism, drug abuse, emotional illness, and other personal problems that may affect job performance.

### **Section 2 – NCFLL-Management Cooperation**

The NCFLL agrees to cooperate fully with Management in an attempt to rehabilitate affected employees who accept assistance made available under the provisions of the Program.

### **Section 3 – Use of Leave Under the Program**

Employees shall be allowed up to one hour (or more as necessitated by travel time) of excused absence for each counseling session during the assessment/referral phase of rehabilitation, not to exceed six sessions. Administrative leave may be granted for this purpose subject to supervisory approval. Absences during duty hours for rehabilitation or treatment must be charged to the appropriate leave category in accordance with leave regulations.

### **Section 4 – Employee Rights and Responsibilities**

- A. Employees may voluntarily seek counseling, referral, and information from the EAP on a confidential basis.
- B. The confidentiality of medical/counseling records of all employees will be preserved in accordance with the Privacy Act and other applicable law and regulations.

### **Section 5 – Management Rights and Responsibilities**

- A. The NCFLL and management recognize that the Program is designed to deal forthrightly with a range of problems at an early stage when the situation is more likely to be correctable. If an employee requests assistance under the Program and participates in the Program, the responsible supervisory official must weigh this fact in determining appropriate disciplinary and adverse action, should such action become necessary.

- B. Managers and supervisors may refer employees to the EAP.
- C. If employees attend EAP sessions during duty hours, supervisors may request information as to where and when the employee is going.

## **Section 6 – Program Training – Union Participation**

A designated NCFLL Representative from the Regional Office city for each Region will be invited to attend Regional seminars, workshops, conferences, or training sessions designed to acquaint supervisors, managers, and employees with the Program and its operation.

## **Section 7 – Promoting the Program**

- A. At least once a year, management will make employees aware of the Employee Assistance Program and the services it provides.
- B. Newly hired employees will receive appropriate EAP materials at their DOL orientation.
- C. Within sixty (60) calendar days of the change in any EAP contractor, or any change in the nature of services provided, all affected employees will be notified in writing.

## **Article 33 – Employee Wellness**

### **Section 1 – General Statement**

The Department and the NCFLL agree that the well-being of Department of Labor employees is a mutual interest of fundamental importance.

Accordingly, they are mutually committed to maintaining a healthy, quality working environment for those employees and to promoting and fostering programs which will enhance their well-being.

The Department, within budgetary limitations, operates a health services program and wellness/physical fitness programs. To the extent of its authority and resources, the Department is committed to providing a quality work environment for its employees. In addition to Department sponsored programs, DOL Agencies are encouraged to initiate their own wellness/fitness programs. The Department and the NCFLL recognize that some of the activities envisioned in this Article may involve voluntary employee financial contributions, in part or whole.

While the Department and the NCFLL are committed to these activities as positive contributions to employees' well-being, job performance, and productivity, they agree that employee wellness is ultimately the individual responsibility of each employee.

### **Section 2 – Health Services Program**

- A. The Department has established, within budgetary limitations, a Health Services Program according to guidelines and procedures specified in DLMS 4, Chapter 800. Various health services may be provided to the Department's employees through the Program including periodic medical screening for early detection of potential health problems such as diabetes, visual defects, glaucoma, hearing defects, etc.; immunizations; periodic medical examinations for employees whose work is a source of health risk; and biennial health maintenance examinations.
- B. Biennial employee health maintenance examinations will be offered to employees age 40 and over, within budgetary limitations. Priority will be given to those employees applying for the first time. After this, priority will be given to employees on a first come, first serve basis. Employee participation will be voluntary. Results of the examination will be furnished only to the employee and/or to a private physician designated by the employee in writing.
- C. The RA-OASAM will advise employees within the Region periodically of the availability of such periodic medical screening and health maintenance examinations so that those eligible employees who are interested may apply. Fourteen (14) calendar days will be allowed for employees to respond to notices for health maintenance exams.

### **Section 3 – Wellness/Fitness Programs**

- A. The Department and the NCFLL are mutually committed to the concept of wellness and fitness programs as a valuable means of enhancing the well-being, and thereby, the performance and productivity of the Department's employees. In addition to the more traditional medical services provided by the Department, wellness programs can provide counseling and assistance to employees on health issues such as life style, weight loss, nutrition, avoidance of harmful substances, positive mental health, etc. Fitness programs are developed as one component of the Department's overall commitment to employee wellness.
- B. The NCFLL will work cooperatively with the Department in developing wellness/fitness programs for the Department's field employees. The Department will share with the NCFLL at least annually reports on the current status of its wellness/fitness programs including funding levels and possible changes to individual employee reimbursement. The NCFLL will participate with the Department in identifying employee wellness/fitness needs and developing the programs which will address those needs. The Department will notify the NCFLL prior to implementing any field programs according to their normal notification procedure.
- C. The Department is committed to equitable support of wellness/fitness programs for participating field employees. The Department and the NCFLL agree that the costs for wellness/fitness programs will normally be shared by participating employees with the Department. Because of the decentralized distribution of employees throughout the field, various physical fitness/wellness program models will be developed to meet employee needs. These models may include the following:
  - 1. Coordinate with other local Federal agencies to establish a joint program.
  - 2. Establish and maintain a DOL fitness facility.
  - 3. Subsidize/reimburse a portion of commercial health club/fitness center cost to participating employees upon demonstrating proof of membership (health club/fitness center membership reimbursements are considered taxable income).
  - 4. Negotiate a corporate rate or contracts for employees with a commercial health club/fitness center. To the extent possible, these programs will be tailored to the unique conditions within each duty station or commuting area.
- D. Employees are encouraged to take advantage of fitness/wellness programs. New employees should be informed about the availability of fitness/wellness programs during orientation.

### **Section 4 – Quality Work Environment**

- A. The general environmental quality of the Department's workplaces is an important mutual interest of the Department and the NCFLL. Accordingly, the parties are committed to policies and practices which will enhance that general quality.

- B. General ventilation and quality of the air in Departmental workspaces will, to the extent of the Department's authority, be maintained at levels conducive to good health and employee well-being. To the extent practicable, the Department commits to maintaining sanitary conditions in ventilation systems servicing Departmental workspaces and to the availability of adequate fresh air for those workspaces. Unless previously provided for in accordance with the OSHA rule on Indoor Air Quality, smoking is prohibited in Department of Labor space as well as hallways and lobbies adjacent to DOL-occupied space. Smoking is prohibited in any office space, including private offices.
- C. Recognizing its risk to their health and well-being, the Department and the NCFLL mutually support and encourage all efforts by employees to quit smoking. In this regard, the Department will sponsor and provide appropriate time and bear the cost of employee participation in DOL smoking cessation classes, clinics, or other such activities. Recognizing it is the individual choice of each employee as to whether they will smoke, participation in a smoking cessation program will be voluntary.
- D. Employees who desire to leave their work areas to go to outside smoking areas may break up their morning and afternoon rest breaks into short smoking breaks.

## **Article 34 – Safety and Health**

### **Section 1 – General Statement**

The Department will, to the extent of its authority, provide and maintain safe and healthful working conditions for all employees. Management will designate a collateral duty safety and health representative for each duty station responsible for reporting any unhealthful, hazardous, or unsafe conditions to the Regional Safety and Health Manager. Pursuant to 29 CFR 1960.25(a) personnel responsible for conducting inspections under the Department's Safety and Health Program shall have both the requisite equipment and expertise in the recognition and abatement of hazards. The Department of Labor's Occupational Safety and Health Program will comply with the requirements of all applicable law, rules, and regulations. The Department is committed to operate the Department of Labor Safety and Health Program in accordance with 29 CFR 1960.

### **Section 2 – Correcting Conditions**

The Department agrees that its Occupational Safety and Health Program will provide prompt abatement of unsafe or unhealthful working conditions. Procedures for abatement of unsafe or unhealthful working conditions as required by 29 CFR 1960 are described in DLMS 4, Chapter 800. Where the unsafe conditions are immediately dangerous to life and limb and the repairs necessary to correct the unsafe conditions are of such an extensive nature that immediate repairs cannot be made to render the area safe, the employees shall not be exposed to the hazard and alternate accommodations shall be found until the area is made safe.

Instances of unsafe and unhealthful conditions, corrective actions, recommendations, and abatement will be communicated to the Regional Safety and Health Oversight Board.

### **Section 3 – Employee Rights/Responsibilities**

- A. The detection of unsafe and unhealthful working conditions at the earliest possible time and the prompt correction of related hazards at the lowest possible working level are essential elements of the Department's Safety and Health Program. Any employee in the bargaining unit who is assigned duties which he/she reasonably believes could possibly endanger his/her health or well-being shall notify the supervisor of the situation and file a report of unsafe or unhealthful working conditions. If the supervisor cannot solve the problem, and after an investigation agrees with the employee, the supervisor shall delay the assignment and refer the matter through the proper channels for appropriate action. Specific procedures are described in DLMS 4, Chapter 800, dated November 7, 2007.
- B. The Department shall assure that no employee is subject to restraint, interference, coercion, discrimination, or reprisal for filing a report of unsafe or unhealthful working conditions or other participation in Agency Occupational

Safety and Health Program activities. An employee who believes he/she has been subject to acts of reprisal for participation in the Department's Safety and Health Program activities has the right to seek redress through established grievance procedures.

- C. An employee has the right to decline to perform his or her assigned task because of the reasonable belief that, under the circumstances, the task poses an imminent risk of death or serious bodily harm, coupled with a reasonable belief that there is insufficient time to seek effective redress through normal hazard reporting and abatement procedures.
- D. Employees or Union Representatives are entitled to official time to participate in the Department's Safety and Health Program.
- E. Employees or Union Representatives have the right to advise Management concerning safety and health problems.
- F. Employees or Union Representatives have the right to be involved in inspection activity. Employees and Union Representatives should be interviewed during Regional Safety and Health Program evaluations.
- G. Employees are expected to follow safety and health directives and practices, including the wearing and use of protective equipment.

#### **Section 4 – Life Saving Equipment**

- A. The Department recognizes the value in making available and providing required support and training in the use of Automated External Defibrillators (AEDs). On a cost effective basis, the Department will continue to expand the availability of AEDs at all Department of Labor facilities to the extent feasible. The parties agree to the particular need for feasibility studies for small DOL field offices. The NCFLL will be afforded an opportunity for input into the design of such studies.
- B. The Department will continue to provide the NCFLL with a recurring formal report on the extent to which AEDs are currently available for all field locations. The results of any DOL feasibility studies on expanding AED availability will be provide to the NCFLL.

#### **Section 5 – Personal Protective Equipment and Clothing**

The Department will provide appropriate personal protective equipment and clothing (such as fire retardant clothing) to protect employees from safety and health hazards. The Department of Labor shall comply with 29 CFR 1960; DLMS 4, Chapter 800; and 29 CFR 1910.132. Management will consider Union input on equipment selection and purchase. These discussions could occur at Safety and Health Committee meetings, LMR meetings, and at the local office level. Decisions on weather-related equipment will be made by Management based on local conditions. Insulated coveralls will be provided where needed based on a case-by-case situation.



## **Section 6 – Vehicle Safety Procedures**

Department of Labor employees operating or riding in Government owned, rented, or privately owned vehicles on official business are to use safety belts and follow government regulations involving hand held electronic equipment at all times while the vehicle is in operation. The Department shall develop and implement a Motor Vehicle Safety Program. The Program shall be written and include the requirements to provide vehicle safety awareness information and training sessions to all employees who operate motor vehicles in the course of their employment.

## **Section 7 – Safety and Health Inspections**

- A. The Department of Labor Safety and Health Program includes the following types of workplace inspection activities:
1. Day-To-Day Inspections,
  2. Annual Inspections,
  3. Unannounced Inspections, and
  4. Pre-Occupancy Inspections.

These inspections are described in DLMS 4, Chapter 800.

- B. Pursuant to 29 CFR 1960, the NCFLL is entitled to designate representatives to be afforded an opportunity to take part in safety and health inspections. On a regional basis, the NCFLL will advise the Department who will serve as their officials to designate these union inspection representatives. Normally, these representatives will be within the local commuting area. The Department will allow official time and travel expenses when the designated union representative is from the local commuting area. Where there is no trained union representative in the commuting area, the Department will cover official time and travel expenses for the nearest trained union representative. If the Union designates a representative from outside the commuting area when one exists within, the Department will have no obligation to cover the representative's travel expenses.
- C. The Department and the NCFLL will work together to ensure that designated NCFLL safety and health inspection representatives are provided appropriate training in order to perform their duties as specified in 29 CFR 1960 and Section 10 (Training) of this Article. This training will normally be web-based or conducted through other technology-based methods. A reasonable amount of official time will be granted in order to complete the necessary training. The Department will provide a report of the above training to the NCFLL on an annual basis.
- D. The Department will submit to the respective NCFLL Officials (described in B above) its annual safety and health inspection plans at the beginning of each fiscal year. These plans will specify the planned dates that each DOL office will be inspected. They will also specify if the office will be inspected by a safety and health professional from OASAM and, if not, what alternative method will be

used. Changes to these plans will be communicated to the affected NCFLLE officials in a timely manner.

- E. For each respective region, the NCFLLE will provide the appropriate OASAM Regional Administrator with a list of the names and telephone numbers of NCFLLE safety and health representatives by location who are to be contacted and afforded an opportunity to take part in planned, unannounced and unplanned safety and health inspections of the listed DOL offices. For planned inspections, management will provide the NCFLLE representative 14 calendar days advanced notice of the anticipated date and time that the inspection will begin. For unplanned inspections, management will notify the NCFLLE as soon as practicable. If for some reason this designated NCFLLE representative is not available, the affected NCFLLE designating officials will be contacted and afforded an opportunity to designate an alternate NCFLLE representative.

## **Section 8 – Exposure to Hazardous Materials**

It is the policy of the Department of Labor to protect employees from exposure to hazardous materials through the use of personal protective equipment and the Department's Hazard Communication Program (DLMS 4, Chapter 800).

Employees who are accidentally exposed to carcinogenic or similar hazardous material will be offered an opportunity to take a physical examination provided by the Department. Any recommended subsequent periodic examinations will be voluntary. Instances of hazardous exposure will be communicated to the Regional Safety and Health Oversight Board. The Department will provide a means by which employees may document any exposure to chemical hazards contacted on the job by utilizing Office of Workers' Compensation CA Forms.

## **Section 9 – Ergonomic Hazards**

- A. The Department will provide employees information about ergonomic hazards and how to prevent ergonomic related injuries. This information will be provided as part of the Department's Ergonomics Safety Program. The Department agrees to the maximum extent possible to provide equipment (chairs, tables, workstations, etc.) that meets nationally recognized ergonomic design criteria. Before equipment is purchased, to the extent possible the vendor should provide training on safe and proper operation of the equipment.
- B. The policy of the Department is to provide safe and healthful workplaces for all DOL employees. In keeping with the policy, the Department acknowledges that there are certain ergonomic and environmental factors that can contribute to the health and comfort of computer users. These factors involve the proper design of workstations and the education of managers, supervisors, and employees regarding the ergonomic, job design, and organizational solutions to computer problems as recommended in various studies published by the National Institute for Occupational Safety and Health (NIOSH).

The Department will achieve this policy by:

1. Acquiring computers and accessory equipment that, to the maximum practical extent, provide comfort to the user and keyboards, worktables, and chairs that are height adjustable and provide proper back support.
2. Providing for the laying out of workspaces that are properly illuminated to reduce glare and ensure visual comfort to computer users while providing adequate lighting for traditional clerical tasks.
3. Seeking and acquiring information and technical assistance, as needed, from appropriate resources on methods for most effectively designing computer workstation layouts.
4. Educating employees about the proper and safe operation of computers, including the value of interspersing prolonged periods of computer use with other work tasks requiring less intensive visual concentration.

## **Section 10 – Training**

The Department agrees that its occupational safety and health program will provide safety and health training. The parties recognize that training of collateral duty safety and health personnel, committee members, employees and employee representatives shall be conducted in accordance with 29 CFR Sections 1960.58 and 1960.59. As prescribed in those sections, such training shall include:

- Agency safety and health programs in accordance with DLMS 4-800
- Section 19 of the OSH Act
- Executive Order 12196
- 29 CFR 1960
- Agency procedures for reporting evaluation and abatement of hazards
- Agency procedures for reporting and investigating allegations of reprisal
- Recognition of hazardous conditions and environment
- Identification and use of occupational safety and health standards
- Other appropriate rules and regulations

This section does not preclude management from determining any other safety and health training as necessary. Regional Safety and Health Committees may recommend additional safety and health training based on regional training needs. The NCFLL recognizes management's right to determine who will conduct the training, how it will be conducted and when.

## **Section 11 – Safety and Health Committees**

- A. The Department and the NCFLL mutually agree to continue to support certified safety and health committees as specified in 29 CFR 1960.37. In addition to the Departmental Safety and Health Committee, the parties agree there will be safety and health committees with coverage for all DOL field locations.

- B. The NCFLL shall retain representation on the Departmental Safety and Health Committee. Unless otherwise mutually agreed to by management and the NCFLL, participation in Committee meetings will be via telephone, video conference or other technology-based methods. The parties recognize that the NCFLL has determined to only attend one meeting of the Departmental Safety and Health Committee and restrict official time and travel for such attendance to a single trip for each of its two representatives. The parties further recognize that the NCFLL prefers that there be only a single annual meeting of the Departmental Safety and Health Committee as permitted by 29 CFR 1960.37(e).
- C. The Department and the NCFLL will establish and maintain up to six Regional Safety and Health Committees. The Committees will be comprised of three management members and three union members. The Committees should meet at least quarterly, but may hold additional meetings when necessary. Meetings will generally be conducted via telephone, video conference, web-based technology or other similar methods. The Committees may conduct two of these meetings face-to-face. With an effort to minimize travel cost, the parties will endeavor to schedule any face-to-face meetings in conjunction with Regional Labor Management Relations meetings or other scheduled meetings. Official time will be authorized for NCFLL Committee members to participate in Regional Safety and Health Committee meetings.
- D. A Regional Safety and Health Oversight Board will oversee and facilitate communication among the Regional Safety and Health Committees. The Oversight Board will be comprised of five members, two each from the NCFLL and management and one member approved by management and the union. The Oversight Board will ensure that the Regional Committees are supporting the Department's Safety and Health Program at the Regional level. Oversight Board meetings may be held quarterly or more often as needed by telephone, video conference, web-based technology or similar methods. Official time will be authorized for NCFLL Board members to participate in Regional Safety and Health Board meetings.
- E. The Department and the NCFLL will ensure that NCFLL committee members are provided with appropriate training to enable them to perform their duties as specified by 29 CFR 1960. This training will normally be web-based or conducted through other technology-based methods. A reasonable amount of official time will be granted in order to complete the necessary training.
- F. The parties may by mutual agreement establish or continue ad hoc safety and health committees for specific purposes, such as training, site committees established by the parties for the Office of Workers Compensation Programs field offices, or accident review boards at the regional/local level. The parties agree that the current committees regarding safety training and the New York Pilot Safety and Health Committee will continue as ad hoc committees. The continuation or further establishment of such committees will only be by mutual agreement.
- G. The Department will share the office inspection data and reports with the NCFLL and the Regional Safety and Health Committees containing any complaints, deficiencies, and/or corrective actions.

## **Article 35 – Harassing Conduct and Workplace Violence**

### **Section 1 – General Statement**

The goal of this Article is to support a work environment in which violent or potentially violent situations are effectively addressed with a focus on prevention by increasing employee understanding of the nature of workplace violence, how to respond to it, and how to prevent it.

The Department will promote a safe working environment for employees and will work with employees to maintain a working environment free from violence, harassment, intimidation, bullying, and other disruptive behavior. Violence or threats of violence, in all forms, are unacceptable. Intimidating or harassing behavior includes threats or other conduct which in any way creates a hostile environment, impairs agency operations or frightens, alarms or inhibits others.

The Department of Labor Workplace Violence Program will comply with all applicable laws, rules and regulations. Information about the Program, including program definitions, rights and responsibilities can be found on Labor Net.

### **Section 2 – Reporting Workplace Violence Incidents**

- A. Any employee who believes that he or she has been the subject of an incident of workplace violence should report the incident to someone in their supervisory chain or the OASAM Regional Administrator.
- B. The Department will establish and maintain a central reporting procedure for incidents to ensure appropriate follow up and tracking.
- C. The NCFLL Executive Committee will be provided notification of the initial incident.
- D. No employee shall be subject to retaliation as a result of reporting incidents under this Article or for cooperating in an investigation.

### **Section 3 – Correcting Conditions**

The Department agrees to promptly take corrective action or otherwise address harassing conduct and workplace violence issues.

A Department of Labor employee who, while in the act of conducting the business of the Department, is exposed to any form of threats or violence will remove himself/herself from the establishment and contact his/her supervisor. If the employee is confronted with battery or feels that the situation may digress into physical violence, the employee should contact the appropriate law enforcement agency that can best respond to the incident (i.e., local law enforcement or Federal Protective Service). The Department will report incidents of workplace violence as required by law.

If an employee is the victim of a crime, he/she will not be held accountable for any property and /or equipment that is stolen or damaged, including the Department's laptop computers, provided that the employee has taken reasonable precautions to secure government-issued equipment.

## **Section 4 – Training**

The Department will ensure that employees, including supervisors and managers, are informed of policies and procedures on identifying, preventing, reporting, and addressing harassing conduct and workplace violence. Within one year of the date of this agreement and annually thereafter, the Department will provide training that covers a variety of topics that may include:

Prevention strategies, responding to threatening situations, reporting procedures, risk factors, early recognition of problematic behavior, cultural differences, emergency procedures, employee assistance programs, and work-related injuries.

## **Section 5 – Program Review and Analysis**

The Department will:

- A. Establish a uniform reporting system for incidents of harassing conduct and workplace violence.
- B. Measure the frequency and severity of workplace violence in order to determine if prevention programs are having an effect.
- C. Analyze trends in violence-related injuries.
- D. Share workplace violence program information with the NCFLL Executive Committee annually in conjunction with a National Labor Management Relations Committee meeting.

## **Article 36 – Annual Leave**

### **Section 1 – General**

Annual leave is a right of the employee and not a privilege. Consistent with the needs of the Department, annual leave which is requested in advance will be approved. It will be the joint responsibility of both the employee and supervisor to schedule annual leave. Management will act on all requests for annual leave in a timely manner, and the approval or denial of such leave will be made as soon as possible. Approvals of leave requests in a timely manner benefit both employees and management. Leave requests that require an expedited response should be given priority attention by the supervisor. In the event an employee's leave is denied, the supervisor will give an explanation to the employee for such denial. If any employee has a projected use or lose annual leave balance after Labor Day, the employee and the supervisor will discuss the use of leave to prevent the unintended loss of annual leave at the end of the year.

### **Section 2 – Consecutive Vacation Time**

For vacation purposes, supervisors will schedule workloads and annual leave in a manner which permits each employee, if he/she wishes, to take at least two consecutive weeks in each year.

### **Section 3 – Resolving Conflict**

In the event of a conflict of annual leave scheduling among employees at a given duty station, length of Agency service will govern, in the absence of personal hardship.

### **Section 4 – Leave Usage Increments**

Annual leave may be used in increments of 15 minutes (1/4 hours).

### **Section 5 – Restored Leave**

Generally, restored annual leave will be scheduled and used not later than the end of the leave year ending two years after the date of leave restoration, consistent with 5 CFR 630.

### **Section 6 – Advanced Annual Leave**

Approval to use annual leave that an employee has not yet earned is at the discretion of the supervisor. The amount of annual leave that may be advanced during a leave year is limited to the lesser of 64 hours or the amount of annual leave an employee would accrue in the remainder of the leave year. Requests for advanced annual leave for a period in excess of 64 hours, not to exceed the amount of annual leave an employee would accrue in the remainder of the leave year, may be approved when an employee

is confronted with an emergency or other exceptional circumstance. However, if an employee separates from DOL prior to the end of the leave year, he/she will be required to pay back the value of any advanced leave for which he/she is indebted as of the date of separation



## **Article 37 – Administrative Leave**

### **Section 1 – Definition**

- A. Administrative leave is an authorized absence from duty without loss of pay or charge against leave which supervisors may grant. It may be granted for purposes related to but not part of an employee's regular duties, or for civic duties or activities which are deemed to be in the interest or to further a function of the Department. Administrative leave can only be granted for activities which can be paid for by DOL appropriations and which cannot be accomplished outside regular business hours. The administration of leave under this article follows the guidance provided by 5 CFR 630, DPR 610 (dated January 1, 2006), and DPR 630 (dated January 30, 2008).
- B. Regular hours are hours in pay status that are paid at the employee's base rate of pay. Pay status hours include hours worked and hours of paid absence, that is, annual leave, sick leave, compensatory time off, credit hours used, administrative leave, and official holidays not worked.

### **Section 2 – Registration and Voting**

- A. As a general rule, where the polls are not open at least three (3) hours before or three (3) hours after an employee's regular hours of work, the employee may be granted an amount of administrative leave to vote in a civil election which will permit the employee to report for work up to three (3) hours after the polls open or leave work up to three (3) hours before the polls close, whichever requires the lesser amount of time off.
- B. Under exceptional circumstances where the general rule does not permit sufficient time, an employee may be excused for such additional time as may be needed to enable the employee to vote, depending upon the particular circumstances in the individual case, but not to exceed a full day.
- C. If an employee's voting place is beyond normal commuting distance and vote by absentee ballot is not permitted, the employee may be granted sufficient time off in order to be able to make the trip to vote. Where more than one (1) day is required to make the trip to the voting place, the Department shall observe a liberal policy in granting the necessary leave for this purpose. Time off in excess of one (1) day shall be charged to annual leave or earned credit hours or compensatory time or if annual leave is exhausted, then to LWOP.
- D. For employees who vote in jurisdictions which require registration in person, time off to register may be granted on substantially the same basis as for voting, except that no such time shall be granted if registration can be accomplished on a non-workday and the place of registration is within reasonable one-day round-trip travel distance of the employee's place of residence.

### Section 3 – Inclement Weather or Emergency Conditions

- A. Management may apply administrative leave to tardiness which is clearly attributable to extraordinary weather, public transportation, or traffic tie-up conditions. In considering requests for excused absences, Management shall consider factors such as the distance between the employee's residence and place of work, the modes of transportation available to an employee, and the efforts made by employees traveling under similar circumstances in getting to work on time.
- B. Charges to Leave. A charge to leave as discussed below includes charges to annual or sick leave, if appropriate, to earned compensatory time, to earned credit hours, or to leave without pay. A charge to leave depends upon the employee's duty status at the time an emergency situation occurs.
  - 1. Emergencies that develop during working hours. When dismissal is announced because of emergency conditions that develop during working hours. The following outlines charges to leave that may occur:
    - a. If the employee was on duty and was dismissed, the employee is not charged leave for the remaining hours of the work shift following dismissal.
    - b. If the employee was on duty and departed on annual leave after receiving official word of dismissal but before the time set for dismissal, the employee is charged leave from the employee's departure time until the official dismissal time.
    - c. If the employee was scheduled to report for duty after taking an official period of leave and dismissal is effected before the employee reports to work, the employee is charged leave until the time set for dismissal.
    - d. If the employee was absent on approved leave for the balance of or for the entire work shift before official word of dismissal was received, the entire absence is charged to leave as originally planned and approved.
  - 2. Emergency situations that develop during non-working hours. When emergency situations develop during nonworking hours, thereby making it difficult or virtually impossible for employees to get to work on time, the Department will open as usual or close by administrative order according to established procedures. The following outlines charges to leave that may occur.
    - a. Excused tardiness. Supervisors may excuse tardiness without charge to leave when it can be determined that the employee made every reasonable effort to get to work on time.
    - b. Unscheduled leave policy. Employees may use annual leave to their credit without having to request advance approval or to provide justification for absence in circumstances for which an unscheduled leave policy is announced. Normal requirements for an employee to notify his or her DOL Agency within prescribed time limits are suspended.

3. DOL offices closed by administrative order. Workdays on which DOL offices are closed are non-workdays for leave purposes. Employees scheduled to work on those days will be excused without charge to leave or loss of pay. Employees on previously authorized leave will not be charged leave for those days.
- C. In reviewing an employee's request for excused absence instead of charge to leave on the basis that the employee made every reasonable effort to get to work on time or at all, the supervisor will consider the following:
    1. Distance between the employee's residence and place of work,
    2. Modes of transportation available,
    3. Efforts made by the employee to get to work,
    4. Success of other employees traveling under similar circumstances, and
    5. Law enforcement announcements.
  - D. Each agency office will contain a section in their local contingency plan that provides notification to employees of actions to be implemented during inclement weather conditions.
  - E. To enhance educating employees on the processes leading to dismissal for inclement weather, the Department will provide the following:
    1. Periodic Spotlights informing employees of the processes for inclement weather dismissal,
    2. Discussion at LMR Meetings on the subject,
    3. Annual all employee E-mail outlining these processes, and
    4. Dismissal procedures will be posted on LaborNet/RegionNet.

## **Section 4 – Vehicle Breakdown While on Official Business**

When a vehicle used on official Government business breaks down or is otherwise inoperative, administrative leave will be granted in connection with emergency repairs to the vehicle if the breakdown occurs while the employee is in official travel status. In such situations, the employee will, as soon as practicable (within an hour if possible), provide the supervisor with an estimate of the situation and obtain appropriate instructions. Administrative leave will be granted upon presentation by the employee to the supervisor of a reasonably acceptable explanation and/or documentation relating to the emergency.

## **Section 5 – Blood Donation**

An employee donating blood at an officially authorized blood bank, or in emergencies to individuals may be granted sufficient administrative leave to donate blood up to four (4) hours on the same day on which the donation is made and not more than once in a calendar month.

## **Section 6 – Participation in Military Funerals**

- A. An employee who is a veteran of a war or of a campaign or expedition for which a campaign badge has been authorized, or a member of an honor or ceremonial

group of an organization of those veterans, may be excused from duty without loss of pay or deduction from annual leave up to four (4) hours, to enable the employee to participate as an active pallbearer or as a member of a firing squad or a guard of honor in a funeral ceremony for a member of the armed forces.

- B. An employee will be granted up to eight (8) hours of administrative leave to attend the funeral of an immediate relative who died as a result of wounds, disease, or injury incurred while serving as a member of the armed forces but not in a combat zone. (See 5 CFR 630.803 for definitions of "immediate relative" and "combat zone" and DPR 630, Subchapter 804(a).)
- C. An employee will be granted administrative leave not to exceed three (3) workdays to attend the funeral of an immediate relative who died as a result of wounds, disease, or injury incurred while serving as a member of the armed forces in a combat zone. (See 5 CFR 630)

## **Article 38 – Court Leave**

An employee will be authorized absence from work status without charge to leave or loss of pay for jury duty, or for attending judicial proceedings in a non-official capacity as a witness in which the Federal Government or a State or local Government is a party.

## **Article 39 – Family Leave**

In recognition of the need for a flexible and compassionate leave policy to assist employees to blend their work life and their family responsibilities, and to promote a harmonious relationship among their needs, Management will consider all reasonable and timely requests from employees that meet the criteria established for leave as provided for in this section. Further, because we recognize that balancing home and workplace needs is important to the well-being of employees and therefore the productivity of the Department, Management and the NCFLL support DOL programs designed to assist employees in meeting their family care needs. The intent of this section is to encourage the development of innovative and cost-effective approaches to providing additional assistance in meeting employee family care needs. The Department, to the extent permitted by Government rules and regulations and budget, will support these programs.

This section is to be read in tandem with the Family and Medical Leave Act (FMLA) and the Federal Employee Family Friendly Leave Act (FEFFLA).

### **Section 1 – Maternity, Paternity, and Child-Rearing Leave**

- A. Sick leave may be used for those periods of absence related to incapacitation due to pregnancy and confinement. Annual leave or LWOP may be used when sick leave is not sufficient to cover this period. Absences which are not medically certified as due to incapacitation for the performance of duty may not be charged to sick leave; such absences must be charged to annual leave, earned credit hours or compensatory time, or leave without pay in an order chosen by the employee.
- B. After delivery and recuperation, the employee may desire a period of adjustment or need time to make arrangements for the care of the child. Such additional leave requirements may be taken care of by the use of available approved annual leave or leave without pay.

### **Section 2 – Family Leave**

- A. An employee may be absent on annual leave, sick leave, or leave without pay for purposes of aiding, assisting, or caring for family members.
- B. An employee requesting extended annual leave or leave without pay shall provide Management a reasonable advance notice which is commensurate with the extended period of absence. All leave will be granted subject to mission requirements of the Agency.
- C. In the case of extended periods of absence, Management will attempt to return the employee to the same job and location. Employees on extended approved absences may be recalled subject to the needs of the Agency mission.
- D. In an emergency situation, Management will grant the leave requested commensurate with the emergency.

### **Section 3 – Adoptive Leave**

Annual leave, earned credit hours and compensatory time, leave without pay, or sick leave, in accordance with Office of Personnel Management (OPM) regulations, can be used by an employee for those absences associated with their adoption of children.

### **Section 4 – Definition of Family Member for FEFFLA**

For the purposes of FEFFLA, family member means the following relatives of the employee:

- A. Spouse, and parents thereof;
- B. Sons and daughters, and spouses thereof;
- C. Parents, and spouses thereof;
- D. Brothers and sisters, and spouses thereof;
- E. Grandparents and grandchildren, and spouses thereof;
- F. Domestic partner and parents thereof, including domestic partners of an individual in B through E of this definition; and
- G. Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

### **Section 5 – Definition of Family Member for FMLA**

For the purposes of FMLA, family members are defined in 29 CFR 825.122 and include:

- A. Spouse;
- B. Yourself;
- C. Parents;
- D. Son or daughter (including step children, adopted children, foster children, and legal wards);
- E. Children in loco parentis of the employee;
- F. Certain adult children with physical and/or mental disability or incapable of self-care; and
- G. Next of kin, son, daughter or parent of certain covered service members and/or active duty members.

## **Article 40 – Sick Leave**

### **Section 1 – General**

Employees will earn sick leave in accordance with applicable statutes and regulations.

### **Section 2 – Approval**

- A. Earned sick leave will be granted when an employee:
1. requests advance approval for medical, dental, or optical examination or treatment;
  2. is incapacitated for the performance of duties by physical or mental illness, injury, pregnancy, or childbirth;
  3. it is required to give care and attendance to a member of his/her immediate family afflicted with a contagious disease, or would jeopardize the health of others because of exposure to a contagious disease. A contagious disease is a disease ruled to be subject to a quarantine, requiring isolation of the patient, or requiring restriction of movement by the patient for a specified period of time as prescribed by the local health authorities having jurisdiction.
  4. provides care for a family member who is incapacitated by a medical or mental health condition or attends to a family member receiving medical, dental, or optical examination or treatment;
  5. provides care for a family member with a serious health condition;
  6. makes arrangements necessitated by the death of a family member or attends the funeral of a family member; or
  7. must be absent from duty for purposes relating to adoption of a child, including appointments with adoption agencies, social workers, and attorneys; court proceedings; required travel; and any other activities necessary to allow the adoption to proceed.

### **Section 3 – Use of Sick Leave**

- A. When an employee in the unit is unable to report for duty because of illness or injury, notification must be given to the appropriate supervisor as soon as possible, normally no later than 10:00 am. If the immediate supervisor is not available when the employee calls in to request sick leave, the employee will leave a message and a phone number where he or she may be reached, if necessary. It is the responsibility of the employee to keep the supervisor advised if their sick leave will extend beyond their original request.
- B. Sick leave may be used in increments of fifteen (15) minutes (.25 hours).
- C. A period of absence on sick leave in excess of three (3) consecutive calendar days must ordinarily be supported by a medical certificate indicating the employee was under a health care provider's care. However, if the circumstances surrounding the employee's absence indicate that the services of



a health care provider were not available or required, the employee's written statement may be accepted in lieu of a medical certificate.

- D. Upon request and the presentation of a medical certificate, sick leave should normally be advanced to permanent employees in the bargaining unit, not to exceed thirty (30) calendar days, for cases of serious illness or injury and when the employee's absence extends beyond three (3) consecutive days. However, no advance sick leave will be made to employees for whom future accrual of sick leave is doubtful.

#### **Section 4 – Charge to Annual Leave**

An approved absence which would otherwise be chargeable to sick leave may be charged to annual leave if requested by the employee and approved by Management.

# **Article 41 – Department of Labor Regional Leave Bank Program**

## **Section 1 – Purpose**

To establish procedures and requirements for a single Voluntary Leave Bank Program (VLBP) for all regions under which the unused accrued annual leave of an employee may be contributed to a leave bank member who needs such leave because of a medical emergency.

## **Section 2 – Administration**

The VLBP will be administered in accordance with 5 U.S.C. 63, 5 CFR 630 (2006) and DPR 630 (October 1, 2005). The Department and the NCFLL agree to develop and maintain a VLBP. The Regional Leave Bank Program will be administered by a Leave Bank Board. The Leave Bank Board will be comprised of one management-designated official, one NCFLL-designated official, and one employee mutually agreed to by both management and the NCFLL. The Board shall not discriminate in violation of any Federal law, including but not limited to Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Rehabilitation Act of 1973, and the Pregnancy Discrimination Act.

## **Section 3 – Procedures**

- A. The Leave Bank Board will have at least one open season per year that will last at least thirty calendar days. The Board may initiate “emergency” open seasons if it determines that available leave is not sufficient to meet the needs of members. Employees will be advised annually of the open season.
- B. Employees who join the Leave Bank will have their membership automatically rolled over each year and the minimum leave donation will be automatically deducted. Employees will be given notice of the opportunity to opt out prior to the end of the year.
- C. Employee contributions to become a leave bank member for a leave year are based upon the employee’s current leave category.
- D. When applying to receive leave, employees must submit required documentation as stipulated by 5 CFR 630.
- E. The Board shall act on leave bank applications within fourteen (14) calendar days of their receipt of the completed form.
- F. A recipient may receive no more than 160 hours of leave from the Leave Bank per Bank year. The Board may establish a time limit in which leave must be used. Thirty (30) calendar days after the end of each open season period, a limit per recipient will be established that is equal to one percent of leave in the Bank as of that date. In any Bank year, approved recipients may be granted total Bank leave up to the lesser of 160 hours or the limit so established.

- G. Recipients who need more leave than the established limit may apply for and receive additional leave via the Leave Transfer program.
- H. Before using any leave from the Leave Bank, an employee is required to exhaust any leave received from the Leave Transfer Program.
- I. The employee is responsible for advising the supervisor of the intent to apply for the Leave Bank, completing an application, and advising the Board or Department upon termination of the need for donated leave.
- J. The employee's supervisor is responsible for monitoring use of donated leave, ensuring that it is used in an appropriate manner, denying use of donated leave for other than an acceptable use, and advising the Board or Department of any concerns.
- K. The Board, subject to approval of the Director of Human Resources, may change the established cap on the number of hours recipients may receive from the Leave Bank per Bank year.

#### **Section 4 – Publicity**

The Department, in coordination with the NCFLL, will develop and maintain a VLBP handbook; advise employees of the program to promote membership, and notify members periodically of the Leave Bank status and activities, rules, etc.

Additional guidance is available in the VLBP handbook which can be accessed through LaborNet

## Article 42 – Volunteer Services to Non-Profit Organizations

Department of Labor employees have a history of generously giving of their time and talents to make positive contributions to their local communities. The NCFL and the Department of Labor agree that providing volunteer service to a community not only helps the people of that community but also enhances the mission of helping working families. Normally, volunteer service is performed outside of work hours. When volunteer service occurs during work hours, employees should normally make use of flexible work schedules, annual leave or credit time. In limited situations, when the volunteer service advances or supports the mission of the Department, employees may request a limited amount of administrative leave. Requests may only be granted in accordance with OPM regulation and guidance and the provisions of this Article.

- A. **General:** Supervisors may approve administrative leave for non-profit volunteer purposes related to but not part of an employee's regular duties, or for civic duties or activities which are deemed to be in the interest of, or to further a function of the Department. This use of administrative leave may be granted for an employee who agrees to use an equal amount of leave/credit time or comp time, in the same pay period, to perform these volunteer duties.
- B. **Required Criteria:** The volunteer activity must meet one or more of the following four (4) criteria:
  - 1. The absence will clearly enhance the professional development or skills of the employee in his/her current position.
  - 2. The absence is brief and is determined to be in the interest of the Department.
  - 3. The absence is officially sponsored or sanctioned by the Department.
  - 4. The absence is directly related to the Department's mission. Examples of mission-related community service may include, but are not limited to, volunteer projects organized to support the Combined Federal Campaign, Feds Feed Families or other community service initiatives sponsored or supported by the Department of Labor; Veterans outreach programs; and employment-readiness programs. Each DOL Agency may establish policy or guidance in determining what activities are mission-related.
- C. **Volunteer activities performed while on administrative leave:** Volunteer activities performed while on administrative leave shall not create or give the appearance of a conflict of interest and shall not be in any way political in nature. Conflict of interest laws and related regulations governing outside employment for compensation also apply to Federal employees who engage in volunteer activities. Hatch Act restrictions apply to employees who are on duty, as well as to those on paid or unpaid leave.
- D. **Request/Approval Procedures:** Requests for administrative leave must be made in advance and in writing. The request must include the name of the organization sponsoring the volunteer activity, the location, the date(s), detailed information describing the volunteer activity, and which of the required criteria contained in Subsection B (above) apply to the activity in question. The supervisor should respond promptly, normally within one (1) workweek after

receipt of the written request. Approval of requests is solely at the discretion of management, and the provisions of this Article are not subject to grievance procedures. The use of administration leave under this Article shall be consistent with 5 CFR 630, DPR 610 and DPR 630.

- E. **Emergency Circumstances:** If circumstances preclude an advance written request for administrative leave, an employee may request annual leave, credit time, leave without pay, or compensatory time in accordance with established procedures. In order to be considered subsequently for administrative leave, the employee must submit the required written request promptly after the conclusion of the volunteer activity.
- F. **Amount of Leave:** The amount of administrative leave approved must be reasonable, brief and consistent with the Agency's approved delegations of authority.
- G. **No Adverse Consequences:** Employees shall not suffer any adverse consequences to their performance ratings or other working conditions (e.g. workload, promotions, performance awards, etc.) as a result of their approved use of administrative leave for volunteer purposes.

## **Article 43 – Performance Management System**

### **Section 1 – Coverage**

This Article concerns the impact and implementation of the Government-wide regulations on the Performance Management System (PMS), and the DOL regulation DPR 430 dated 10/15/08. These regulations, as appropriate, apply to employees in the NCFLL bargaining unit except as provided herein.

The Government-wide regulations and the Department's implementing regulation are applicable to employees in the bargaining unit, except where non-mandatory provisions of the regulations are in conflict with this Article. In such cases, the parties agree that Article 43 is controlling.

### **Section 2 – Procedures for Developing Elements and Performance Standards**

- A. Consistent with Management's right to assign work, the performance elements should be consistent with the duties and responsibilities contained in an employee's position description.
- B. In establishing standards, due consideration will be given to employee input.
- C. Employees are entitled to an explanation of the rationale for their elements and standards.
- D. Due consideration will be given the employee as to the resources available and the authority delegated necessary to meet the identified standards and elements.

### **Section 3 – Performance Standards**

A performance standard will, to the maximum extent feasible, permit the accurate evaluation of job performance on the basis of objective criteria related to the job in question for each employee or position under the System.

After receiving proposed elements and standards from the supervisor, the employee will have the opportunity to meet and discuss these standards with the supervisor, and to provide his or her written comments. When a performance standard has more than one criterion, employees will be advised as to the relative importance of the criteria contained within the standard.

A performance standard may be in the form of meeting less than all the criteria under a performance standard or of meeting all the criteria under a performance standard.

Upon request, supervisors will inform employees orally on what is expected in order to exceed a standard. Employees will be provided ongoing feedback from their supervisors on their work performance.

## **Section 4 – Annual Rating of Record**

- A. Within thirty (30) calendar days after the end of the rating period, each employee shall receive an annual rating of record.
- B. Each Agency will ensure regular performance feedback is provided to each employee during the appraisal period. As part of this feedback, a progress review must be held at least once during the appraisal period, but no later than One Hundred Twenty (120) calendar days before the end of the rating period. This review will include areas of critical competencies requiring improvement and feedback on sustaining positive performance. At a minimum, during this progress review, employees will be informed orally of their performance relative to the elements and standards in their performance plans. The employee's progress review discussion will reflect the necessary information needed to assess progress toward attaining a career ladder promotion as reflected in Article 20, Section 10. The rating official and the employee will certify on the performance appraisal form that the progress review was held. The Department is committed to recognizing desired performance, and to providing opportunities to correct poor performance.
- C. The rating official must confer with the reviewing official and secure the approval of the reviewing official of the tentative rating for the employee before discussing the tentative rating with the employee. The supervisor will discuss the rating of record with the employee to avoid misunderstandings and possible inaccuracies. The rating official will confer with the employee to review accomplishments, problems, and general performance during the appraisal period and will discuss the tentative conclusions regarding the rating with the employee. The employee's performance rating discussion will reflect the necessary information needed to assess progress toward attaining a career ladder promotion as reflected in Article 20, Section 10. The discussion will be face-to-face to the extent practicable but may be by telephone.
- D. The employee will have an opportunity to present his/her assessment of work accomplishments, as well as time to respond in writing to the rating official on the rating. Employees have up to fourteen (14) calendar days in which to review, sign, or prepare comments to the rater or reviewing official, as appropriate, on their ratings. Any written comments will be forwarded to the reviewing official(s) along with the tentative rating. After the rating has been reviewed and approved, it will be discussed with the employee by the rating official if any changes have been made in the tentative rating. Such written response is to be considered by the rater or reviewing official, as appropriate, and attached to the performance appraisal and will be maintained in the employee performance file.

## **Section 5 – Improving Unsatisfactory Performance**

- A. Any employee not meeting the performance standards of one or more critical elements will be promptly notified.
- B. Informal efforts by the supervisor will include guidance to the employee regarding specific actions which should be taken to improve performance.

## **Section 6 – Performance Improvement Plan**

- A. When informal efforts made by the supervisor do not result in improved performance when an employee is failing a standard, a Performance Improvement Plan will be developed with the participation of the employee. The Plan will be discussed between the immediate supervisor and the employee and put into writing. This Plan will be geared toward efforts which must be initiated by both employee and immediate supervisor and which are designed to result in overall job performance at the effective level or above.

At a minimum, this Plan will include the following:

- 1. An explanation of the elements and the related performance standards in which the employee's performance fails to meet the standard;
  - 2. Specific goals in terms of time and results expected for levels of progress against each performance standard where performance improvement is needed; also, advice about what the employee must do to bring his or her performance up to the meet level, as well as periodic counseling and reassessment by the supervisor during this period; and
  - 3. Training, if appropriate.
- B. No performance-based action (5 CFR 432) will be proposed unless the employee is given at least a 90-day period of time in which to correct any deficiencies noted and a detailed explanation of the work to be accomplished in the 90-day period to correct performance deficiencies. To this end, the Performance Improvement Plan will be utilized.

## **Section 7 – Special Circumstances**

Performance appraisals must take into account: authorized absences, including Union representation, during the course of working hours, and factors outside the employee's control.

## **Section 8 – Initiation of a New Appraisal Period**

- A. After receiving the tentative elements and standards from the supervisor, the employee will have a period not to exceed ten working days within which to examine and consider this material and to meet with the supervisor to discuss these elements and standards. During this period, the employee, upon request, will be granted a reasonable amount of official time to consult with the Union Steward concerning the elements and performance standards.
- B. At a bargaining unit employee's request, when assigned a new supervisor, the new supervisor will discuss the bargaining unit employee's performance plan.



## **Section 9 – Removal of “Fail” and “Need to Improve” Performance Information in Personnel Files**

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 (“Meet”) for one year from the date of the advance notice, then any entry or other notation with regard to the “Fail” or “Need to Improve” performance for which the action was proposed shall be removed from any Agency record relating to the employee.

## **Section 10 – Information Sharing**

Management agrees to share Agency prototype elements and standards developed at the regional or national level for similar or common positions within the bargaining unit with the NCFLL in a timely manner.

The NCFLL will have a minimum of 30 calendar days to submit comments on standards before their implementation.

“Prototype elements and/or standards” are performance elements and standards that apply to several positions with similar duties, responsibilities, and job requirements. Usually they are developed centrally for all positions in a particular mission-critical occupation and grade.

## **Section 11 – Grievability and Arbitrability of Job Elements and Performance Standards**

Performance Standards may only be grieved when they are applied in a rating of record.

## **Article 44 – Performance Awards**

### **Section 1 – General**

- A. The current rating of record will be used as a basis for decisions to grant performance-based awards under the Department’s Performance Management System (See DPR 430). In addition to performance bonuses based on a rating of record, managers and supervisors are encouraged to utilize all award categories to reward deserving employee performance in a timely manner throughout the rating cycle. Examples of award categories are special act or service award, instant good job award, time off award, honorary award, and non-monetary award. To this end, the parties have agreed that managers can utilize the instant good job award to make awards of up to \$300 net.
- B. Absent budget constraints, Management will fully utilize the awards budget to reward deserving employee performance. The NCFLL will be notified if an awards budget is not fully utilized.
- C. When Management uses bargaining unit employees’ special skills (such as a second language) that are not already included in his/her official duties, Management should give consideration to rewarding these employees using all available award categories.

### **Section 2 – Effect of Summary Ratings**

- A. An employee who receives a rating of record of Exemplary must receive a performance award and/or a Quality Step Increase.
- B. An employee who receives a rating of record of Highly Effective should normally receive a performance award.
- C. An employee who receives a rating of record of Effective should be considered for and may receive a performance award.
- D. If an employee has been promoted within the appraisal year, the appropriate manager or supervisor may take this into account in determining the amount of the employee’s performance award, and/or whether to grant a Quality Step Increase for an “Exemplary” rating for that year.
- E. Within each performance award unit, awards granted to employees in the same grade with a particular rating should normally be more in terms of dollars (including any Quality Step Increase) than awards received by employees in the same grade with a lower rating.
- F. If an employee does not have a rating of record when performance awards are granted, the employee may be granted an award when he/she is assigned a rating of record.
- G. Management will consider retroactive awards for employees whose ratings change after the distribution of payouts.
- H. It is Management’s intention normally to pay out performance awards by the end of the calendar year.

- I. Suggested Amounts of Performance Awards: The following amounts are suggested for consideration in determining performance awards:

<b>Rating</b>	<b>Suggested Percent of Employees' Rate of Basic Pay</b>
<b>Exemplary</b>	Up to 10%
<b>Highly Effective</b>	Up to 7%
<b>Effective</b>	Up to 4%

- J. The title of the official with the responsibility for managing the performance awards budget must appear on the cover of each Performance Plan. Employees will be informed of this official at the beginning of the annual appraisal period.

## **Article 45 – Acceptable Level of Competence for Within-Grade Increase**

### **Section 1 – General**

Pursuant to 5 U.S.C. 5335 and 5 CFR 531, an employee is entitled to receive a within-grade increase (WIGI) subject to completion of the appropriate waiting period and a determination that the employee's work is of an acceptable level of competence (Effective). Such determination must be made upon completion of the waiting period and in accordance with applicable law and regulation.

### **Section 2 – Definition of Acceptable Level of Competence**

For within-grade purposes, acceptable level of competence means where performance is at or above the Effective level in the performance standards for all elements.

### **Section 3 – Procedures**

- A. The basis for a determination of acceptable level of competence is an employee's current rating of record.
- B. No within-grade increase will be authorized unless there has been an official determination that the employee's performance is at the Effective level or better. Failure to inform an employee of a negative official determination is not a basis for changing that negative official determination.
- C. Whenever the supervisor determines that the employee's work is not "acceptable," the supervisor shall follow the provisions of Article 43.
- D. No employee shall receive a negative determination without first being provided with an opportunity to improve as provided for in Article 43.
- E. If an employee is failing a standard and a Performance Improvement Plan is not initiated at least 90 days prior to the end of the waiting period, the Performance Improvement Plan will extend for the necessary time to provide the full ninety (90) calendar days. At the end of the ninety (90) calendar days, if the summary performance rating is at least "Effective," the within-grade increase will be granted retroactive to the original due date.
- F. After a final determination results in the denial of an employee's within-grade increase, a supervisor may subsequently determine that the employee has improved his/her performance and has demonstrated a sustained level of performance meeting the requirements of an acceptable level of competence. When this occurs, the supervisor may prepare a new rating of record reflecting the employee's progress to the Effective level and grant the within-grade increase in accordance with 5 CFR 531.411.

## Section 4 – Negative Determination

- A. When a determination is made that an employee's work is not of an acceptable level of competence (negative determination), the employee will be notified in writing as soon as possible after completion of the waiting period:
1. The basis for this negative determination;
  2. The employee's right to file a written request for reconsideration within fifteen (15) calendar days from receipt of the official determination;
  3. The name and address of the Management Official who will reconsider the official determination and with whom the request for reconsideration should be filed (who shall have taken no part, formally or informally in the original determination);
  4. The right of the employee to have representation according to terms of the DOL-NCFLA Agreement;
  5. The right of the employee to contest, in writing, the basis for the negative determination; and
  6. The right of the employee and his/her representative to have a reasonable amount of time to submit the request
- B. Grievance
1. When a request for reconsideration is received, the human resources office shall establish an employee reconsideration file which shall contain all pertinent documents relating to the negative determination, including copies of the written determination and the basis thereof, the employee's written request for reconsideration, the report of investigation if an investigation was made, the decision of the reconsideration official, and any other documents the employee may have submitted regarding the determination.
  2. The reconsideration file shall not contain any document that has not been made available to the employee and/or his/her representative with an opportunity to submit a written exception, including any exception the employee may have had to the written summary of his/her personal presentation. Upon request, a copy of the reconsideration file will be given to the employee.
  3. The time limit for submitting a request for reconsideration shall be extended when: (1) the employee was not notified of the time limit in accordance with Section 4A (2) and was not otherwise aware of it, or (2) the employee was prevented by circumstances beyond his/her control from requesting reconsideration within the time limit.
  4. The Management Official shall reconsider the official determination of the supervisor, taking into consideration any written response from the employee and/or his/her representative.
  5. The Management Official, after reconsideration, will issue a decision in writing on the negative determination, within thirty (30) calendar days after receipt of the request for reconsideration.
  6. If the decision does not sustain the initial negative determination and the WIGI is to be granted, it will be granted retroactive to the original due date.

7. If the decision sustains the initial negative determination, the decision letter shall notify the employee of his/her right to grieve the decision within thirty (30) calendar days of receipt of the letter.
8. If no timely decision is issued, an employee may file a grievance within thirty (30) calendar days from the date that the decision was due.
9. A copy of the decision of the Management Official will be sent promptly to the Human Resources Office.

## **Article 46 – Honor Awards Committee**

Management agrees to recognize a representative designated by the NCFLL on the Secretary of Labor's Honor Awards Committee and that this member should meet with the Committee whenever it meets to consider award recommendations which involve bargaining unit employees. This Committee, as defined in appropriate issuances, is responsible to the Secretary for review of award recommendations and for evaluating the operation of the Employee Recognition Program.

# Article 47 – Reduction in Force or Transfer of Function

## Section 1 – General

- A. The Department will adhere to all applicable Government wide rules and regulations as well as DPR 351 (Oct. 1, 2007) and DPR 330 (Oct. 1, 2007) and the provisions of this Article in the administration of reduction in force (RIF) or transfer of function.
- B. This Article governs: (1) transfer of function, and (2) the separation, demotion, reassignment requiring displacement of another employee, or furlough for more than 30 calendar days of bargaining unit employee(s) by reduction in force from their respective levels.
- C. The parties agree that RIFs will be handled in accordance with 5 CFR Part 351. The determination of competitive areas will be made in accordance with 5 CFR 351.402. This Article concerns the impact and implementation of the Government-wide regulations on RIF, which may occur during the life of the Agreement, with respect to employees in the NCFLL bargaining unit.
- D. Administrative assignment rights for excepted employees will, with respect to positions in the Excepted Service, be administered in accordance with 5 CFR 351.705(a)(3).

## Section 2 – Notification

- A. Preliminary Notification to NCFLL of RIF or Transfer of Function
  - 1. When it is anticipated that transfer of function or RIF affecting bargaining unit employee(s) will be necessary, the NCFLL will be given preliminary notification in writing. This notification will be at least one hundred twenty (120) calendar days in advance of the anticipated implementation date, unless circumstances dictate otherwise, and will include the following information:
    - a. The reason for the RIF or transfer of function,
    - b. The approximate number of employees who may be affected initially,
    - c. The competitive areas and levels that may be involved initially in a reduction in force, and
    - d. The anticipated effective date that action will be taken.
  - 2. At the time the NCFLL receives its preliminary notification of an anticipated RIF, the Department will provide the NCFLL with a list of all employees covered by the notice whose current annual ratings of record are overdue.
- B. Notice to Employees
  - 1. Affected employees shall be given a written notice no later than sixty (60) calendar days prior to the date of the implementation of a reduction in force or transfer of function, unless circumstances dictate otherwise. When a reduction in force is caused by circumstances not reasonably foreseeable, the Office of Personnel Management (OPM), at the request



of the Department, may authorize a notice period of less than sixty (60) calendar days but at least thirty (30) full calendar days before the effective date of release.

2. When a general reduction-in-force notice is used, it will be supplemented by a specific notice. The Department will not release an employee from his or her competitive level until at least fifteen (15) calendar days after the employee's receipt of the specific notice.
3. The notice period begins the day after the employee receives the notice.

### **Section 3 – Retention Registers**

- A. The NCFLL Executive Council will be provided a copy of the annotated retention register(s), to be used to issue the specific notices, at least two (2) calendar days before the issuance of the initial specific Notices. The NCFLL Executive Council will keep all Retention Registers secure and confidential in accordance with 5 CFR 293, Personnel Records and DPR 351. Amended or revised retention registers will be provided to the NCFLL as soon as possible.
- B. The retention register will include: the employee's tenure group, competitive level, and original service computation credit date; the ratings of record used to compute credit for performance; the amount of credit for performance; and the adjusted service computation date.
- C. Employees' performance ratings of record due before the issuance due date of specific RIF notices will be submitted to the servicing Human Resources Office in sufficient time for retention standing to be determined. The due date would ordinarily be no more than fifteen (15) calendar days prior to the issuance date of specific notices.
- D. When employees affected by RIF are in the same competitive level with the same length of service, as augmented by performance credit, and the same subgroup, ties will be broken in the following order: (a) total DOL service; then, if necessary, (b) by length of service in the DOL Agency; and then, (c) by time the current grade level.

### **Section 4 – Department of Labor Employee Placement Assistance**

- A. It is the policy of the Department to assist employees who are adversely affected as the result of government-wide or DOL management initiatives, with career transition services and, to the extent practicable, consideration and selection priority for position(s) within the Department for which they qualify. Priority is given only to affected employees and is intended to maximize their opportunities to find other employment. To the extent feasible, the Department will retrain eligible employees for other occupations. Within budget constraints, the Department will provide the following programs and services for all DOL employees who will or might become "surplus" or "displaced" because of management initiatives, such as delayering, reorganization, competitive sourcing, transfer of function, or other workforce restructuring. Placement assistance for

either RIF or Transfer of Function will be governed by 5 CFR 330, Subpart F, and DOL DPR 330.

- B. Within budget constraints, the Department will provide the following programs and services for all DOL employees who will or might become “displaced” because of management initiatives, such as delayering, reorganization, competitive sourcing, transfer of function or other workforce restructuring:
  - 1. Career transition services,
  - 2. Priority Consideration,
  - 3. Special selection priority for eligible employees as defined in 5 CFR Part 330, Subpart F (Agency Career Transition Assistance Plans),
  - 4. Reemployment priority for eligible employees who receive a notice of separation or certificate of expected separation under 5 CFR 351, and
  - 5. Special Selection Priority for positions in Agencies outside of DOL when the employee is separated or proposed to be separated and meets the eligibility requirements under 5 CFR, Subpart G, Interagency Career Transition Assistance Plan for Displaced Employees.
- C. Career Transition Services within DOL
  - 1. Eligible employees may be allowed excused absence for reasonable periods of time to use services and facilities subject to supervisory approval and dependent on the needs of the workload and the office in accordance with DPR 630.
  - 2. The Department offers career transition services for DOL employees. These services assist employees in determining the context of the employee’s work and career objectives and help him/her set realistic career goals.
  - 3. Employees with disabilities may request reasonable accommodation to access career transition services from headquarters or field offices as well as remote sites in accordance with DLMS-4, Chapter 306, Reasonable Accommodations for Employees and Applicants with Disabilities and as set forth in DPR 330.

## **Section 5 – Re-promotion List**

- A. Career, career-conditional, and excepted employees not serving under time-limited appointment, will be entered on the Re-promotion List and given consideration for re-promotion when a vacancy occurs which will be filled by merit staffing competitive procedures or an excepted vacancy occurs that will be advertised internally. The employee must be qualified for the vacancy and it must be in the competitive area where the demotion occurred and at the employee’s former or an intervening grade.
- B. Eligibility for referral begins on the effective date of the downgrade or when the employee’s entitlement under the Displaced Employee Program ceases. It extends for a period not to exceed two years, or until the employee has reached his/her former or retained grade, whichever occurs first, unless the employee declines a reasonable offer of a position.

## **Section 6 – RIF Contract Coverage**

During the term of the Contract, all RIFs will be conducted in accordance with this Contract and government-wide regulations. Nothing will waive the right of the NCFLL to negotiate on the impact or implementation of any individual RIF with respect to matters not specifically covered by this Contract.

## **Article 48 – Interstation Transfer**

### **Section 1 – General**

- A. Interstation transfer may be used by the Department but will not be used or threatened as a form of discipline or reprisal.
- B. An employee whose interstation transfer is directed for reasons related to his/her performance may request review of the action through the grievance procedure.
- C. Reimbursement for travel and transportation expenses incurred in an interstation transfer which is in the interest of the Government shall be provided in accordance with applicable laws and regulations.

### **Section 2 – Procedures**

- A. Filling of a Vacancy by Interstation Transfer
  - 1. Any bargaining unit employee who wants to be transferred to another duty station may file a request for transfer with the Regional Human Resource Office(s) that services the duty station(s) to which the employee wants to be transferred. Such a request must include:
    - a. The employee's current Region, Agency, duty station, grade, and position; and
    - b. The Agency, duty station(s), and position(s) for which the employee would like to be considered.
  - 2. Requests for transfer will be kept on file by the Regional Human Resource Office from receipt until the end of the current fiscal year.
  - 3. In the event that Management elects to fill a vacancy by transfer, Management will first give consideration to the employees who have filed a request for transfer, with the Human Resource Office that services the vacant position, in accordance with Subsection 1. above.
- B. Selection for Transfer

Management will consider volunteers from among employees for the position to be filled and for which the volunteer is qualified and meets any special requirements.

### **Section 3 – Return to Previously Abolished Position**

- A. Management agrees that where an employee has been transferred due to abolishment of his/her position, or the employee is transferred from an overstaffed office, and the position is reestablished within one year, or Management decides to re-staff the office from which the employee was transferred, the employee(s) will be notified in writing and will be returned to that position if the employee applies for the position within thirty (30) calendar days of such notification. In instances where no PCS monies have been expended, the return right will be a three-year period.

- B. If there are two or more applicants for the reestablished position, the employee with the greater length of service in the Department shall have preference.

#### **Section 4 – Interstation Transfer for Employee Convenience/Hardship**

Management will consider the request of an employee who, for personal convenience, asks to be transferred at his/her own expense to fill a vacant position within his/her Agency for which he/she is qualified and meets any special requirements.

In keeping with the Department's commitment to a Family Friendly Workplace, special consideration should be given to an employee who demonstrates a personal hardship.

#### **Section 5 – Notice to NCFLL**

The designated NCFLL Representative as prescribed in Article 3 will be notified of all proposed intra-region transfers of bargaining unit employees at least two weeks in advance. For inter-region transfers, designated representatives in both the gaining and losing Regions will be notified. At each National LMR Meeting, the Department will provide the NCFLL a list, by OASAM Region, containing the number of inter-station transfer requests received and the number granted.

## **Article 49 – Contracting Out**

### **Section 1 – General**

- A. The Department acknowledges its responsibility to adhere to law and applicable Government-wide regulation regarding the use of experts, consultants, and contractors' employees.
- B. Upon request, the Department shall provide a copy of a specific contract to the NCFLL within thirty (30) calendar days, with proprietary or Privacy Act information redacted.
- C. It is the policy of the Department that a bargaining unit employee will be supervised by supervisory personnel of the Department and not by personnel of a contractor.
- D. The Department will provide the NCFLL copies of FAIR Act inventories for commercial and inherently governmental functions. At the request of the Union, Management will meet to explain the rationale for the FAIR Act classification decisions.

### **Section 2 – A-76 Competitive Sourcing/Commercial Activity Process**

The parties have a mutual interest in ensuring constructive employee involvement in implementing the Commercial Activities (A-76) studies initiated by the Department. Therefore:

- A. The Department shall notify the Union within seven (7) calendar days of its decision to use an A-76 competition to determine if government personnel should continue to perform work or contract out work that is currently performed by bargaining unit employees. The notice shall identify the affected units and the functions, positions and grade levels of bargaining unit employees affected. The Union shall be notified of all relevant data and information as they become available, including schedules, milestone charts, invitations for bid or requests for proposals, and performance work statements (PWS)/statements of work (SOW).
- B. The Union may appoint a bargaining unit employee on each PWS and Most Efficient Organization (MEO) Team, consistent with the revised OMB Circular A-76 guidelines. An employee may serve on the PWS Team or the MEO Team, but not both. Members of the PWS and MEO Teams will be provided relevant training. Employees selected to serve on the PWS and MEO Teams will be allowed a reasonable amount of official time and travel in connection with Team activities. It is anticipated that training and meetings may be conducted via teleconference.
- C. The organizational entity holding an A-76 competition shall hold regular meetings to discuss the status of the competition with all affected employees, including bargaining unit employees. The NCFLL will be given notice prior to any meetings between bargaining unit employees and management with regard to A-76 discussions. Every effort will be made to provide notification as early as possible.

- D. As information is releasable, management will notify the Union of its decision to contract out work that is currently performed by bargaining unit employees. Such notice will include information regarding any feasibility or cost studies that have been performed, authorized staffing levels, number of positions and vacancies.
- E. Upon receipt of notification of Management's decision to contract out work that is currently performed by bargaining unit employees, the Union may request bargaining in accordance with Article 4.
- F. Upon request and as allowable by law and regulation, the Department will provide the union information on A-76 related activities. This includes a copy of the PWS, contract solicitation, and documents referenced in the revised OMB Circular A-76, including Appendix B, Sections C and D.
- G. Upon request of a specific performance decision favoring the agency, the Department will provide the NCFL a copy of the MEO letter of obligation no later than 15 days prior to the implementation of the agency MEO.

### **Section 3 – Personnel Considerations for Displaced Employees**

- A. Displaced employees are those identified for release from their competitive level by an Agency, in accordance with 5 CFR Part 351 and Chapter 35 of Title 5, United States Code, as a direct result of a decision to convert to contract (contracting out) the Agency's Most Efficient Organization (MEO), or interagency service agreement.
- B. Displaced employees will receive career transition services, to include career counseling and training as described in DPR 330, Recruitment, Selection, and Placement. Provisions contained in Article 47 (Reduction in Force) also cover displaced employees.
- C. Federal employees displaced by a decision to convert to contract or public reimbursable source performance have the Right-of-Refusal for jobs for which they are qualified that are created by the award of conversion.
  - 1. A standard clause should be included in A-76 cost comparison solicitations notifying potential contractors of this requirement (see Federal Acquisition Regulations [FAR] 52.207-3). The Right-of-First-Refusal is afforded to all Federal employees displaced by the decision to convert to contract performance.
  - 2. Human Resource Officers should work with the contracting officer and employees to implement these provisions.
- D. Agencies should exert maximum efforts to find available positions for Federal employees displaced by conversion decisions, including:
  - 1. Giving priority consideration for available positions within the Agency;
  - 2. Establishing a Reemployment Priority List and an effective placement program;
  - 3. Paying reasonable costs for training and relocation that contribute directly to placement; and
  - 4. Registration in the Career Transition Assistance Program (CTAP) and the Interagency Career Transition Assistance Program (ICTAP).

## **Article 50 – Technology**

Technology is dramatically impacting work processes throughout business and Government nationwide. While innovations in technology are occurring so rapidly it is impossible to anticipate them, the Department and the NCFLL embrace the opportunities created to improve work processes and employee skills. The parties recognize that to take advantage of the opportunities technology presents, new ways must be found to work together to ensure that employees understand new technologies and that they are provided the necessary equipment, training, and systems to carry out their duties and responsibilities. To that end, the parties are committed to exploring ways to share information about new technology, while respecting each other's statutory rights.

### **Section 1 – Information Technology Committee**

- A. The NCFLL and the Department recognize that it is mutually beneficial for employees to understand management plans for introducing new technology and to have a forum for the NCFLL to discuss issues related to technology. To that end the parties establish a joint Information Technology Committee where broad Department-wide or cross-Agency technology Issues can be discussed.
- B. The Information Technology Committee will meet up to four times a year with at least two of the meetings held face-to-face. The Committee will be made up of at least three Union members and three Management members, but there will be no more than five Union and Management members in attendance.

### **Section 2 – Hardware and Software Utilization**

Where available, the Department will provide online access to electronic documentation, such as manuals and procedures for the equipment, hardware, and software that employees are required to utilize. A point-of-contact phone number and e-mail address will be provided to employees by their respective Agencies to answer questions and trouble shoot computer problems.

### **Section 3 – Training on New Technology**

- A. The Department commits to ensuring that all employees are equipped to perform the duties and responsibilities of their positions. Employees interested in increasing their information and technology skills are encouraged to pursue additional advanced training.
- B. As the Department introduces new technology, appropriate training (e.g. on-line instruction, desk-aids, "help lines," mentors, and/or classroom sessions) will be made available to employees affected by the introduction of new procedures and technology. Additional training will be provided for employees who demonstrate difficulty. If individual employees cannot adjust to the changes caused by the introduction of new technology or if the introduction results in the abolishment of some positions and the establishment of others, the Department of Labor,



consistent with applicable regulations, will make every effort to utilize the skills and abilities of those employees adversely affected by the changes.

#### **Section 4 – Pilot Programs**

- A. An Agency and the NCFLL may, by mutual agreement, establish a joint Information Technology (IT) Task Group comprised of three Union and three Management Representatives. The IT Task Group will provide a forum for Management to share anticipated technology changes and the Union to share and discuss concerns and interests of bargaining unit employees related to these changes. Each IT Task Group will meet as mutually agreed to by the parties. While face-to-face meetings may be appropriate in some instances, it is expected that the Task Group will maximize use of telephonic and other electronic communication to minimize travel costs.
- B. Any IT Task Group established under this Section will remain in operation for a minimum of one year unless the parties mutually decide to dissolve it sooner. At the end of the one year period, the Task Group may be renewed on an annual basis by mutual agreement.
- C. By agreeing to participate in a pilot IT Task Group, the NCFLL agrees that it will address its impact and implementation concerns in that forum and will not request formal bargaining.

#### **Section 5 – Identity Theft**

The Department is committed to adhering to government wide standards for security of its computer systems and confidential data. The Department and the NCFLL recognize that in some instances, bargaining unit employees may be required to provide confidential information, including their Social Security Number, to conduct the government's business using DOL electronic systems.

In the event that an employee's confidential information is compromised as a direct result of conducting official business while using a DOL computer system, the Department will seek to minimize any adverse impact on the affected bargaining unit employee. As such, an employee whose identity has been stolen from a DOL system may be granted a reasonable amount of time, as well as use of DOL equipment and facilities, for the purpose of remedying issues directly related to the identity theft.

## Article 51 – Information Sharing – Periodic Reports

The Department shall provide the NCFLL the following information, on a periodic basis, in connection with positions in the bargaining unit. This information will normally be provided electronically and in the timeframes outlined in this Article.

- A. Management will furnish annually to the NCFLL, during the month of February, for its internal use only, an electronic spreadsheet by OASAM Region, capable of being sorted by names, position titles, grades, bargaining unit status, dues check-off status, Agency duty station, and local affiliation of all employees in the bargaining unit. (Article 1, Section 7)
- B. Management will furnish monthly notification, on a regional basis, a list of all new hires into positions within the bargaining unit identifying the Agency and location.
- C. Management will furnish monthly to the NCFLL, for its internal use only, an electronic copy by Region of the names, position titles, grades, and duty stations of all employees in the bargaining unit appointed, transferred, promoted and separated during the preceding month.
- D. Regional OASAM will provide the NCFLL with the inventory of space actions on no less than a semi-annual basis, at each Regional LMR meeting. The inventory shall include the agency, city/state, lease expiration date, considered action, justification, estimated timeframe and status of the renovation/move. Updates of the inventory will be provided upon request. (Article 11)
- E. The Department will issue notices at least annually or as needed to NCFLL Bargaining Unit Employees concerning the availability of EEO Counselor positions. (Article 19, Section 7D.)
- F. Management will provide the NCFLL copies of Merit Staffing tests (electronic, paper, etc.) developed for use in the evaluation of candidates. (Article 20, Section 6A.4)
- G. Management will provide a copy of each Certificate from which selections may be made to the designated NCFLL Representative at the same time it is sent to the selecting official for positions in the bargaining unit. (Article 20, Section 6A.6)
- H. Management will notify designated NCFLL Representatives of the names of candidates selected for positions within the unit by the personnel office processing the personnel action as soon as a selection has been made. (Article 20, Section 6B)
- I. Management will notify a designated NCFLL Representative, in advance of any scheduled reviews of Regional Human Resources Office operations, and provide a sanitized copy of the Merit Staffing review within thirty (30) calendar days after the review is finalized. (Article 20, Section 7 and Section 7A)
- J. The Department will share with the NCFLL the information reported to OPM on the use of Telework on an annual basis. (Article 29, Section 11)
- K. The Department will keep the NCFLL advised of the status of Departmental Dependent Care Programs. (Article 30, Section 3)
- L. The Department, in the administration of this program, will collect information and share such information with the NCFLL. The information will be in regard to matters such as employee participation in connection with their duty station, total

- family income, amount of subsidy, eligibility/ineligibility of applicants, and number and age of children coming under the program. (Article 30, Section 4 E)
- M. The Department will provide to the individual Local Union Treasurer an electronic biweekly Union Roster and Activity Report for that local. The reports will include the name and the Agency of each member from whose salary dues have been withheld and the amount withheld for each person listed. The biweekly listing will provide annotated explanations of cases in which dues are not withheld (such as no payment, cancellation, LWOP, separated, etc.) (Article 10, Section 6)
- N. The Department will submit to the respective NCFLL Officials (described in B above) its annual safety and health inspection plans at the beginning of each fiscal year. These plans will specify the planned dates that each DOL office will be inspected. They will also specify if the office will be inspected by a safety and health professional sent to the office by OASAM and, if not, what alternative method will be used. Changes to these plans will be communicated to the affected NCFLL officials in a timely manner. (Article 34, Section 7D)
- O. Management agrees to share with the NCFLL Agency prototype elements and standards for similar or common positions within the bargaining unit. (Article 43, Section 10)
- P. The designated NCFLL Representative as prescribed in Article 3 will be notified of all proposed intra-region transfers of bargaining unit employees at least two weeks in advance. For inter-region transfers, designated representatives in both the gaining and losing Regions will be notified. At each National LMR Meeting, the Department will provide the NCFLL a list, by OASAM Region, containing the number of inter-station transfer requests received and the number granted. (Article 48, Section 5)
- Q. The Department will provide the NCFLL copies of FAIR Act inventories for commercial and inherently governmental functions. At the request of the Union, Management will meet to explain the rationale for FAIR Act classification decisions. (Article 49)
- R. The Department shall notify the Union within seven (7) calendar days of its decision to use A-76 competition to determine if government personnel should continue to perform work or contract out work that is currently performed by bargaining unit employees. (Article 49)
- S. Management will advise the NCFLL, within thirty (30) calendar days of the Secretary's determination, of the percentage of pay to be used for Performance Management (PMS) bonuses. Consistent with the Privacy Act, the NCFLL will be provided, within sixty (60) calendar days after the award payouts, an annual breakdown of the following PMS information for NCFLL bargaining unit employees by agency/sub-agency and region (or agency regional equivalent):
- Total PMS awards payout,
  - Total number of bargaining unit employees,
  - Total number of above receiving PMS awards,
  - Total number receiving awards by grade, and
  - Total number paid by rating level.

- T. Management will share workplace violence program information with the NCFLL Executive Committee annually in conjunction with the National Labor Relations Committee Meeting. (Article 35, Section 5 (4))

## **Article 52 – Quality of Service**

The Department is committed to ensuring that bargaining unit employees receive high quality and efficient administrative services, including employee compensation and benefits and financial services. Establishing and maintaining a high standard of quality for these services support the overall mission of the Department by allowing employees to focus on mission-related work. To that end, as the Department evaluates and implements new technology and external service providers, every effort will be made to ensure that the quality of service meets the needs of Agencies and employees. When problems arise with the quality of service, the Department will actively pursue timely and satisfactory resolution. The Department will keep the NCFLL informed of significant service-related issues concerning bargaining unit employees

## **Article 53 – Directed Membership and Participation in Professional Associations**

The Department agrees to pay for membership dues in professional associations whenever an employee is directed to join such an organization by an appropriate level of Management in connection with the performance of his/her official duties. Such memberships must be in the name of the Department. The Department also agrees to pay the expenses of employees (consistent with budget limitations and accounting regulations) selected by an appropriate level of Management in advance for attendance at professional meetings.

# **Article 54 – Management Rights**

## **Section 1 – General**

- A. The Department retains the right to:
  - 1. Determine the mission, budget, organization, number of employees, and internal security practices of the Department.
  - 2. In accordance with applicable laws:
    - a. To hire, assign, direct, layoff, and retain employees in the Department, 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 from among properly ranked and certified candidates for promotion or from any other appropriate source; and
    - d. To take whatever actions may be necessary to carry out the mission of the Department.
- B. Nothing in this Section shall preclude the Department and the NCFLL from negotiating:
  - 1. At the election of the Department, 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. The procedures which Management Officials of the Department 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.

## **Section 2 – Applications**

The requirements of this Article shall apply to all supplemental agreements between the NCFLL and the Department.

## **Article 55 – Leaves of Absence (Union Officials)**

### **Section 1 – AFGE or AFL-CIO Officer or Representative**

Management agrees to approve leaves of absence for any bargaining unit employee who is elected to a position of National Officer of the American Federation of Government Employees, AFL-CIO or any other AFL-CIO affiliate, for the purpose of serving full time in the elected position or who is selected as an AFGE National Union Representative or representative of any other AFL-CIO affiliate.

### **Section 2 – Period of Leave of Absence**

Leaves of absence granted under Section 1 of this Article will be for a period concurrent with the term of office of the elected Official or representative and will be automatically renewed by management upon notification in writing from the elected official or representative that he/she has been reelected or reselected and wishes to continue in a leave of absence status.

### **Section 3 – Conditions and Return Rights**

- A. The NCFLL agrees that all of the leaves of absence granted or approved in accordance with this Article are subject to the following conditions in addition to such other conditions as may be imposed by law or higher regulation:
  - 1. Without pay; and
  - 2. Access to Departmental premises by such employees will be in accordance with the terms of this Agreement or Department regulations whichever is applicable.
- B. Management, to the extent of its authority, will attempt to accomplish the following:
  - 1. Place an employee returning from leave of absence in the position held at the time that the leave of absence began; failing this,
  - 2. An effort will be made to place the employee in a like position in the Region; or failing either of the foregoing, and
  - 3. The employee will be placed in a like position somewhere in the Agency.



## **Article 56 – Reemployment Opportunities After Retirement**

### **Section 1 – Eligibility**

All employees in the bargaining unit who retire optionally from the Department will be considered, upon request, for reemployment.

### **Section 2 – Selection and Approval**

- A. Eligible retirees will be considered for reemployment in any vacant position for which they apply and for which they meet the minimum qualification requirements.
- B. If a retired former employee wishes to be considered for reemployment, he/she should apply to the personnel office that services the Region where he/she wishes to be reemployed.

### **Section 3 – Reemployment**

Rights and benefits of reemployed annuitants are outlined on Fact Sheet: Reemployed Annuitants, which is available through the servicing Human Resource Offices.

## **Article 57 – Concerted Activity**

### **Section 1 – No Strike**

The NCFLL agrees that during the life of this Agreement it will not encourage, initiate, participate, or condone any strike, work stoppage, or slowdown on the part of a bargaining unit employee or group of bargaining unit employees which would harm or adversely affect the operations or missions of the Department and that it will not condone any such activity by failing to take affirmative action to prevent or stop it.

### **Section 2 – No Lockout**

Management agrees that it will not lock out any bargaining unit employees.

## **Article 58 – Copies of Agreement**

### **Section 1 – Copies**

Booklet copies of this Agreement shall be provided by the Department to each employee in the unit. The NCFLL shall be furnished a reasonable number of copies to meet its needs.

### **Section 2 – Expenses**

The expenses for printing and distribution of this Agreement shall be borne by the Department.

### **Section 3 – Electronic Posting**

The Department will post an electronic copy of the Agreement on LaborNet.

## **Article 59 – Supplemental Agreements**

### **Section 1 - Authority of Master Agreement**

The Department and the NCFLL agree that this Agreement is a master Agreement and that any supplemental agreements shall not delete, modify, or otherwise nullify any provision, policy, or procedure in this Agreement; nor shall any provision in a supplemental agreement be in conflict with or duplicate any provision of this Agreement, statute, or regulation of the Department or higher authority. Any supplementary agreements or amendments to this Agreement that are entered into by the parties shall become a part of and shall terminate at the same time as this Agreement unless otherwise expressly agreed to in writing by the parties. While no Memoranda of Understanding (MOU) are carried over under this Agreement, Article 2, Section 6, Past Practices, applies to mandatory working conditions that resulted from such former understandings.

Prior to filing a grievance, if there is a dispute concerning the existence of a past practice in regards to a regional MOU, the matter will be referred to the regional labor relations officer and the local president for resolution. If the dispute is not resolved, the matter will be referred to the Director, Office of Departmental Labor Relations and Negotiations (ODLRN), and the NCFLL President for resolution. If the dispute concerns the existence of a past practice in regards to a national MOU, prior to filing a grievance, the matter will be referred to the ODLRN, and the NCFLL President for resolution.

National Memoranda of Understanding negotiated during the term of this Agreement will be posted on LaborNet.

### **Section 2 – Appropriate Matters for Regional Negotiations**

Matters appropriate for negotiations at the Regional level are those within the scope of bargaining under the Statute. These matters do not include:

- A. Subject matter already contained in this Agreement;
- B. Interpretation and application of this Agreement; or
- C. Subject matter that has been the subject of bargaining at the National level.

### **Section 3 – Resolution of Regional Negotiation Disputes**

Disputes between the local parties over whether agreement proposals or counter proposals are subject to Regional negotiations will be referred to the Department and the NCFLL Executive Committee. When a dispute has been submitted to the Department and the NCFLL, negotiations will be suspended on the issue pending final determination of the dispute. If the Department and NCFLL cannot resolve the dispute, either party may submit the matter to the appropriate authority in accordance with its rules and regulations.

## **Section 4 – Ratification and Approval of Regional Agreements**

All Regional supplemental agreements are subject to ratification by the NCFLC and approval by the Department.

## **Article 60 – Duration and Termination**

- A. This Agreement shall take effect on October 1, 2012, and shall remain in effect through September 30, 2018, unless extended through mutual agreement. It will remain in effect for yearly periods thereafter unless either party serves the other party with written notice, any time during the month of June prior to the expiration date, of its desire to terminate or modify this Agreement.
- B. Upon receipt by either party of notice from the other party of its desire to terminate or modify this Agreement, both parties shall meet within thirty (30) calendar days in an effort to reach agreement with respect to ground rules for negotiating a new Agreement.

## Appendix A – Merit System Principles

### § 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 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.



## Appendix B – Prohibited Personnel Practices

### § 2302. Prohibited personnel practices

(a)(1) For the purpose of this title, “prohibited personnel practice” means any action described in subsection (b) of this section.

(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;

(ix) a decision concerning pay, benefits, or awards 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;  
and

(xi) 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

(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; and

(C) “agency” means an Executive agency and the Government Printing Office, but does not include--

(i) a Government corporation, except in the case of an alleged prohibited personnel practice described under subsection (b)(8);

(ii) the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the Central Imagery Office, the National Security Agency, and, 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; or

(iii) the General Accounting Office.

(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 except as provided under section 3303(f);

(3) coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee of 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) a 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; or

(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) a 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;

(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;

(B) testifying for or otherwise lawfully assisting any individual in the exercise of any right referred to in subparagraph (A);

(C) cooperating with or disclosing information to the Inspector General of an agency, or the Special Counsel, in accordance with applicable provisions of law; or

(D) for refusing to obey an order that would require the individual to violate a law.

(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;

(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; or

(11) 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. This subsection shall not be construed to authorize the withholding of information from the Congress or the taking of any personnel action against an employee who discloses information to the Congress.

(c) The head of each agency shall be responsible for the prevention of prohibited personnel practices, for the compliance with and enforcement of applicable civil service laws, rules, and regulations, and other aspects of personnel management, and for ensuring (in consultation with the Office of Special Counsel) that agency employees are informed of the rights and remedies available to them under this chapter and chapter 12 of this title. Any individual to whom the head of an agency delegates authority for personnel management, or for any aspect thereof, shall be similarly responsible within the limits of the delegation.

(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;

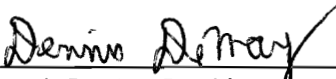
(2) sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a), prohibiting discrimination on the basis of age;

(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.

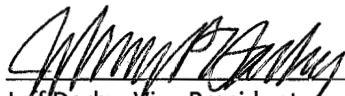
For the National Council of Field  
Labor Locals, AFGE, AFL-CIO

  
Dennis DeMay, President

  
Jim Weyrauch, Executive Vice President

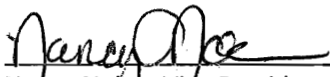
Dempster Wheeler, Treasurer


  
Daryl Laurie, Recording Secretary

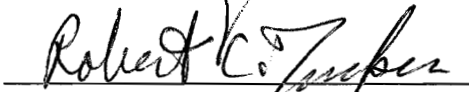
  
Jeff Darby, Vice President

  
Michael A. England, Vice President

  
Robert J. Newberry, Vice President


  
Nancy Nolan, Vice President

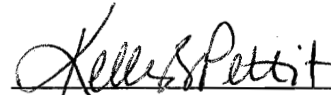
  
Paul Tracy, Vice President

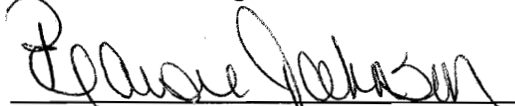
  
Robert Tucker, Vice President


  
Sandra Walters, Vice President

For the U.S. Department of Labor

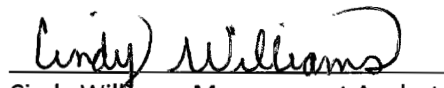
  
Hilda L. Solis  
Secretary of Labor

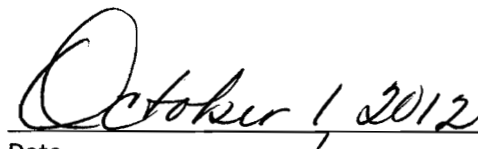
  
Kelley S. Pettit, Regional Administrator  
OASAM – Dallas Region

  
Earsie Johnson, Acting Director  
Office of Labor Relations and Departmental  
Negotiations

  
Peter F. Beil, Jr., Labor Relations Officer  
Office of Labor Relations and Departmental  
Negotiations

  
James Culp, Regional Solicitor  
Dallas Region

  
Cindy Williams, Management Analyst  
OASAM – Atlanta Region

  
Date

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*“Only a fool would try to deprive working men and working women  
of the right to join the union of their choice.”  
Dwight D. Eisenhower*

## NOTES

*“A good contract, with a good union, is good business.”  
John Dunlop, Secretary of Labor (1975-1976)*

## NOTES

*"It's a pretty good rule to work with anyone who will work with you."  
John L. Lewis*

## NOTES

*“There is no greater calling than to serve your fellow man.  
There is no greater satisfaction than to have done it well.”  
Philip Murray*

## NOTES

*“Labor is prior to, and independent of, capital. Capital is only the fruit of labor, and could never have existed if labor had not first existed. Labor is the superior of capital, and deserves much the higher consideration.”*  
*Abraham Lincoln*



# Celebrating 50 Years of Collective Bargaining

**1978**

Maternity and Family Leave  
Arbitration  
Flexitime  
Honor Awards  
Stewards

**1985**

Performance Awards

**1991**

Flexiplace  
First Forty  
Ergonomic Hazards  
Religious Observances  
Job Sharing  
Fitness Program

**1997**

Partnership

**2002**

Mass Transit Subsidy  
Child Care Subsidy

**2006**

Leave Bank  
Quality of Service

**2012**

Pre-Tax Parking  
Volunteer Services  
Nursing Mothers  
Workplace Violence



*"The Miner"*

*by Gary Prazen, National Mine Safety and Health Academy, Beaver, West Virginia*