INTERIM

COLLECTIVE BARGAINING AGREEMENT

between

THE FEDERAL TRADE COMMISSION

&

THE NATIONAL TREASURY EMPLOYEES UNION

January 19, 2025

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PREAMBLE

The Federal Trade Commission (hereinafter referred to as the "FTC", the "Agency" or the "Employer") and the National Treasury Employees Union (hereinafter referred to as the "NTEU" or the "Union") (collectively referred to as the "Parties") agree that the public interest requires high standards of Employee performance and the continued development and implementation of work practices that facilitate improved Employee performance and efficiency. The Parties also agree that the well-being of Employees and efficient administration of the Government are benefitted by providing Employees an opportunity to participate through collective bargaining by their authorized representatives with respect to policies and practices affecting conditions of their employment.

The Parties further agree that the participation of Employees should be improved through the maintenance of constructive and cooperative relationships between labor organizations and management officials. Subject to law and the paramount requirements of public service, effective labor-management relations within the Federal service require a clear statement of the respective rights and obligations of the labor organization and Agency management.

With the foregoing in mind, and in accordance with the provisions of the Statute and other applicable laws, rules, regulations, and policies, the Parties enter into this agreement which shall constitute an interim Collective Bargaining Agreement (Agreement) between the Employer and the Union.

DEFINITIONS

Unless otherwise modified in this Agreement, the following terms as used in this Agreement will have the following meanings:

Employee: a bargaining unit Employee of the FTC.

Workdays: Workdays as used in this Agreement means Monday through Friday and does not include Federal holidays.

ARTICLE 1 – COVERAGE

Section 1. The terms of this Agreement apply to all professional Employees of the Federal Trade Commission Headquarters and to all professional and nonprofessional Employees of all FTC Regional Offices, regardless of duty location. The terms of this Agreement do not apply to nonprofessional Employees of FTC Headquarters; supervisors; management officials; and those described in 5 U.S.C. Section 7112(b)(2), (3), (4), (6), and (7).

Section 2. During the term of this Agreement, the Employer agrees that all new employees employed in the units described in Section 1 above, will be automatically covered under the terms and conditions of this Agreement.

Section 3. To the extent that any preexisting local or midterm agreements or any local practices between the Union and the Employer conflict with the express terms of this Agreement, the terms of this Agreement shall apply.

Section 4.

A. Conditions of employment, applicable to a bargaining unit employee, are based on the unit status of the position held by the employee. Therefore, bargaining unit employees, when placed on a temporary promotion or formal detail to a non-bargaining unit position, are not covered by the provisions of this Agreement during the time of the temporary assignment.

B. Provisions in this collective bargaining agreement between FTC and NTEU containing the phrase "the Employer has determined" or "Management has determined" denote a unilateral determination by the FTC that is placed in the Agreement for informational purposes. It is understood that such determinations may be unilaterally changed by the Employer at any time after notification to NTEU and any negotiations required by law.

C. Nothing in this Agreement may be interpreted as the Employer's agreement or consent to negotiate over the terms and conditions of employment of non-bargaining unit employees and/or non-bargaining unit positions.

ARTICLE 2 – EFFECT OF LAW & REGULATIONS

Section 1. In the administration of all matters covered by this Agreement, the Parties are governed by existing or future laws.

Section 2. To the extent that provisions of the Employer's policies and procedures issued after the effective date of this agreement are in specific conflict with this Agreement, the provisions of this Agreement will govern.

Section 3. Nothing in this Agreement constitutes a waiver of the Employer's rights under 5 U.S.C. Section 7106(a).

ARTICLE 3 – RIGHTS & OBLIGATIONS

Section 1. Management Rights and Obligations.

A. In accordance with the provisions contained in 5 U.S.C 7106, Management Rights, the Employer retains the rights:

(1) To determine the mission, budget, organization, number of Employees, and internal security practices of the Agency; and

(2) In accordance with applicable laws:

(a) To hire, assign, direct, lay off, and retain Employees in the Agency, or to suspend, remove, reduce in grade or pay, or to subject such Employees to other remedial action;

(b) To assign work, to make determinations with respect to contracting out, and to determine the personnel by which the Agency's operations shall be conducted;

(c) With respect to filling positions, to make selections for appointments from:

i. Among properly ranked and certified candidates for promotion; or

ii. Any other appropriate source; and

(d) To take whatever actions may be necessary to carry out the missions of the Agency during emergencies.

B. Nothing in this Section or the Statute shall preclude the Employer and the Union from negotiating:

(1) at the election of the agency, on the numbers, types and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods and means of performing work;

(2) procedures which management officials of the agency will observe in exercising any authority under this Article or Statute; or

(3) appropriate arrangements for employees adversely affected by the exercise of any authority under this Article or Statute by such management officials.

C. The Employer retains all other rights in accordance with applicable laws and regulations, except for those specific modifications contained in this Agreement.

Section 2. Employee Rights.

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

(1) to act for a labor organization in the capacity of a representative in accordance with the Union's constitution and bylaws, and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the Executive Branch of the Government, the Congress, or other appropriate authorities; and

(2) to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this Agreement.

B. The initiation of a grievance in good faith by employees and in accordance with Section 2.A of this Article will not adversely effect their standing with their supervisor or reflect negatively on their loyalty or desirability to the organization. Employees and Union stewards 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. The Employer will not impose any restraint, interference, coercion, discrimination, or reprisal against any employee in the exercise of his or her right to designate a Union steward in accordance with the Union's constitution and bylaws for the purpose of representing to the Employer any matter of concern or dissatisfaction or of representing the employee to any Government agency or official other than the Employer. Nothing in this Section, however, abrogates the right of the Agency to conduct investigations concerning employee misconduct.

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

D. It is understood that an employee must follow lawful supervisory orders, directions or assignments.

(1) The Employer will not take disciplinary or remedial action against the employee as a result of carrying out the lawful orders, directions, or assignments of a supervisor, or attempting in good faith to carry out such lawful orders, directions, or assignments, except to the extent that employee fails to meet established performance standards in carrying out such orders, directions, or assignments.

(2) If an employee disputes the legality of his or her supervisor's order, direction, or assignment based on the employee's belief that it violates a law, rule, regulation, or published Code of Ethics/Professional Responsibility:

(a) The employee will discuss the dispute/difference and the basis for it with his or her supervisor with the intent of resolving the dispute/difference.

(b) If unresolved, the employee may seek review of the dispute by his or her next level supervisor or the supervisor's designee, who will assess the matter and inform the employee of his or her determination regarding the dispute.

(c) If unresolved, the employee may request that the decision be put in writing. Thereafter, the immediate supervisor or supervisor's designee shall give the instructions to the employee in writing. The Employer shall assume full responsibility for those instructions if they are carried out in the manner prescribed by the supervisor.

(d) In addition, professional employees whose professional license must be maintained as a condition of employment (e.g., Series 905 Attorneys) may consult with the body responsible for the enforcement of the Code of Professional Responsibility in the State or District in which he or she is licensed for guidance, and, upon receipt, provide such guidance to the supervisor. Prior to the receipt of such guidance, the professional shall not be required to sign any disputed document. If the guidance provided indicates that the action is inappropriate, the professional shall not be required to sign any subsequent documents related to that action.

(3) At such time as the employee has complied with a supervisor's direction or assignment, he or she may file a grievance, as appropriate, to seek a remedy to any alleged violation of his or her rights.

(4) An employee who has questions concerning an interpretation or application of standards of ethical conduct in which he or she has a direct personal interest is encouraged to raise his or her questions with the FTC's ethics office.

E. A bargaining unit employee will be granted a reasonable amount of duty time to confer with his or her Union representative concerning matters for which he or she can receive remedial relief under this Agreement and to attend and prepare for any proceeding listed in the Official Time Article, in which the employee is a proper participant (e.g., as a mutually agreed upon witness).

F. Employee will submit a request for time away from official duties and state the general purpose for the time and the amount of time being requested in accordance with the provisions in the Official Time Article. The use of duty time must be requested by the employee to their supervisor, at least 24 hours in advance or, if the request is more urgent, as soon as reasonably practicable. The supervisor shall normally grant the employee's request unless the requested duration is unreasonable or the employee's absence would substantially interfere with business needs. If the employee has provided reasonable advance notice, but the Employer fails to act on the request in a timely fashion, the request will be considered as approved for up to 2 hours per day until the supervisor or designee approves/denies the request. The employee will notify his/her supervisor upon return to the

worksite.

G. In meetings with the Employer only, if the requested representation is not available, the meeting will be postponed, but for not more than two (2) workdays. This time limit may be extended by mutual consent of the parties prior to the expiration of such time limit. If within that time the Union cannot provide a representative, the employee may not delay the meeting further. If, due to emergency circumstances, the Employer cannot delay the meeting for up to two workdays, the employee and the Union will be notified immediately, and the Union will be provided a reasonable time to provide a representative.

H. To the maximum extent possible, all examinations of employees conducted by the Employer only as described in Section G above will be conducted in a private room.

I. A grievant, appellant, or an employee will receive duty time, in accordance with approval procedures in Section 2.G of this Article**,** to meet telephonically or via video conference unless both parties agree to meet in person to address the following:

(1) grievance meetings with the Employer;
(2) arbitration hearings, if the Employee is still on the rolls;
(3) oral reply meetings for a notice of proposed disciplinary or adverse action;
(4) an adverse action hearing, if the Employee is still on the rolls;
(5) other statutory appeal hearings, if the Employee is still on the rolls;
(6) meetings for the purpose of presenting replies to notices of termination of a probationary Employee in accordance with Section 4 of the Probationary and Trial Period Employee Article, if the Employee is still on the rolls; and**,**
(7) an examination by a representative of the Employer in connection with an investigation which may lead to disciplinary action.

J. The Employer agrees that it will apply 5 C.F.R. Parts 2635 and 9401 (Standards of Ethical Conduct) in accordance with law.

K. For any Employee for whom a Flexible Workplace Agreement for remote work (RWA) has been approved as of the date this Agreement is executed, such RWA will not be revoked or modified not to authorize remote work for three (3) years unless the Employer determines that the Employee has performance deficiencies while participating in remote work. In such instances, the Employee will be evaluated to determine whether the remote work arrangement may be contributing to the performance deficiencies in a manner that could otherwise be effectively addressed if the worker were to report to an FTC office. The employee will be given notice that their RWA is being changed or revoked. The change or revocation notice will be in writing, provide an explanation of the change, include the effective date, provide a reasonable time frame for the change, and provide any appeals/grievance procedures available to the employee. Further, nothing in this Section impacts the Employer's rights to limit, restrict, or prohibit remote work pursuant to Section 5.B of Chapter 3, Section 690 of the Agency's Administrative Manual.

Section 3. Union Rights and Obligations

A. The Union is the exclusive representative of the employees in the unit and is entitled to act for, and represent the interests of all employees in the unit. The Union shall have the right to present its views, either orally or in writing, to the Employer on any matters of concern regarding personnel policies and practices and matters affecting working conditions.

B. The Union has the right to attend and send a properly designated representative of its own choosing to any formal discussion as defined by 5 USC Section 7114 (a)(2)(A) between the Employer and one or more employees in the unit concerning any grievance or any personnel policy or practice or other general conditions of employment. The Union agrees that in order to conserve costs it will designate a local representative in the office where the formal meeting is being held or will be given the opportunity to join remotely.

C. At those formal meetings where the Union has chosen to be represented, the Employer or the Union will identify the designated Union representative. The Union representative may ask relevant questions and present a brief statement outlining the Union's position concerning the issues addressed at that meeting. The Union representative cannot use his or her attendance to disrupt the meeting or to undermine the Employer's position at the meeting. The Employer retains the right to terminate the meeting.

D. The parties recognize that sensitive information may be discussed at meetings held pursuant to Section B, above. As such, the parties will keep such information confidential except to the extent necessary to process, address, or resolve the grievance or issue being discussed. Provided that anyone with access to that information is advised of the confidentiality requirements herein."

E. Consistent with law, nothing in this Article or in this Agreement shall be interpreted so as to limit management from meeting informally with an employee without the Union being given the opportunity to be represented at such informal meetings. However, if during the course of such an informal meeting an employee reasonably believes that the questions from management may result in disciplinary action against him or her, or if the meeting turns into a formal meeting as defined in 5 USC 7114(a)(2)(A), the employee may request the presence of a union representative for the remainder of the meeting.

ARTICLE 4 – POSITION DESCRIPTIONS

Section 1. Where the Agency moves a position from the competitive service to the excepted service, or between excepted services, whether pursuant to statute, Executive Order, or an OPM issuance, to the extent that this subpart is not inconsistent with applicable statutory provisions; or moves an Employee who has accrued status and civil service protections under 5 U.S.C. chapter 75, subchapter II, involuntarily to any position that is not covered by that chapter or subchapter the Agency will comply with 5 C.F.R. Part 302, Subpart F (see Appendix A). An Employee or the Union on behalf of an Employee or group of Employees may appeal the Agency's decision directly to the Merit System Protection Board consistent with 5 C.F.R. § 302.603 or the negotiated grievance and arbitration procedures in this Agreement, but not both. When the Employee or the Union files such appeal, the Agency will stay the movement of the Employee until a final decision is provided, to include decisions from a higher authority

ARTICLE 5 – GRIEVANCE PROCEDURE

Section 1.

A. A grievance means any dispute, difference, disagreement or complaint –

(1) By any employee relating to wages, hours, and conditions of employment, including a dispute regarding the interpretation of, application of, or compliance with the provisions of this Agreement;

(2) By the UNION concerning any matter relating to the wages, hours, and conditions of employment of any employees in the bargaining unit or involving the interpretation of, application of, or compliance with the provisions of this Agreement;

(3) By any employee, the UNION, or the EMPLOYER concerning:

(a) the effect or interpretation, or claim of breach, of this Agreement; or

(b) any claimed violation, misinterpretation, or misapplication of any law, rule or regulation affecting conditions of employment.

(4) Except that the following matters are not grievable and therefore this Article shall not apply with respect to:

(a) A matter filed for formal review and adjudication by the Merit Systems Protection Board (MSPB), the Office of Personnel Management (OPM), the Equal Employment Opportunity Commission (EEOC), or the Federal Labor Relations Authority (FLRA), or other matter that an employee files under another review or reconsideration procedure.

(b) A proposed notice of an action that, if effected, would be excluded from coverage as appealable under Section 1.a (4)(a) of this Article.

(c) The content of published agency regulations, procedures, and policy.

(d) Non-selection for promotion from a group of properly ranked and certified candidates or failure to receive a noncompetitive promotion.

(e) An action terminating a temporary promotion at its expiration, or before, that returns the employee to his or her former position or a different one of equivalent grade and pay.

(f) Adoption or non-adoption of an employee's suggestion, granting or failure to grant any type of discretionary award or recognition, and receipt or failure to receive a quality step increase.

(g) The substance of the critical elements and performance standards for an employee's position; however, an employee may grieve a performance rating and include the application of these elements and standards as part of his or her grievance.

(h) The termination of a probationary employee, return of an employee from an initial appointment as a supervisor or manager to a nonsupervisory or nonmanagerial position for failure to satisfactorily complete the probationary period, or separation or termination of an employee during a trial period.

(i) An action taken in accordance with the terms of a formal written agreement voluntarily entered into by an employee and the agency.

(j) Any action taken to return an employee from a temporary change in duty station, including returning an employee from an overseas or foreign assignment.

(k) Matters involving allegations of discrimination, when a discrimination complaint has been filed with the FTC EEO Office concerning the same issue(s). This does not preclude an employee from filing an administrative grievance and seeking pre-complaint counseling at the same time. However, at such time that a discrimination complaint is filed with the FTC EEO Office, the grievance will be cancelled and the complaint will be processed under the procedures and time frames outlined in Administrative Manual Chapter 5, Section 400, *Equal Employment Opportunity*.

(l) Any matter that is also the subject of a harassment claim being investigated under Administrative Manual Chapter 5, Section 420, *Anti-Harassment Policy and Procedures.*

(m) Claims of discrimination based on sexual orientation processed under Administrative Manual Chapter 5, Section 410, *Sexual Orientation Anti-Discrimination Policy*.

(n) Any matter the substance of which has been the subject of a previous administrative grievance or complaint of discrimination or harassment submitted by the same employee.

(o) The payment of, failure to pay, or the amount of a recruitment bonus, relocation bonus, retention allowance, or student loan repayment.

(p) Any decision rendered by the Leave Bank Board on the Voluntary Leave Bank Program.

(q) Establishment of a Performance Development Plan following a determination of unacceptable performance.

(r) The classification of a position description and all actions excluded under 5 C.F.R. § 511.607.

(s) Receipt or nonreceipt of any benefit conferred under a government-wide benefits program.

B. Grievances may be initiated by employees, singly or jointly, by the Union for itself, by the Union on behalf of one or more employees, or by the Agency.

C. This grievance procedure shall be the exclusive administrative procedure available to the Parties and the employees for resolving a grievance, except as to the following:

(1) **MSPB**

(a) A grievance involving a challenge to an adverse or unacceptable performance resulting in removal, suspension for more than fourteen (14) calendar days, reduction in grade, reduction in pay, or furlough of thirty (30) calendar days or less may be raised either under the appropriate MSPB procedure or under this negotiated grievance procedure, but not both. An employee shall be deemed to have exercised his or her option at such time as he or she timely files a notice of appeal under the applicable appellate procedure or timely files a grievance in writing in accordance with the provisions of this Article, whichever event occurs first.

(b) An employee who receives a notice of final action regarding an adverse or unacceptable performance action has thirty (30) calendar days beginning with the day after the effective date of the action to appeal the action to the Merit Systems Protection Board. If the employee decides to seek recourse through this negotiated grievance procedure and the Union decides to invoke arbitration after receiving a final decision under the negotiated grievance procedure, notice of a decision to seek arbitration must be served upon the Agency within twenty (20) calendar days after receiving the decision.

(2) **EEO**. An employee may file a grievance under this Article or a formal EEO complaint with the FTC's EEO Office regarding a particular matter, but not both. An employee is deemed to have exercised his/her option to raise a matter through the EEO process or through the grievance process at such time as the employee files a formal complaint of discrimination with the FTC's EEO Office or files a grievance in writing in accordance with the provisions of this Article, whichever event occurs first.

(3) **OSC**. An employee who believes (s)he has been discriminated against on the basis of marital status, political affiliation, sexual orientation, parental status or protected genetic information may file a grievance under this Article, or if appropriate a Complaint of Possible Prohibited Personnel Practice with the Office of Special Counsel, but not both.

(4) **FLRA.** If an alleged grievance also constitutes an alleged unfair labor practice, the aggrieved Party has the option to seek redress under this Article or under the FLRA's unfair labor practice procedure, but not both. The aggrieved Party is deemed to have

exercised its option to raise a matter as an unfair labor practice or as a grievance at such time as the aggrieved Party timely files an unfair labor practice charge with the FLRA or timely files a grievance in writing in accordance with the provisions of this Article, whichever event occurs first.

Section 2.

A. A grievant is entitled to be assisted by a Union representative in the submission of grievances or may submit grievances without Union representation. No individual may serve as an employee's representative in the processing of a grievance under this procedure, unless such representative has been approved by the Union. If a grievant submits a grievance without Union representation, the Union will be given the opportunity to be present at all formal discussions of the grievance. To the extent possible, the Union will be given reasonable advance notice of such discussions. An employee does not have the right to take a matter to arbitration unless the Union is the invoking party.

B. An employee will be given up to a total of 8 hours of official time to prepare and present a grievance or appeal, including attendance at meetings with the Agency.

Section 3. Employees, designated representatives, and employee witnesses will be assured freedom from restraint, interference, coercion, discrimination, intimidation, or reprisal arising out of their initiation or participation in the resolution of a grievance.

Section 4. When appropriate, non-binding mediation may be used to address employee grievances under this section; however, the Employer will determine whether mediation is appropriate for the grievance presented. Any settlement agreement must provide for dismissal of the administrative grievance promptly upon execution of the settlement agreement.

Section 5. Grievances under the Step One Procedure shall be processed as follows:

A. A Step One grievance concerning a particular act or occurrence must be filed with the deciding official within 15 calendar days after the date of that act or occurrence or within 15 calendar days after the date the employee became aware of the act or occurrence. The deciding official may extend this time limit for good cause shown by the employee; however, requests for an extension must be filed in writing within the 15-day limit and submitted to the deciding official. A Step One grievance concerning a continuing practice or condition may be presented at any time.

B. An employee request for mediation pursuant to Section 4 of this Article must be initiated within 15 calendar days after the date of the event that gives rise to the dispute or 15 calendar days after the employee became aware of such event. If mediation does not resolve the dispute, the employee may proceed directly to the Step Two grievance process.

C. If the deciding official fails to issue a decision within the time limits outlined in Section 5.I. of this Article, the grievant may proceed directly to the Step Two procedure within 15 days of the expiration of the time limit.

D. The grievant must present the Step One grievance to the management official at the lowest level within the Bureau or Office who has the authority over the matter at issue. This is usually the official who made the decision or committed the act about which the employee is dissatisfied. In most cases, the official will be the employee's first line supervisor or manager.

E. The grievant may present a Step One grievance orally or in writing, and include the following information:

(1) Sufficient detail to identify the matter grieved. If the grievance is submitted in writing, the written documentation supporting the grievance, to include the grievance itself, may not exceed ten pages, including attachments. If the grievant has documentation to submit in support of his or her oral grievance, it must be submitted at the same time the oral grievance is presented. In all cases, the font size used for written documentation may not be smaller than 12 points.

(2) The relief requested; and

(3) A written designation of representative, if applicable.

F. An employee is required to pursue a Step One grievance before filing a Step Two grievance in all instances, except when mediation was attempted but was not successful in resolving some or all of the issues.

G. If the management official who receives the grievance does not have authority to grant the relief requested, he or she will contact the Human Capital Management Office specialist to obtain guidance regarding designation of a deciding official. Deciding officials have the right of redelegation as he or she deems appropriate.

H. The deciding official must determine if the matter presented is not excluded by Section 1A4 of this Article, whether the grievance has been submitted in accordance with the time limits outlined in Section 5.A. of this Article, and any other threshold issues, including potential use of mediation if a request was made, before reaching any decision on the merits of the grievance. The deciding official will cancel a Step One grievance that fails to comply with the procedural requirements of this section.

I. The deciding official will process the Step One grievance and issue a written decision as soon as possible, but no later than 15 calendar days after the receipt of written grievance or presentation of an oral grievance. The deciding official may extend this time if necessary, but must notify the employee, in writing, and inform him or her of the date to expect the decision.

J. The written decision on the Step One grievance must contain the rationale on which the decision is based, specify the relief, if any, that will be provided, and inform the employee of the right to present the grievance under the Step Two procedure set out in Section 6 of this Article if he or she is dissatisfied with the decision under the Step One procedure, including the name and contact information of the deciding official and applicable time limits for filing a Step Two grievance.

Section 6. A grievant is entitled to present a Step Two Grievance if: (1) Mediation was attempted but was not successful in resolving the Step One grievance; (2) the grievant did not receive a decision within the applicable time limits under the Step One grievance procedure; or (3) the grievant is dissatisfied with the decision issued under the Step One grievance procedure. Grievances under the Step Two Procedure shall be processed as follows:

A. A Step Two grievance must be presented within seven calendar days after: (1) the date of the notice informing the grievant that the mediation process was terminated; (2) the date the grievant should have, but did not, receive a decision under the Step One grievance procedure; or (3) the date the Step One grievance decision was issued.

B. The grievant must present the Step Two grievance, in writing, to the management official designated in the Step One grievance decision. In most cases, this deciding official will be the grievant's second level supervisor or manager. Deciding officials have the right of redelegation as he or she deems appropriate.

C. The Step Two grievance must be in writing and include a statement that the grievant is filing a Step Two grievance; a statement of sufficient detail to identify the matter grieved, a statement specifying the relief requested; a written designation of representation, if applicable; written documentation supporting the Step Two grievance that may not exceed ten pages, including attachments; copies of all materials presented in the Step One grievance procedure; and a copy of the Step One decision.

D. Concerns or issues not raised in the Step One procedure (or not submitted to mediation) may not be raised in a Step Two grievance.

E. If the Step Two grievance covers a matter not excluded from this Agreement, is timely submitted, and satisfies the procedural requirements for presenting a grievance, the deciding official will process it and issue a written decision as soon as possible but generally not later than 30 calendar days after receipt. The deciding official may extend this time if necessary, but must notify the grievant, in writing, and inform him or her of the date to expect the decision.

F. If the deciding official determines that additional information is required before he or she issues a decision, the deciding official may designate an appropriate fact finder within 15 calendar days after receipt of the Step Two grievance and notify the employee in writing that the grievance decision will be delayed pending the completion of the fact-finding process.

(1) The fact finder will conduct an inquiry of a nature and scope relevant to the issues involved in the grievance.

(2) The inquiry may involve, but is not limited to, reviewing and securing documentary evidence and conducting personal interviews.

(3) At the request of the deciding official, the fact finder may recommend a disposition of the grievance.

(4) Upon completion of the inquiry, the fact finder will submit to the deciding official the grievance file which will include a written report of findings and, when requested, recommendations for relief. The report is advisory and any recommendations made are not binding on the deciding official.

(5) The fact finder's report should be submitted to the deciding official within 30 days after the matter is referred to the fact finder. The fact finder shall also provide the employee, and their representative, if applicable, with a copy of the report at the same time it is provided to the deciding official. The deciding official may extend this period if the circumstances of the grievance or scope of inquiry warrant an extension.

(6) Upon receipt of the fact finder's report, the 30-day time limit for issuing a decision will resume. However, the deciding official may extend this time if necessary to fully consider the report, but must notify the employee, in writing, and inform him or her of the date to expect the decision.

G. The decision on the Step Two grievance will be in writing and address why the matter raised is not covered by the grievance procedure or the merits of the grievance and the appropriate relief granted, if any.

H. The decision on the Step Two grievance is not subject to further administrative review or appeal from the Agency. If the Union is not satisfied with the Step Two decision, the Union may invoke the matter to Arbitration under Article 6.

Section 7: Institutional Grievances.

A. In lieu of the step-by-step procedure set out in Sections 5 and 6 of this Article, the Union may submit a written grievance to the General Counsel, or designee with a copy to the Lead, Labor Relations, HCMO when it alleges that the Agency has violated terms and conditions specifically granted to the Union by statute or under this Agreement.

B. These "Institutional Grievances" by the Union will be submitted in writing within twenty (20) workdays after the occurrence of the act which gave rise to the grievance or twenty (20) workdays after the Union became aware of the action or may reasonably have been expected to have learned of the action. Upon receipt of the grievance, the Union and Agency representative (no more than two representatives for each Party unless mutually agreed otherwise) shall meet within ten (10) workdays to discuss the grievance. A written decision will be issued to the Union within twenty (20) workdays after the meeting. If the Union is not satisfied with the decision, it may appeal the decision to arbitration in accordance with the Arbitration provisions of this Agreement.

Section 8. When two (2) or more employees file individual grievances involving the same facts, events and the same issues arising out of the same incident, at the Union's option the grievances may be consolidated and processed through the grievance and arbitration procedure together. Upon mutual agreement, the parties may elect to consolidate other grievances involving two (2) or more employees.

Section 9.

A. All time limits referred to in this Article may be extended by written mutual consent of the Parties prior to the expiration of such time limits. Per written request of the Union, time limits will be tolled when the Agency has not responded to an information request after a reasonable time to respond. Time limits will no longer be tolled when the FTC states, in writing, that it has provided all information that the FTC believes it is required to release under 7114b.

B. Failure of the Employer to observe the time limits where no extension has been agreed to shall entitle the grievant to advance the grievance to the next Step.

C. Failure of the grievant or Union to observe the time limits contained in this procedure, where no extension has been granted, will result in termination of the grievance with no option to refile on the same matter. In cases where the Employer's response is late, the time limits for the grievant's response shall begin on the date the Employer's response is received by the Union.

Section 10.

A. All grievance step meetings will provide the employee and the Union with an opportunity to present his, her or its case or position in discussions of the grievance with the management representatives.

B. Upon advance written request by the Union, the Employer will provide reasonable official time for employee/Union witnesses with relevant information to meet with the Union pursuant to the grievance process. Under no circumstances will a witness requested by the Union or grievant be compelled to appear or answer questions involuntarily.

Section 11. When Agency grievances arise, they will be submitted in writing to the NTEU National President. Such a grievance must be submitted in writing to the National President twenty (20) calendar days after the occurrence of the act which gave rise to the grievance or twenty (20) calendar days after the Agency became aware of the action or may reasonably have been expected to have learned of the action. The management official who filed the grievance, or designee, will meet within ten (10) calendar days with the Union to ensure that all pertinent facts are made available. The Union will provide a written decision to the management official or designee within ten (10) calendar days after the date of the meeting. If the grievance is not settled by this method, the matter may be referred to arbitration by the Agency. A letter invoking the grievance for arbitration must be served on the Union's National President within twenty (20) calendar days of the written decision.

Section 12. In connection with potential or actual grievances, the Employer will respond to the Union's requests for information submitted pursuant to 5 U.S.C. § 7114(b)(4) within a reasonable period of time. Normally, within 10 workdays of receipt of the information request, Labor Relations will let the designated NTEU steward know that the request was received and will let the steward know an approximate amount of time that is will likely take to respond to each item requested.

Section 13. Discipline will be covered by Chapter 3, Section 752: Disciplinary and Adverse Actions (updated August 2015). Agency decisions regarding discipline may be grieved under this Article subject to Section 1.C above.

ARTICLE 6– ARBITRATION

Section 1.

A. Upon written notification by either the Agency or the Union, any unresolved grievance may be appealed to binding arbitration within 20 calendar days of receipt of the final decision in the grievance procedure.

B. Such appeals by the Agency must be hand-delivered, emailed, or sent by certified mail to the Union's national president and appeals by NTEU must be hand-delivered, emailed, or sent by certified mail to the General Counsel, Legal Division, or designee with a copy to the Lead, Labor Relations, Office of Human Capital.

Section 2.

A. The procedure for selecting an arbitrator for grievances arising under this Agreement is set forth below.

(1) The Agency and the Union will establish a panel of arbitrators to hear disputes brought under this procedure.

(2) The arbitration panel will have a minimum of five (5) arbitrators. The panel may contain more names upon mutual agreement of the Parties. Cases will be assigned to arbitrators on the panel on a rotating basis, in alphabetical order, absent mutual agreement.

(3) Replacement arbitrators, as necessary, will be selected based on the following procedures: The Parties will first informally discuss the possible arbitrator in an attempt to agree on which arbitrator(s) shall become a member of the panel. Absent agreement, the Parties will obtain a list of experienced Federal sector labor arbitrators from the Federal Mediation and Conciliation Service or any other mutually agreeable source; the cost of any list will be shared equally by the Parties. The Parties shall each strike a name from the list until the agreed-upon number of arbitrators for the panel remains; a coin toss will determine which party shall strike first.

(4) Either party may unilaterally remove one arbitrator from the panel during each 12-month period of this Agreement by giving notice to the other party. Upon receipt of that notice, no further cases will be assigned to that arbitrator, but the arbitrator will hear and decide any cases already assigned. Upon removal of an arbitrator from the panel, the Parties will move expeditiously to name a replacement. The Parties will use the procedures listed to select any replacement arbitrator.

B. Within 30 calendar days after receipt of a request for arbitration, the parties will assign the case to the next arbitrator on the panel, on a rotational basis.

C. The arbitrator will hear the grievance as promptly as practicable, on a date and at a site,

normally the Employer's premises at or nearest to the grievant's worksite, mutually agreeable to the parties during regular hours of the basic workweek.

D. Unless mutually agreed otherwise by the parties, if the party invoking a case for arbitration has not contacted the arbitrator for possible hearing dates within six months, the case will be deemed to be moot and considered withdrawn. No further arbitration will take place with respect to the matters covered by that grievance.

E. If the Parties fail to agree on a joint submission of the issue for arbitration, each shall present a separate submission, with a copy to the other Party, and the arbitrator shall determine the issue(s) to be heard.

Section 3.

A. The arbitrator's fees and all of the arbitrator's expenses, including travel expenses, incurred under this procedure shall be borne equally by the parties. Unless the parties agree otherwise, a verbatim transcript of the hearing will be made. The parties will share the cost of the court reporter and will each bear the expense of the copies of the transcript it obtains. The parties will share equally the cost of the transcript supplied to the arbitrator.

B. Once the hearing date has been established, a party unilaterally requesting that an arbitration hearing be postponed, delayed, or cancelled for any reason that results in fees being charged by the arbitrator or the court reporter will pay any and all fees associated with the requested change. The fact that one party has no objection to the request of the other party for postponement, delay, or cancellation of the arbitration hearing will not absolve the requesting party from the paying of all the fees being charged.

C. In any case where the parties mutually agree to postpone, delay, or cancel an arbitration proceeding, or if the parties settle the matter prior to an arbitration hearing, the parties will share equally the cost of any fees being charged by the arbitrator or the court reporter that are associated with the requested change.

Section 4.

A. The parties will exchange lists of potential hearing witnesses normally within 15 calendar days prior to the scheduled hearing. The Employer will make reasonable efforts to produce Agency employees as witnesses if requested by the Union. However, each party reserves the right to question the relevance or necessity of any potential witness, and the arbitrator will resolve any such questions prior to the date of the hearing.

B. Each party has the responsibility and obligation to produce its witnesses on the day of the hearing. The grievant and all employees who are called as witnesses will be excused from duty to the extent necessary to participate in the arbitration hearing, without loss of pay or charge to annual leave.

C. The hearing shall be informal and strict rules of evidence will not apply.

D. Issues may not be raised for the first time at arbitration that were not raised during the course of the grievance processing or were not raised during the processing of the adverse

or performance-based action giving rise to the arbitration.

E. The arbitrator shall have the authority to make all grievability and/or arbitrability determinations. The arbitrator may render a decision on issues of grievability and/or arbitrability prior to addressing the merits of the original grievance. Absent mutual agreement, the parties will be entitled to submit post-hearing briefs, provided that all documents given to the arbitrator are also provided to the opposing party's representative at the same time.

F. The arbitrator shall have no power to add to, subtract from, or modify the terms of this Agreement. The award will be limited to the issues presented at arbitration. The arbitrator's decision will be final and binding, and the arbitrator will have the authority to make an aggrieved employee whole, or issue any other remedy, to the extent such remedy is consistent with law, rule, and regulation.

G. The arbitrator shall submit his/her decision to the Employer and the Union advocate as soon as possible, but in no event later than 30 calendar days following the close of the record or receipt of the transcript, whichever is later before him/her, unless the parties waive this requirement.

H. Either Party may file an exception to the arbitrator's award with the Federal Labor Relations Authority under regulations prescribed by the Authority except that exceptions to an arbitrator's award in connection with a grievance filed under Section 1.C.1 of the Grievance Procedure, shall be handled in accordance with the requirements of 5 U.S.C. Section 7121(f). A copy of such exception shall be provided concurrently to the other Party.

I. An arbitrator has the authority to award reasonable attorney fees in accordance with the standards established under 5 U.S.C. Section 5596.

ARTICLE 7 – UNION REPRESENTATIVES AND OFFICIAL TIME

Section 1.

A. The Parties agree that the use of official time for the activities identified in this Article contributes to the effective conduct of the Employer's business in the public interest.

B. The terms "representative," "steward" or "officer" are used interchangeably in this Article and those terms refer to all employees representing NTEU, e.g., assistant chief stewards, chief stewards, stewards, and Union officers. No other bargaining unit employee(s) may be authorized by the Union to act on its behalf and receive official time unless mutually agreed to by the Parties.

C. The Union may designate one representative (steward and/or officer) for each forty (40) bargaining unit employees (or fractional portion thereof) at FTC Headquarters and in each Region. Only these representatives, in addition to the Chapter President, will receive official time, in accordance with this Article.

D. The Union agrees to provide to the Employer (Office of Employee Relations, Labor Relations, and Performance Management) a list of stewards/representatives as described above, within thirty (30) workdays after the effective date of this Article. The Union will also provide to the Employer written notice of any changes (additions or deletions) in such a list at least two (2) workdays in advance of the effective date of the change. No more than two representatives can report to the same first-line supervisor.

Section 2.

A. Union representatives will receive a reasonable amount of official time (including official time to travel to and from meetings described in C. below to the extent the employee is otherwise in a duty status) to fulfill their representational responsibilities in accordance with 5 U.S.C. § 7114 (a) (1-2).

(1) The Employer recognizes that in using official time under this Article, the Chapter President, Executive Vice President, Vice President of Regional Offices, Vice President of the Bureau of Economics, Vice President of Non-Professional Members, Secretary, Treasurer, and Chief Steward will share a bank of 2,500 hours per year.

(2) If the Chief Steward, the Vice Presidents, Secretary or Treasurer request more than twenty-four (24) hours of official time in a pay period, such additional official time will be requested by having the Chapter President or designee submit the request to the office of Labor Relations.

(3) If any other Union representative requests more than 4 (four) hours in a pay period, such additional official time will be requested by having the Chapter President or designee submit the request to the Office of Employee Relations, Labor Relations, and Performance Management.

B. The number of Union representatives authorized for official time is governed by the

following:

(1) For each of the matters with the Employer described in subsection C.1 and 17, the Union shall be entitled to official time for no more than one representative.

(2) For the matters described in subsections C.3, 4, 5, 6 and 7, the Employer will normally have two representatives (e.g., the deciding official and an advisory management representative), and the Union will be limited to one representative (in addition to the employee/grievant) with the exception that upon notice in advance, an additional union representative may attend for training purposes subject to managerial approval. If the Employer sends additional representatives to these meetings, it will notify the Union in advance, and the Union may send an equal number of additional representatives.

(3) In cases arising under subsection C.2, 8, 9, and 16, the number of Union representatives is equal to the number of Employer representatives at such meetings.

(4) The Union may occasionally designate an additional representative for training purposes so that a new steward may observe at least one official time meeting, and so that an experienced steward can supervise a new steward at least once in a meeting. Managerial approval is required.

C. Official time will only be granted for representational activities when the representative would otherwise be in a duty status. A Union steward may not use official time or duty time to conduct internal Union business. A Union steward may not earn overtime, premium pay, compensatory time for travel, or compensatory time for any activities relating to representational activities. Official time for Union representatives and for affected bargaining unit employees is authorized for the following purposes:

(1) meetings concerning personnel policies, practices or other general conditions of employment or any other matter covered by 5 U.S.C. 7114(a)(2)(A);

(2) meetings to discuss or present unfair labor practice charges or unit clarification petitions;

(3) meetings with the FLRA or participation on behalf of the Union in proceedings before the Authority;

(4) oral replies to notices of proposed disciplinary, adverse, or unacceptable performance actions;

(5) meetings to present appeals in connection with statutory or regulatory appeal procedures in which the Union is designated as the representative;

(6) examinations of employees in the unit by a representative of the Employer in connection with an investigation if the employee reasonably believes that the examination may result in disciplinary action against the employee; and
the employee requests representation;

(7) grievance meetings and arbitration hearings;

(8) negotiations sessions with the Employer (e.g., mid-term negotiations);

(9) meetings of committees on which Union representatives are authorized joint membership pursuant to this Article or any other negotiated agreement;

(10) to participate in one annual NTEU National training per year per representative, or up to 8 hours per year, per representative, to participate in other non-NTEU sponsored training designed to improve representational skills or otherwise improve the labor-management relationship;

(11) to communicate with affected employee(s) about matters covered under this Article;

(12) to prepare and investigate grievances, interview witnesses, prepare arbitrations, and meet with NTEU National Staff Representatives in connection with representational activity;

(13) to prepare to represent an employee in a statutory appeal process, including replies;

(14) to prepare to negotiate over mid-contract issues;

(15) to prepare to participate in a FLRA investigation or hearing as a representative of the Union;

(16) to prepare for and attend Labor Management Forum (LMF) meetings;

(17) to prepare and maintain records and reports required of the Union by Federal agencies; and

(18) to contact members of Congress and their staffs to discuss legislative matters affecting the Employer and its employees, including attending NTEU's annual Legislative Conference. For purposes of attending the Legislative Conference, the Union shall be entitled to no more than seven (7) representatives on official time per year.

D. The Employer shall provide the chapter with quarterly reports regarding the use of Official time by Union representatives.

Section 3.

A. The Chapter President will account for his or her use of official time on a biweekly basis using in the FTC's official time keeping system (currently Quick Time).

B. Any other Union representative will submit a request to his or her supervisor, via email for use of official time. The official time request will include the date, location, general purpose, and the amount of time being requested. The representative is required to input those approved hours in Quick Time each pay period.

C. The request for official time should normally be made by the employee to their supervisor

no less than 24 hours in advance. The Employer will approve or deny the request in a timely manner, but no later than when the requested official time would begin. The supervisor shall normally grant the employee's written request unless the requested duration is unreasonable, or the employee's absence would substantially interfere with business needs. The employee will notify his/her supervisor upon return to the worksite.

(1) If the Union Representative has provided no less than 24 hours advance notice, but the Employer fails to act on the request in a timely fashion, the request will be considered as approved for up to 2 hours per day until the supervisor or designee approves/denies the request.

(2) If the Union representative is not released, official time will be granted later that day if at all feasible. Any denial of a request for official time must be made as quickly as possible.

(3) When the anticipated duration of use of official time is less than one half (1/2) hour, advance approval is not required. However, the employee will normally notify the supervisor if they are leaving the work area.

D. Bargaining unit employees will seek approval, in writing from his or her supervisor to use a reasonable amount of time under this Article, to confer with his or her Union representative concerning representational matters and to attend and prepare for any proceeding listed under Section 2.C. of this Article in which the employee is a proper participant (e.g., as a mutually agreed upon witness or if allowed to testify as a technical advisor in lieu of the Union representative). The employee will submit a request reasonably in advance, and the Employer will approve or deny the request in a timely manner, but no later than when the requested official time would begin. If the employee has provided reasonable advance notice, but the Employer fails to act on the request in a timely fashion, the request will be considered as approved for up to 2 hours per day until the supervisor or designee approves/denies the request.

E. The provisions of this Article shall not bar Union representatives from using a reasonable amount of official time for activities specifically provided elsewhere in this Article.

F. Any use of official time under this Article shall count from the time the Union official ceases working at his or her normal duties to the time he or she resumes those normal duties. Union officials are responsible for recording the amount of official time utilized on his or her official FTC Time and Attendance Report (currently Quick Time). Bargaining unit employees who are meeting with Union officials or otherwise using time authorized by this contract are not required to report the use of this time on their Time and Attendance Report.

G. The employer has determined that a Union representative will receive an annual appraisal provided the Union representative has worked enough time to be rated, i.e., performed at least 120 hours of ratable work based on assigned duties included in their position description.

H. Performance of employees serving as union representatives will be rated on the basis of

Agency-assigned work (as described in Section 3G above) consistent with the elements used in his or her performance plan. No union representative will be disadvantaged in the assessment of his or her performance based on the use of approved, documented official time spent on representational duties authorized by the Federal Service Labor Management Relations Statute or as permitted under the terms of this Article. The Employer will take into account the time spent by Union representatives carrying out their labor-management responsibilities, and interruptions in performing their normal job functions, when evaluating the performance of those Union representatives. However, it is understood that performance problems unrelated to the use of official time may be addressed in accordance with other relevant provisions of this Article. Supervisors will not consider time spent on union duties when assessing employee performance.

ARTICLE 8 - FACILITIES AND SERVICES

Section 1.

A. Upon reasonable advance request by the Union, the Employer will provide a meeting space, as available, for meetings between 6:30 A.M. and 6:00 P.M. (local time) in each location of the Employer. Requests by the Union to utilize meeting space after 6:00 P.M. will be granted if consistent with local security arrangements. It is agreed that the Union will comply with all security and housekeeping rules in effect on the Employer's premises at that time and place. The room will be used for the following purposes:

(1) preparing or discussing a grievance;

(2) preparing for meetings with the Employer;

(3) conducting informal discussions including meetings during coffee breaks or lunch periods to meet employees and generally discuss collective bargaining and labor relations; and

(4) internal Union business (e.g., internal Union meetings), so long as no official Agency duty time is utilized for such meetings.

B. Agency employees who are Union representatives may use the Employer's office equipment (including computers and computer files), e-mail system, fax, printers, scanners, and photocopy machines in connection with labor management activities for which official time is authorized under Article 7 (Official Time). The Union will be entitled to a mailbox on the Agency's Outlook system.

(1) The Agency's equipment, including computers, printers, copying equipment, fax machines, telephones and email systems may not be used for internal Union business, except pursuant to the Agency's policy permitting employees to use such equipment for reasonable and limited personal use. However, limited personal use does not include mass mailing, including emails of materials to employees. Internal Union business includes, but is not limited to, the solicitation of membership, elections of Union officials, discussions about local or national Union management and their decision making, and collection of dues.

(2) The NTEU National President and the local Chapter President are the sole Union officials that may authorize transmission of mass mailings (i.e., emails sent to a majority or all bargaining unit members in either one or several emails) in connection with representational activities. The Union will be provided an email distribution list of bargaining unit employees (updated quarterly) to be used for such purposes. Unless otherwise delegated by the National President or the Chapter President, no other employee or Union representative will be authorized to transmit mass mailings to bargaining unit employees on Union-related matters. Such mass emails may not violate law or the security of the employer, or contain libelous material, or material maligning

the integrity of any individual, the employer, or the federal government.

Section 2. Each April and October, the Employer will provide NTEU National for its internal use only, an electronic spreadsheet which will contain the names, band, position titles, division, branch, group, unit, section, assigned duty location (city and state) adjusted base pay and email address for all employees in the unit. The list will also identify employees who are on dues withholding status and employees' work status (for example, temporary, term, permanent, full- time, or part time), and have changed names in the Agency Directory and/or in M/S Outlook (marriage, divorce, hyphenated name, nickname). Quarterly, the Employer will also provide a listing of any employees whose bargaining unit status has been changed (added or removed from the bargaining unit), and if removed from the bargaining unit, the reason for the change (e.g., promotion or transfer to a non-bargaining unit position).

Section 3.

A. The Employer will place the Agreement and any amendments on the Agency intranet website, in both HTML and PDF formats. The Agency will also place all Memoranda of Understanding between FTC and NTEU on the FTC intranet website. All of these Agreements will be linked from the FTC intranet home page (first page), with the link titled FTC /NTEU Agreements. Employees will be permitted to access these Agreements online through both the FTC and NTEU web sites during normal work hours and after hours.

Section 5.

A. At Constitution Center, the Employer will provide the chapter a standard office using the government standard.

B. The Union office will be designed to provide privacy to the Union and shall have a lockable door. The Employer will provide, for the office, meeting tables, a single four (4) drawer lockable file cabinet, a bookcase, four (4) chairs, a bulletin board, a telephone, a computer with full network and Internet access, a printer, and a shredder.

C. Subject to the needs of the Employer, use of a conference rooms at Headquarters, satellite offices, and Regional Offices may be scheduled by the Union through the normal scheduling system (e.g., MS Outlook).

Section 6. The Union shall have the right to receive U.S. Postal Service mail or private express mail services addressed to the Union, clearly identified as Union business-related. Such mail will be opened by the Employer only to the extent required for security purposes; the contents will not be read. Further, the Employer agrees to issue written instructions to all appropriate employees notifying them of these requirements.

Section 7. The Employer will provide to the Union one bulletin board of appropriate size per building in Headquarters, satellite offices (e.g., Constitution Center), and Regional offices. The specific location of such bulletin boards shall be mutually agreed to by the Employer and the Union. It is agreed that the Union may title the designated bulletin board space as "NTEU CHAPTER 344." The Union's bulletin boards should contain material which does not reflect adversely on the integrity of any individuals, other labor organizations, government agencies, or activities of the Federal government. Material will be posted directly by the Union. If the Employer reasonably objects to any posted item, the Union will remove and/or relocate such item in a reasonable amount of time.

Section 8.

A. The Union may distribute material on the Employer's premises to employees provided that the employee distributing the material is in a non-duty status, and further provided that the distribution does not create a litter or employee traffic problem and that the material being distributed complies with the requirements of Section 7 of this Article.

B. When the Union wishes to set up displays or tables to distribute materials or gather signatures on petitions in areas of the Employer's premises, it will do so on non-duty time. Furthermore, it shall notify HCMO one (1) workday in advance.

C. The Union shall be permitted to perform desk drops to bargaining unit employees subject to the following constraints:

   (1) The employee performing the desk drop will do so on his or her own time (e.g., during work breaks, lunch periods, before/after work, on annual leave or LWOP). When desk drops are performed after work hours, they will be completed in a time and manner consistent with the FTC's security procedures.

   (2) Desk drops will not be conducted in areas where no bargaining unit employees are located.

ARTICLE 9 – DUES WITHHOLDING

Section 1. Eligible employees who are members of the Union may pay dues through the authorization of voluntary allotments from their compensation. To be eligible to make such voluntary allotments, an employee must:

A. Be an employee of the bargaining unit covered by this Agreement;

B. Be a member in good standing in the Union;

C. Have voluntarily completed Standard Form 1187 (SF-1187) ("Request for Payroll Deductions for Labor Organization Dues"); and

D. Have a regular net salary, after other legal and required deductions, sufficient to cover the amount of the authorized allotment for dues.

Section 2. The Union will:

A. Inform and educate members of the voluntary nature of the system for the allotment of labor organization dues;

B. Purchase SF-1187 forms and make them available to employees;

C. Assure that each SF-1187 is properly completed and inform the designated official of the Employer of any changes;

D. Inform the designated official of the Employer of any employee who has been expelled or ceases to be in good standing with the Union;

E. Inform the designated official of the Employer of any changes in the dues amounts or the formula for membership dues (including tables by both dollar amount and percentage of salary being withdrawn for dues). Such changes may not be made more frequently than once every 12 months; and

F. Provide the designated official of the Employer with the names and complete mailing addresses and changes thereto of officials to whom dues withholding information should be submitted.

Section 3. The Employer will:

A. Deduct and process voluntary allotments of dues and changes in dues upon certification from the Union national president in accordance with this Article. Changes in the dues amounts will be made as soon as possible, but no later than one full pay period after

notification by the Union;

B. Withhold authorized dues on a bi-weekly basis at no cost to the Union or the employee;

C. Start dues withholding no later than one full pay period following receipt of a properly certified SF-1187;

D. Reinstate dues withholding for employees temporarily assigned to positions outside the bargaining unit as soon as possible, but no later than one full pay period following their return to the bargaining unit;

E. Notify the Union when an employee, who has submitted an SF-1187, is not eligible to enroll in the automatic dues withholding program because he/she is not an employee in the bargaining unit covered by this Agreement;

F. Have the Office of Employee Relations, Labor Relations, and Performance Management provide to the Union a copy of Standard Form 1188 or other revocation documents received within three (3) working days after receipt.

G. Prepare remittances and reports as follows:

(1) Transmit to the Union the total amount deducted for all employees and total amount remitted to the Union;

(2) Remittance will be made per pay period by Electronic Fund Transfer directly to an account designated by the Administrative Controller, National Treasury Employees Union, 800 K Street, Suite 1000, N.W., Washington, D.C. 20001. The Employer also will provide the following information in an Excel spreadsheet via a secure FTP or secure web service hosted by NTEU.

(a) Employees' names in alphabetical order by last name;

(b) Employee ID (unique agency identifier)

(c) Last four (4) digits of the SSN

(d) Band level;

(e) Adjusted base pay (including locality or geo pay);

(f) Hourly salary;

(g) Hours worked in pay period;

(h) Pay plan;

(i) Total amount of dues withheld;

(j) Pay period start date;

(k) Pay period end date;

(l) Identification of duty location;

(m)Organization code;

(n) Identification of the labor organization, including the Union chapter number;

(o) BU Code Descriptors:

D Continuing (Pay Period that Seasonal returns to duty)
H Separation (Other than Retirement)
J Movement Out of Recognition Area
L Temporary Promotion/Reassignment to Non-Bargaining Unit Position
M Return to BU after Temporary Promotion/Reassignment
N Non-Duty Status (Seasonal Continues to be in Non-Duty Status)
R Retirement
X Deceased

(p) The Employer will provide a bi-weekly dues report to the Chapter President.

Section 4.

A. The Employer will terminate an employee's dues withholding allotment no later than one full pay period after the Employer learns that:

(1) An employee ceases to be a member in good standing in the Union;

(2) The Union loses exclusive recognition for the covered unit;

(3) An employee is reassigned or promoted from the unit for which the Union has been accorded exclusive recognition; or

(4) An employee is separated from employment with the Employer.

B. Revocation notices for employees who have had dues allotments in effect for more than one (1) year must be submitted to the payroll office during pay period fifteen (15) each year. Revocations will become effective during pay period eighteen (18). Revocations may only be affected by submission of a completed SF-1188 that has been initialed by the Chapter President or his or her designee. If the SF-1188 is not initialed, the Employer shall return

the SF-1188 to the employee and direct the employee to the proper Union official for initialing. SF-1188s that are returned by an employee prior to the end of pay period 18 will be effective in pay period 18. To revoke such dues withholding, employees must have had dues withheld for at least one (1) year.

C. Revocation notices for employees who have had dues allotments in effect for more than one (1) year and whose SF-1187 was submitted after August 10, 2020, will become effective as soon as administratively feasible. Revocations may only be affected by submission of a completed SF-1188 that has been initialed by the Chapter President or his or her designee. If the SF-1188 is not initialed, the Employer shall return the SF-1188 to the employee and direct the employee to the proper Union official for initialing.

D. Revocation notices for employees who have not had dues allotments in effect for one (1) year must be submitted on or before the one (1) year anniversary date of their dues allotment. Revocations may only be affected by submission of a completed SF-1188 that has been initialed or signed by the Chapter President or his or her designee. If the SF1188 is not initialed or signed, the Employer shall return the SF-1188 to the employee and direct the employee to the proper Union official for initialing. The SF-1188 will become effective the first full pay period after the employee's anniversary date.

E. Administrative errors which deny the Union its full amount of dues will be corrected, and the next remittance to the Union will be adjusted to include the amount not previously forwarded. Administrative errors which result in an overpayment to the Union will not be recollected if the erroneous payments were received by the Union in good faith and without fraud and misrepresentation in accordance with 5 U.S.C. § 5584 and applicable regulations.

ARTICLE 10 – MID-TERM BARGAINING

Section 1.

A. The Union recognizes that the Employer has the right to exercise its management rights as set forth in the Civil Service Reform Act during the life of this Agreement and, in accordance with applicable law, rule, regulation and this Agreement, to initiate changes in operational and administrative procedures and programs when the Employer determines it is in the best interest of the Agency.

B. The Employer recognizes that the Union has the right to bargain over the procedures which the Employer will observe in exercising its management rights authority, and/or over appropriate arrangements for employees adversely affected by the exercise of the Employer's management rights and authorities. This in no way waives any of the Union's rights to negotiate to the maximum extent allowable by law.

Section 2. Except in cases of emergency as provided in the Civil Service Reform Act, such as unforeseen occurrences precluding such notice, the Employer shall provide the Union with reasonable advance notice of intended changes in personnel policies or practices or conditions of employment. Written notification of national changes shall be provided to the NTEU National President or designee, with a concurrent notice to the Chapter President. Notice of local changes shall be provided to the Chapter President, or designee.

Section 3. If the Union would like to request an official briefing from the Employer, it must request the briefing within five (5) working days of receipt of the official notice. If the Union wishes to negotiate concerning the implementation or impact on employees of the proposed change(s) and substance when permitted by law, the Union will submit written proposals to the Employer within ten (10) working days after notification of the proposed change(s) affecting bargaining unit employees, or ten (10) working days after providing a briefing to the Union, whichever is later. The Union agrees that any proposals submitted in the context of bargaining will be related to the proposed change(s) and will not deal with extraneous matters. The union recognizes that Management will unilaterally implement the change in working conditions if the union does not submit negotiable proposals during the time frames listed above. Negotiations will normally begin within five (5) working days after receipt by the Employer of the Union's proposals. Changes in conditions of employment resulting from these negotiations will not be effective until the date of execution of any agreement reached, subject to Section 7.C below.

Section 4. The submission of proposed changes by the Employer and the submission of proposals by the Union under Sections 2 and 3 above shall not preclude either Party from submitting other proposals or counterproposals during the course of negotiations.

Section 5. Where negotiating sessions are required, the sessions will be conducted as follows:

A. The Parties will conduct negotiating sessions via telephone, email, or other existing technology. FTC will pay for travel and per diem (for up to four nights) for up to two bargaining unit employees up to three times per calendar year to negotiate over substantial mid-term initiatives. The Union may unilaterally elect to send representatives to Washington, D.C. for negotiating sessions at the Union's expense (travel, lodging, per diem, and any other related expenses). In such instances, the Employer will provide official time for such travel, subject to the Article on Official Time.

B. Negotiating sessions will be conducted during the regular administrative workday.

C. When negotiating, the Union bargaining team shall be limited to four (4) employee representatives and two (2) National NTEU staff members, unless the Parties mutually agree otherwise. The Union may appoint additional members up to the number of Employer members in attendance at the negotiations. The above-referenced numbers do not include technical experts which may be utilized by the Parties to address specific issues.

Section 6. Agreements negotiated under the provisions of this Article will be subject to agency head approval pursuant to 5 U.S.C. § 7114(c).

Section 7.

A. If an agreement has not been reached, either Party may contact the Federal Mediation and Conciliation Service (FMCS) to submit the remaining issues to mediation.

B. If negotiable issues remain outstanding, either Party may proceed to the Federal Service Impasses Panel (FSIP) for resolution of all outstanding negotiable issues.

C. The Employer may implement the mid-term initiative at its peril if the only remaining union proposals that the Parties have not agreed to are non-negotiable.

Section 8.

A. To the extent permitted by law, the Union may initiate mid-term bargaining by proposing changes in conditions of employment provided that such changes do not relate to matters addressed in this or any other agreement between the Parties, and provided further that such changes do not relate to matters over which the Union has waived its right to bargain during the negotiation of this Agreement.

B. Notice of changes in conditions of employment proposed by the Union will be served on the Employer. The Union's submission shall be limited to five (5) issues per year. Such notices will be affected by e-mail, certified mail, or hand delivery to the Lead, Labor Relations.

ARTICLE 11 – DURATION

Section 1. This Agreement will become effective upon execution by the parties and after completion of Agency Head Review. However, on any Article where the Agency needs to conduct training prior to implementation, and such training cannot be provided prior to the completion of Agency Head Review, the Agency will be provided up to sixty (60) days to conduct such training prior to implementation of that Article.

Section 2. The terms of this Agreement will remain in effect until a term Collective Bargaining Agreement becomes effective.

Section 3. Absent an express provision to the contrary, all MOUs agreed to by the Employer and the Union shall remain in effect for the duration of this Agreement, provided that such agreements do not contain terms and conditions in conflict with this Agreement, law, or regulation. Either party shall have the right to reopen such agreements upon the expiration of this term Agreement, or as expressly provided under the terms of the MOU.

SIGNATURE PAGE

The signatures to this Agreement set forth the Parties' full and complete understanding that this is an accurate statement of the negotiated language agreed to by the respective bargaining teams during their negotiations of this Agreement. The Agreement will be effective on January 19, 2025.

For the Federal Trade Commission

Lina Khan

Lina M. Khan 1/19/2025
Chair

For National Treasury Employees Union

Doreen P. Greenwald 1/19/2025

Doreen Greenwald Date
National President
National Treasury Employees Union

Kathleen Clair 1/19/2025

Kathleen Clair Date
NTEU Chapter 344 President

M. Aliza Chesler 1/19/2025

M. Aliza Chesler Date
Assistant Counsel, NTEU Negotiations
Chief Spokesperson, NTEU

Title 5 —Administrative Personnel
Chapter I —Office of Personnel Management
Subchapter B —Civil Service Regulations

PART 302—EMPLOYMENT IN THE EXCEPTED SERVICE

Authority: 5 U.S.C. 1302, 3301, 3302, 3317, 3318, 3319, 3320, 8151, E.O. 10577 (3 CFR 1954-1958 Comp., p. 218);

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§ 302.105 also issued under 5 U.S.C. 1104, Pub. L. 95-454, sec. 3(5); § 302.501 also issued under 5 U.S.C. 7701 *et seq.*; § 302.107 also issued under 5 U.S.C. 9201-9206 and Pub. L. 116-92, sec. 1122(b)(1).

Source: 55 FR 9407, Mar. 14, 1990, unless otherwise noted.

Subpart A—General Provisions

§ 302.101 Positions covered by regulations.

(a) ***Positions covered.*** With respect to the application of veteran preference, this part applies to each position in the Executive Branch of the Federal Government that is not in the competitive service and that is subject to the provisions of title 5, United States Code, or subject to a statutory requirement to follow the veteran preference provisions of title 5. With respect to restoration rights that are due to compensable injury and appeals therefrom, this part applies to those positions covered by 5 U.S.C. 8101(1) that are not in the competitive service.

(b) ***Positions not covered.*** This part does not apply to a position or appointment that is required by the Congress to be confirmed by, or made with the advice and consent of, the Senate.

(c) ***Positions exempt from appointment procedures.*** In view of the circumstances and conditions surrounding employment in the following classes of positions, an agency is not required to apply the appointment procedures of this part to them, but each agency shall follow the principle of veteran preference as far as administratively feasible and, on the request of a qualified and available preference eligible, shall furnish him/her with the reasons for his/her nonselection. Also, the exemption from the appointment procedures of this part does not relieve agencies of their obligation to accord persons entitled to priority consideration (see § 302.103) their rights under 5 U.S.C. 8151:

(1) Positions filled by persons appointed without pay or at pay of $1 a year;

(2) Positions outside the continental United States and outside the State of Hawaii and the Commonwealth of Puerto Rico when filled by persons resident in the locality, and positions in the State of Hawaii and the Commonwealth of Puerto Rico when paid in accordance with prevailing wage rates;

(3) Positions which the exigencies of the national defense program demand be filled immediately before lists of qualified applicants can be established or used, but appointments to these positions shall be temporary appointments not to exceed 1 year which may be renewed for 1 additional year at the discretion of the agency;

(4) Positions filled by appointees serving on an irregular or occasional basis whose hours or days of work are not based on a prearranged schedule and who are paid only for the time when actually employed or for services actually performed;

(5) Positions paid on a fee basis;

(6) Positions included in Schedule A (see subpart C of part 213 of this chapter) for which OPM agrees with the agency that the positions should be included hereunder and states in writing that an agency is not required to fill positions according to the procedures in this part.

(7) Positions included in Schedule C (see subpart C of part 213 of this chapter) and positions excepted by statute which are of a confidential, policy-determining, policy-making, or policy-advocating character;

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(8) Attorney positions; and

(9) Positions filled by reemployment of an individual in the same agency and commuting area, at the same or lower grade, and under the same appointing authority as the position last held; *Provided That,* there are no candidates eligible for the position on the agency's priority reemployment list established in accordance with § 302.303.

(10) Positions for which a critical hiring need exists when filled under § 213.3102(i)(2) of this chapter.

(11) Appointment of persons with intellectual disabilities, severe physical disabilities, or psychiatric disabilities to positions filled under 5 CFR 213.3102(u).

[55 FR 9407, Mar. 14, 1990, as amended at 58 FR 58260, Nov. 1, 1993; 60 FR 10006, Feb. 23, 1995; 77 FR 28214, May 11, 2012; 85 FR 63191, Oct. 7, 2020; 89 FR 25046, Apr. 9, 2024]

§ 302.102 Method of filling positions and status of incumbent.

(a) To the extent permitted by statute and this chapter, each appointment, position change, and removal in the excepted service shall be made in accordance with any regulations or practices that the head of the agency concerned finds necessary.

(b) Except as authorized under paragraph (c) of this section, a person appointed to an excepted position does not acquire a competitive status by reason of the appointment. When an employee serving under a nontemporary appointment in the competitive service is selected for an excepted appointment, the agency must—

(1) Inform the employee that, because the position is in the excepted service, it may not be filled by a competitive appointment, and that acceptance of the proposed appointment will take him/her out of the competitive service while he/she occupies the position; and

(2) Obtain from the employee a written statement that he/she understands he/she is leaving the competitive service voluntarily to accept an appointment in the excepted service.

(c) Upon a finding by OPM that in a particular situation the action will be in the interest of good administration, OPM may authorize an agency to make appointments to specified positions in the excepted service in the same manner as to positions in the competitive service. Persons given career-conditional or career appointments pursuant to a specific authorization by OPM under this paragraph may acquire a competitive status as provided in part 315 of this chapter.

[55 FR 9407, Mar. 14, 1990, as amended at 58 FR 58261, Nov. 1, 1993]

§ 302.103 Definitions.

Person entitled to priority consideration means a person who was furloughed or separated without misconduct, from a position without time limit, because of a compensable injury and whose recovery takes longer than 1 year from the date compensation began. To be eligible under this part the person must apply for reappointment to his or her former agency within 30 days of the date of cessation of compensation.

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§ 302.104 Applicability of regulations to applicants and employees.

Each agency shall follow the provisions of this part relating to examination, rating, and selection for appointment of an applicant when a qualified preference eligible or person entitled to priority consideration applies for appointment to a position covered by this part. Each agency, in its discretion, may follow these provisions when no preference eligible or person entitled to priority consideration applies.

§ 302.105 Special agency plans.

An agency having a position subject to this part may establish a system which will result in granting to eligible persons the preference or priority consideration referred to in sections 1302(c) or 8151 of title 5, United States Code, but which does not conform to all the procedural requirements set forth in this part. The agency establishing such a system must ensure that all eligible applicants entitled to veteran preference or priority consideration receive at least as much advantage in referral as they would receive under the procedures set forth in this part.

§ 302.106 Vacancy announcements.

When an agency announces a vacancy in the excepted service, the announcement must contain a reasonable accommodation statement that complies with requirements in part 330, subpart A of this chapter.

[66 FR 63906, Dec. 11, 2001, as amended at 75 FR 67593, Nov. 3, 2010]

§ 302.107 Suitability inquiries regarding criminal history.

Agency inquiries regarding criminal history must be done in accordance with the requirements under chapter 92 of title 5, U.S. Code and part 920 of this chapter.

[88 FR 60329, Sept. 1, 2023]

Subpart B—Eligibility Standards

§ 302.201 Persons entitled to veteran preference.

In actions subject to this part, each agency shall grant veteran preference as follows:

(a) When numerical scores are used in the evaluation and referral, the agency shall grant 5 additional points to preference eligibles under section 2108(3) (A) and (B) of title 5, United States Code, and 10 additional points to preference eligibles under section 2108(3) (C) through (G) of that title.

(b) When eligible candidates are referred without ranking, the agency shall note preference as “CP” for preference eligibles under 5 U.S.C. 2108(3)(C), as “XP” for preference eligibles under 5 U.S.C. 2108(3)(D) through (G), as “SSP” for preference eligibles under 5 U.S.C. 2108(3)(H) and as “TP” for all other preference eligibles under that title.

[55 FR 9407, Mar. 14, 1990, as amended at 85 FR 63191, Oct. 7, 2020]

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§ 302.202 Qualification requirements.

Before making an appointment to a position covered by this part, each agency shall establish qualification standards such as those relating to experience and training, citizenship, minimum age, physical condition, etc., which shall relate to the duties to be performed. An agency may delegate the establishment of standards relating to a group of positions or a specific position to the appropriate administrative level or subdivision in accordance with the needs of the locality in which the position is located, but the agency shall determine that each standard established is in conformity with this part. Each agency shall make its standards a matter of record in the appropriate office of the agency, and shall furnish information concerning the standards for a position to an applicant on his/her request. Each agency shall apply the standards for a position uniformly to all applicants, except for such waivers as are provided in this part for a preference eligible. An agency shall not include a minimum educational requirement in qualification standards, except for a scientific, technical, or professional position the duties of which the agency decides cannot be performed by a person who does not have a prescribed minimum education. An agency shall not establish a maximum age requirement for any position. Each agency shall make a part of its records the reasons for its decision under this section and shall furnish those reasons to an applicant on his/her request. The qualification standards shall include:

(a) A provision for waiver by the agency of requirements as to age, height, and weight for each preference eligible when the requirements are not essential to the performance of the duties of the position; and

(b) A provision for waiver by the agency of physical requirements for each preference eligible when the agency, after giving due consideration to the recommendation of an accredited physician, finds that the applicant is physically able to discharge the duties of the position.

§ 302.203 Disqualifying factors.

(a) The qualification standards established by an agency or by an administrative level or subdivision of an agency may provide that certain reasons disqualify an applicant for appointment. The following, among others, may be included as disqualifying reasons:

(1) Dismissal from employment for delinquency or misconduct;

(2) Criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct;

(3) Intentional false statement or deception or fraud in examination or appointment;

(4) Habitual use of intoxicating beverages to excess;

(5) Reasonable doubt as to the loyalty of the person involved to the Government of the United States;

(6) Any legal or other disqualification which makes the individual unfit for service; or

(7) Lack of United States citizenship.

(b) An agency may not disqualify an applicant solely because of his/her retired status.

Subpart C—Accepting, Rating, and Arranging Applications

§ 302.301 Receipt of applications.

(a) Each agency shall establish definite rules regarding the acceptance of applications for employment in positions covered by this part and shall make these rules a matter of record.

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(b) Each agency shall apply its rules uniformly to all applicants who meet the conditions of the rules and shall furnish information concerning the rules to an applicant on his/her request.

§ 302.302 Examination of applicants.

(a) ***Eligibility.*** An evaluation of the qualifications of applicants for positions covered by this part may be conducted at any time before an appointment is made. The evaluation may involve only determination of eligibility or ineligibility or may include qualitative rating of candidates. If the evaluation involves only basic eligibility numerical scores will not be assigned and eligible candidates will be referred in accordance with the procedures described in paragraph (b)(5) of § 302.304. If qualitative ranking is desired, numerical scores may be assigned in accordance with paragraph (b) of this section. Each agency shall make a part of the records the reasons for its decision to use ranked or unranked referral and, for ranked actions, the quality ranking factors used. This information shall be made available to an applicant on his/her request.

(b) ***Rating.*** Numerical scores will be assigned on a scale of 100. Each applicant who meets the qualification requirements for the position established under § 302.202 will be assigned a rating of 70 or more and will be eligible for appointment. Candidates scoring 70 or more will receive additional points for veteran preference as provided in § 302.201. Numerical ratings are not required when all qualified applicants will be offered immediate appointment. When there is an excessive number of applicants, numerical ratings are required only for a sufficient number of the highest qualified applicants to meet the anticipated needs of the agency within a reasonable period of time. The agency must, however, adopt procedures to insure the consideration of preference eligibles in the order in which they would have been considered if all applicants had been assigned numerical ratings. An agency shall furnish a notice of the rating assigned to an applicant on his/her request.

(c) ***Nonpreference applicants for certain positions.*** An agency may not consider or rate an application for the position of elevator operator, messenger, guard, or custodian submitted by a nonpreference eligible as long as at least three qualified preference eligibles are available for the position.

(d) ***Evaluating experience.*** When experience is a factor in determining eligibility, an agency shall credit a preference eligible

(1) with time spent in the military service of the United States if the position for which he/she is applying is similar to the position which he/she held immediately before his/her entrance into the military service; and

(2) with all valuable experience, including experience gained in religious, civic, welfare, service, and organizational activities, regardless of whether pay was received therefor.

§ 302.303 Maintenance of employment lists.

(a) ***Establishment*** —

(1) ***Agency's obligation.*** An agency must establish a priority reemployment list whenever any applicants rated eligible under § 302.302 meet the conditions set out in paragraphs (b)(1) through (b)(3) of this section and must consider candidates from that list in accordance with § 302.304(a). All applicants not included on the priority reemployment list will be listed on the regular employment list unless the agency elects to establish a reemployment list as provided in paragraph (c) of this section.

(2) ***Agency discretion.*** In establishing its lists, an agency may, but is not required to: Afford priority consideration to non-preference eligibles who meet the conditions set out in paragraph (b)(4) of this section; afford priority consideration under paragraph (b) of this section for a longer time and/or in a

broader geographic area than the minimum requirement; and/or provide reemployment consideration after the priority list is exhausted to additional current and former employees in accordance with paragraph (c) of this section. An agency may limit consideration granted at its discretion to applicants for specific positions or applicants who meet specific conditions, but must make those conditions a matter of record and must apply its policy uniformly to all eligible employees. Generally, full-time employees may be considered only for full-time positions and other-than-full-time employees only for other-than-full-time positions. However, full-time employees may be considered for other-than-full-time positions if there are no other-than-full-time employees on the appropriate priority or reemployment list; and other-than-full time employees may be considered for full-time positions if there are no full-time employees on the appropriate list.

(b) ***Priority reemployment list.*** Candidates are entered on the priority reemployment list in the geographic areas specified in paragraph (b)(1) of this section and remain on the list for 2 years unless the agency elects to provide a longer period of eligibility. The priority reemployment list includes:

(1) The name of each former employee of the agency who is a preference eligible, has been furloughed or separated from a continuing appointment without delinquency or misconduct, and applies for reemployment. Candidates in this category are considered for positions in the commuting area where they were separated unless the agency elects to provide broader consideration.

(2) The name of each former employee of the agency who is a preference eligible and who, as the result of an appeal under part 752 of this chapter, is found by the Merit Systems Protection Board to have been unjustifiably dismissed from the agency, but who is not entitled to immediate restoration under the Board's decision. Candidates in this category are considered in the commuting area from which separated unless the Board's decision specifies a broader or different area or the agency elects to afford broader geographic consideration.

(3) The name of each former employee of the agency who has been furloughed or separated due to compensable injury sustained under the provisions of 5 U.S.C. chapter 81, subchapter I, who is not entitled to immediate restoration, and who is eligible for priority consideration under this part. Candidates in this category are considered in the commuting area where they last served and, if the agency determines that an appropriate vacancy is unlikely to occur in that area during the candidates' period of reemployment priority, in other locations for which they are available.

(4) At the agency's discretion, the name of each former employee of the agency who is not a preference eligible, has been furloughed or involuntarily separated from a continuing appointment without delinquency or misconduct, and applies for reemployment. Candidates in this category are considered in the geographic area specified by the agency.

(c) ***Reemployment list.*** A reemployment list may be established at the agency's discretion to include the names of current employees of the agency and of former employees of the agency who are to be considered for future employment and who are not eligible for inclusion on the priority reemployment list. Employees may be entered on the reemployment list only for positions in which tenure and/or work schedule is no greater than that of the position previously held.

(d) ***Order of entry.*** An agency shall enter the names of all applicants rated eligible under § 302.302 on the appropriate list (priority reemployment, reemployment, or regular employment) in the following order:

(1) ***When candidates have been rated only for basic eligibility under § 302.302(a).***

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(i) Preference eligibles having a compensable, service-connected disability of 10 percent or more (designated as "CP") unless the list will be used to fill professional positions at the GS-9 level or above, or equivalent;

(ii) All other candidates eligible for 10-point veteran preference;

(iii) All candidates eligible for 5-point veteran preference;

(iv) All candidates eligible for sole survivorship preference and

(v) Qualified candidates not eligible for veteran preference.

(2) ***When qualified candidates have been assigned numerical scores under § 302.302(b).***

(i) Preference eligibles having a compensable, service-connected disability of 10 percent or more, in the order of their augmented ratings, unless the list will be used to fill professional positions at the GS-9 level or above, or equivalent;

(ii) All other qualified candidates in the order of their augmented ratings. At each score, qualified candidates eligible for 10-point preference will be entered first, followed, second, by 5-point preference eligibles, third, by sole survivorship preference eligibles, and last, by nonpreference eligibles.

[55 FR 9407, Mar. 14, 1990, as amended at 85 FR 63191, Oct. 7, 2020]

§ 302.304 Order of consideration.

(a) ***Consideration of priority reemployment candidates.*** An agency must consider all qualified candidates on its priority reemployment list before it may refer candidates from its reemployment list, if any, or regular employment list. When a qualified candidate is available on the priority list, the agency may appoint an individual who is not on the priority list or who has lower standing than others on that list *only* when necessary to obtain an employee for duties that cannot be taken over without undue interruption to the agency by an individual who is entitled to reemployment priority or has higher standing on the priority reemployment list than the one appointed. The agency must notify each individual on the priority reemployment list who is adversely affected by an appointment under this paragraph of the reasons for the exception and must further notify each such individual who is a preference eligible of his or her right of appeal to the Merit Systems Protection Board.

(b) ***Consideration of other candidates.*** Except as provided in paragraphs (b)(4) and (b)(5) of this section, an agency shall consider applicants on the reemployment and/or regular employment list who have been assigned eligible ratings for a given position in Order A, Order B, or Order C, as described in paragraphs (b)(1) through (b)(3) of this section. Order A must be used when the agency has not established a reemployment list.

(1) ***Order A.***

(i) The name of each qualified preference eligible who has a compensable, service-connected disability of 10 percent or more and is entitled to 10-point preference under section 3309 of title 5, United States Code, in the order of his/her numerical ranking.

(ii) The name of each other qualified applicant in the order of his/her numerical ranking.

(2) ***Order B.***

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(i) The name of each qualified preference eligible who has a compensable, service-connected disability of 10 percent or more and is entitled to 10-point preference under section 3309 of title 5, United States Code, and whose name appears on the agency's reemployment list, in the order of his/her numerical ranking.

(ii) The name of each qualified preference eligible who has a compensable, service-connected disability of 10 percent or more and is entitled to 10-point preference under section 3309 of title 5, United States Code, and whose name appears on the agency's regular employment list, in the order of his/her numerical ranking.

(iii) The name of each other qualified applicant on the agency's reemployment list, in the order of his/her numerical ranking.

(iv) The name of each other qualified applicant on the agency's regular employment list, in the order of his/her numerical ranking.

(3) ***Order C.***

(i) The name of each qualified preference eligible who has a compensable, service-connected disability of 10 percent or more and is entitled to 10-point preference under section 3309 of title 5, United States Code, and whose name appears on the agency's reemployment list, in the order of his/her numerical ranking.

(ii) The name of each other qualified applicant on the agency's reemployment list, in the order of his/her numerical ranking.

(iii) The name of each qualified preference eligible who has a compensable, service-connected disability of 10 percent or more and is entitled to 10-point preference under section 3309 of title 5, United States Code, and whose name appears on the agency's regular employment list, in the order of his/her numerical ranking.

(iv) The name of each other qualified applicant on the agency's regular employment list, in the order of his/her numerical ranking.

(4) ***Professional order.*** An agency shall consider applicants who have been assigned eligible ratings for professional and scientific positions at the GS-9 level and above, or equivalent, in the following order:

(i) ***Applicants on the agency's reemployment list, if any.*** If numerical scores have been assigned, the applicants will be considered in the order of their augmented scores. If numerical scores have not been assigned, all preference eligibles will be considered together regardless of the type of preference, followed by all other priority reemployment candidates.

(ii) ***Applicants on the agency's regular employment list.*** If numerical scores have been assigned, the applicants will be considered in the order of their augmented scores. If numerical scores have not been assigned, all preference eligibles will be considered together regardless of the type of preference, followed by all other candidates.

(5) ***Unranked order.*** When numerical scores are not assigned, the agency may consider applicants who have received eligible ratings for positions not covered by paragraph (b)(4) of this section in either of the following orders:

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(i) ***By preference status.*** Under this method, preference eligibles having a compensable service-connected disability of 10 percent or more are considered first, followed, second, by other 10-point preference eligibles, third, by 5-point preference eligibles, fourth by sole survivorship preference eligibles, and last, by nonpreference eligibles. Within each category, applicants from the reemployment list will be placed ahead of applicants from the regular employment list.

(ii) ***By reemployment/regular list status.*** Under this method, all applicants on the reemployment list are considered before applicants on the regular employment list. On each list, preference eligibles having a compensable service-connected disability of 10 percent or more are considered first, followed, second, by other 10-point preference eligibles, third, by 5-point preference eligibles, fourth by sole survivorship preference eligibles, and last by nonpreference eligibles.

[55 FR 9407, Mar. 14, 1990, as amended at 85 FR 63919, Oct. 7, 2020]

Subpart D—Selection and Appointment; Reappointment; and Qualifications for Promotion

§ 302.401 Selection and appointment.

(a) ***Selection.*** When making an appointment from a priority reemployment, reemployment, or regular list on which candidates have not received numerical scores, an agency must make its selection from the highest available preference category, as long as at least three candidates remain in that group. When fewer than three candidates remain in the highest category, consideration may be expanded to include the next category. When making an appointment from a list on which candidates have received numerical scores, the agency must make its selection for each vacancy from not more than the highest three names available for appointment in the order provided in § 302.304. Under either method, an agency is not required to—

(1) Accord an applicant on its priority reemployment or reemployment list the preference consideration required by § 302.304 if the list on which the applicant's name appears does not contain the names of at least three preference eligibles; or

(2) Consider an applicant who has previously been considered three times or a preference eligible if consideration of his/her name has been discontinued for the position as provided in paragraph (b) of this section.

(b) ***Passing over a preference applicant.*** When an agency, in making an appointment as provided in paragraph (a) of this section, passes over the name of a preference eligible, it shall follow the procedures in 5 U.S.C. 3318(c) and 3319(c) as described in the *Delegated Examining Operations Handbook.* An agency may discontinue consideration of the name of a preference eligible for a position as described in 5 U.S.C. 3318(c).

[55 FR 9407, Mar. 14, 1990, as amended at 85 FR 63191, Oct. 7, 2020]

§ 302.402 Reappointment.

An agency may reappoint a current or former nontemporary employee of the executive branch of the Federal Government who is a preference eligible to a position covered by this part without regard to the names of qualified applicants on the agency's priority reemployment, reemployment, or regular employment list.

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§ 302.403 Qualifications for promotion.

In determining qualifications for promotion with respect to an employee who is a preference eligible, an agency shall waive:

(a) Requirements as to age, height, and weight unless the requirement is essential to the performance of the duties of the position; and

(b) Physical requirements if, in the opinion of the agency, after considering the recommendation of an accredited physician, the preference eligible is physically able to perform efficiently the duties of the position for which the promotion is proposed.

Subpart E—Appeals

§ 302.501 Entitlement.

An individual who is covered by 5 U.S.C. 8101(1) and is entitled to priority consideration under this part (see § 302.103) may appeal a violation of his/her restoration rights to the Merit Systems Protection Board under the provisions of the Board's regulations by presenting factual information that he or she was denied restoration rights because of the employment of another person.

Subpart F—Moving Employees and Positions into and Within the Excepted Service

Source: 89 FR 25046, April 9, 2024, unless otherwise noted.

§ 302.601 Scope.

(a) This subpart applies to any situation where an agency moves:

(1) A position from the competitive service to the excepted service, or between excepted services, whether pursuant to statute, Executive Order, or an OPM issuance, to the extent that this subpart is not inconsistent with applicable statutory provisions; or

(2) An employee who has accrued status and civil service protections under 5 U.S.C. chapter 75, subchapter II, involuntarily to any position that is not covered by that chapter or subchapter.

(b) This subpart also applies in situations where a position previously governed by title 5, United States Code will be governed by another title of the United States Code going forward, unless the statute governing the exception provides otherwise.

§ 302.602 Basic requirements.

(a) In the event the President, Congress, OPM, or their designees direct agencies to move positions from the competitive service into the excepted service under Schedule A, B, or C, or any schedule in the excepted service created after May 9, 2024, or to move positions from a schedule in the excepted service to a different schedule in the excepted service, the following requirements must be met, as relevant:

(1) If the directive explicitly delineates the specific positions that are covered, the agency need only list the positions moved in accordance with that directive, and their location within the organization and provide the list to OPM.

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(2) If the directive requires the agency to select the positions to be moved pursuant to criteria articulated in the directive, then the agency must provide OPM with a list of the positions to be moved in accordance with those criteria, denote their location in the organization, and explain, upon request from OPM, why the agency believes the positions met those criteria.

(3) If the directive confers discretion on the agency to establish objective criteria for identifying the positions to be covered, or which specific slots of a particular type of position the agency intends to move, then the agency must, in addition to supplying a list of the identified positions or specific slots of particular types of position, supply OPM with the locations in the organization, the objective criteria to be used, and an explanation of how these criteria are relevant.

(b) An agency is also required to—

(1) Identify the types, numbers, and locations of positions that the agency proposes to move into the excepted service.

(2) Document the basis for its determination that movement of the positions is consistent with the standards set forth by the President, Congress, OPM, or their designees as applicable.

(3) Obtain certification from the agency's Chief Human Capital Officer (CHCO) that the documentation is sufficient and movement of the positions is both consistent with the standards set forth by the directive, as applicable, and with merit system principles.

(4) Submit the CHCO certification and supporting documentation to OPM (to include the types, numbers, and locations of positions) in advance of using the excepted service authority, which OPM will then review.

(5) For exceptions effectuated by the President or OPM, list positions to the appropriate schedule of the excepted service only after obtaining written approval from the OPM Director to do so. For exceptions effectuated by Congress, inform OPM of the positions excepted either before the effective date of the provision, if the statutory provisions are not immediately effective, or within 30 days thereafter.

(6) For exceptions created by the President or OPM, initiate any hiring actions under the excepted service authority only after OPM publishes any such authorizations in the FEDERAL REGISTER, to include the types, numbers, and locations of the positions moved to the excepted service.

(c) In accordance with the requirements provided in paragraphs (a) and (b) of this section—

(1) An agency that seeks to move an encumbered position from the competitive service to the excepted service, or from one excepted service schedule to another, must—

(i) Provide written notification to the incumbent employee of the intent to move the position 30 days prior to the effective date of the position being moved.

(ii) In the written notification required by paragraph (c)(1)(i) of this section, if the movement was involuntary, inform the employee that the employee retains any competitive status or procedural and appeal rights previously accrued under chapter 75, subchapter II, or section 4303 of title 5, United States Code, notwithstanding the movement of the position, and inform the employee of appeal rights conferred under § 302.603 and the timing for exercising such appeal rights.

Appendix A to Interim Agreement

(d) In addition to applying to the movement of positions, the requirements of this section apply to the involuntary movement of competitive service or excepted service employees with respect to any earned competitive status, any accrued procedural rights, or depending on the action involved, any appeal rights under chapter 75, subchapter II, or section 4303 of title 5, United States Code, even when moved to the new positions.

(e) Notwithstanding the use of the plural words “positions,” “employees,” “individuals,” and “personnel actions,” this section also applies if the directive of the President, Congress, OPM, or a designee thereof affects only one position or one individual.

§ 302.603 Appeals.

(a) A competitive service employee whose position is placed into the excepted service or who is otherwise moved involuntarily to the excepted service, or an excepted service employee whose position is placed into a different schedule of the excepted service or who is otherwise involuntarily moved to a position in a different schedule of the excepted service, may directly appeal to the Merit Systems Protection Board, as provided in paragraphs (b), (c), and (d) of this section. The appeal rights conferred in this section are in addition to, and not in derogation of, any right the individual would otherwise have to appeal a subsequent personnel action undertaken without following appropriate procedures under chapter 75, subchapter II, or section 4303 of title 5, United States Code.

(b) Where the agency, notwithstanding the requirements of section 302.602 of this part, asserts that the move of the original position or any subsequent position to which the individual is involuntarily moved thereafter will eliminate competitive status or any procedural and appeal rights that had previously accrued, the affected individual may appeal from that determination and request an order directing the agency:

(1) To correct the notice to provide that any previously accrued status or procedural and appeal rights under those provisions continue to apply; and

(2) To comply with the requirements of either chapter 75, subchapter II or section 4303, title 5, United States Code, in pursuing any action available under those provisions, except to the extent that any such order would be inconsistent with an applicable statute.

(c) Where the agency fails to comply with § 302.602(c)(1) of this part and fails to provide the individual with the requisite notice, the affected individual may appeal the failure to provide the requisite notice and request an order directing the agency to comply with that provision.

(d) An individual may appeal under this part on the basis that:

(1) A facially voluntary move was coerced or otherwise involuntary; or

(2) A facially voluntary move to a new position would require the individual to relinquish their competitive status or any civil service protections and the move was coerced or otherwise involuntary.